

CHAPTER I.

GOVERNMENT ORGANIZATION

ARTICLE I.

1.0101 OVER PERSONS AND PROPERTY: The jurisdiction of the City of Beach, North Dakota, extends to all persons, places and property within its boundaries, and such extraterritorial jurisdiction as is granted to it under the provisions of the North Dakota Century Code and amendments thereto.

1.0102 DEFINING THE CITY LIMITS: There shall be included with the municipal limits of the City of Beach, North Dakota, the following territory or land; all lots and blocks shall also include all streets, allies and public ways included within the area and adjacent thereto, which are defined as within the confines of the City limits: **AMENDED BY ORD. 386, 369, 373, 385, & RESOLUTION 377-2013 & 10-2015**

The Incorporated Limits of the City of Beach, Golden Valley County, North Dakota, includes tracts lying entirely within Section 23, 24, 25 and 26, Township 140 North, Range 106 West of the 5th Principal Meridian, more particularly described as follows, to-wit:

COMMENCING At a point which is the southwest corner of Lot 15, Block 1 of Carlson's First Addition to the City of Beach, as said Carlson's First Addition is platted and surveyed in said Section 24, said point also being on the east property line of First Avenue East; thence in a southerly direction along the east property line of said First Avenue East to a point which is 66.0 feet due east of the southeast corner of Lot 7, Block 4 of Mrs. Richard's Addition to the City of beach, as said Mrs. Richard' Addition is platted and surveyed in said Section 24, said point also being 33.0 feet north of the south line of Section 24; thence in an easterly direction along a line 33.0 feet north of and parallel to the south line of Section 24, to a point which is 30.0 feet west of the southwest corner of Lot 7, Block 4 of Richard's Heights, as said Richard's Heights is platted and surveyed in said Section 24; thence in a northerly direction along a line parallel to the west property lines of Blocks 4 and 5 of said Richard's Heights to a point which is the southeast corner of Lot 13, Block 1 of Carlson's First Addition to the City of Beach; thence in a westerly direction along the south property line of Block 1 of said Carlson's First Addition, a distance of 331.0 feet to the POINT OF BEGINNING.

Beginning at a point which is the northwest corner of said Section 26; thence in a southerly direction along the west line of said Section 26, to a point which is the southwest corner of the Northwest Quarter of said Section 26, said point also being the southwest corner of the Resurvey of Near's Addition to the City of Beach, as

said Resurvey is platted and surveyed in said Section 26; thence in an easterly direction along the south line of the northwest quarter of said Section 26 and along the south line of Lot A of said Resurvey of Near's Addition, to a point which is the southeast corner of the Northwest Quarter of said Section 26; thence in a southerly direction along the west line of Southeast Quarter of said Section 26, to a point which is the southeast corner of the Southeast Quarter of said Section 26; thence in an easterly direction along the south line of the Southeast Quarter of Section 26, to a point which is the southeast corner of the Southeast Quarter of said Section 26; thence continuing in an easterly direction along the south line of the Southwest Quarter of Section 25, to a point which is the southeast corner of the Southwest Quarter of said Section 25; thence in a northerly direction along the east line of the Southwest Quarter of said Section 25, to a point which is the northeast corner of the Southwest Quarter of said Section 25, said point also being 33.0 feet east of the southeast corner of Lot 1, Block 7 of Hunter's Addition to the City of Beach, as said Hunter's Addition is platted and surveyed in said Section 25; thence in an easterly direction along the south line of the Northeast Quarter of said Section 25 and also to and along the south property line of Block 1 of Potter's Addition to the City of Beach, as said Potter's Addition is platted and surveyed in said Section 25, and also to and along the south property lines of Blocks 26, 27, 28, and 29 of Glenhaven Park Addition to the City of Beach, as said Glenhaven Park Addition is platted and surveyed in said Section 25, to a point which is the southeast corner of the Northeast Quarter of said Section 25; thence in a northerly direction along the east line of the Northeast Quarter of said Section 25 to a point which is the northeast corner of the Northeast Quarter of Section 25; thence in a westerly direction along the north line of the Northeast Quarter of said Section 25, said line also being the centerline of 4th Avenue North, to a point which is the northwest corner of the Northeast Quarter of Section 25; thence in a northerly direction along the east line of the Southwest Quarter of Section 24, to a point which is the northeast corner of the South Half of the Southwest Quarter of said Section 24; thence in a westerly direction along the north line of the South Half of the Southwest Quarter of said Section 24, to a point which is the northwest corner of Lot 1, Block 3 of Carlson's Addition to the City of Beach, as said Carlson's Addition is platted and surveyed in said Section 24, said point also being on the east line of Mrs. Richard's Addition to the City of Beach, as said Mrs. Richard's Addition is platted and surveyed in said Section 24; thence in a northerly direction along the east line of said Mrs. Richard's Addition, to a point which is the northeast corner of said Mrs. Richard's Addition; thence in a westerly direction along the north line of said Mrs. Richard's Addition, a distance of 400.0 feet to a point which is the northwest corner of said Mrs. Richard's Addition; thence in a southerly direction along the west line of said Mrs. Richard's Addition to a point which is the northeast corner of McLaren's 2nd Addition to the City of Beach, as said McLaren's 2nd Addition is platted and surveyed in said Section 24; thence in a westerly direction along the north line of said McLaren's 1st Addition and to and along the north line of Johnstone's 1st Addition to the City of Beach, as said Johnstone's 1st Addition is platted and surveyed in said Section 24,

extended to the west line of said Section 24, a distance of 125.0 feet, said west line of Section 24 also being the centerline of First Street; thence in a northerly direction along the west line of said Section 24, to a point which is 90.0 feet west of the southwest corner of Carlson's Third Addition to the City of Beach, as said Carlson's Third Addition is platted and surveyed in said Section 24; thence in an easterly direction to and along the south line of said Carlson's Third Addition, a distance of 330.0 feet to the southeast corner of said Carlson's Third Addition; thence in a northerly direction along the east line of said Carlson's Third Addition, a distance of 250.0 feet to a point which is the northeast corner of said Carlson's Third Addition; thence in a westerly direction along the north line of said Carlson's Third Addition, extended to the west line of said Section 24, a distance of 330.0 feet, said west line of Section 24 also being the centerline of First Avenue; thence in a northerly direction along the west line of said Section 24 to a point which is on a bearing of S65°49'E of the northeasterly corner of Carlson's 2nd Addition to the City of Beach, as said Carlson's 2nd Addition is platted across said Section 24; thence in a northwesterly direction on a bearing of N65°49'W to a point which is on the east line of said Carlson's 2nd Addition; thence continuing on a bearing of N65°49'W along the northerly boundary of said Carlson's 2nd Addition, a distance of 657.98 feet; thence in a westerly direction along the north line of said Carlson's 2nd Addition, a distance of 399.8 feet to the northwest corner of said Carlson's 2nd Addition; thence in a southerly direction, along the west line of said Carlson's 2nd Addition a distance of 1645.4 feet to the north line of the Southeast Quarter of Section 23, said point also being 33.0 feet south of the southwest corner of Block 2 of said Carlson's 2nd Addition; thence in an easterly direction along the north line of the Southeast Quarter of said Section 23, to a point which is 33.0 feet north and 33.0 feet west of the northwest corner of Lot 8, Block 8 of Woodhull's First Addition to the City of Beach, as said Woodhull's First Addition is platted and surveyed in said Section 23, said point also being the intersection of the centerline of 3rd Street West and 11th Avenue North; thence in a southerly direction along the centerline of said 3rd Street West to a point which is the centerline of said 3rd Street West to a point which is the intersection of the centerline of said 3rd Street West and 10th Avenue North; thence in a westerly direction along the centerline of said 10th Avenue North and paralleling the north line of the Southeast Quarter of said Section 23, to a point which is 33.0 feet north and 33.0 feet west of the northwest corner of Lot 7, Block 22 of Woodhull's 2nd Addition to the City of Beach, as said Woodhull's 2nd Addition is platted and surveyed in said Section 23, said point also being the intersection of the centerline of 6th Street West and 10th Avenue North; thence in a southerly direction along the centerline of said 6th Street West to a point which is the intersection of the centerline of 6th Street West and 6th Avenue North, said point also being 33.0 feet west and 33.0 feet south of the southwest corner of Lot 12, Block 9 of said Woodhull's 2nd Addition; thence in a westerly direction along the centerline of 6th Avenue North to the west line of the Southeast Quarter of said Section 23, said point also being 33.0 feet north and 33.0 feet west of the northwest corner of Lot 10, Block 24 of Woodhull's 1st Addition to the City of Beach; thence in a southerly

direction along the west line of the Southeast Quarter of said Section 23 to the southwest corner of the Southeast Quarter of said Section 23; thence in a westerly direction along the south line of the Southwest Quarter of said Section 23, to a point which is the southwest corner of the Southwest Quarter of said Section 23, said point also being the northwest corner of the Northwest Quarter of said Section 26, and the POINT OF BEGINNING.

EXCLUDED From the above described incorporated limits is the following tract:

A tract of land lying in the Southwest Quarter of the Southeast Quarter (SW1/4SE1/4) of Section 24, Township 140 North, Range 106 West of the 5th P.M., Golden Valley County, North Dakota, more particularly described as follows, to-wit:

Beginning at a point 693 feet east of the South Quarter corner of said Section 24; thence in an easterly direction on an azimuth bearing of 090°16', a distance of 400.0 feet along the previously incorporated city limits; thence in a northerly direction on an azimuth bearing of 360°00', a distance of 427.0 feet; thence in a westerly direction on an azimuth bearing of 270°16', a distance of 400.0 feet; thence in a southerly direction on an azimuth bearing of 180°00', a distance of 427.0 feet to the POINT OF BEGINNING.

Tract contains 3.9 acres, according to the above description. The south 400.0 feet of the west 750.0 feet of the east 1550.0 feet of the Southeast Quarter of Section 24, Township 140 North, Range 106 West, 5th P.M., Golden Valley County, North Dakota. Containing 6.88 acres.

1.0103 DIVISION OF CITY INTO PRECINCTS: There shall be one precinct within the City of Beach to be designated as "The City of Beach". The precinct shall consist of all that part of the City of Beach hereinabove set forth. The polling place for said precinct shall be located at the Beach High School. **AMENDED BY ORD. 385**

1.0104 NUMBER AND BOUNDARIES OF WARDS:

A. There shall be one ward within the City of Beach, North Dakota. Members of the City Council shall be elected at large.

ARTICLE 2.

GOVERNING BODY--CITY COUNCIL

1.0201 REGULAR MEETINGS: The City Council shall hold its regular meetings on the first and third Monday of each month at the City Hall. If a regular meeting falls on a holiday, such meeting shall be held on the following business day with the same effect as if

it was conducted on the day appointed.

The meeting shall commence at the hour of 7:00 o'clock p.m., unless specifically designated otherwise by the City Council.

1.0202 SPECIAL MEETINGS: Special meetings may be called at any time by the Mayor or any two members of the city council to consider matters mentioned in the call of such meeting. Written notice of any special meeting shall be given to each member of the city council at least three hours before the time of the meeting.

1.0203 ORGANIZATIONAL MEETINGS: The first meeting for the organization of the City shall be held on the 4th Tuesday in June of each even-numbered year.

1.0204 HOLIDAYS: In the event that a regularly scheduled meeting shall fall on a holiday, such meeting shall be held upon the next business day with the same effect as if conducted upon the day appointed.

1.0205 PUBLIC NOTICE OF MEETINGS: Public notice shall be given in advance of meetings of the City Council. The notice shall contain the date, time and location of the meeting and where practicable, the topics to be considered. However, the lack of an agenda and the notice, or a departure or an addition to the agenda at a meeting shall not affect the validity of the meeting or the actions taken thereat. The schedule of the regular meetings of the City Council including the aforementioned notice information shall be filed annually in January with the City Auditor. The schedule shall be furnished to anyone who requests the information. In addition, the City Council shall post public notice of its meeting at the principal office if such exists, and at the location of the meeting. The Mayor shall have the responsibility of assuring that such public notice is given at the same time as the council members are notified, and that the notice is available to anyone requesting such information. In the event of emergency or special meetings of a public body, the person calling such meeting shall notify representatives of the news media, if any, located where the meeting is to be held and which have requested to be so-notified of such special or emergency meeting, of the time, place, date, and the topics to be considered at the same time as such councilmen are notified.

1.0206 PUBLICATION OF PROCEEDINGS: The City shall publish a complete record of all its proceedings in the official newspaper in accordance with Section 40-08-12 NDCC as the same now is required or may be hereinafter amended.

1.0207 SALARIES: The salary of the Mayor of the governing body of the City of Beach shall be the sum of Four Thousand Two Hundred DOLLARS (\$4,200.00) per year. The salary of other members of the city council of the City of Beach shall be the sum of Three Thousand Three Hundred DOLLARS (\$3,300.00) per person per year. **AMENDED BY ORD. 385 390**

1.0208 RULES AND ORDER OF BUSINESS: The rules and order of business for the parliamentary government of the city council shall be governed by Robert Rules of Order.

1.0209 VOTING: Unless otherwise specifically provided by law, all votes of whatever kind taken at a council meeting must be open public votes, and all non-procedural votes must be recorded roll call votes with the votes of each member being made public at the open meeting. The minutes shall show the results of every vote taken and shall show the recorded votes of each member of every recorded roll call vote. Each councilmen present is obligated to vote on a measure presented to the City Council. A pass vote is to be considered as a vote with the remaining majority if a quorum is present. If a member of the council for reason or cause does not wish to act or participate in a matter before the council, he shall cause same to be entered on the record of the proceedings and the council shall then proceed, as if said member or members were absent. **AMENDED BY ORD. 385**

1.0210 CITY COUNCIL: The governing body of the City shall be the City Council which shall be composed of the mayor and aldermen. **AMENDED BY ORD. 385**

1.0211 MEMBERS OF COUNCIL - QUALIFICATIONS - ELECTION OF COUNCILMEN--TERM OF OFFICE--COMPENSATION OF COUNCILMEN--AUTHORITY:

The number of councilmen, the election of councilmen and the mayor, the qualifications of the mayor and councilmen, the term of office of the councilmen and the mayor, the authority and restrictions on councilmen, shall be governed by the provisions pertaining thereto in Chapter 40-08 of NDCC as now appears or may be hereinafter amended. **AMENDED BY ORD. 385**

1.0212 RULES OF PROCEDURE GENERALLY:

- A. At the hour of meeting, the mayor shall call the council to order. He shall preserve order and quorum and decide all questions of order, subject to an appeal to the council.
- B. As soon as the council shall be called to order, the auditor shall proceed to call the names of members in alphabetical order marking who is present and who is absent, and record the marking in the proceedings of the council.
- C. In case of the absence of the mayor, the president and the vice-president of the council at the time of the meeting, the auditor shall call the council to order. Thereupon, the council shall select one of their own members as president pro tempore.
- D. At each regular meeting of the council, the order of business shall be

substantially as follows:

- (1) Reading and correcting the minutes of the last proceeding meeting.
 - (2) Accounts and claims may be presented and acted upon.
 - (3) Personal appearances, Receiving petitions, memorials, demonstrations and communications.
 - (4) Report of committees and special board may be made and considered, first from standing committees and next from select boards and committees.
 - (5) Ordinances may be introduced, and ordinances introduced at the previous meeting may be put on final passage.
 - (6) Miscellaneous business.
 - (7) Adjournment.
- E. All accounts presented to the council for allowance shall be in detail stating "if labor performed, the locality, when such work was done, by whose order, number of days employed and the price to be paid per day; if for material furnished, by whose order, and the place where such material was used and delivered".
- F. When a motion is made, it shall be stated by the mayor or read by the auditor previous to discussion. All resolutions shall be reduced to writing, and any resolution may be withdrawn by consent of the council before discussion or amendment.
- G. All questions, except passages of ordinances, shall be put in this form; those that are in favor of the motion (state the question) say "aye", those opposed say "no".
- H. When a question has once been decided it shall be in order for any member of the majority or, in case of a tie, for any member voting the affirmative to move reconsideration thereof at the same or next regular meeting.
- I. In all cases when a resolution or motion shall be entered on the minutes, the names of the members moving such resolution or motion shall be entered on the minutes.

- J. (Repealed) The reports of committee shall be made in writing.
- K. The City Auditor shall see that all ordinance and resolutions are correctly engrossed and enrolled before they are published.

- L. The council may from time to time pass a resolution setting forth a procedure for consideration of items of business pursuant to an agenda, and further provide for the method and procedure for causing items to be placed on the agenda.

1.0213 PRESIDENT AND VICE-PRESIDENT--ELECTION OF, AUTHORITY:

At the organization meeting in each even-numbered year, the council members shall elect one of their members a president and one a vice-president to hold office until their successors are elected. The president of the city council shall be the presiding officer of the council in the absence or temporary disability of the mayor. In the absence or disability of the mayor and president of the city council, the vice-president shall be the presiding officer. **AMENDED BY ORD. 385**

1.0214 VACANCY IN THE OFFICE OF A COUNCIL MEMBER: If a vacancy shall occur in the office of mayor or councilmen, such vacancy shall be filled pursuant to the rules and procedures set forth in Chapter 40-08 NDCC as the same now appears or may hereinafter be amended. **AMENDED BY ORD. 385**

1.0215 CORPORATE SEAL: The corporate seal of the City of Beach shall be circular and it shall contain thereon the words "City of Beach, North Dakota".

ARTICLE 3.

HOME RULE CHARTER

1.0301 INCORPORATION: The inhabitants of the City of Beach, within the corporate limits as now established or as hereafter established in the manner provided by law, shall continue to be a municipal body politic and corporate in perpetuity, under the name of the "City of Beach".

1.0302 GOVERNING BODY TO EXERCISE POWERS: Subject to the limitations imposed by the Constitution of the United States of America, the Constitution of the State of North Dakota, state law, and this Charter, all powers of the city shall be vested in the elected, governing body. The elected, governing body shall enact ordinances, adopt budgets, determine policies and prescribe the functions of government to be performed by the city under the authority of the charter and the constitution and laws of this state.

1.0303 POWERS OF CITY: The city shall have all powers granted to municipal corporations by the constitution and laws of this state and by this charter, together with all the implied powers necessary to carry into execution all powers granted.

1.0304 SALES TAX: There is hereby imposed a retail sales tax and use tax of no more than one percent of those gross receipts taxed pursuant to Chapters 57-39.2 and 57-

40.2. NDCC, subject to the following:

A. Any transactions exempted from imposition of the state sales tax or use tax pursuant to state law shall be exempted from the city sales tax or use tax. In addition, there shall be imposed no sales tax on the sale of farm machinery or farm machinery repair or replacement parts.

B. The amount of the sales and use tax shall not exceed one percent (1%) of the gross receipt, nor shall the tax exceed twenty-five dollars (\$25) on any single purchase or sales transaction involving one or more items.

C. Any retail sales tax or use tax imposed shall be computed and collected in the same manner provided by law for the collection of the state sales tax and use tax. The bracket system for the application of the state sales tax set forth in section 57-39.2-08.2, NDCC, shall be adjusted to incorporate the additional city sales tax.

D. The proceeds of any sales and use tax, less administrative costs, shall be dedicated and utilized for maintenance of the swimming pool (20%), and infrastructure and community enhancement (80%).

E. This ordinance imposing a city sales tax adopted pursuant to this article shall, no later than July 1 in the sixth year following the year in which the ordinance takes effect, be referred to a vote of the electorate on motion of the governing body unless the ordinance has previously been referred and approved by a majority vote by petition of qualified voters. If a majority of the qualified voters voting on the question vote to repeal the ordinance, it shall be repealed effective at midnight on March 31st of the following year. Thereafter, an ordinance adopted by the governing body imposing a sales tax shall not take effect unless first referred to a vote of the electorate and approved by a majority of the qualified voters voting on the question.

F. An ordinance imposing a city sales tax approved by a majority vote of the voters, as set forth in (E) above, shall remain in effect unless repealed or amended thereafter pursuant to law.

G. It is intended that the statutes of this state, so far as applicable, shall continue to apply to this city, except insofar as superseded by this charter or by ordinance passed pursuant to this charter, and that in addition to

the powers enumerated herein or implied hereby, or appropriate to the exercise of such powers, the city shall have and may exercise all powers under the constitution and laws of the state applicable generally to all cities.

1.0305 SEPARABILITY CLAUSE: If any section or part of a section of this charter shall be held invalid by a court of competent jurisdiction, such holding shall not affect the remainder of this charter, except to the extent that an entire section or part of a section may be inseparably connected in meaning and effect with the section or part of a section to which such holding shall directly apply.

1.0306 PLENARY AND IMPLIED POWERS OF THE GOVERNING BODY: The governing body shall have plenary power to enact and make all proper and necessary ordinances, resolutions and orders to carry out and give effect to the express and implied powers granted by law or in this charter to the end that a complete, harmonious and effective municipal government may be initiated, installed, operated, and maintained in the city, and thereby protect and safeguard the rights, interests, safety, morality, health and welfare of the city and its inhabitants.

1.0307 SUCCESSION IN GOVERNMENT:

A. Rights of Officers and Employees Preserved--Except as otherwise specifically provided, this charter shall not affect or impair the rights or privileges of officers or employees of the city, or any office, department or agency thereof, existing at the time this charter shall take effect. Any provision of law in force at the time this charter shall take effect, which provision of law is not inconsistent herewith, shall remain in full force and effect as respects qualifications of personnel, appointment, removal, pension and retirement rights, civil rights, or any other rights or privileges of officers or employees of the city or any office, department or agency thereof.

B. Continuance of Present Officers--All persons holding executive and administrative office at the time this charter takes effect shall continue in office and shall continue the performance of their duties until provisions shall have been made in accordance therewith for the performance of such duties or the discontinuance of such office.

C. Continuance of Present Offices, Departments or Agencies-- Any office, department or agency, heretofore existing, shall continue to exercise powers and duties the same as were heretofore exercised and shall have the power to continue any business proceedings or other

matters within the scope of its regular powers and duties until such office, department or agency shall be changed or abolished by the governing body.

The powers conferred and the duties imposed upon any office, department or agency of the city by the laws of this state shall, if such office, department or agency be abolished by this charter or under its authority, be thereafter exercised and discharged by the office, department or agency designated by the governing body.

D. Continuance of Appointive Boards, Authorities and Commissions--All appointive boards, authorities and commissions, heretofore existing shall continue and shall exercise such powers and duties as were granted them until such boards, authorities and commissions and the powers thereof shall be changed or abolished by the governing body.

E. Continuance of Contracts--All contracts entered into by the city, or for its benefit, prior to the taking effect of this charter, shall continue in full force and effect.

F. Pending Actions and Proceedings--The adoption of this charter shall not abate or otherwise affect any action or proceeding civil or criminal, pending when it takes full effect, brought by or against the city or any office, department, agency or officer thereof.

G. Ordinances and Statutes to Remain in Force--All ordinances, resolutions and regulations of the city, together with state statutes applicable to municipalities which are in force at the time this charter takes effect, and not inconsistent with the provisions thereof, are hereby continued in force until such ordinances, resolutions and regulations of the city are duly amended or repealed and until ordinances are enacted providing procedures replacing those previously required by state statute.

H. Inauguration of Government Under This Charter--If a majority of the qualified electors of the city voting on the question vote to ratify this charter, the provisions of this charter shall go into effect upon the filing of the charter by the governing body with the Secretary of State, the Clerk of District Court for Golden Valley County, and the office of the City Auditor, within ninety (90) days.

1.0308 METHOD OF AMENDMENT AND REPEAL: This charter may be amended or repealed and provided by Chapter 40-05.1 of the North Dakota Century Code.

ARTICLE 4.

APPOINTIVE OFFICES

1.0401 APPOINTIVE OFFICES: At the first meeting after the qualifications of its members, or as soon thereafter as possible, the mayor with the approval of the city council shall appoint persons to the following offices:

- (1)A city auditor;
- (2)A city assessor;
- (3)A city attorney;
- (4)A city engineer;
- (5) Such other officers as the city council deems necessary and expedient.

The city assessor shall be appointed at the first meeting of the city council in September of each odd-numbered year.

1.0402 TERM OF APPOINTIVE OFFICERS -- OATH: The term of all appointive officers shall begin on the 1st day of July succeeding their appointment, and such officers shall hold their respective offices for two years, and until their successors are appointed and qualified. Before entering upon the duties of their office, appointed officers shall take the oath of office and give bonds as required by Section 40-13-03 NDCC as the same now appears or may be hereinafter amended.

1.0403 REMOVAL: Appointive officers may be removed by a majority vote of the city council. Whenever a vacancy occurs in an appointive office, the same proceedings shall be held to fill such vacancies as are provided for in case of an appointment in the first instance.

1.0404 BONDS OF MUNICIPAL OFFICERS AND EMPLOYEES: The auditor, the assessor of the city, and such other officers as the city council may from time to time determine, before entering upon the discharge of their respective offices, shall execute and deliver to the municipality, their separate bonds payable to the municipality, conditioned for the honest and faithful performance of their official duties. Such amount shall be in an amount fixed by the governing body of the municipality. All official bonds shall be

approved by the mayor and filed in the office of the city auditor. Such bonds shall conform to the provisions of law applicable to the bonds of state officers and employees except that no personal surety shall be accepted on any bond. The city shall not pay the premium on any bond except a bond written in the state bonding fund or a bond procured to replace a bond canceled by the state bonding fund. The city council at any time may require new and additional bonds of any officer.

1.0405 SALARIES: The salary of city officials and appointive officers, except as otherwise provided by law, shall be in such sums and amounts as may be, by resolution of the city council, fixed from time to time.

1.0406 ADMINISTRATIVE POLICY AND PROCEDURES: Each officer of the city shall perform the following duties:

- A. Perform all duties required of his office by law or ordinance and such other duties not in conflict as may be required by the city council;
- B. Be immediately responsible to the city council for the effective administration of their department and all activities assigned thereto;
- C. Keep informed as to the latest practices in their particular field and shall inaugurate with approval of all of the city council such new practices as appear to be of benefit to the service and to the public;
- D. Submit such reports of activities of his department as the city council may request;
- E. Be responsible for the proper maintenance of all city property and equipment used in his department or under his control;
- F. Establish and maintain records in sufficient detail to furnish all information needed for proper control of department activities and to form a basis for reports to the city council;
- G. Cooperate with other officers, department and employees;
- H. Have the power to direct and supervise all subordinates under him;
- I. Perform their duties during such hours as the city council may prescribe by resolutions from time to time;
- J. Comply and perform their duties in accordance with chapters 40-13 and 40-14 NDCC as the same may apply to them and those particular statutes which pertain to his particular office.

1.0407 OBSTRUCTING A PUBLIC OFFICIAL PROHIBITED: Every person who willfully delays or obstructs a public officer in the discharge or attempt to discharge any duty of his office shall upon conviction thereof, be punished by a fine of not more than five hundred DOLLARS (\$500.00) or by imprisonment not to exceed thirty (30) days, or both such fine and imprisonment in the discretion of the Court; the Court to have power to suspend said sentence and to revoke the suspension thereof.

ARTICLE 5.

PURCHASING AND DISPOSITION OF PROPERTY

1.0501 COMPETITIVE BIDDING REQUIRED: All purchases of, and contracts for supplies and contractual services, and all sales of property which have become obsolete or unusable shall, except as otherwise provided herein, be based whenever possible on competitive bid.

1.502 PROCEDURE: All supplies and contractual services except as otherwise provided herein, when the estimated cost thereof shall exceed Five Thousand DOLLARS (\$5,000.00), shall be purchased from the lowest responsible bidder after due notice inviting proposals. All sales or dispositions of obsolete or unusable property when the estimated values shall exceed twenty-five hundred DOLLARS (\$2,500.00), shall be sold upon resolution by the city council authorizing the public sale of said property, a notice containing a description of the property to be sold and designating the place where and the day and the hour when the sale will be held shall be published in the City's official newspaper as provided in Section 40-01-09 NDCC once each week for two consecutive weeks with the last publication being at least ten (10) days in advance of the date set for the sale. The notice shall specify whether the bids are to be received at auction or as sealed bids as determined by the city council. The property advertised shall be sold to the highest bidder if his bid is deemed sufficient by the majority of the members of the city council. The lowest responsible bidder, or the highest responsible bidder, shall be the bidder who in addition to price has the best ability, capacity and skill to perform the contract to provide the service required, promptly or within the specified time without delay or interference. There shall also be considered character, integrity, reputation, judgment, experience and efficiency of the bidder, the quality of the performance of previous contracts, sufficiency or financial resources, and previous and existing compliance with state laws and city ordinances. **AMENDED BY ORD. 385**

1.0503 OPEN MARKET PURCHASES: All sales of property which have become obsolete or unusable of an estimated value of less than twenty-five hundred DOLLARS (\$2,500.00) or all supplies and services of a noncompetitive type or kind, or purchases and sales between governmental bodies, or when in the opinion of the city council an apparent emergency required immediate purchase of supplies or contractual services, shall be made or obtained in the open market without competitive bidding.

1.0504 DISCLOSURE OF INTEREST: No city officer shall refuse or fail to disclose to the city council to which he or she is a member, any personal interest, direct or indirect, and any contract requiring the expenditure of municipal funds. Any person who shall violate any provision of this section shall be guilty of an infraction and shall, in addition, be subject to removal from office.

1.0505 CONVEYANCE, SALE, LEASE OR DISPOSAL OF REAL PROPERTY:
Real property belonging to the municipality shall be conveyed, sold, leased, or disposed of only as approved by a two-thirds (2/3) vote of all members of the governing body. Instruments affecting such conveyance, sale, lease, or disposal shall be valid only when duly executed by the mayor and attested by the city auditor. Subject to the restrictions of Sections 40-11-04 NDCC and 40-11-04.1 NDCC which require public notice of a sale of real estate in excess of a certain amount, it shall be at the discretion of the city council as to whether or not there shall be an advertisement for bids for such conveyance, sale, lease or disposal; whether or not advertisements shall be made in other states of the fact that certain real property is available for such disposition; and whether or not sale should be made at public auction; such decision by the governing body to be made by a majority vote of the members present. Bids for the purchase or lease of real property belonging to the municipality, whether or not advertisement thereof has been made, shall be directed to the city council and submitted to the city auditor, who shall present any and all such bids to the city council at its next regularly scheduled meeting. When specific statutory provisions contained in the North Dakota Century Code provide for a procedure which is in conflict with this section governing the conveyance, sale, lease or disposal of real property; this section shall not apply insofar as it is in conflict with such state law. A portion of said statutory procedures are as follows:

- A. Lease of airports or landing fields, or portions thereof shall be under authority granted in Section 2-02-06 NDCC. Said lease shall further be in compliance with regulations and directives of appropriate federal agencies.
- B. Conveyance of right of way for any state highway shall be as provided in Section 24-01-46 NDCC.
- C. Leasing of oil and gas lands shall be as provided in Sections 38-09-02 through 38-09-04 and Sections 38-09-14 through 38-09-20 NDCC.
- D. Conveyance of property to a municipal parking authority shall be as provided in Section 40-61-05 NDCC.
- E. Lease of public buildings or portions thereof shall be as provided in Chapter 48-08 NDCC.
- F. Granting of concessions for cafes, restaurants, and confectioneries on public buildings and grounds shall be as provided in Chapter 48-09, NDCC.

- G. Granting of right of way for a railway, telephone line, electric light system, or a gas or oil pipeline system shall be as provided in Section 49-09-16 NDCC.

1.0505 AMENDED BY ORD. 371

ARTICLE 6.

CITY LODGING TAX

1.0601 CITY LODGING TAX IMPOSED - DISPOSITION: There is imposed a tax in the amount of two percent upon the gross receipts of retailers on the leasing or renting of hotel, motel, or tourist court accommodations within the city for periods of less than thirty consecutive calendar days or one month. The tax imposed by this section shall be in addition to the state sales tax on rental accommodations and the city sales tax provided in Section 1.0304 of the Beach City Code. All proceeds collected under this section must be deposited in the city visitor's promotion fund and spent only as provided in Chapter 40-57.3 of the North Dakota Century Code.

1.0602 VISITOR'S COMMITTEE FOR LODGING TAX: There is hereby created a visitor's committee which shall serve as an advisory committee to the City Council in administering the proceeds of the lodging tax as described in Section 1.0601 of the Beach City Code. The appointees shall serve without compensation, except for reimbursement for necessary expenses. Committee members shall serve a term of four years, except that two of those initially appointed must be appointed for an initial term of two years. Vacancies must be filled in the same manner as the initial appointment. The committee shall elect a chairperson and vice-chairperson from among its members to serve a term of two years.

CHAPTER II.

ORDINANCES

ARTICLE 1.

2.0101 PROCEDURE IN PASSING ORDINANCES: All ordinances shall be read twice, and the second reading shall not be had in less than one week after the first reading; and after such first reading, before their final passage, an ordinance may be amended, and shall then be put upon their second reading and final passage; provided such ordinance is not enacted until it is approved by the mayor or passed over the mayor's veto. An ordinance passed by the city council shall be deposited in the office of the city auditor for the approval of the mayor. If the mayor approves such ordinance, he shall sign the same. An ordinance not approved by the mayor shall be returned by him with his objections to it in writing to the next regular or special meeting of the council occurring not less than five days after the passage thereof. The veto may extend to an entire ordinance or any one or more items or appropriations contained in any ordinance making an appropriation. If a veto extends to a part only of an ordinance, the remainder of the ordinance shall take effect and be in force. If the mayor fails to return any ordinance with

his objections thereto within the time specified in this section, he shall be deemed to have approved the same. Any ordinance which has been vetoed in whole or in part may be reconsidered by the city council, and if two-thirds (2/3) of its members shall pass such ordinance, it shall be effective notwithstanding the veto. The vote to pass an ordinance over the mayor's veto shall be taken by yeas and nays and entered in the journal.

2.0102 PUBLICATION: The title and penalty clause of every ordinance imposing any penalty, fine, imprisonment, or forfeiture for a violation of its provisions, after the final adoption of such ordinance, shall be published in one issue of the official newspaper of the city.

2.0103 EFFECTIVE DATE OF ORDINANCES: Ordinances finally approved by the city council and which require publication shall take effect and be in force from and after the publication thereof unless otherwise expressly provided in the ordinance. Ordinances which do not require publication shall take effect and be in force from and after the final approval thereof unless otherwise expressly provided therein.

2.0104 EFFECT OF REPEAL: When any ordinance repealing a former ordinance, clause or provision shall be itself repealed, such repeal shall not be construed to revive such former ordinance, clause or provision, unless it shall be expressly so provided.

2.0105 ORDINANCE BOOK REQUIRED: The city auditor shall record in an ordinance book all ordinances finally passed and approved, and when any ordinance has been published, he shall record therein the Affidavit of Publication or Posting. The ordinance book, or copies of ordinances as recorded therein, certified by the city auditor, shall be received as evidence without further proof. If the ordinances of a municipality have been printed in a book or pamphlet form by authority of the city council, such book or pamphlet shall be received as evidence of the existence of the ordinances therein contained. **AMENDED BY ORD. 385**

2.0106 GENERAL PENALTIES FOR VIOLATION: In case no other specific penalty is prescribed for the violation of any section or provision of any ordinance of the city of Beach, any person found guilty of violating an ordinance shall be punished by a fine that shall not exceed five hundred DOLLARS (\$500.00), and imprisonment shall not exceed thirty (30) days for one offense, or both such fine and imprisonment in the discretion of the Court; the Court shall have the power to suspend said sentence and to revoke the suspension thereof. Each day any person, firm, association or corporation shall violate any section or provision of any article shall constitute a separate offense.

2.0107 COST OF PROSECUTION: In every case of conviction of a violation of any ordinance or any part thereof, the cost of prosecution may be assessed against the person convicted, as part of the punishment.

2.0108 CONFINEMENT AS PAYMENT OF COST: In all trials for offenses under the ordinances of the city of Beach, if the Defendant is found guilty, the municipal judge

shall render judgment accordingly. It shall be part of the judgment that the Defendant stand committed until such judgment is complied with in no case to exceed one (1) day for every one and 25/100 DOLLARS (\$1.25) of fine and costs assessed against said Defendant.

AMENDED BY ORD. 385

2.0109 LABOR IN LIEU OF FINE: If the Defendant is found guilty of the violation of a municipal ordinance and is committed as provided above in 2.0108, the municipal judge may require him to work for the municipality at such labor as his strength and health will permit, not exceeding eight hours in each working day. For that work, the person so imprisoned shall be allowed for each day, exclusive of his board, ten DOLLARS (\$10.00) on account of fines and costs assessed against him. If a person is convicted under an ordinance prohibiting driving while under the influence of an intoxicating liquor or a narcotic drug, the Court may, prior to sentencing, refer the person to an approved treatment facility for diagnosis. Upon receipt of the results of the diagnosis, the Court may impose a sentence as prescribed by the city ordinances or it may sentence the person to treatment in a facility approved by the State Division of Alcoholism and Drug Abuse. AMENDED BY ORD. 385

2.0110 REFUSAL TO WORK: Any person refusing to perform manual labor in accordance with the sentence of the Court, shall be deemed in contempt of Court and shall be punished accordingly. No credit shall be allowed such person on account of such fine and costs for the day or days that such person refuses to perform manual labor in accordance with the sentence of the Court. AMENDED BY ORD. 385

2.0111 DEFERRING OR SUSPENDING SENTENCE: The municipal judge may, in his discretion, upon the conviction of any person of any offense against any ordinances of the City of Beach, then and there impose a sentence of imprisonment as may be regulated by such ordinances, or defer imposition of sentence or suspend the sentence imposed on such person for a period of not to exceed ninety (90) days from the date of such conviction; and may, during such period, allow the Defendant to go upon his own recognizance, or upon such bail as may be regulated by law or ordinances of said city; and may, in his discretion, at or before the expiration of such period have the Defendant brought before him and commit such Defendant or cause such sentence of imprisonment to be then and there imposed and executed in like manner, so far as applicable, as may be provided by law or the ordinance in cases where the commitment and imposition of the sentence of imprisonment is not deferred or suspended and may then and there forthwith commit such Defendant and require that such sentence of imprisonment be executed and carried out. AMENDED BY ORD. 385

2.0112 FINES AND FORFEITURES FOR VIOLATION OF ORDINANCES PAID INTO CITY TREASURY: All fines, penalties, and forfeitures collected for offenses against the ordinances of the city shall be paid into its treasury at the end of the month in which it is forfeited or collected along with the municipal judge's monthly report. AMENDED BY ORD. 385

CHAPTER III.

PUBLIC PLACES AND PROPERTY

ARTICLE 1.

CONSTRUCTION AND REPAIR

3.0101 SUPERVISION: All construction, maintenance and repair of public streets, alleys, sidewalks and public ways shall be under the supervision of the city engineer or street officer appointed by the city council. He shall be charged with the enforcement of all ordinance provisions relating to such public places (except traffic ordinances) and is hereby authorized to enforce such ordinances. **AMENDED BY ORD. 386**

3.0102 CONSTRUCTION AND REPAIR--PERMITS: It shall be unlawful to construct, reconstruct, alter, create or repair, any public street, sidewalk, driveway, curbs, gutters, retaining walls, without having first secured a permit thereof, unless said work is performed by the city contractor. Applications for such permits shall be made to the auditor and shall state the location of the intended construction, reconstruction, alteration or repair, the extent thereof, and the person or firm who is to do the actual construction work. No permit shall be issued except where the work will conform to the ordinances of the city or the requirements of the city engineer or city officer. **AMENDED BY ORD. 386**

3.0103 BOND: Each applicant shall file a bond in the amount of twenty-five hundred DOLLARS (\$2,500.00) with surety to be approved by the city council condition to indemnify the city for any loss or damage resulting from the work undertaken or the manner of doing the same. **AMENDED BY ORD. 386**

3.0104 SPECIFICATIONS: All construction, maintenance and repair herein shall be made in conformity with the specifications laid down or approved from time to time by the governing body, city engineer, or street officer. **AMENDED BY ORD. 386**

3.0105 DUTY OF THE OWNER TO MAINTAIN: It shall be the duty of the owner of any property along which a sidewalk has been constructed to maintain the same in good repair and safe condition. Should any such owner fail to so maintain said sidewalks the city engineer or street officer shall direct him to make such repairs as may be necessary to restore such sidewalk to a safe condition. Should he fail within a reasonable time, to follow the directions of the city engineer or street officer, the city engineer or street officer shall report the facts to the city council who shall then proceed as provided in the laws of the State of North Dakota, to make such sidewalk safe. **AMENDED BY ORD. 386**

3.0106 APPLICATION FOR PERMIT: An applicant for a permit hereunder shall file with the city auditor an application showing:

- (1) The name and address of the owner, or agent in charge, of the property abutting

their proposed work area.

- (2) The name and address of the party doing the work.
- (3) The location of the work area.
- (4) The attached plans or sufficient sketches showing details of the proposed alterations.
- (5) Estimated cost of the alterations.
- (6) Such other information as the city engineer, street officer or the city council shall find reasonably necessary to the determination of whether a permit should be issued hereunder.

3.0106 AMENDED BY ORD. 386

3.0107 FEES: The fee of five and 00/100 DOLLARS (\$5.00) shall accompany an application for a permit. AMENDED BY ORD. 386

3.0108 STANDARDS FOR ISSUANCE OF PERMIT: The city auditor shall issue a permit hereunder when the city engineer or the street officer finds:

- (1) That the work will be done according to the standards and specifications of the city for public work of like character.
- (2) That the operation will not unreasonably interfere with vehicle and pedestrian traffic, the demand and necessity of parking spaces, the means of ingress and egress to and from the property affected in adjacent properties.
- (3) That the health, welfare and safety of the public will not be unreasonably impaired.
- (4) That the bond required by 3.0103 has been duly filed and approved.

3.0108 AMENDED BY ORD. 386

3.0109 SIDEWALKS BUILT TO GRADE: All sidewalks shall be constructed in accordance with the elevation and grade thereof to be furnished by the city engineer, and shall be constructed under his direction and supervision or under the supervision of the street officer. AMENDED BY ORD. 386

3.0110 WIDTH OF SIDEWALKS: All sidewalks hereinafter constructed within the limits of the city of Beach shall be constructed with the following widths:

- A. All sidewalks in the residential district shall be constructed four feet in width and have a minimum slope of .25 inches per foot from the inside edge

towards the street.

- (1) In locations where the right of way width is 60 feet or less, the sidewalk shall be constructed on the property line.
 - (2) In locations where the right of way width is greater than 60 feet the sidewalk shall be constructed 18 inches out from the property line.
 - (3) In no case in the residential district shall the sidewalk be constructed adjacent to the curb unless with specific approval of the city council.
- B. All sidewalks in the commercial and/or industrial district shall be constructed from the property line to the back of the curb and the width of the sidewalk shall be governed by the width of the street section.
- (1) In areas where commercial development is not complete the entire sidewalk need not be constructed. A section 6 feet in width adjacent to the curb shall be constructed thus leaving an area for structural foundations.

3.0111 MATERIALS AND MANNER OF CONSTRUCTION: The kind and quality of material of which, and the manner in which, sidewalks, driveways, curb and gutter, relaying of block walks, and paving repairs shall be constructed according to specifications set by resolution of the city council with the advice and consent of the city engineer.

3.0112 CITY CONTRACTOR: The city auditor shall receive bids for the construction of sidewalks, driveways, curb and gutter and paving repair as the city may find necessary to have done. Such bids shall be made upon blanks furnished by the city engineer or street officer and shall conform to specifications filed with the city auditor by the city engineer or street officer and approved by the city council.

All sidewalks, driveways, curb and gutter, and alley returns lying between the property line and the abutting street hereafter constructed within the city of Beach must conform to this chapter and the specifications filed with the city engineer and approved by the city council. When any contract for the construction of sidewalks, driveways, curb and gutter, relaying of block walks, and paving repairs is about to be entered into by the city in accordance with the provisions of the laws of this state, the contractor to whom any such contract shall be awarded shall be required, before such contract is entered into, to give, in addition to the contract bond required by the laws of the state of North Dakota, an additional bond in an amount to be determined by the city council of the city of Beach with the condition that said contractor shall warrant the workmanship for a period of one year from the date of final estimate all sidewalks, driveways, curb and gutter, and paving repairs so constructed by such contractor under the terms of such contract, and that in case they shall within said time begin to crumble or to disintegrate or become cracked or broken to such an extent, that in the opinion of the city engineer or street officer, the same is not a

satisfactory compliance with the specifications for the construction thereof, then the city engineer or street officer may direct that such sidewalks, driveways, curb and gutter or paving repairs be immediately repaired or relaid in whole or in part as he shall deem best, and the contractor shall immediately cause the same to be repaired or relaid; and in the case of a contractor's neglect, refusal or failure so to repair or to relay the same, the city, at any time within said two year period, or thereafter, may cause the same to be repaired or relaid, and the cost thereof, whether done by the city directly or through a contract, may be recovered against said contractor and the surety upon such bond. **AMENDED BY ORD. 386**

ARTICLE 2.

USE AND CARE OF STREETS, SIDEWALKS AND PUBLIC PLACES

3.0201 NAMING STREETS AND AVENUES:

1. That all public streets within the City running in a east-west direction shall be designated as streets, and numbered pursuant to that map attached hereto and made a part hereof.
2. That all public streets within the City running in a north-south direction shall be designated as avenues and numbered pursuant to that map attached hereto and made a part hereof.

3.0202 OBSTRUCTIONS AND ENCROACHMENTS:

3.0202-1 Depositing or scattering rubbish, refuse, etc.

It shall be unlawful for any person in the city to throw or permit to be deposited or scattered upon any sidewalk, alley, street, bridge, public passageway or any vacant lot, public or private property in the city any waste or other material of any kind, including but not limited to wood, ashes, grass, rubber, cans, cartons, bottles, offal, paper, dung, earth or any other thing or substance whatever which may injure, disfigure or tend to render such street, etc., unclean or a nuisance. Any person in violation of this Section shall be fined in amount not to exceed \$25.00. **AMENDED BY ORD. 386**

3.0202-2 Depositing snow or ice onto streets, etc.

- A. Generally. It shall be unlawful for any person in the city to throw, move, dump, deposit or permit to be deposited or scattered any snow or ice accumulated on private property, sidewalks or public passageway onto driving lanes of any street or alley, except as otherwise permitted by this section.
- B. Residential Exceptions. Snow or ice may be deposited on the boulevard or area

between the edge of the curb or paved surface of a street or alley and the sidewalk. Snow or ice may also be deposited, in the event there is no boulevard or the boulevard area is filled, along the curb and gutter in the parking lane of the street or alley.

- C. Commercial Buildings. In order to facilitate safe and adequate parking for customers and other business related activities, any person operating or conducting a business in any commercial building within the city shall be prohibited from depositing snow or ice from the premises along the curb and gutter in the parking lane of the street or alley.
- D. Commercial Exceptions. Subsection (C) of this section shall not apply to the sidewalk portions of the commercial building premises.
- E. Penalty. Notwithstanding any other provisions hereof, violation of this section shall be punishable by a fine not exceeding five hundred dollars or by imprisonment not exceeding thirty days, or both such fine and imprisonment, for each such offense.

3.0202-3 Hauling sand, mud, etc., over streets, etc. No person shall haul or transport over the paved streets, avenues, or alleys of the city any manure, sand, mud, dirt, clay, stone, ashes, coal, gravel or rubbish of any kind, unless such material is hauled or transported in a tight box so constructed as to prevent the spilling, sifting or scattering of any of the substances therein contained upon such streets, avenues or alleys.

3.0202-4 Washing of earth, etc., onto sidewalks. The owner of any lot or piece of land abutting any sidewalk in the city shall not allow or permit earth or other substances from such lot or piece of land to wash or accumulate upon any such walk, and in the event that any earth or other substance shall wash or accumulate upon any such walk, it shall be the duty of the owner of the abutting lot or piece of land to remove it, and failure to do so shall be a violation of this section.

3.0202-5 Depositing or throwing materials on streets-Glass, nails, etc. No person shall throw or place in any street or alley any glass, nails or other material likely to puncture or injure the rubber tires of any vehicle. Any person who, through accident, may cause to be thrown or placed in any street or alley any glass, nails or other material likely to puncture or injure the rubber tires of any vehicle shall remove such material immediately.

3.0202-6 Wire or tacks. It shall be unlawful for any person to throw or deposit in any street, avenue or alley of the city any wire or tacks.

3.0202-7 Painting signs on sidewalk. It shall be unlawful for any person to paint any signs upon the sidewalks within the city either with paint, chalk or other substance.

3.0202-8 Coasting, tobogganing, etc. No person shall use any portion of any street

or sidewalk for coasting, tobogganing or similar sports. **AMENDED BY ORD. 386**

3.0203 OPENINGS: It shall be unlawful to construct or maintain any opening or stairway in any public street or sidewalk or alley without a permit from the city council. All such lawfully maintained buildings shall be guarded by a suitable strong cover or railing to be approved by the street officer or the city engineer or the official who supervises public improvements. **AMENDED BY ORD. 386**

3.0204 WIRES: It shall be unlawful to erect any poles or wires or maintain any poles or wires over, upon, or under any public place, street, alley or public way without having first secured permission from the city council.

Any person or company which maintains poles and wires in the streets, alleys, or other public places, shall, in the absence of provisions in the franchise concerning the subject, keep such wires and poles free from and away from any trees and shrubs in such places as far as may be possible, and keep all such trees and shrubs near such wires and poles properly trimmed, subject to the supervision of the street officer in public improvements, so that no injury shall be done either to the poles or wires or to the shrubs and trees by their contact. **AMENDED BY ORD. 386**

3.0205 LEAVING OF VEHICLES OR TRAILERS: It shall be unlawful for any vehicle or trailer to be left on a street for more than 48 hours, and failure to move the vehicle or trailer after 48 hours will be a violation of this section.

The Police Department is authorized to remove or cause to be removed any vehicle or trailer found to be in violation of this section, and may impound and retain the same until the expense of removal, storage, and impounding has been paid in full, together with the amount of any fine, costs, bail, or other claims of the City against the owner or any other person lawfully entitled to possession thereof. If the impounded vehicle or trailer is not reclaimed and redeemed by the true owner or the person lawfully entitled to possession thereof with a period of thirty (30) days after the impounding, any vehicle or trailer so impounded in the manner provided in Section 12.0505 of the Beach City Code, as may be amended from time to time. **AMENDED BY ORD. 386**

3.0206 DISTRIBUTING HAND BILLS, AND SO ON: The scattering, throwing or placing of bills, posters, advertising matter, hand bills and other similar matter on lawns, porches, yards, sidewalks, steps, streets, alleys, public ways or upon automobiles while parked on the streets, alleys or public ways or public parking lots in the city of Beach by any person, firm, co-partnership or association, or corporation, is hereby declared to be a nuisance and unlawful.

3.0207 WEIGHT AND LOAD RESTRICTIONS: No person shall operate any vehicle at any time upon any street or part of a street, with a gross weight which exceeds a number 3 restriction as adopted by the State Highway Patrol Motor Carrier Division, except as follows:

- A. Vehicles shall be permitted along those routes designated by the City Council as truck routes and indicated as such, which do not exceed in weight those limits as determined from time to time by the State of North Dakota for highways other than the Interstate System, except that designated truck route from Interstate 94, along Highway 16 to 4th Street North, thence east along 4th Street North to Central Avenue, thence South along Central Avenue to Main Street, thence from Main Street East shall be those weight limits determined from time to time by the State of North Dakota for vehicles on the Interstate System.
- B. Vehicles in excess of a number 3 restriction may be operated upon streets other than those designated as truck routes for the purpose of delivering or picking up materials or merchandise, and then only by entering such street at the intersection nearest the destination of the vehicle and proceeding thereon no further than the nearest intersection thereafter.
- C. That this section shall not apply to vehicles and equipment of the City's public works and fire department.

Failure to abide by the provisions of this Section shall be violation of the Section.

The Police Department is authorized to remove or cause to be removed any vehicle found to be in violation of this Section, and may impound and retain the same until the expense of removal, storage, and impounding has been paid in full, together with the amount of any fine, costs, bail, or other claims of the City against the owner or any other person lawfully entitled to possession thereof within a period of thirty (30) days after the impounding, any vehicle so impounded may be sold and disposed of by the Police Department in the manner provided in Section 12.0505 of the Beach City Code, as may be amended from time to time.

For the purpose of this section, the word "street" shall mean any street, avenue, lane, alley, drive, or any other title that indicates a street. **AMENDED BY ORD. 372 & 386**

3.0208 REMOVAL OF SNOW AND ICE FROM SIDEWALKS: It shall be, and is hereby declared to be, the duty of the owner or occupant of each lot in the city of Beach to remove from the sidewalk in front of or along the same, any snow or ice which forms, accumulates or obstructs such sidewalk within twenty-four (24) hours after the ice forms, or the snow ceases to fall thereon; provided, however, that where the ice accumulated is of such character as to make the removal thereof practically impossible, the sprinkling of ashes or sand or salt thereon within the time specified for removal in such manner as to make such sidewalk safe for the travel of pedestrians thereon shall be deemed in compliance with the provisions of this article.

3.0209 REMOVAL OF SNOW AND ICE BY THE CITY: In the case the owner of

any lot in the city refuses or neglects to remove such ice from such sidewalk in front of or along a lot therein, the ice or snow therefrom within the time above stated or refuses to sprinkle ashes, salt or sand on the same within the time specified for removal in such a manner as to make such sidewalk safe for travel of pedestrians thereon, the same may be removed by or under the direction of the city engineer or street officer of the city, or ashes or sand or salt sprinkled thereon and the necessary expenses thereon shall be charged against the abutting property by special assessment thereof in the manner prescribed by law. **AMENDED BY ORD. 386**

3.0210 STREET CLEANING--SNOW REMOVAL: When ever in the judgment of the city council or city engineer or street officer of the city, it shall be necessary that streets, alleys or public ways in the city be cleared of snow or ice or be cleaned by the use of street sweepers or other methods of cleaning such streets, or for marking for traffic purposes, the ordinances of the city regulating the parking of automobiles, trucks and other motor vehicles may be suspended by resolution of the city council and it shall be unlawful for any automobile, truck, or other motor vehicle to be parked or left standing during the period of time during which said parking is prohibited by said resolution. **AMENDED BY ORD. 386**

3.0211 NOTICE: Whenever it becomes necessary to remove snow or ice or to sweep and clean streets, or to mark streets for traffic purposes in the city there shall be designated by the city engineer or street officer the area and streets to be cleared of snow or ice or cleaned as aforesaid in the time during which such snow and ice removal and street cleaning shall be done and the posting of such information in the area affected. **AMENDED BY ORD. 386**

3.0212 IMPOUNDING: Whenever any parked automobile, truck, machinery, vehicle, or equipment shall be found in any place prohibited by these restrictions, and during the hours as provided herein, the same shall be impounded by the city as a place to be provided and it shall be unlawful for any person, firm or corporation to remove or attempt to remove any truck, automobile, machinery, vehicle or equipment from the place where impounded without first paying the cost of such impounding.

3.0213 BLOCKING STREETS: No driver of any vehicle shall stop the same on any street, avenue, lane, or alley of the city in such a manner as to hinder or prevent other vehicles or persons from passing at all times, unless in case of absolute necessity, nor shall any driver of any vehicle stop the same at any regular crossing or said street, alley, lane or avenue, so as to prevent the free passage of persons traveling or passing on foot.

3.0214 PERMITS--FEES: A permit fee shall be charged by the General Supervisor for the issuance of an excavation permit which shall be in addition to all other fees for permits or charges relative to any proposed construction work. The excavation permit fee shall be in the amount of \$25. **AMENDED BY ORD. 386**

3.0214-1 Form and display of placard. Section 3.0214-1 is hereby repealed. The General Supervisor shall provide each permittee at the time a permit is issued hereunder a

suitable placard plainly written or printed in English letters at least one inch high with the following notice: "City of Beach, Permit No. _____ Expires _____." In the first blank space on such placard there shall be inserted the number of the permit and after word "expires" shall be stated the date when the permit expires.

It shall be the duty of any permittee to keep the placard posted in a conspicuous place at the site of the excavation work. It shall be unlawful for any person to exhibit such placard at or about any excavation not covered by such permit or to misrepresent the number of the permit or the date of expiration of the permit.

3.0214-2 Routing of traffic. Section 3.0214-2 is hereby repealed. The permittee shall take appropriate measures to assure that during the performance of the excavation work traffic conditions as nearly normal as practicable shall be maintained at all times so as to cause as little inconvenience as possible to the occupants of the abutting property and to the general public; provided, that the General Supervisor may permit the closing of streets to all traffic for a period of time prescribed by him if in his opinion it is necessary. The permittee shall route and control traffic including its own vehicles as directed by the city police department. The following steps shall be taken before any highway may be closed or restricted to traffic:

- (a) The permittee must receive the approval of the General Supervisor and the police department therefor;
- (b) The permittee must notify the chief of the fire department of any street so closed;
- (c) Upon completion of construction work, the permittee shall notify the General Supervisor and city police department before traffic is moved back to its normal flow so that any necessary adjustments may be made;
- (d) Where flagmen are deemed necessary by the General Supervisor they shall be furnished by the permittee at its own expense. Through traffic shall be maintained without the aid of detours, if possible; in instances in which this would not be feasible the General Supervisor will designate detours. The city shall maintain roadway surfaces of existing highways designated as detours without expense to the permittee but in case there are no existing highways the permittee shall construct all detours at its expense and in conformity with the specifications of the General Supervisor. The permittee will be responsible for any unnecessary damage caused to any highways by the operation of its equipment. **AMENDED BY ORD. 386**

3.0214-3 Interference with fire-fighting equipment, fire escapes, etc. The excavation work shall be performed and conducted so as not to interfere with access to fire stations and fire hydrants. Materials or obstructions shall not be placed within fifteen feet of fire plugs. Passageways leading to fire escapes or fire-fighting equipment shall be kept free of piles of material or other obstructions.

3.0214-4 Encroachment of earth onto highways; traffic crossings. The permittee shall erect and maintain suitable timber barriers to confine earth from trenches or other excavations in order to encroach upon highways as little as possible.

The permittee shall construct and maintain adequate and safe crossings over excavations and across highways under improvement to accommodate vehicular and pedestrian traffic at all street intersections. Vehicular crossings shall be constructed and maintained of plank, timbers and blocking of adequate size to accommodate vehicular traffic safely. Decking shall be not less than four inches thick and shall be securely fastened together with heavy wire and staples. Pedestrian crossings shall consist of planking three inches thick, twelve inches wide and of adequate length together with necessary blocking. The walk shall be not less than three feet in width and shall be provided with a railing as required by the General Supervisor. **AMENDED BY ORD. 386**

3.0214-5 Removal and protection of utilities. The permittee shall not interfere with any existing utility without the written consent of the General Supervisor and the utility company or person owning the utility. If it becomes necessary to remove an existing utility this shall be done by its owner. No utility owned by the city shall be moved to accommodate the permittee unless the cost of such work be borne by the permittee. The cost of moving privately owned utilities shall be similarly borne by the permittee unless he makes other arrangements with the person owning the utility. The permittee shall support and protect by timbers or otherwise all pipes, conduits, poles, wires or apparatus which may be in any way affected by the excavation work and do everything necessary to support, sustain and protect them under, over, along or across such work. In case any such pipes, conduits, poles, wires or apparatus should be damaged, they shall be repaired by the agency or person owning them and the expense of such repairs shall be charged to the permittee, and his bond shall be liable therefor. The permittee shall be responsible for any damage done to any public or private property by reason of the breaking of any water pipes, sewer, gas pipe, electric conduit or other utility and his bond shall be liable therefor. The permittee shall inform itself as to the existence and location of all underground utilities and protect them against damage. **AMENDED BY ORD. 386**

3.0214-6 Protection of adjoining property. The permittee shall at all times and at his own expense preserve and protect from injury any adjoining property by providing proper foundations and taking other measures suitable for the purpose. Where in the protection of such property it is necessary to enter upon private property for the purpose of taking appropriate protective measures, the permittee shall obtain a license from the owner of such private property for such purposes; and if he cannot obtain a license from such owner; the General Supervisor may authorize him to enter the private premises solely for the purpose of making the property safe. The permittee shall, at its own expense shore up and protect all buildings, walls, fences or other property likely to be damaged during the progress of the excavation work and shall be responsible for all damage to public or private property or highways resulting from its failure property to protect and carry out such work. Whenever it may be necessary for the permittee to trench through any lawn area, the sod

shall be carefully cut and rolled and replaced after ditches have been backfilled as required in this article. All construction and maintenance work shall be done in a manner calculated to leave the lawn area clean of earth and debris and in a condition as nearly as possible to that which existed before such work began. The permittee shall not remove even temporarily any trees or shrubs which exist in parking strip areas or easements across private property without first having notified and obtained the consent of the property owner or in the case of public property the appropriate city department or city official having control of such property. **AMENDED BY ORD. 386**

3.0214-7 Erection of footbridges over sidewalk excavations. Any excavation made in any sidewalk or under a sidewalk shall be provided with a substantial and adequate footbridge over such excavation on the line of the sidewalk, which bridge shall be at least three feet wide and securely railed on each side so that foot passengers can pass over safely at all times.

3.0214-8 Maintenance of attractive nuisance. It shall be unlawful for the permittee to suffer or permit to remain unguarded at the place of excavation or opening any machinery, equipment or other device having the characteristics of an attractive nuisance likely to attract children and hazardous to their safety or health.

3.0214-9 Maintenance and storage of excavated materials generally. All material excavated from trenches and piled adjacent to the trench or in any street shall be piled and maintained in such manner as not to endanger those working in the trench, pedestrians or users of the streets and so that as little inconvenience as possible is caused to those using streets and adjoining property. Where the confines of the area being excavated are too narrow to permit the piling of excavated materials beside the trench, such as might be the case in a narrow alley, the General Supervisor shall have the authority to require that the permittee haul the excavated material to a storage site and then re-haul it to the trench site at the time of back-filling. It shall be the permit's responsibility to secure the necessary permission and make all necessary arrangements for all required storage and disposal sites. **AMENDED BY ORD. 386**

3.0214-10 Repairing damage done to existing improvements. All damage done to existing improvements during the progress of the excavation work shall be required by the permittee. Materials for such repair shall conform with the requirements of any applicable code or ordinance. If upon being ordered the permittee fails to furnish the necessary labor and materials for such repairs the General Supervisor shall have the authority to cause such necessary labor and materials to be furnished by the city and the cost shall be charged against the permittee and the permittee shall also be liable on his bond therefor. **AMENDED BY ORD. 386**

3.0214-11 Cleaning site and surrounding area. As the excavation work progresses all streets and private properties shall be thoroughly cleaned of all rubbish, excess earth, rock and other debris resulting from such work. All clean-up operations at the location of

such excavation shall be accomplished at the expense of the permittee and shall be completed to the satisfaction of the General Supervisor. From time to time as may be ordered by the General Supervisor and in any event immediately after completion of such work, the permittee shall at his own expense clean up and remove all refuse and unused materials of any kind resulting from such work, and upon failure to do so within twenty-four hours after having been notified to do so by the General Supervisor, such work may be done by the General Supervisor and the cost thereof charged to the permittee, and the permittee shall also be liable for the cost thereof under the surety bond provided hereunder. **AMENDED BY ORD. 386**

3.0214-12 Protection and restoration of watercourses, sewers or drains; accommodation of surplus water, muck, silt, etc. The permittee shall provide for the flow of all watercourses, sewers or drains intercepted during the excavation work and shall replace watercourses, etc., in as good condition as it found them or shall make such provisions for them as the General Supervisor may direct. The permittee shall not obstruct the gutter of any street but shall use all proper measures to provide for the free passage of surface water.

The permittee shall make provision to take care of all surplus water, muck, silt, slickings or other run-off pumped from excavations or resulting from sluicing or other operations and shall be responsible for any damage resulting from its failure to so provide. **AMENDED BY ORD. 386**

3.0214-13 Promulgation of standards. Standards for breaking through pavement, tunnels, back-filling and restoration of surface shall be promulgated by the General Supervisor's office for inspection during business hours. **AMENDED BY ORD. 386**

3.0214-14 Restoration of surface. If the permittee shall have failed to restore the surface of the street to its original and property condition upon the expiration of the time fixed by such permit or shall otherwise have failed to complete the excavation work covered by such permit, the General Supervisor, if he deems it advisable, shall have the right to do all work and things necessary to restore the street and to complete the excavation work. The permittee shall be liable for the actual cost thereof and twenty-five percent of such cost in addition for general overhead and administrative expenses. The city shall have a cause of action for all fees, expenses and amounts paid out due it for such work and shall apply in payment of the amount due it any funds of the permittee deposited as herein provided and the city shall also enforce its rights under the permittee's surety bond provided pursuant to this article.

It shall be the duty of the permittee to guarantee and maintain the site of the excavation work in the same condition it was prior to the excavation for two years after restoring it to its original condition. **AMENDED BY ORD. 386**

3.0214-15 Length, bracing and sheathing of pipe trenches. Except by special permission from the General Supervisor, no trench shall be excavated more than two

hundred fifty feet in advance of pipe laying nor left unfilled more than five hundred feet where pipe has been laid. The length of the trench that may be opened at any one time shall not be greater than the length of pipe and the necessary accessories which are available at the site ready to be put in place. Trenches shall be braced and sheathed according to generally accepted safety standards for construction work as prescribed by the General Supervisor. No timber bracing, lagging, sheathing or other lumber shall be left in any trench. **AMENDED BY ORD. 386**

3.0214-16 Period for completion of work generally. The permittee shall prosecute with diligence expedition all excavation work covered by the excavation permit and shall promptly complete such work and restore the street to its original condition, or as near as may be, as soon as practicable and in any event not later than the date specified in the excavation permit therefor.

3.0214-17 Emergency repairs generally. In the event of any emergency in which a sewer, main, conduit or utility in or under any street breaks, bursts or otherwise is in such condition as to immediately endanger the property, life, health and safety of any individual, the person owning or controlling such sewer, main, conduit or utility, without first applying for and obtaining an excavation permit hereunder, shall immediately take proper emergency measures to cure or remedy the dangerous conditions for the protection of property, life, health and safety of individuals. However, such person owning or controlling such facility shall apply for an excavation permit not later than the end of the next succeeding day during which the General Supervisor's office is open for business and shall not proceed with permanent repairs without first obtaining an excavation permit hereunder. **AMENDED BY ORD. 386**

3.0214-18 Declaration of emergency work. If in his judgment traffic conditions, the safety or convenience of the traveling public or the public interest require that the excavation work be performed as emergency work, the General Supervisor shall have full power to order, at the time the permit is granted, that a crew of men and adequate facilities be employed by the permittee twenty-four hours a day to the end that such excavation work may be completed as soon as possible. **AMENDED BY ORD. 386**

3.0214-19 Avoidance of unnecessary inconveniences or annoyances; reduction of noise, dust, etc. Each permittee shall conduct and carry out the excavation work in such manner as to avoid unnecessary inconvenience and annoyance to the general public and occupants of neighboring property. The permittee shall take appropriate measures to reduce to the fullest extent practicable in the performance of the excavation work, noise, dust and unsightly debris. During the hours of 10:00 p.m. and 7:00 a.m., such permittee shall not use, except with the express written permission of the General Supervisor or in case of an emergency as herein otherwise provided, any tool, appliance or equipment producing noise of sufficient volume to disturb the sleep or repose of occupants of the neighboring property. **AMENDED BY ORD. 386**

3.0214-20 Disturbing surface monuments or hubs. The permittee shall not disturb any surface monuments or hubs found on the line of excavation work until ordered to do so by the General Supervisor. **AMENDED BY ORD. 386**

3.0214-21 Inspections; promulgation of regulations to carry out article. The General Supervisor shall make such inspections as are reasonably necessary in the enforcement of this article. **AMENDED BY ORD. 386**

The General Supervisor shall have the authority to promulgate and cause to be enforced such rules and regulations as may be reasonably necessary to enforce and carry out the intent of this article.

3.0214-22 Maintenance of drawings of subsurface street installations. Users of subsurface street space shall maintain accurate drawings, plans and profiles showing the location and character of all underground structures including abandoned installations. Corrected maps shall be filed with the General Supervisor within sixty days after new installations, changes or replacements are made. **AMENDED BY ORD. 386**

3.0214-23 Applicability of article to work done by or for city. The provisions of this article shall not be applicable to any excavation work under the direction of competent city authorities by employees of the city or by any contractor of the city performing work for and in behalf of the city necessitating openings or excavations in streets.

3.0214-24 Applicability of article to persons operating public utilities. All persons operating public utilities in the city under franchise granted by the city and having the right either by general or special permission to enter upon streets and open and excavate pavements, sidewalks or disturb the surface thereof by excavation or other work shall not be required to apply for a permit but shall be required to perform the work and bring it to completion as promptly as practicable and to that end shall employ an adequate standing force. Any person operating any such public utility shall, however, comply with other requirements of this article, including the surety bond and deposit requirements.

3.0214-25 Liability insurance required of permittee. A permittee, prior to the commencement of excavation work hereunder, shall furnish the General Supervisor satisfactory evidence in writing that the permittee has in force and will maintain in force during the performance of the excavation work and the period of the excavation permit public liability insurance of not less than one hundred thousand dollars for any one person and three hundred thousand dollars for any one accident and property damage insurance of not less than fifty thousand dollars duly issued by an insurance company authorized to do business in this state. **AMENDED BY ORD. 386**

3.0214-26 Liability of city. This article shall not be construed as imposing upon the city or any official or employee any liability or responsibility for damages to any person injured by the performance of any excavation work for which an excavation permit is issued hereunder; nor shall the city or any official or employee thereof be deemed to have

assumed any such liability or responsibility by reason of inspections authorized hereunder, the issuance of any permit or the approval of any excavation work.

3.0215 EXCAVATIONS--APPLICATION: Applications for such permits shall be made to the auditor, and shall describe the location of the intended excavation or tunnel the size thereof, the purpose thereof, and the person, firm or corporation doing the actual excavating work and the name of the person, firm or corporation for whom or which the work is being done, and shall contain an agreement that the applicant will comply with all ordinances and laws relating to the work to be done.

3.0216 EXCAVATIONS--FEES: There shall be no fee for such permits.

3.0217 EXCAVATIONS--BOND: Before an excavation permit as herein provided is issued, the applicant shall deposit with the city auditor a surety bond in the amount of one thousand DOLLARS (\$1,000.00) payable to the city. The required surety bond must be:

- A. With good and sufficient surety;
- B. By a surety company authorized to transact business in the state;
- C. Satisfactory to the city attorney in form and substance;
- D. Conditioned upon the permittee's compliance with this article and to secure and hold the city and its officers harmless against any and all claims, judgments or other costs arising from the excavation and other work covered by the excavation permit or for which the city, the city council or any city officer may be made liable by reason of any accident or injury to persons or property through the fault of the permittee either in not properly guarding the excavation or for any other entry resulting from the negligence of the permittee and further conditioned to fill up, restore and place in good and safe condition as near as may be to its original condition and to the satisfaction of the city engineer or street officer all openings and excavations made in streets, and to maintain any street where excavation is made in as good a condition for the period of twelve (12) months after such work shall have been done, usual wear and tear expected, as it was in before such work shall have been done. In a settlement of the surface within such one (1) year period shall be deemed conclusive evidence of defective back-filling by the permittee. Nothing herein contained shall be construed to require the permittee to maintain any repairs to pavement made by the city if such repairs shall prove defective. Recovery of such bond for any injury or accident shall not exhaust the bond but it shall in its entirety cover any or all future accidents or injuries during the excavation work for which it is given. In the event of any suit or claim against the city by reason of the negligence or

default of the permittee, upon the city's given written notice to the permittee of such suit or claim any final judgment against the city requiring it to pay for such damage shall be conclusive upon the permittee and his surety.

An annual bond may be given under this provision which shall remain in force one year conditioned as above, in the amount specified above and in other respects as specified above, but applicable as to all excavation work in streets by the principal and such bond during the term of one year from such date. **AMENDED BY ORD. 386**

3.0218 EXCAVATIONS--MANNER OF: It shall be unlawful to make any such excavation or tunnel in any way contrary to or at variance with the terms of the permit thereof. Proper bracing shall be maintained to prevent the collapse of adjoining grounds; and in excavations the excavation shall not have anywhere below the surface any portion which extends beyond the opening at the surface.

No injury shall be done to any pipes, cables or conduits in the making of such excavations or tunnels; and notice shall be given to the persons maintaining any such pipes, cables or conduits or to the city department or officer charged with the care thereof, which are or may be endangered or affected by making of any such excavation or tunnel before such pipes, cables or conduits shall be disturbed.

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

3.0219 EXCAVATIONS--RESTORATION: Any person, firm or corporation making any excavation or tunnel in or under any public street, alley or other public place in the city shall restore the surface to its original condition if there is no pavement there. Refills shall be properly tampered down, and any bracing in such tunnel or excavation shall be left in the ground.

Any opening in a paved or improved portion of the street shall be repaired and the surface relaid by the applicant, in compliance with the ordinances of the city and under the supervision of the city engineer or street officer. **AMENDED BY ORD. 386**

3.0220 EXCAVATIONS--SUPERVISION: The officer of streets or the city engineer shall from time to time inspect or cause to be inspected, all excavations and tunnels being made in or under any public street, alley or other public place in the city to see to the enforcement of the provisions of this article. Notice shall be given to him at least ten (10) hours before the work of refilling any such tunnel or excavation commences.

ARTICLE 3.

HOUSE NUMBERING

3.0301 COMPLIANCE WITH ARTICLE: The owner of each building in the city shall

number the same in conformity with the provisions of this article.

3.0302 DESIGNATION OF NUMBERS BY CITY: The city engineer or street officer shall designate the numbers of all buildings and the owner, occupant or agent of each building now or hereinafter shall post it with its proper number. **AMENDED BY ORD. 386**

3.0303 SIZE AND LOCATION OF FIGURES: The figures forming the numbers of all buildings shall be not less than three inches in height and shall be conspicuously attached to or painted near the entrance to each building or may be painted, attached to, stamped or printed on glass, tin or other substantial background or body and attached to such buildings in a conspicuous place near the front entrance thereof.

3.0304 FAILURE, REFUSAL OR NEGLECT OF THE OWNER, AND SO ON; TO COMPLY WITH THE ARTICLE: If the owner or other person in charge or custody of a building within the city fails, refuses or neglects to comply with the requirements of this article, the city engineer or street officer shall cause proper numbers to be placed upon such building and the cost of so doing shall be collected from the owner or custodian of the building in a suit thereof by the city. **AMENDED BY ORD. 386**

ARTICLE 4.

UNCLAIMED AND ABANDONED PROPERTY

3.0401 UNCLAIMED AND ABANDONED PROPERTY--DEFINED: Personal property left upon the streets, alleys or other public ways in the city shall be deemed to be unclaimed or abandoned within the meaning of this article when the same is permitted to remain in any one place upon said streets, alleys or other public ways for a period of ten (10) days or more.

3.0402 UNCLAIMED AND ABANDONED PROPERTY--SEIZURE OF: When ever any unclaimed or abandoned personal property is found upon the streets, alleys or other public ways of the city, the same shall be seized and possession thereof taken by any police officer, street officer, or other officer of the city. **AMENDED BY ORD. 386**

3.0403 UNCLAIMED AND ABANDONED PROPERTY--HOLDING--NOTICE AND SALE: Such personal property as aforesaid shall be held by the for a period of not less than ninety (90) days, after its seizure as provided herein. After the expiration of said ninety (90) days the city auditor shall cause notice to be published in the official newspaper of said city. The notice shall specify and state the description of the property so seized and held, the location of the place where the same was seized or taken by said city, and a further notice that said property will be sold, at public auction, to the highest bidder for cash, not less than fifteen (15) days from and after the day of the publication of such notice. The notice shall further state the hour, date and place where said sale will be held.

3.0404 UNCLAIMED AND ABANDONED PROPERTY--REPORT OF SALE: At the time specified in said notice the said property shall be sold by the chief of police of the city or by any person designated by him, at public auction, to the highest bidder for cash and within three (3) days after the date of said sale, the officer making the sale shall make a report thereof to the governing body, which report shall contain the description of the property sold, the time and place of sale, the name or names of the purchaser or purchasers and the amount received thereof, said report shall be made under oath and subscribed by the person making such sale and shall be filed with the city auditor within three (3) days after the date of such sale and such officer, with said report, shall pay to the city auditor the net proceeds of said sale. **AMENDED BY ORD. 386**

3.0405 UNCLAIMED AND ABANDONED PROPERTY--BILL OF SALE: Upon the receipt of the report as specified in Section 3.0404 hereof the city auditor shall prepare a bill of sale of the property sold, conveying the same to such purchaser and the same shall be executed by the mayor and attested by the city auditor and delivered to the purchaser.

3.0406 UNCLAIMED AND ABANDONED PROPERTY--PROCEEDS OF SALE: The city auditor shall retain the proceeds of said sale in a separate account for a period of six (6) months from and after the time of such sale and if the proceeds of such sale are not claimed as hereinafter provided by the owner of said property, the said money shall be transferred to the general fund of the city.

3.0407 UNCLAIMED AND ABANDONED PROPERTY--REDEMPTION: Any person owning such personal property seized as aforesaid, may at any time prior to the sale thereof, upon furnishing satisfactory proof of his ownership thereof to the chief of police, reclaim such property upon paying the expenses incurred by the city for the seizure, storage or advertising the sale thereof, and any person owning such property as aforesaid may at any time within six (6) months after such sale and upon making satisfactory proof to the governing body of his ownership thereof, claim the proceeds of such sale, upon payment to the city of the necessary expenses incurred by the city for the seizure, storage and sale of said property.

ARTICLE 5.

BENCH MARK OF THE CITY

3.0501 BENCH MARK OF THE CITY: That the initial bench mark, marked by an iron bolt driven in the ground at the northwest corner of Block Two (2) of the original townsite of Beach as the same is platted and on file in the office of the Register of Deeds in and for Billings County, and thereafter transferred to Golden Valley County, said bolt being thirty-nine (39) inches below the projection on the cement pillar at the northwest corner of the Golden Valley State Bank as it was then constructed, is hereby declared to be the initial or standard bench mark from which the grade for streets of all that portion of said city above described as the original townsite of Beach, are established and its elevation is 100

feet above datum.

The several grades of city streets above established for all that portion of said city above described are as shown and specified in the surveyor's map and blueprint by W. R. Veigel, a civil engineer, from the survey made by him for a grade for the above said portion of said city, which surveyor's map and blueprint is on file in the Office of the City Auditor and for said City of Beach, and is hereby specified and declared to be the official and standard grade chart of all streets in the aforesaid city.

CHAPTER IV.

FIRE PROTECTION AND PREVENTION

ARTICLE 1.

ORGANIZATION OF FIRE DEPARTMENT

4.0101 ESTABLISHMENT: There is hereby created and established a fire department, consisting of a chief, and such other members of said fire department as may from time to time be provided for by the governing body. Members shall be appointed in the manner provided by law.

4.0102 SUPERVISION: The fire chief shall have the control, subject to the order and direction of the governing body, of the fire department and all fire apparatus belonging to the city.

4.0103 DUTIES: The fire chief shall have the following duties and power:

1. **TO KEEP RECORDS.** The chief of the department shall cause to be kept, in books for that purpose, a full and complete record of the organization of the department, its membership, the respective positions held by the firemen in the department, vacancies, appointments and dismissals, and of all notices issued by the department, and of all its transactions, of all fires occurring in the city, and the cause thereof when ascertainable, of the time lost by firemen, and of all property placed in his charge, and all expenditures made by his order and shall keep such other books and records as shall be required in the department, and such books shall always be open to the inspection of any member of the governing body.
2. **TO COMMAND AND CONTROL.** It shall be the duty of the chief of the department to preserve order and discipline at all times in the department, and to require and force a strict compliance with the ordinances of the city relating to his department and the rules and regulations pertaining thereto. At all fires he shall have sole and absolute control and command over all persons connected with the fire department of the city.
3. **TO MAKE REPORTS.** The chief of the fire department shall report at the end of each year at annual January meeting, and oftener when required to do so to the governing body. At the end of each calendar year, he shall make an annual report in writing, including a summary of his monthly reports. He shall report upon the condition of the fire department, the number of fires that have occurred in the city since his last annual report, and the cause of the same, so far as can be ascertained, the number of buildings destroyed or injured, the names of the owners or occupants of the same as nearly as can be ascertained, and the amount of loss upon the

buildings, and other property so destroyed or injured, which report shall filed in the office of the City Auditor.

4. TO MAKE ANNUAL INVENTORY. The Chief of the fire department shall, during the month of June in each year, make a complete itemized list and report of all property under his charge and belonging to the city, stating its condition. He shall also report as to such new apparatus or supplies as in his judgement may be needed to properly maintain his department.
5. TO PREPARE A BUDGET. The chief of the fire department should prepare a budget of the whole cost and expense of providing for and maintaining the fire department of the city during the succeeding fiscal year, to be presented at the annual January meeting.
6. TO KEEP PROPERTY IN GOOD CONDITION. To keep property in good condition to see that all apparatus and property committed to his care and the several buildings or portions thereof, are kept clean and in good sanitary condition.
7. TO HAVE CHARGE OF ALARM SYSTEM. To have charge of alarm system of the city.
8. TO CONTROL CROWDS AT FIRES. The Chief of the fire department may prescribe limits in the vicinity of any fire within which no persons, except those who reside therein, firemen and policemen, and those admitted by his order, may enter.
9. TO ORDER REMOVAL OF PROPERTY, WHEN. To order the removal of property, whenever it shall become necessary for the preservation of such property from fire or to prevent the spreading of fire, or to protect adjoining property.
10. TO COMMAND ASSISTANCE. To command assistance from persons in attendance at any fire, not members of the fire department, for the extinguishing of fires.
11. TO PRESCRIBE BADGE AND UNIFORM. To prescribe badge and uniform to be worn by the officers and men of the department.

4.0104 POLICE POWERS: All members of the fire department of the City, while an active duty, shall have the powers of policemen on duty and are authorized to arrest any person or persons who shall interfere or attempt to interfere with or to hinder any member of the department in the performance of his duty.

4.0105 UNLAWFUL TO HINDER DEPARTMENT: It shall be unlawful for any

person to prevent, interfere with, or in any manner hinder the fire department, or any member thereof, while engaged in the discharge of duty at a fire, or to disobey any lawful command of the chief or acting chief of the department.

4.0106 DRIVING OVER FIRE HOSES: No person shall drive any vehicle of any kind whatever, upon or over any hose belonging to the Fire Department while the same is laid in the streets and alleys of the city.

4.0107 FALSE ALARMS: It shall be unlawful for any person knowingly to give or cause to be given any false alarm of fire, or to give or cause to be given, while a fire is in progress, a second or general alarm for the same fire, or tamper with or set off any fire alarm or signal box with like intent; or tamper, meddle, or interfere with any such fire alarm box; or intentionally cut, break, deface or remove any such box, or any of the wires or supports thereof, connected with fire alarm system; or intentionally interfere with or injure any property of any kind belonging to or used by the fire department; or hinder or delay any apparatus or equipment or vehicle belonging to the fire department.

4.0108 TAKING FIRE EQUIPMENT: No person shall take, received or attempt to receive or take from the possession and control of any member of the Fire Department, any of the apparatus, tools or property belonging to said department, without the consent of the chief of the fire department.

4.0109 ENTERING FIRE DEPARTMENT: No person shall occupy any rooms in any building which are used exclusively by the fire department, or enter such rooms or handle any apparatus used by the fire department without permission.

4.0110 SERVICE OUTSIDE CORPORATE LIMITS: Members of the fire department are authorized to use its fire department to attend to fires and render assistance to other municipalities within or without this state, or to private property, including farm buildings located outside the city limits, and the fire department, its members, and apparatus, when engaged outside the limits of the municipality, shall be deemed to be engaged in the performance of a public duty as fully as if serving within the limits of the City of Beach.

ARTICLE 2.

FIRE LIMITS

4.0201 FIRE LIMITS: All those parts of the City which have been zoned for commercial or industrial use or that may hereafter be so zoned.

4.0202 EXTERIOR COVERING: It shall be unlawful to construct any building or structure within the fire limits unless the exterior walls and roof and permanent foundation

hereof are covered with or constructed of noninflammable material.

4.0203 REPAIRS: It shall be unlawful to repair any existing frame building within the fire limits after the same has been damaged by any cause to fifty (50) percent of its value. Any existing frame building in the fire limits may be brick veneered. Any frame building damaged by fire or otherwise over 50% of its value shall be torn down and removed.

ARTICLE 3.

FIRES IN PUBLIC PLACES

4.0301 SMOKING: Any person who, by smoking or attempting to light or to smoke cigarettes, cigars, pipes, or tobacco in any manner, in which lighters or matches are employed who shall in any careless, negligent or reckless manner whatsoever, whether willfully or wantonly or not, set fire to any furniture, curtains, drapes, household fittings or furnishing whatsoever in any hotel, motel public rooming house, tenement house, or any public building, so as to endanger life or property in any way or to any extent shall be guilty of violating this article.

4.0302 NOTICE: A plainly printed notice shall be posted in a conspicuous place in each sleeping room of all hotels, motels, public rooming houses, lodging houses and other places of public assemblage within the City of Beach, advising tenants of the provisions of this chapter.

4.0303 REPORTS: Every fire of any kind, and from whatever source, occurring in or about any hotel, motel, rooming house, lodging house or apartment hotel in the City of Beach shall be reported immediately to the fire department.

ARTICLE 4.

FIRE PREVENTION

4.0401 ADOPTION OF FIRE CODE: There is hereby adopted by the City of Beach for the purposes of prescribing regulations governing conditions hazardous to life and property from fire, hazardous materials, or explosion, that certain Code and Standards know as the: Uniform Fire Code, including all Appendix Chapters and Uniform Fire Code Standards published by the Western Fire Chiefs Association and the International Conference of Building Officials, being particularly the 1994 editions thereof and the whole

thereof, including Appendix Sections II-A, II-B, II-E, II-F, II-G, II-H, II-I, III-A, III-B, III-C, IV-A, IV-B, V-A, VI-A, VI-B, VI-D, VI-E, VI-F, and VI-G, copies of which Code and Standards have been and are now filed in the office of the Auditor of the City and the same are hereby adopted and incorporated as fully as if set out at length herein.

4.0402 PERMIT FEES: No fee shall be required for any permit or license required by the said fire prevention code.

4.0403 ESTABLISHMENT OF BUREAU OF FIRE PREVENTION: The director of inspections, the chief of the fire department and the chief of the bureau of fire prevention shall act as a committee to determine and specify, after giving affected persons occupancies in addition to those enumerated in the Uniform Fire Code which shall require permits. The chief of the bureau of fire prevention shall post such list in a conspicuous place in his office and distribute copies thereof to interested persons.

4.0404 STORAGE OF FLAMMABLE LIQUIDS: No new bulk plants for storage of flammable liquids shall be permitted within the limits of the City. Flammable liquids stored for other purposes (including retail gasoline sales) shall be stored in containers and in a manner that comply with the rules and regulations set forth in the fire code adopted by the city and state and federal rules and regulations pertaining thereto.

4.0405 MODIFICATIONS OF FIRE CODE: The chief of the Fire Department shall have power to modify any of the provisions of the fire prevention code upon application in writing by the owner or lessee, or his duly authorized agent, when there are practical difficulties in the way of carrying out the strict letter of the code, provided that the spirit of the code shall be observed, public safety secure, and substantial justice done. The particulars of such modification when granted or allowed and the decision of the chief of the bureau of fire prevention thereon shall be entered upon the records of the department and a signed copy shall be furnished the applicant.

4.0406 APPEALS: Whenever the chief of the fire department shall disapprove an application or refuse to grant a license or permit applied for, or when it is claimed that the provisions of the code do not apply or that the true intent and meaning of the code have been misconstrued or wrongly interpreted, the applicant may appeal from the decision of the chief of the fire department to the governing body within 30 days from the date of the decision of the appeal.

4.0407 PENALTIES: Any person who shall violate any of the provisions of the code hereby adopted or fail to comply therewith, or who shall violate or fail to comply with any order made thereunder, or who shall build in violation of any detailed statement of specifications or plans submitted and approved thereunder, or any certificate or permit issued thereunder, and from which no appeal has been taken, or who shall fail to comply with such an order as affirmed or modified by the governing body or by a court of competent jurisdiction, within the time fixed herein, shall severally for each and every such violation and noncompliance respectively, be punishable by a fine of not more than

\$500.00 or by imprisonment for not to exceed thirty (30) days or by both such fine and imprisonment. The imposition of one penalty for any violation shall not excuse the violation or permit it to continue; and all such persons shall be required to correct or remedy such violations or defects within a reasonable time; and when not otherwise specified, each ten days that prohibited conditions are maintained shall constitute a separate offense.

The application of the above penalty shall not be held to prevent the enforced removal of prohibited conditions.

4.0408 REGULATIONS REGARDING SALE OR USE OF FIREWORKS WITHIN THE CITY OF BEACH, NORTH DAKOTA:

4.0408-1 "Fireworks" defined.

The term fireworks shall mean fireworks as defined in Section 23-15-01 NDCC which states:

"Fireworks" defined. The term fireworks shall mean and include any combustible or explosive composition, or any substance or combination of substances or article prepared for the purpose of producing a visible or an audible effect by combustion, explosion, deflagration or detonation, and shall include blank cartridges, toy pistols, toy cannons, toy canes, or toy guns in which explosives other than toy paper caps are used, the type of balloons which require fire underneath to propel the same, firecrackers, torpedoes, skyrockets, Roman candles, daygo bombs, sparklers, or other fireworks of like construction, any fireworks containing any explosive or flammable compound, or any tablets or other device containing any explosive substance. Nothing in this regulation shall be construed as applying to toy paper caps containing not more than twenty-five hundredths of a grain [16.20 milligrams] of explosive composition per cap."

Said definition shall include any amendments to the above section as may hereinafter be adopted.

4.0408-2 "City Limits" defined. The city limits as used herein shall include all area within the boundaries of the City of Beach, North Dakota and that area surrounding the boundaries of the City of Beach, North Dakota, within its ordinance enforcement jurisdiction. At that present time said area includes all property within one-half mile of the boundary of the City of Beach, North Dakota.

4.0408-3 Sale prohibited -- exceptions.

A. It shall be unlawful for any person to offer or exhibit for sale of use any fireworks within the city limits of the City of Beach, North Dakota, except as herein specified:

(1) Fireworks, as defined above, may be sold by persons having a city permit during those times and manner provided in Chapter 23-15 of the North Dakota Century Code, as now written or as may be hereafter amended.

(2) Only persons, firms or corporations having operated a retail business within the City of Beach, North Dakota, wherein merchandise was assessed by local taxing authority, on April 1st immediately preceding thereto, and having a retail license as provided in Section 23-15-04 of the North Dakota Century Code, may obtain a city permit for the sale of fireworks and may offer for sale or sell at retail within the city limits of the city of Beach, North Dakota, to persons as provided herein.

(3) Any person engaged in the sale of fireworks, pursuant to this ordinance, shall first obtain a permit from the city of Beach, North Dakota, which said permit shall allow the sale of fireworks during the year of issue, and as specified in this order. Said permit shall be issued for a fee of \$25.00 and shall be obtained from the City Auditor of the City of Beach, North Dakota, prior to the sale of fireworks.

4.0408-4 Use and explosion of fireworks prohibited. It shall be unlawful for any person to explode fireworks within the city limits of the city of Beach, North Dakota, except between the hours of 9:00 o'clock a.m. to 11:00 o'clock p.m. from July 3rd to July 5th of each year; provided, however, that the City Council may, in its sole discretion, allow for the use and explosion of fireworks within the city limits for such other special occasions and upon such other terms and conditions as the City Council may from time to time determine and establish. Any person in violation of this restriction shall be fined in an amount of at least \$25.00. **AMENDED BY ORD. 378 & 386**

4.0408-5 Penalty - Generally. Violation of any provision of this Section 4.0408 shall be construed an offense, for which a maximum penalty of thirty days imprisonment, a fine of \$500.00 or both may be imposed. Law enforcement officials may confiscate fireworks being offered for sale or use or being used in violation of this ordinance.

4.0409 PARKING OF VEHICLES CONTAINING ANHYDROUS AMMONIA: Vehicles containing anhydrous ammonia shall not be parked or left unattended on any street, highway, avenue, boulevard, public property or alley within the city limits.

PENALTY: Any persons violating the provisions of this ordinance may be fined up to \$500.00 and sentenced up to 30 days confinement for each offense.

CHAPTER V.

LAW ENFORCEMENT DEPARTMENT

ARTICLE 1.

ORGANIZATION AND REGULATIONS

5.0101 ESTABLISHMENT: The law enforcement department heretofore created for the City of Beach and by this chapter continued shall consist of the officers as may be authorized or contracted for by the governing body.

5.0102 ADDITIONAL OFFICERS-EMERGENCY: In case of riot or unusual or general disturbances of the peace, the Chief Law Enforcement officer shall have power to appoint such other and additional officers as be deemed necessary for the preservation of the public peace.

5.0103 DUTIES OF CHIEF: The chief law enforcement officer shall manage the custody of all persons incarcerated therein. He shall keep such records and make such reports concerning the activities of his department as may be required by statute or by the governing body. The chief shall be responsible for the performance by the law enforcement department, of its functions, and all persons who are law enforcement officers of the city shall serve subject to the orders of the chief.

5.0104 DUTIES OF OFFICERS: It shall be the duty of the law enforcement officers to notice and diligently inquire into and report all violations of the city ordinances, violations of the criminal laws of the state and breaches of the peace, and to make complaint against the person or persons guilty thereof, and to attend punctually on all trials of offenses in regard to which complaint has been made by any policeman.

5.0105 RULES AND REGULATIONS: The chief law enforcement officer may make or prescribe such rules and regulations that are deemed advisable; such rules, when approved by the governing body, shall be binding on such members. Such rules and regulations may cover, besides the conduct of the members, uniforms and equipment to be worn or carried, hours of service, vacations, and all other similar matters necessary or desirable for the better efficiency of the department. **AMENDED BY ORD. 387**

ARTICLE 2.

POWERS AND DUTIES

5.0201 MONEY OR PROPERTY OF ARRESTED PERSONS: It shall be the duty of the law enforcement department, and of each and every member of the law enforcement force, to safely keep all moneys or property which may be found on the person, in possession of, or claimed by, any person arrested for crime, and pay or deliver over the same by the order of the presiding Judge, and forthwith after taking the same, to report in writing the kind and amount thereof, to the presiding Judge.

5.0202 ARRESTED PERSONS: Any law enforcement officer after making any arrest, with or without a warrant, for any violation of city ordinances, shall take the person or persons so arrested, without any unreasonable delay, before the presiding Judge, to be dealt with according to law and ordinances of the City.

5.0203 STOLEN, ABANDONED, LOST PROPERTY: The Chief law enforcement officer shall have the custody of all lost, abandoned or stolen property recovered in the City.

ARTICLE 3.

MISCELLANEOUS

5.0301 FALSE ALARMS-INTERFERENCE: No person shall give or cause to be

given, or make, or place or cause to be given, any false report, call, or communication of any kind to the police, or any false police alarm with intent to deceive; or tamper with or set off any law enforcement alarm or signal box with like intent; or tamper, meddle, or interfere with any such police alarm box; or intentionally cut, break, deface or remove any such box, or wires or supports thereof, connected with the police alarm system; or intentionally interfere with or injure any property of any kind belonging to or used by the law enforcement department; or hinder or delay any apparatus or equipment or vehicle belonging to the police department. **AMENDED BY ORD. 387**

5.0302 MONTHLY REPORT: The chief law enforcement officer shall submit a monthly report to the city council detailing the activities of the law enforcement department during the prior month, in such form or manner as the city council shall from time to time prescribe.

CHAPTER VI.

PLUMBING CODE

ARTICLE 1.

ADOPTION OF STATE PLUMBING CODE

6.0101 ADOPTION OF CODE: The North Dakota State Plumbing Code, as may be adopted, amended, or re-enacted by the State of North Dakota or its State Board of Plumbing from time to time, is hereby adopted as a standard code and rules governing the practice of plumbing and the minimum standards of plumbing within the city.

A copy of such code shall be kept on file in the office of the city auditor for inspection and use of the public, and shall be marked with the words City of Beach Official Copy.

ARTICLE 2.

LICENSING OF PLUMBERS

6.0201 LICENSE REQUIRED: No person shall engage in business as a master plumber or a journeyman plumber without being licensed as a plumber in such classification by the State of North Dakota.

ARTICLE 3.

PERMITS

6.0301 PERMITS REQUIRED: Whenever any master plumber is licensed by the City to engage in the work covered by this chapter, or home owner shall desire to commence any such work, he shall first obtain a proper Building Permit from the City. No permit, however, shall be required for ordinary repairs to plumbing.

6.0302 PERMITS NOT ISSUED IF SPECIAL ASSESSMENTS DELINQUENT: No connection with existing water and sewer lines of the City shall be permitted with any property on which any special assessment taxes therefore are delinquent.

6.0303 PERMITS NOT ISSUED-UNASSESSED PROPERTY WITHOUT PAYMENT: Whenever any real property located outside of the city limits comes within the city limits by annexation or otherwise, and such real property shall be benefitted or served by existing water and/or sewer facilities, no connection to such existing water and sewer lines shall be permitted or made by any person owning such property until and unless such person shall have paid to the City an amount of money as may be determined by the governing body. Such amount shall be based upon the area served and the benefit resulting to the property involved.

6.0304 PERMITS NOT ISSUED-CERTAIN CONNECTIONS: No connection of any storm water pipe or sewer, or any pipe leading from any roof, gutter or down spout, to any sanitary sewer shall be permitted, and it shall be unlawful for any person to make any such connection or cause the same to be made unless approved by the City Engineer or authorized official.

6.0305 PERMITS-USE OF: No plumber or other person shall commence any plumbing or sewer work for which a permit is required as set forth in this chapter until he shall have made application for such permit and the same shall have been issued to him, nor having received a permit shall perform any such work except in strict conformity with the provisions of this chapter, and such other rules and regulations as the City may make from time to time for the execution of the same. No licensed plumber, or other person holding a license, shall allow the use of his name by any other person or the use of any permit granted to him by any other person not in his employ.

ARTICLE 4.

SUPERVISION

6.0401 CHANGES IN EXISTING INSTALLATIONS: The city street officer is hereby given authority to order and supervise the repair, alteration or removal of any sanitary sewer connection or plumbing, any connection to storm-water sewer, or any

private sanitary drain, cesspool, or privy, which in his judgment is so installed, or as in such condition as to be unsanitary, or to constitute a public nuisance or menace to health. In case of such repair, alteration or removal, if the plumbing code is not observed and connections not properly executed by the owner or owners thereof, in accordance with his directions, he may cause the same to be discontinued from any source of water supply. It shall thereafter be unlawful for any person in any manner to use any such installation, or to supply water thereto, until the same shall have been put in a safe and sanitary condition according to his directions. **AMENDED BY ORD. 387**

6.0402 NEW INSTALLATIONS: All plumbing work and all excavations in the public streets or alleys, the cutting and replacing of pavement, laying of water and sewer connections, and connections to storm-water sewers, and all construction of private sanitary drains, and cesspools, within the corporate limits shall be undertaken and executed only by a master plumber, or other persons, as have obtained a general license for such work, as required herein, provided that the tapping of water mains and the placing of corporate cocks therein shall be done only by city employees. Such work shall be supervised by the city street officer. **AMENDED BY ORD. 387**

ARTICLE 5.

SANITARY REQUIREMENTS

6.0501 WHEN PLUMBING FIXTURES REQUIRED: It shall be unlawful for any person to construct any building intended for human habitation, including dwelling, tenements, apartments, hotels, motels, lodging houses, dormitories, or club houses, or intended to be used as a theater or assembly hall, or as an office building, shop or factory or to convert any building to such use, or to occupy any building for such purpose, unless the same be connected to both the sewer and water systems of the City.

CHAPTER VII.

ELECTRICITY

ARTICLE 1.

ADOPTION OF ELECTRICAL CODE

7.0101 ELECTRICAL CODE ADOPTED: There is hereby adopted by reference by the city council for the purpose of regulating all electrical construction and materials and appliances used in connection with electrical work and the operation of all electrical apparatus within the city that certain code know and designated as the National Electrical Code, as recommended by the National Fire Protection Association. A copy of the National Electrical Code shall be kept on file in the city auditor's office for inspection and use of the public.

ARTICLE 2.

PERMITS

7.0201 PERMIT REQUIRED: No person shall commence any electrical work for which a permit is required until he shall have made application for such permit to the city building inspector and if none to the city auditor and the same shall have been granted, nor having received a permit shall perform any electrical work except in strict compliance with the laws of the State of North Dakota, and the provisions of this article, together with such rules and regulations as the city shall make from time to time for the execution of the same.

7.0202 WORK BY LICENSED ELECTRICIAN: All electrical work hereafter to be installed in any building within the corporate limits, shall be undertaken and executed only by such persons as hold a master electrician's license or a Class B electrician's license where applicable as provided in the laws of the State of North Dakota.

7.0203 WORK BY LICENSED ELECTRICIAN, WHEN NOT REQUIRED: No permit or application for a permit shall be required for the installation of electrical wiring for electrical installations made upon their own property by public service corporations, which hold franchises from the city for the manufacture and distribution of electrical power.

7.0204 USES OF LICENSE BY ANOTHER: No person holding a master electrician's license or a Class B electrician's license shall allow the use of his name, or any permit granted to him, by any other person.

7.0205 INSPECTION OF WORK: Upon completion of the work which has been authorized by the issuance of an electrical permit, it shall be the duty of the master electrician to request an inspection of his work by the state inspector. Such inspection shall be requested and conducted before the electrical work is covered by other building components.

In a case where such work includes a new or altered electrical service, the utility company shall not make any connection unless the service entrance bears a notice signed by the state inspector that said wiring has been inspected and approved by said inspector.

ARTICLE 3.

SUPERVISION OF WORK

7.0301 SUPERVISION OF WORK: All electrical installations now existing or hereafter to be made, altered or repaired in or upon any building in the city shall be under the supervision of the state inspector who shall required such work to comply with this article and city ordinances.

7.0302 POWERS: The city or state inspector shall have the right during reasonable hours to enter any building in the discharge of his duties, or for the purpose of making any inspection or test of the electrical installation or electrical equipment, contained therein and is hereby empowered to disconnect or order the discontinuance of electrical service to any electric wiring or equipment found to be defectively installed or otherwise not in conformity with the provisions of this article until such wiring, or equipment shall have been made safe as directed by him.

7.0303 EXISTING INSTALLATIONS: All existing electrical installations and devices on any premises or upon any building or structure in the city shall be subjected to inspection by the city or state inspector and if in the opinion of the city or state inspector a

hazard exists the owner shall be notified with an order requiring that the hazard be corrected. In the case where the owner fails to comply with city or state inspector's order, the service to the premises, structure, or building shall be disconnected.

7.0304 DEFECTIVE WORK: The city or state inspector is hereby given authority to order the removal and replacement, or the alteration of any installation or portion thereof for which a permit has been obtained, should he upon inspection of the same find it to have been executed in violation of any of the provisions of this article. It shall thereafter be unlawful for any person in any way to use such installation, or to supply the power thereto, until the same shall have been made to conform to the provisions of this article. No permit for any other work shall be issued to any applicant therefore who has executed any work in violation of the provisions of this article until such work shall have been made to conform thereto.

CHAPTER VIII.

BUILDING AND MECHANICAL CODE

Article 1.

GENERAL BUILDING CODE

8.0101 ADOPTION OF BUILDING CODE: The erection, construction, enlargement, alteration, repair, moving, removal, demolition, conversion, occupancy, equipment, use, height, area and maintenance of buildings or structures in the City of Beach shall meet with the provisions of the rules and regulations of the North Dakota State Building Code, as may be amended from time to time, including any future updates and amendments thereto. A true and current copy of the North Dakota State Building Code, as amended from time to time, shall be kept on file with the City Auditor, and is hereby made a part of this Chapter by reference, as if set out here in full; with exception of those sections hereinafter set forth affecting local conditions in the City, which are amended, for use and application in the City, and the City hereby adopts such Code as so modified.

8.0102 AMENDMENTS, DELETIONS, ADDITIONS TO CODE:

1. Section 4.0202 of these Revised Ordinances of 2009 of the City of Beach, shall be incorporated and adopted by reference as an addition to this Building Code.
2. Section 6.0501 of these Revised Ordinances of 2009 of the City of Beach, North Dakota, shall be incorporated and adopted by reference as an addition to this Building Code.

8.0103 CLARIFICATION OF CODE: For the purpose of clarifying the Building Code adopted above.

1. "Municipality" or "City" shall mean the City of Beach.
2. Whenever the Building code shall conflict with the zoning ordinances, the zoning ordinances shall govern.
3. Any reference to fire limits within the city shall mean the fire limits set out in Chapter IV.

8.0104 FEES: Fees under the Building Code shall be as follows:

For work valued at less than \$100,000.00, the fee shall be \$25.00, and for work valued at \$100,000.00 and over, there shall be an additional fee of \$10.00 for each additional \$10,000.00 of valuation or fraction thereof in excess of \$100,000.00.

AMENDED BY ORD. 387

8.0105 PENALTIES: The violation of any of the provisions of this chapter shall be punishable as provided in Chapter II of this code.

ARTICLE 2.

MECHANICAL CODE

8.0201 ADOPTION OF MECHANICAL CODE: The Uniform Mechanical Code, as may be amended from time to time, including all supplements, additions, and amendments thereto, as published by the International Conference of Building Officials, copies of which are on file in the office of the City Auditor, is hereby adopted as the Mechanical Code of the City for regulating heating, ventilating, cooling, refrigerating, and other systems as provided therein, as though the same were herein set forth in full, with the exception of the sections hereinafter set forth affecting local conditions in the City, which are commenced, deleted, or added to, for use and application in the City, and with the further exception of those Amendments to the Uniform Building Code which are part of the State Building Code as set forth in the North Dakota Century Code, and the City hereby adopts said Code as so modified.

CHAPTER IX.

HEALTH

ARTICLE 1.

BOARD OF HEALTH

9.0101 MEMBERS: The City Council and the city health officer or city physician; who shall have and exercise all powers under the law.

9.0102 REGULATIONS, NOTICE OF: Notice shall be given by the board of health, pursuant to the laws of the State of North Dakota, of all general orders and regulations made by such board, by publishing the same in the official newspaper within the jurisdiction of the board, which publication shall be deemed a legal notice to all persons.

ARTICLE 2.

CONTAGIOUS DISEASES

9.0201 DUTY OF HEALTH OFFICER: He shall properly instruct the physicians within his jurisdiction in the proper methods to employ in reporting contagious and other diseases, and shall furnish each physician with the necessary blanks for that purpose, said blanks to be of the form prescribed by the State Board of Health. He shall keep a record of all dangerous, contagious and infectious diseases occurring within his jurisdiction, which record shall show the name and address within his jurisdiction, which record shall show the name and address of the party affected, the name of the disease, by whom reported, and such other statistical data as may be required by the State Board of Health, and shall perform such other duties as may be prescribed by the laws of the State and the

ordinances of the city.

9.0202 REPORT REQUIRED OF DISEASE: Every physician called in to care for or treat a person afflicted with a contagious disease or any epidemic disease shall make a report of the same within 24 hours after being called in to the health officer. In case no physician is in attendance it shall be the duty of the person in charge or having the care of such person to make a report within 24 hours from the time the disease is recognized.

9.0203 QUARANTINE: The health officer shall have charge of the enforcement of the quarantine rules. He shall have the power and the authority to place any premises within which a contagious or epidemic disease occurs under quarantine, and the health officer shall determine the time when the quarantine ends.

9.0204 FUMIGATION: Premises which have been quarantined in accordance with the terms of the preceding section shall be thoroughly fumigated or otherwise freed from all risk of contagious disease, under the supervision of the health officer before the quarantine shall end.

9.0205 SPREADING CONTAGION: It shall be unlawful for any person to spread, willfully or carelessly, any contagious disease or to so cause the spread of the same.

9.0206 DELIVERIES TO QUARANTINED PREMISES: No person engaged in the delivery of food or drink intended for human consumption shall enter any premises which are quarantined because of the existence of a contagious or epidemic disease. No containers or bottles shall be removed from any such premises until the termination of the quarantine - and no such container which has been left at such premises during the quarantine shall be placed in use for carrying food or drink until it has been thoroughly sterilized.

9.0207 PENALTY: The violation of any of the provisions of this article shall be punishable as provided in Chapter II of this code.

ARTICLE 3.

GARBAGE, REFUSE, RUBBISH

9.0301 DEFINITIONS: For the purpose of this article the following words shall have the meanings given herein.

1. Ashes is the residue from burning wood, coal, coke or other combustible materials.
2. Garbage is putrescible animal and vegetable wastes resulting from the handling, preparation, cooking and consumption of food.

3. Refuse is all putrescible and non putrescible solid wastes (except body wastes) including garbage, rubbish, ashes, street cleanings, dead animals, abandoned automobiles, and solid market and industrial wastes.
4. Rubbish is non putrescible solid wastes (excluding ashes) consisting of both combustible and non-combustible wastes, such as paper, cardboard, tin cans, yard clippings, wood, glass, bedding, crockery and similar materials.

9.0302 ACCUMULATION OF REFUSE PROHIBITED: No person shall permit or suffer to accumulate in or about any yard, lot, place or premises; or upon any street or sidewalk, adjacent to or abutting upon any lot, block or place, or premises owned and occupied by him, or for which he may be agent, within the city limits, any and all refuse, nor suffer such yard, lot, place or premises to be or remain in such condition.

9.0303 CONTAINERS: All garbage and rubbish shall, by the person upon whose premises the same shall have been produced or accumulated, be bagged and placed in containers or placed for collection in a manner that complies with the rules and regulations adopted by the City pertaining to collection and disposal of garbage and rubbish.

9.0304 FEES: That the City Council of the City of Beach shall, by resolution, establish rates and charges for garbage and rubbish collection and disposal. Such rates and charges shall be at all times imposed and collected according to schedules which are reasonable and adequate to produce net revenue sufficient for the payment of all costs associated with (whether directly or indirectly) the collection and disposal of garbage and rubbish and with the compliance of rules and regulations pertaining thereto, and to maintain a reserve to provide adequately for the operation and maintenance of a garbage and rubbish collection disposal system.

The rates and charges for disposal of garbage and rubbish, the procedures for disposal of garbage and rubbish, and the procedure for the enforcement of the collection of said rates and charges shall be established from time to time by resolution of the City Council of Beach, North Dakota, as they shall, in their discretion determine.

9.0305 HAZARDOUS WASTE DISPOSAL: There shall be no dumping or disposing of hazardous wastes, as defined by State and Federal regulations pertaining thereto in the City dump disposable area without specific written permission from the City Council of the City of Beach and under the direction of those persons having control thereof.

9.0306 FEES-PAYMENT-COLLECTION: In all places where water service is provided, the monthly charge set forth in the preceding section shall be added to and collected as a part of the water bill and collected by the water department, but shall be separately stated on the bill. Garbage and rubbish collection bills shall be due and payable

at the same time as the water bill, either monthly or quarterly as the case may be. If such charge is not paid when due the water service to such premises shall be shut off by the water department in the same manner as is now provided for in the case of delinquency in payment of water bills and such service shall not be restored without the payment of the penalties now provided for.

In all places where water service is not provided, the charges above set forth shall be paid to the city upon bills from the city.

If the garbage and rubbish charge so established is not paid when due, such sum may be recovered by the city, in an action at law against the owner or occupant, or both, of the property so served; provided, however, that in the event that a person receiving garbage and rubbish removal services notifies the City of an extended period of absence from the City in the garbage and rubbish removal fee may, in the sole discretion of the City, be waived.

The proceeds from the collection of the fees and charges shall be placed in the general fund, and all of the expense of the city, in the purchase and maintenance of equipment and in the collection and disposal of garbage and rubbish, shall be paid out of the general fund.

9.0307 DISPOSAL OF REFUSE NOT COLLECTED BY THE CITY: All other wastes as defined, and not included under garbage, rubbish, and ashes may be disposed of by the person creating such waste, by hauling such waste for disposal to such points as are designated or approved by the city, or, such person may arrange with some person not in their employ to collect or haul such wastes to such points as are designated by the city.

9.0308 SUPERVISION: The collection, removal and disposal of garbage and rubbish under the provisions of this article, shall be under the supervision, direction and control of the city with the assistance of the city health officer. The city council shall appoint such employees and enter such contracts as shall be necessary to carry out the purposes of this article.

9.0309 RULES AND REGULATIONS: The city council shall prescribe and publish such reasonable rules and regulations in connection with the preparation, handling and disposition of garbage and rubbish as may be necessary to regulate, enforce and carry out the provisions of this chapter. The city may direct that the city garbage and rubbish collection crews shall not collect garbage and rubbish from any premises where such rules and regulations are not complied with and the failure to collect the same shall not relieve the owner or occupant of the premises from the payment of fees nor from the enforcement of the penalties of this code.

9.0310 COMMERCIAL HAULERS: All rubbish, ashes and other wastes, including kitchen garbage not collected and removed by the city garbage haulers, until such time as

the city shall provide for the collection and disposal thereof by contract or by municipal employees, may be collected, removed, transported and disposed of by commercial haulers.

9.0311 RISE BY COMMERCIAL HAULERS: There shall be charged a fee prescribed by the City Council in its rules and regulations, for each use of the city dump by commercial haulers, farm, or nonresidents, who deposit refuse in said dump.

9.0312 DISPOSAL GROUNDS: The city council shall designate the location or places to which all wastes referred to in this article shall be hauled, deposited or disposed of by commercial haulers, or others.

9.0313 RESIDENTS ENTITLED TO USE: Nothing herein contained shall be construed as prohibiting the hauling of such wastes by authorized city employees or by persons from their own premises and not for hire or compensation; provided, however, that all such wastes shall be hauled and disposed of in accordance with such regulations as may from time to time be issued by the city council.

9.0314 VIOLATIONS OF PROVISIONS- ENFORCEMENT PROCEDURE: In the event any person shall fail to comply with the provisions of this Article 3, they shall be subject to the penalties set forth in the general penalty provision. In addition the City may notify the owner of the property, as shown by the records of the County Register of Deeds, of the violation and demand that the violation be corrected. If the owner fails to comply with the demand to correct the violation, or fails to appeal to the District Court within 30 days from the date of the notice, the City through its officers and employees may enter upon the premises and take such action as may be necessary, including the removal and disposal of garbage and rubbish, and the cost thereof shall be billed to the owner. If the owner shall fail to pay said costs within 30 days from the date of billing, the amount may be deemed a municipal lien and shall be levied against the property as a special assessment and certified to the County Auditor for collection with the general taxes, or the City may seek to recover the amount in a suit at law against the owner.

ARTICLE 4.

MINIMUM HOUSING CODE

9.0401 DEFINITIONS: The following definitions shall apply to the interpretation and enforcement of this article.

- A. Basement shall mean a story of a building located partly underground, but having less than two-thirds of its clear floor-to-ceiling height below outside grade.
- B. Ceiling shall mean the interior overhead surface of a room.
- C. Cellar shall mean a story of a building located partly or wholly underground and having more than two-thirds of its clear floor-to-ceiling height below outside grade.
- D. City Health Officer shall mean the legally designated health authority of the city or building inspector appointed or retained by the City.
- E. Dwelling shall mean any building, structure, or parts thereof used and occupied for human habitation, or intended to be so used, and includes appurtenances and utilities belonging thereto or usually enjoyed therewith.
- F. Dwelling unit shall mean any room or group of rooms located within a building and forming a single habitable unit with facilities which are used or intended to be used for living, sleeping, cooking, and eating purposes.
- G. Extermination shall mean the control and elimination of insects, rodents, or other pests by eliminating their harborage places; by depriving or making inaccessible materials that may serve as their food; by poisoning, spraying, fumigating, trapping, or any other recognized and legal pest elimination methods approved by the city health officer.
- H. Family shall mean one or more persons occupying a dwelling or dwelling unit and living as a single nonprofit unit.
- I. Garbage shall mean the animal and vegetable wastes resulting from handling, preparation, cooking, and consumption of food.
- J. Habitable room shall mean a room or enclosed floor space used or intended to be used for living, sleeping, cooking, or eating purposes.
- K. Infestation shall mean the presence, within or around a dwelling, residence, lot, premises, or storage place, of any insects, rodents, or other pests.
- L. Meaning of certain words. Whenever the words dwelling, dwelling unit, rooming house, rooming unit, or premises are used in this article they shall be construed as though they were followed by the words "or any part thereof". Whenever the masculine pronoun is used it shall also mean the feminine pronoun.

- M. Multiple dwelling shall mean any structure or building containing more than one dwelling unit.
- N. Occupant shall mean any person, over one year of age, living, sleeping, cooking, eating in, or having actual possession of a dwelling or dwelling unit or rooming unit.
- O. Operator shall mean any person who has charge, care, or control of a building or parts thereof, in which dwelling units are let.
- P. Owner shall mean any person alone or jointly.
- Q. Person shall mean and include any individual, firm, corporation, association, or partnership.
- R. Plumbing shall mean and include all of the following supplied facilities and equipment; gas pipes, gas-burning equipment, water pipes, garbage disposal units, waste pipes, water closets, sinks, installed dishwashers, lavatories, bathtubs, shower baths, installed clothes-washing machines, catch basins, drains, vents, and any other similar supplied fixtures, together with all connections to water, sewer, or gas lines.
- S. Repair shall mean to restore to good condition.
- T. Rooming house shall mean a dwelling in which more than two rooms are let for hire, or more than four persons are given lodging for compensation.
- U. Rubbish shall mean combustible and noncombustible materials, except garbage, and the terms shall include the residue from the burning of wood, coke, and other combustible material such as paper, rags, cartons, boxes, wood, excelsior, rubber, leather, tree branches, yard trimmings, tin cans, metals, glass, crockery, and dust.
- V. Substandard shall mean any dwelling, dwelling unit, or premises violating any provisions of this article.
- W. Supplied shall mean paid for, furnished, or provided by or under the control of the owner or operator.
- X. Temporary housing shall mean any tent, trailer, or other structure used for human shelter which is designed to be transportable and which is not attached to the ground, to another structure, or to any utilities system and located on the same premises for more than (30) consecutive days.

9.0402 INSPECTION OF DWELLINGS, DWELLING UNITS, ROOMING UNITS AND ANY OTHER PREMISES: The city health officer or city building inspector is hereby authorized and directed to make inspections to determine the conditions of all dwellings, dwelling units, rooming units, and premises located within the city in order that he may perform his duty of safeguarding the health and safety of the occupants of such dwellings and of the general public.

For the purpose of making such inspections the city health officer or building inspector is hereby authorized to enter, examine, and survey at reasonable times all dwellings, dwelling units, rooming units, and premises.

The owner or occupant of every dwelling, dwelling unit, rooming unit, or the person in charge thereof shall give the city health officer or city building inspector access to such dwelling, dwelling unit, rooming unit or premises, at reasonable times for the purpose of inspection.

Each occupant of a dwelling or dwelling unit shall give the owner thereof, or his agent or employee, access to any part of such dwelling, dwelling unit, or its premises, at reasonable times for the purposes of making such repairs and/or alterations as are necessary to effect compliance with the provisions of this or any lawful order issued pursuant to the provisions of this article.

9.0403 MINIMUM REQUIREMENT FOR DWELLING UNITS: No person shall occupy as an owner, occupant, or let to another for occupancy any dwelling unit for the purpose of living, sleeping, or eating therein, which does not comply with the following requirements:

A. General Conditions

- (1) Every foundation, floor, wall, ceiling, and roof shall be reasonably weather-tight, rodent-proof, and shall be capable of affording privacy and shall be kept in good repair.
- (2) Every window, exterior door and basement hatchway shall be reasonably weather-tight, watertight, rodent-proof, and shall be kept in sound working condition and good repair.
- (3) Yards adjacent to any dwelling shall be graded to drain water off the lot or into a drainage system on the lot; no standing or stagnant pools of water shall be permitted on any yard or lot.
- (4) Every supplied facility, piece of equipment, or utility which is required under this article shall be so constructed or installed that it will function safely and effectively and shall be maintained in a satisfactory working condition.

- (5) No owner, operator, or occupant shall cause any service facility, equipment, or utility which is required under this article to be removed from, shut off, or disconnected in any occupied building or dwelling unit except for such temporary interruption as may be necessary while actual repairs or alterations are in the process or during temporary emergencies.
- (6) Porches, exterior stairways, steps, walkways, and sidewalks shall be in good repair and free from hazards.
- (7) Out buildings, retaining walls, fences, and accessory buildings shall comply with the provisions of this article regarding repair, maintenance and usage.
- (8) Every dwelling unit shall be provided with approved, safe and unobstructed means of egress and shall comply with the applicable provisions of the City Building Code and the Fire Prevention Code and the rules and regulations adopted pursuant thereto.
- (9) Dwelling units shall have access available to bedrooms or bathrooms through hallways or other means to assure the privacy of the occupants.

9.0404 DWELLING UNIT UNFIT FOR HUMAN HABITATION: The City Health Officer or City Building Inspector shall determine that a dwelling is unfit for human habitation or a building is substandard, if he finds that any of the following conditions exist:

1. Building supporting members which show thirty-three (33) percent or more of damage or deterioration.
2. Buildings that have interior or outside walls or coverings which show fifty (50) percent or more damage or deterioration.
3. Buildings which have floors or roofs with improperly distributed loads, which are overloaded, or which have insufficient strength to be reasonably safe for the purpose used or such framing members deflect over 1/360 of the span.
4. Buildings which have been damaged by fire, wind, or other causes that endanger the lives, safety, or welfare of the occupants or other people of the city.
5. Buildings which are dilapidated, decayed, unsanitary, or in disrepair which are likely to cause sickness or disease, or to cause injury to the health, safety, or welfare of the occupants or to other people of the city.
6. Buildings in which each living unit does not have safe and unobstructed means of egress leading to a safe and open space at ground level as required by the City Building Code.

7. Building which have defects therein increasing the hazards of fire, accidents, or other calamities such as lack of adequate ventilation, light, heating, or sanitary facilities as endangering the health, morals, safety, or general welfare of the occupants or other residents of the City.
8. Buildings which are in violation of any provisions of the building regulations, fire prevention, or ordinances of the city.
9. Buildings in which the interior walls, ceilings, and floors of all habitable rooms are not of durable material, in good repair, and well painted.
10. Buildings in which the exterior walls are not covered with an approved type of sheathing, stucco, brick, or other recognized type of material in good repair.
11. Buildings or premises that violate any ordinance of the city relative to sanitation and safety.
12. Dwelling units in which the bedrooms or bathrooms are not available through hallways or other means to assure the privacy of the occupants.

9.0405 ROOMING HOUSES: No person shall operate, or permit to be occupied, a rooming house which does not comply with the following requirements.

Applicability of Previous Sections and Subsections. The provisions of this article shall be applicable to each rooming house and rooming unit. For the purpose of this Section whenever in the above-mentioned section the term "dwelling" is used, it shall be construed to mean "rooming house" and whenever the term "dwelling unit" is used it shall be construed to mean "rooming unit".

9.0406 BASEMENT-CELLARS: No basement or cellar space shall be used for a dwelling unit or habitable room unless:

1. The floors and walls are damp-proofed and impervious to leakage of underground or surface moisture and insulated against dampness.
2. Total of the window area in each room is equivalent to ten (10) percent of the floor space of such room, or no less than that considered adequate and reasonable as compared to the floor space of such room.
3. The total openable window area for ventilating each room is equivalent to at least five (5) percent of the floor space of such room or where there is supplied some room or where there is supplied some other device affording equivalent ventilation and approved by the city health officer.

4. Every window which is below the grade of the ground adjoining such window shall have light wells or areaways extending at least twenty (20) inches out from said window throughout the entire width of the window.
5. Walls, ceiling, and floors of the basement rooms shall comply with Items of Section 9.0403 of this article.

9.0407 RESPONSIBILITY OF OWNERS AND OCCUPANTS:

1. Every owner of a dwelling or dwelling unit containing two or more dwelling units shall be responsible for maintaining in a clean and sanitary condition the shared or public areas of the dwelling and premises.
2. Every occupant of a dwelling or building shall keep in a clean and sanitary condition that part of the dwelling, dwelling unit, and premises thereof which he occupies and controls.
3. Every occupant of a dwelling or dwelling unit shall dispose of all rubbish in a clean and sanitary manner by placing it in the rubbish containers as required by city ordinances.
4. No owner shall occupy or let to any other occupant any vacant dwelling unit unless it is clean, sanitary, fit for human habitation, and not in violation with this article.
5. Every occupant of a dwelling or dwelling unit shall dispose of all garbage and any other organic waste which might be food for rodents, in a sanitary manner by placing it in the garbage disposal facilities or garbage storage containers as required by city ordinance. It shall be the responsibility of the owner to supply such facilities or containers for all dwelling units in a dwelling containing more than two dwelling units and for all dwelling units located on the premises where more than two dwelling units share the same premises. In all other cases, it shall be the responsibility of the occupants to furnish such facilities or containers.
6. Every occupant of a dwelling containing a single dwelling unit shall be responsible for the extermination of any insects, rodents, or other pests therein or on his premises; and every owner of a dwelling or building containing more than one dwelling unit shall be responsible for such extermination whenever a dwelling unit within such building shall become infested.

9.0408 DUTIES OF OCCUPANTS: It shall be the duty of every occupant of a dwelling to:

1. Keep the dwelling unit and grounds pertaining to it in a clean and sanitary condition, free from fire hazards, free of rodents, household pests and vermin harborage.

2. Keep all plumbing in reasonably good working order and free of obstruction.
3. Provide sound and tight garbage, rubbish, and ash containers when the same are not supplied by the owner, and keep all containers by whomever supplied in a clean and sanitary condition.
4. Comply with the requirements of this article when the duties mentioned therein falls on the occupant.
5. Comply with the occupancy for overcrowding requirements and limitations of this article.

9.0409 OCCUPANCY AND OVERCROWDING: No owner or occupant shall permit overcrowding in any dwelling unit or portion thereof as determined and measured by the following standards:

1. Every dwelling unit shall contain at least 160 square feet of space for the first occupant and at least 100 square feet for each additional occupant.
2. No sleeping room shall have a floor area of less than 80 square feet.
3. The total of all habitable rooms in a dwelling unit shall be such as to provide at least 100 square feet of floor area per person of the family over twelve years of age and at least 50 square feet of floor area per person of the family under twelve years of age.
4. In computing the floor area under this Section only those portions of the floor having a ceiling height of at least 7 feet 6 inches in height shall be included.

9.0410 APPLICABILITY OF THE CITY BUILDING CODE: Whenever the provisions of this article require the construction, installation, alteration, repair of a dwelling or dwelling unit, or its facilities, utilities or equipment, the required work shall be done in full compliance with the applicable provisions of the City Building Code.

9.0411 SUBSTANDARD BUILDINGS OR DWELLING UNITS, NUISANCE: Any buildings or dwelling units which violate the terms of Sections 9.0403, 9.0404, 9.0405, 9.0406, 9.0407, 9.0408 and 9.0409 of this article are hereby declared a public nuisance and dangerous to public health and shall be repaired, vacated, demolished, or said violations discontinued as hereinbefore and hereinafter provided.

9.0412 ENFORCEMENT; SERVICE OF NOTICE AND ORDER, AND THE CITY HEALTH OFFICER'S DUTIES OF: Whenever the City Health Officer of City Building Inspector determines there has been a violation of any provisions of this article, he shall notify in writing the owner, occupant, lessee, mortgagee, and all other persons having an

interest in said building, premises, or dwelling as shown by the records of the Register of Deeds of Golden Valley County, and any dwelling, dwelling unit, premises, or building found by him to be substandard as set forth in this article, that:

1. The owner must vacate, repair, demolish said building or premises within the terms of the Notice and Order.
2. The owner or occupant must vacate said building or premises or may have it repaired in accordance with the Notice and Order and remain in possession.
3. Provided, that any person notified under this article to repair, vacate, or demolish any building or premises shall be given such reasonable time as may be necessary to do, or have done, the work or acts required by the Notice and Order provided herein and in case such building or premises must be vacated such vacation notice shall be complied with in thirty (30) days and such repair or demolition order shall be complied with in ninety (90) days.
4. Set forth in the Notice and Order, provided in Subsection 1 herein, a description of the building, premises, or structure deemed substandard, a statement of particulars which makes the building, premises, or structure "Substandard or dangerous" and an order requiring the same to be put in such condition with the terms of the article and within such time as specified but not to exceed ninety(90) days.
5. Report to the city council any noncompliance with the "Notice and Order", provided for in Subsections 1,2,3, and 4 herein.
6. Appear at all hearings conducted by the city council and testify as to the conditions of the "substandard building or premises".
7. Place a Notice and Order on all "substandard buildings or premises" reading as follows: "This building/premises has been found to 'substandard' by the City Health Officer/City Building Inspector. This Notice and Order is to remain on this building or premises until it is repaired, vacated, or demolished in accordance with Notice and Order which has been given to the owner, occupant, lessee, or mortgagee of this building and all other persons having an interest in said building as shown by the records of Register of Deeds of Golden Valley County. It is unlawful to remove this Notice and Order until such Notice and Order is complied with."

9.0413 DUTIES OF CITY COUNCIL: The city council shall:

1. Upon receipt of a report of the City Health Officer or City Building Inspector as provided in Section 9.0412, Subsection 5, thereof, give written notice to the owner, occupant, lessee, mortgagee, and all other persons having an interest in said building, premises or dwelling as shown by the records of the register of Deeds of Golden Valley County, to appear before it on the date specified in the Notice and Order to show cause why the building, premises

or dwelling unit reported to be a "substandard or dangerous building, premises or substandard dwelling unit" should not be repaired, vacated, or demolished in accordance with the statement of particulars set forth in the City Health Officer's Notice and Order, provided in Section 9.0412, Subsection 1.

2. Holding a hearing and hear such testimony as the city Health Officer or the owner, occupant, mortgagee, lessee, or any other person having an interest in said building or premises as shown by the records of the Register of Deeds of Golden Valley County shall offer relative to "substandard building, premises or dwelling unit".
3. Make written findings of fact from the testimony offered pursuant to Subsection (b) herein as to whether or not the building or premises in question is a "substandard or dangerous building, premises or swelling unit" within the terms of Sections 9.0403, 9.0404, 9.0405, 9.0406, 9.0407, 9.0408, 9.0409, and 9.0410 of this article.

4. Issue an order based upon the findings of fact pursuant to Section 9.04012, Subsection 1, 2, and 3 commanding the owner, occupant, lessee, mortgagee, and all other persons having an interest in said building as shown by the records of the register of Deeds of Golden Valley County to repair, vacate, or demolish any building or premises found to be a "substandard building or premises@ within the terms of this article.

9.0414 FAILURE TO COMPLY WITH THE DECISION OF THE CITY COUNCIL: If the owner, occupant, mortgagee, or lessee fails to comply with the order of the city council or fails to appeal to the District Court within thirty (30) days as provided herein, the City through its officers and employees shall cause such building, premises or structure to be repaired, vacated, or demolished as ordered by the Board and shall cause the cost of such repair, vacation, or demolition to be charged against the land on which the said building or premises exists by special assessment, or as a municipal lien, or shall cause the said cost of removal to be levied as a special tax against the land or to be recovered in a suit at law against the owner.

9.0415 PENALTY FOR DISREGARDING THE NOTICE AND ORDER: The owner of any "substandard or dangerous building, premises or dwelling unit" who shall fail to comply with any Notice and Order to repair, vacate or demolish the said building, premises or structure given by any person authorized by this to give such Notice and Order shall be guilty of a misdemeanor and upon conviction thereof shall be fined not exceeding Five Hundred (\$500.00) Dollars for each offense and every day subsequent to such notice in which said owner shall fail to comply with any Notice and Order as above stated shall be deemed a separate offense.

The occupant or lessee in possession who fails to comply with Notice and Order to vacate and who fails to repair said building or premises in accordance with any Notice and Order given as provided for in this article shall be guilty of a misdemeanor and upon conviction thereof shall be fined not exceeding Five Hundred (\$500.00) Dollars for each offense and every day subsequent to such notice in which the said occupant or lessee shall fail to comply with said notice and order as above stated shall be deemed a separate offense.

Any person removing the notice and order provided for in Section 9.0412, subsection 7, thereof shall be guilty of a misdemeanor and upon conviction shall be fined not exceeding Five Hundred (\$500.00) Dollars for each offense.

9.0416 DUTIES OF CITY ATTORNEY: The City Attorney shall:

1. Prosecute all persons failing to comply with the terms of the notice and order provided for herein in Section 9.0412, subsection 7, and findings of fact order provided for in Section 9.0412, subsection 4.
2. Appear at all hearings before the Board in regard to "substandard buildings or premises".
3. Take such other legal action as is necessary to carry out the terms and provisions of this article.

9.0417 WHERE OWNER ABSENT FROM THE CITY: In cases, except emergency cases, where the owner, occupant, lessee, or mortgagee is absent from the City, all Notice and Orders provided for herein shall be sent by registered or certified mail to the owner, occupant, mortgagee, and all other persons having an interest in said building as shown by the land records of the Register of Deeds of Golden Valley County to the last known address of each and a copy of such Notice and Order shall be posted in a conspicuous place on the "substandard building or premises" to which it relates, such mailing and posting shall be deemed adequate service.

9.0418 EMERGENCY ACTION BY THE CITY HEALTH OFFICER OR CITY BUILDING INSPECTOR: Whenever the City Health Officer or City Building Inspector finds that an emergency exists which requires immediate action to protect the public health he may, without notice or hearing, issue an order reciting the existence of such emergency and requiring that such action be taken as he deems necessary to meet the emergency. Notwithstanding the other provisions of this Chapter, such order shall be effective immediately. Any person to whom an order is directed shall comply therewith immediately, but upon petition to the City shall be afforded a hearing as soon as possible, in the manner provided in Section 9.0412. After such hearing, depending upon the findings as to whether the provisions of this article have been complied with, the city council shall continue such order in effect, or modify it, or revoke it.

9.0419 APPEAL: The Board shall serve upon the owner, occupant, mortgagee, lessee, and all other persons having an interest in such building or premises so ordered repaired, vacated, or demolished, a copy of its order, such order to be served upon such owner, occupant, mortgagee, or lessee within ten (10) days after the issuance of such order. Such owner, occupant, mortgagee, or lessee shall thereafter have thirty (30) days from the date of service of such order served upon him in which to appear from such order to the District Court of Golden Valley County, North Dakota, or take such other legal steps to enjoin the enforcement of such order as he may deem proper.

Any person desiring to appeal from any order issued by the Board under and by virtue of this Section shall file an undertaking in the sum of at least Five Hundred (\$500.00) Dollars to be approved by the City Auditor and conditioned that the appellant will prosecute the appeal without delay and will pay all costs that may be adjudged against him in District Court. Such undertaking shall be payable to the City.

9.0420 ENFORCEMENT OF INTERPRETATION: This article shall be enforced by the City Health Officer in accordance with the provisions of this article.

9.0421 PENALTIES: Any person who violates any provision of this Ordinance shall be fined not more than Five Hundred Dollars (\$500.00) or by imprisonment not to exceed thirty (30) days or by both such fine and imprisonment, at the discretion of the court having jurisdiction. Each and every violation of the provisions of this article shall constitute a separate offense.

9.0422 UNCONSTITUTIONALITY CLAUSE: Should any section paragraph, sentence, clause, or phrase of this article be declared unconstitutional or invalid for any reason, the remainder of this article shall not be affected thereby.

ARTICLE 5.

DANGEROUS BUILDINGS

9.0501 DANGEROUS BUILDINGS DEFINED: All buildings or structures which have any or all of the following defects shall be deemed "dangerous buildings".

- A. Those whose interior walls or other vertical structural members list, lean or buckle to such an extent that a plumb line passing through the center of gravity falls outside of the middle third of its base.
- B. Those which exclusive of the foundation, show thirty-three (33) percent or more, damage or deterioration of the supporting member or members, or fifty (50) percent of damage or deterioration of the non-supporting enclosing or outside walls or covering.

- C. Those which have improperly distributed loads upon the floors or roofs or in which the same are overloaded, or which have insufficient strength to be reasonably safe for the purpose used.
- D. Those which have been damaged by fire, wind, or other causes so as to have become dangerous to life, safety, morals, or the general health and welfare of the occupants or the people of the City.
- E. Those which have become or are so dilapidated, decayed, unsafe, unsanitary or which so utterly fail to provide the amenities essential to decent living that they are unfit for human habitation or are likely to cause sickness or disease so as to work injury to the health, morals, safety or general welfare of those living therein.
- F. Those having inadequate facilities for egress in case of fire or panic or those having insufficient stairways, elevators, fire escapes, or other means of communication.
- G. Those which have parts thereof which are so attached that they may fall and injure members of the public or property.
- H. Those which because of their condition are unsafe, unsanitary, or dangerous to health, morals, safety or general welfare of the people of the city.
- I. Those buildings existing in violation of any provision of the Building Code, of the fire prevention code, electrical or plumbing codes or of other ordinances of this city.

9.0502 STANDARDS FOR REPAIR, VACATION OR DEMOLITION: The following standards shall be followed in substance by the Building Inspector and the Governing Body in ordering repair, vacation or demolition:

- A. If the "dangerous building" can reasonably be repaired so that it will no longer exist in violation of the terms of this article it shall be ordered repaired.
- B. If the "dangerous building" is in such condition as to make it dangerous to the health, morals, safety, or general welfare of its occupants it shall be ordered to be vacated.
- C. In any case where a "dangerous building" is fifty (50) percent damaged or decayed or deteriorated from its original value or structure, it shall be demolished, and in all cases where a building cannot be repaired so that it will no longer exist in violation to the terms of this article it shall be demolished. In all cases where a "dangerous building" is a fire hazard

existing or erected in violation of the terms of this article or any ordinance of the city or statute of the State of North Dakota, it shall be demolished.

9.0503 DANGEROUS BUILDINGS, NUISANCES: All "dangerous buildings" within the terms of Section 9.0501 of this article are hereby declared to be public nuisances and shall be repaired, vacated, or demolished as hereinbefore and hereinafter provided.

9.0504 DUTIES OF BUILDING INSPECTOR: The Building Inspector shall:

- A. Inspect any building, wall or structure about which complaints are filed by any person to the effect that a building, wall, or structure is or may be existing in violation of this article.
- B. Inspect any building, wall or structure reported (as hereinafter provided for) by the Fire or Police Departments of this City as probably existing in violation of the terms of this article.
- C. Notify in writing the owner occupant, lessee, mortgagee, and all other persons having an interest in said building, as shown by the record in the office of the Register of Deeds of the County of Golden Valley, of any building found by him to be a Dangerous building@ within the standards set forth in Section 9.0501 of this article that: (1) the owner must vacate, or repair, or demolish said building in accordance with the terms of the notice and this article; (2) the owner or occupant must vacate said building or may have it repaired in accordance with the notice and remain in possession. Provided, that any person notified under this subsection to repair, vacate, or demolish any building shall be given such reasonable time, not exceeding 30 days, as may be necessary to do, or have done, the work or act required by the notice provided herein.
- D. Set forth in the notice provided for in subsection (c) hereof, a description of the building, or structure deemed unsafe, a statement of the particulars which make the building or structure a "dangerous building" and an order requiring the same to be put in such condition as to comply with the terms of this ordinance within such length of time, not exceeding 30 days, as is reasonable.
- E. Report to the city council any noncompliance with the "notice" provided for in subsections (c) and (d) hereof.
- F. Appear at all hearings conducted by the city council and testify as to the condition of "dangerous buildings".
- G. Place a notice on all "dangerous buildings" reading as follows: "This building/premises has been found to be a dangerous building/premises by

the Building Inspector. This notice is to remain on this building/premises until it is repaired, vacated, or demolished in accordance with the notice which has been given the owner, occupant, lessee, or mortgagee of this building/premises and all other persons having an interest as shown by the records of the Register of Deeds of the County of Golden Valley. It is unlawful to remove this notice until such notice is complied with."

9.0505 DUTIES OF THE CITY COUNCIL: The city council shall:

- A. Upon receipt of a report of the Building Inspector as provided for in Section 9.0504, Subsection (e) hereof, give written notice to the owner, occupant, mortgagee, lessee and all other persons having an interest in said building as shown by the records of the Register of Deeds of the County of Golden Valley to appear before it on the date specified in the notice to show cause why the building or structure reported to be a "dangerous building" should not be repaired, vacated, or demolished in accordance with the statement of particulars set forth in the Building Inspector's notice provided for herein in Section 9.0504, Subsection (E).
- B. Hold a hearing and hear such testimony as the Building inspector or the owner, occupant, mortgagee, lessee, or any other person having an interest in said buildings as shown by the records of the Register of Deeds of the County of Golden Valley shall offer relative to the "dangerous building".
- C. Make written findings of fact from the testimony offered pursuant to subsection (b) as to whether or not the building in question is a "dangerous building" within the terms of Section 9.0501 thereof.
- D. Issue an order based upon findings of fact made pursuant to subsection (c) commanding the owner, occupant, mortgagee, lessee and all other persons having an interest in said building as shown by the records of the Register of Deeds of the County of Golden Valley, to repair, vacate, or demolish any building found to be a "dangerous building" within the terms of this article and provided that any person so notified, except the owners, shall have the privilege of either vacating or repairing said "dangerous building".

9.0506 FAILURE TO COMPLY WITH DECISION OF THE CITY COUNCIL: If the owner, occupant, mortgagee, or lessee fails to comply with the order of the city council or fails to appeal to the District Court within thirty (30) days as provided herein, the City through its officers and employees shall cause such building or structure to be repaired, vacated or demolished as ordered by the Board and shall cause the costs of such repair, vacation, or demolition to be charged against the land on which said building existed by special assessment, or as a municipal lien, or shall cause said cost of removal to be levied as a special tax against the land upon which said building stands or did stand or to be recovered in a suit at law against the owner.

9.0507 VIOLATIONS; PENALTY FOR DISREGARDING NOTICES OF ORDERS:

The owner of any "dangerous building" who shall fail to comply with any notice or order to repair, vacate, or demolish said building given by any person authorized by this article to give such notice or order shall be guilty of a misdemeanor and upon conviction thereof shall be fined not exceeding Five Hundred Dollars (\$500.00) for each offense and every day subsequent to such notice in which the said order shall fail to comply with any notice or order as above stated, shall be deemed a separate offense.

The occupant or lessee in possession who fails to comply with any notice to vacate and who fails to repair said building in accordance with any notice given as provided for in this article shall be guilty of a misdemeanor and upon conviction thereof shall be fined not exceeding Five Hundred Dollars (\$500.00) for each offense and every day subsequent to such notice in which the said owner shall fail to comply with any notice or order as above stated, shall be deemed a separate offense.

Any person removing the notice provided for in Section 9.0504, Subsection (h) hereof shall be guilty of a misdemeanor and upon conviction shall be fined not exceeding Five Hundred Dollars (\$500.00) for each offense.

9.0508 DUTIES OF THE CITY ATTORNEY: The City Attorney shall:

- A. Prosecute all persons failing to comply with the terms of the notices provided for herein in Section 9.0504, Subsections (c) and (d) and the order provided for in Section 9.0505, Subsection (d).
- B. Appear at all hearings before the Board in regard to "dangerous buildings".
- C. Take such other legal action as is necessary to carry out the terms and provisions of this article.

9.0509 WHERE OWNER ABSENT FROM THE CITY: In cases, except emergency cases, where the owner, occupant, lessee, or mortgagee is absent from the city all notices or orders provided for herein shall be sent by registered or certified mail to the owner, occupant, mortgagee, lessee, and all other persons having an interest in said building as shown by the land records of the Register of Deeds of the County of Golden Valley to the last known address of each, and a copy of such notice shall be posted in a conspicuous place on the "dangerous building" to which it relates. Such mailing and posting shall be deemed adequate service.

9.0510 DUTIES OF FIRE, POLICE AND HEALTH DEPARTMENTS: All employees of the Fire, Police and Health Departments shall make written reports to the building inspector of all buildings, structures, or premises which are, may be, or are suspected to be "dangerous buildings or premises" as herein defined.

9.0511 APPEAL: The city council shall serve upon the owner, occupant, mortgagee, lessee and all other persons having an interest in any such building so ordered repaired, vacated, or demolished, a copy of its order, such notice to be served upon such owner, occupant, mortgagee or lessee within ten (10) days after the issuance of such order. Such owner, occupant, mortgagee or lessee shall thereafter have thirty (30) days from the date of the service of such order upon him in which to appeal from such order to the District Court of Golden Valley County, North Dakota, or to take such other legal steps to enjoin the enforcement of such order as he may deem proper.

Any person desiring to appeal from any order issued by the city council under and by virtue of this article shall file an undertaking in the sum of at least Five Hundred Dollars (\$500.00) to be approved by the City Auditor and conditioned that the appellant will prosecute the appeal without delay and will all costs that may be adjudged against him in the District Court. Such undertaking shall be payable to the City.

IN THE MATTER OF "DANGEROUS BUILDINGS" LOCATED AT

BEACH, NORTH DAKOTA, UNDER ARTICLE 5.

NOTICE OF HEARING

You are hereby notified that the Building Inspector of Beach, North Dakota, has filed with City Council a report that you have not complied with a Notice and Order issued by him that dwellings or premises located at _____ were dangerous and were to be demolished by you prior to _____, 20____.

You are further notified to appear before the city council of the City of Beach, North Dakota, on the _____ day of _____, 20____, at the hour of _____ o'clock ____M., to show cause, if any you have, why said building or premises reported to be "dangerous" should not be demolished in accordance with the statement of particulars set forth in the Building Inspector's Notice.

Dated _____, 20____.

CITY COUNCIL OF THE CITY OF
BEACH, NORTH DAKOTA

BY: _____, MAYOR

ATTEST: _____, AUDITOR

IN THE MATTER OF A "DANGEROUS BUILDING OR PREMISES" LOCATED AT, _____
TO THE CITY OF BEACH, NORTH DAKOTA, WITH AN ADDRESS OF, _____

NOTICE AND ORDER

You are hereby notified that the undersigned, Building Inspector of the City of Beach, North Dakota, acting pursuant to article 5 and chapter 9 of the Code of the City of

Beach, 20____, has made an inspection of the following described building/premises in which you are, or appear to be, interested, to-wit: _____

You are further notified that the undersigned, Building Inspector, deems the foregoing described building or premises to be dangerous within the meaning of Section 9.0501 of said Ordinance of the City of Beach, 20 _____, in the following particulars:

YOU ARE THEREFORE ORDERED TO _____

the said building or premises on or before the _____ day of _____, 20 _____.

Building Inspector

Dated this _____ day of _____, 20_____.

This is a suggestion as to the warning sign that should be printed in red.

WARNING

Whereas it has been determined by appropriate inspection that the dwelling, premises or building to which this notice is attached, does not comply with Ordinances

of the City of Beach all persons are hereby warned that it is unlawful to rent, lease, let, occupy or permit the use or occupancy of this dwelling, premises, or building for dwelling purposes or as a place of employment for human beings, or to remove or molest this notice.

City Health Officer

Beach, North Dakota

CHAPTER X.

BUSINESS REGULATIONS AND LICENSES

ARTICLE 1.

GENERAL PROVISIONS

10.0101 LICENSES: Unless otherwise specifically provided, licenses and permits required for the carrying on of a business or trade within the city shall be applied for, issued, terminated, and revoked according to the provisions of this article.

10.0102 LICENSES--APPLICATION: Any person desiring a license or permit under any ordinance of the city shall make a written application to the city thereof upon application blanks furnished by the city auditor and file the same with the city auditor stating the purpose for which the same is desired, for what length of time, and specifying the place where his business is to be carried on; if required to file a bond before being licensed he shall also name his proposed sureties on his bond and his application.

10.0103 LICENSES--GRANTING: The city auditor shall receive applications for licenses and permits and grant the same in all cases where expressly authorized upon the terms and conditions specified by ordinance. If he shall feel not authorized to grant any particular application for license or permit for any purpose not named by ordinance, he shall report such application to the next meeting of the city council for their action thereon.

10.0104 LICENSES--TERM:

1. No license or permit shall be granted for a longer period than one (1) year.
2. All yearly licenses or permits shall commence on the 1st day of July on each year and expire on the 1st day of June and each succeeding year.
3. No license or permit shall be valid until signed and sealed, nor shall any person be deemed licensed until a license shall be duly issued to him.
4. Each license shall be dated the day of issuance thereof, but if the applicant or applicants shall have been acting without a license, the license shall commence with the date the business commences; if the business calls for a yearly license then the license shall commence on the 1st day of July in the year for which the licenses shall be issued.

5. The date of issuance of the license together with the time of commencing and expiration shall be given in the license and license record.

10.0105 LICENSES--NOT TRANSFERABLE: No license or permit shall be assignable or transferable except by permission of the city council. No person other than the person to whom the license is granted shall be authorized to do business or act under such licenses or at any other than the place specified therein. The city may grant the continuance of the business license to any other portion of the city, such permission to be certified on the license by the city auditor. No license shall authorize any person to act under it at more than one place at the same time, or at any other place then is therein specified. Whoever shall violate any of the provisions of this section shall be deemed to be acting without a license and shall be subject to the same penalty as prescribed for acting without a license.

10.0106 LICENSES--REVOCATION: All licenses granted shall be subject to ordinances in force at the time of issuing thereof or which may be subsequently passed by the city council. Any person who shall violate any provision of this article relating to his license may be proceeded against for any fine or penalty imposed thereby, and his license may be revoked or forfeited in the discretion of the city council or the Court before which any action may be brought for the recovery of any fine or penalty.

Where not otherwise provided any license may be revoked by the city council at any time for cause. "Cause" shall include, but not be limited to the following:

1. Violation of the laws of the state of North Dakota, or any of the ordinances or the city dealing with or pertaining to the business or trade licensed.
2. The willful making of any false statement as to a material fact in the application for license.
3. Permitting any disorderly or immoral practices upon the premises where the licensee is licensed to carry on the business or trade.
4. The death of a licensee.
5. When the licensee ceases business at the location licensed.

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

10.0107 LICENSES--POSTING OF: All licenses and permits issued by the city for

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

10.0108 LICENSES--SHORT TERM: No license unless otherwise specified shall be issued for a fractional part of the year, but shall relate back if taken out subsequent to the first day of July of each year.

10.0109 LICENSES--ENFORCEMENT: All city officials having duties to perform with reference to licensed premises, including all police officers, shall have authority to enter the licensed premises with or without a search warrant to check for violations of ordinances or state laws by the licensee.

10.0110 LICENSES--OBLIGATIONS OF THE CITY: No applicant shall be granted a license who is in default under the provisions of any city ordinance, or is indebted or obligated to the city, or is delinquent in the payment of any taxes or fees in which the city shares.

ARTICLE 2.

TRANSIENT MERCHANTS

10.0201 DEFINITIONS: For the purpose of this article:

1. Transient Merchant includes any nonresident person, individual, co-partnership or corporation either as principal or agent, who engages in, does, or transacts any temporary transient business in the City of Beach, either in one locality, or in traveling from place to place within the city selling goods, wares, and merchandise, who does not intend to become and does not become a permanent merchant of the city of Beach, and who, for the purpose of carrying on such business, hire, leases, occupies or uses a building, structure, lots, tract, railroad car or motor vehicle for the exhibition and sale of such goods, wares, and merchandise. The person, individual, co-partnership or corporation so engaged shall not be relieved from complying with the provisions of this article merely by reason of associating temporarily with any local dealer, trader, merchant or auctioneer, or by conducting such transient business in connection with, as a part of, or in the name of any local dealer, trader, merchant or auctioneer.
2. "Merchandise" shall not include any livestock or agricultural products.
3. "Resident" shall be defined as a person whose principal residence has been located within Golden Valley County, North Dakota, for a period of thirty (30)

days or more.

10.0202 LICENSE REQUIRED: It shall be unlawful to do business in the city as a transient merchant without having first secured a license thereof as is herein provided. For the purpose of this article any merchant engaging or intending to engage in business as a merchant in the city for a period of time not exceeding one hundred (100) days shall be considered as a transient merchant, provided that peddlers shall not be considered transient merchants.

10.0203 LICENSE FEE: The license fee to be required of all transient merchants for the transaction of such business within the city, is contemplated and provided for and in by Section 51-04-09 NDCC, is hereby fixed at the sum of twenty-five and 00/100 DOLLARS (\$25.00) per day for each and every day during which any such transient merchant shall transact business in the city. **AMENDED BY ORD. 387**

10.0204 LICENSE--APPLICATION FOR: Applicants for licenses under this article, whether an individual, co-partnership, or corporation, shall file a written sworn application signed by the applicant, if an individual, by all partners if a partnership, and by the President if a corporation, with the city auditor, showing:

1. Applicant's name, present residence, present home address, present business address and if a corporation under the laws of what state the same incorporated;

2. The name, present residence, present home address and present business address of the person or persons having the management or supervision of the applicant's business during the time that it is proposed that it will be carried on in the city.
3. That the residence, business address and type of business in which the applicant has been engaged in the previous two (2) years;
4. The residence, business address, and type of business in which the person having the management or supervision of applicant's business has been engaged in the previous years;
5. The place or places in the city where it is proposed to carry on applicant's business, and the length of time during which it is proposed that said business shall be conducted;
6. The kind of business to be conducted;
7. The name and address of the auctioneer, if any, who will conduct the sale; and
8. A statement of the nature, character and quality of the goods, wares or merchandise to be sold or offered for sale by applicant, in the city, the invoice value and quality of such goods, wares and merchandise, whether the same are proposed to be sold from stock in possession or from stock in possession and by samples; at auction, by direct sale, or by direct sale and taking orders for future delivery; where the goods or property proposed to be sold are manufactured or produced and where such goods or products are located at the time said application is filed.

10.0205 BOND: Before any license shall be issued to a transient merchant for engaging in business in this city, the applicant therefor shall file with the city auditor a bond running to the city in the sum of one thousand and 00/100 DOLLARS (\$1000.00) executed by the applicant, as principal, and a responsible surety upon which service of process may be made in the State of North Dakota; said bond not to be revokable nor to terminate prior to the passage of two (2) years' time after the expiration of the license issued pursuant thereto not until due notice that the terms of the bond are to be canceled have been given to the city auditor; said bond to be approved by the city attorney, conditioned that said applicant shall comply with all of the provisions of the ordinances of the city and the statutes of the State of North Dakota, regulating and concerning the sale of goods, wares and merchandise and will pay all judgments rendered against said applicant for any violation of said ordinances or statutes, or any of the, together with all judgments and costs that may be recovered against him by any person or persons for damage

growing out of any misrepresentation or deception practiced on any person transacting such business with such applicant, whether said misrepresentation or deceptions were made or practiced by the owners or by their servants, agents, or employees, either at the time making the sale or through any advertisement of any character whatsoever, printed or circulated with reference to the goods, wares and merchandise sold or any part thereof. Action on the bond may be brought to the name of the city to the use of the aggrieved person. **AMENDED BY ORD. 387**

10.0206 SERVICE OF PROCESS: Before any licenses herein provided shall be issued for engaging in businesses a transient merchant, as herein defined, in this city, such applicants shall file with city auditor an instrument nominating and appointing the city auditor his true and lawful agent with full power and authority to acknowledge service of notice of process for and on behalf of said applicant in respect to any matters connected with or arising out of the business transacted under said license and a bond given as required by this article, or for the performance of the conditions of said bond or for any breach thereof, which said instrument shall also contain recitals to the effect that said applicant for said license consents and agrees that service of any notice or process may be made upon said agent, and when so made shall be taken and held to be as valid as if personally served upon the person or persons applying for the said license under this article, according to the law of this state or any other state, and waiving all claim or right of error by reason of such acknowledgment of service or manner of service. Immediately upon service of process upon the city auditor, as herein provided, the city auditor shall send to the licensee at his last know address, by registered mail, a copy of said process.

10.0207 EXHIBITING LICENSE: The license issued under this article shall be post conspicuously in the place of business named therein. In the event that such person or persons applying for said license shall desire to do business in more than one place within the city, separate licenses may be issued for each place of business, and shall be posted conspicuously, in each place of business.

10.0208 TRANSFER: No license issued to a transient merchant in the city shall be transferred.

10.0209 ENFORCEMENT BY POLICE: It shall be the duty of the police officers of the city to examine all places of business and persons in their respective territories subject to the provisions of this article, to determine if this article has been complied with and to enforce the provisions of this article against any person found to be violating the same. The city auditor shall deposit with chief of police a record of each license, together with the location within the city of the business licensed thereunder to assist and promote such enforcement.

Failure to abide by the provisions of the Article 10.02 shall be a violation. A violation of the Article shall be punishable by a fine not to exceed \$50 per occurrence. **AMENDED BY**

10.0210 REVOCATION:

1. Any license issued pursuant to this article may be revoked by city council, after notice and hearing for any of the following causes:
 - (a) Any fraud, misrepresentation or false statement contained in the application for license.
 - (b) Any fraud, misrepresentation or false statement made in connection with the selling of goods, wares, or merchandise;
 - (c) Any violation of this article;
 - (d) Conviction of the licensee of any felony or of a misdemeanor involving moral turpitude; or
 - (e) Conducting the business license under this article in an unlawful manner or in such a manner as to constitute a breach of the peace or to constitute a menace to the health, safety or general welfare of the public.
2. Notice of hearing for revocation of a license shall be given in writing, setting forth specifically the grounds of the complaint and the time and place of the hearing. Such notice shall be mailed, postage prepaid, to the licensee at his last known address, at least five days prior to the date set for the hearing.

10.0211 EXPIRATION OF LICENSE: All licenses issued under the provision of this article shall expire at the expiration of the period for which application has been made and prepaid, to be renewable by the city auditor upon application and payment thereof.

ARTICLE 3.

HAWKERS AND PEDDLERS

10.0301 "HAWKING" AND "PEDDLING" DEFINED: Selling, offering for sale or soliciting the purchase of goods, wares or merchandise or any produce of any kind grown outside of the state or any magazine, newspaper, periodical or publication, taking or attempting to take orders for sale of said goods, wares and merchandise of any nature whatsoever for future delivery, or for services to be furnished or performed in the future, whether or not such individual has, carries or exposes for sale a sample of the subject of said sale or whether he is collecting advance payments on said sales or not, upon the public streets or places by going from

house to house within the city shall be deemed hawking and peddling.

10.0302 LICENSE REQUIRED FOR NONRESIDENTS: No person who is not a resident of the County of Golden Valley shall hawk or peddle within the city without first obtaining a license to do so from the city auditor and without first posting the performance bond required herein.

10.0303 FEES--BOND: The license fee for hawking or peddling within the city shall be twenty-five and 00/100 DOLLARS (\$25.00) per day for each day or portion of day, and five hundred and 00/100 DOLLARS (\$500.00) per month if paid in advance.

In addition to the payment of such fee and as a prerequisite for the obtaining of such license, any hawker or peddler who is not a resident of the County of Golden Valley, North Dakota, shall obtain and file with the City Auditor a performance bond in the amount of one thousand and 00/100 DOLLARS (\$1,000.00), which bond shall run to the benefit of the City and shall remain in full force and effect for a period of six (6) months after the expiration of the license applied for. Such bond shall by its terms guarantee that such licensee will perform all of his contractual obligations incurred while doing business within the city and should such licensee default or fail to perform any of such obligations, that any person aggrieved thereby shall then be empowered to have and recover his claims against such licensee directly from such performance bond. Such performance bond shall either be in the form of cash deposited with the City Auditor or in the form of a surety bond written by a surety company authorized to do business within the state. **AMENDED BY ORD. 387**

10.0304 EXHIBITION OF LICENSE: Hawkers and peddlers are required to exhibit their licenses at the request of any citizen.

10.0305 TRANSFER: No license issued under the provision of this article shall be transferred or used at any time by any person other than the one to whom it was issued.

10.0306 USE OF STREETS: No hawker or peddler shall have any exclusive right to any location in the public streets, nor shall any be permitted a stationary location, nor shall he be permitted to operate in any congested area where his operations might impede or inconvenience the public. For the purpose of this article, the judgment of a police officer, exercised in good faith, shall be deemed conclusive as to whether the area is congested or the public impeded or inconvenienced.

10.0307 ENFORCEMENT: It shall be the duty of any police officer of this city to require any person seeking hawking or peddling, and who is not known by such officer to be duly licensed, to produce his license and to enforce the provisions of this article against any person to be in violation of the same.

10.0308 REVOCATION:

1. Licenses issued under the provision of this article maybe revoked by the city council after notice and hearing, for any of the following causes:
 - (a) Fraud, misrepresentation, or false statement contained in the application for license;
 - (b) Fraud, misrepresentation, or false statement made in the course of carrying on his business;
 - (c) Any violation of this article;
 - (d) Conviction of a crime or misdemeanor involving moral turpitude;
 - (e) Conducting the business of hawking or peddling in an unlawful manner or in such a manner as to constitute a breach of peace or constitute a menace to the health, safety or general welfare of the public.
2. Notice of a Hearing for revocation of a license shall be given in writing setting forth specifically the grounds of complaint and the time and place of Hearing. Such notice shall be mailed, postage prepaid, to the licensee at his last known address at least five (5) days prior to the date set for the Hearing.

10.0309 PENALTY: Failure to abide by the provisions of this Article 10.03 shall be a violation. A violation of this Article shall be punishable by a fine not to exceed \$50 per occurrence. **AMENDED BY ORD. 387**

ARTICLE 4.

ALCOHOLIC BEVERAGES

10.0401 DEFINITIONS: For the purpose of this article:

1. "Alcoholic beverages" shall mean any liquid suitable for drinking by human beings, which contains one-half (1/2) of one percent or more of alcohol by volume.
2. "Beer" shall mean any malt beverage containing more than one-half (1/2) of one percent of alcohol by volume.

3. "Liquor" shall mean any alcoholic beverage except beer.
4. "Person" shall mean and include any individual, firm, corporation, association, club, co-partnership, society, or any other organization; and shall include the singular and the plural.
5. "Sale" and "sell" shall mean all manner or means of furnishing alcoholic beverages, including the selling, exchange, barter, disposition of, and keeping for sale of such alcoholic beverages.
6. "Package" and "original package" shall mean and include any container or receptacle containing an alcoholic beverage, which container or receptacle is corked or sealed by the manufacturer thereof and which cork or seal has not been removed or broken prior to the sale of such package to the purchaser.
7. "Club" or "lodge" shall include any corporation or association organized for civic, fraternal, social or business purposes, or the promotion of sports.
8. "Retail sale" shall mean the sale of alcoholic beverages for use or consumption and not for resale.
9. "Off-sale" shall mean the sale of alcoholic beverages in original packages for consumption off or away from the premises where sold and an off-sale license shall authorize the person named therein to conduct such off-sales only at the place designated in such license and no elsewhere, and shall not permit the opening of the package sold on the premises where sold. Such sale must in each case be completed by delivery of the liquor sold to the actual purchaser thereof on the licensed premises.
10. "On sale" shall mean the sale of alcoholic beverages for consumption only on the premises where sold, and an on- sale license shall authorize the licensee to conduct such on-sales only at the place designated in such license and not elsewhere.

10.0402 EXCEPTIONS:

1. This article shall not apply to wines delivered to priests, rabbis and ministers for sacramental use.
2. This article shall not be construed to apply to the following articles, when they are unfit for beverage purposes:

- (a) Denatured alcohol produced and used pursuant to Acts of Congress, and the regulations thereunder;
- (b) Patent, proprietary, medical, pharmaceutical, antiseptic and toilet preparations;
- (c) Flavorings extracts, syrups and food products;
- (d) Scientific, chemical and industrial products, nor to the manufacturer or sale of said articles containing alcohol.

10.0403 LICENSE REQUIRED: No person shall sell at retail within the city limits of the City any alcoholic beverages without first having obtained a license therefore as herein provided. This section shall not apply to public carriers engaged in interstate commerce.

10.0404 LICENSE -- TERM OF:

1. All licenses issued hereunder shall be for a period of not more than one year and shall expire on Midnight on the 30th day of June in each year. Where a license is granted for a period less than a year subsequent renewal thereof must be made for the full annual term.
2. If an application is made for license hereunder during the license year for the unexpired portion of such year, the fees therefore shall be as follows:
 - (a) If the short term be for three months or less, the license fee therefore shall be 25% of the annual license fee.
 - (b) If the term be for more than three months and less than six months, the license fee therefore shall be 50% of the annual license fee.
 - (c) If the term be for more than six months but less than nine months, the license fee therefore shall be 75% of the annual license fee.
 - (d) For any term in excess of nine months, the full annual license fee shall be paid.
 - (e) The license fees shall be payable before the license is issued. Provided, however, the full annual license fee may be payable in two equal installments which shall be payable on or before July 1 and January 1 of each year.

10.0404 AMENDED BY ORD. 387

10.0405 LICENSE -- CLASSES OF:

1. On and off sale liquor licenses at an annual fee of nine hundred dollars (\$900.00).
2. Off sale liquor license at an annual fee of eight hundred ten dollars (\$810.00).
3. On and off sale beer license at an annual fee of two hundred dollars (\$200.00).
4. Off sale beer license at an annual fee of one hundred dollars (\$100.00).
5. In addition to the licenses authorized in 1 through 4 above, specialty restaurant beer and wine licenses may be issued permitting on-sale beer sales and/or wine sales subject to the following restrictions and conditions:
 - (a) A licensee hereunder shall comply with all of the laws of the state relating to the sale and dispensation of alcoholic beverages.
 - (b) The food and beer and/or wine license hereunder shall be for the sale of beer and/or wine for consumption on the premises only, and no sales for consumption off the premises shall be made.
 - (c) A licensee hereunder shall sell tap beer only which shall be dispensed by the licensee or an employee from kegs or barrels, and the sale of beer in bottles, cans or similar packages shall not be permitted. Wine may be sold on tap or by bottles for consumption on the premises with food.
 - (d) Beer and wine shall be consumed at tables or booths only, and no beer or wine shall be consumed at a counter or bar.
 - (e) No dancing will be permitted in an establishment holding a license hereunder.
 - (f) An establishment holding a license hereunder shall provide adequate off-street parking, within the discretion of and subject to the approval of the City Council.
 - (g) The license fee for food and beer and/or wine license shall be Four Hundred Dollars (\$400.00) per year, payable in the manner provided in Section 10.0404 above.
 - (h) Licenses issued under this Section shall be limited to one for the

current population as of July 1, 1981, which is deemed to be 1,392. Thereafter, one additional license may be issued for each 1,000 additional people in the City as determined by the City Council.

- (i) Gross receipts from sales of beer and wine hereunder shall not exceed twenty-five percent of the gross receipts from sales of all food items and beer and wine combined.
 - (j) Except as modified in this Section, a license hereunder shall comply with and be subject to all of the remaining provisions of this Ordinance.
- 6. In addition to any alcoholic beverage licenses that may be issued under subsections 1 through 5 above of this section, it is hereby provided that the City may grant an alcoholic beverage license for both on and off-sale to any hotel or motel within the City limits which has seventy-five or more rental units or rooms which has, as an integral part of such hotel or motel, adequate meeting room space and sufficient dining area and facilities to adequately serve its patrons, as well as the public generally. In order to qualify for an alcoholic beverage license under this provision, it is necessary that the dining area and other food service facilities be in operation and open for business at least as many hours daily as the alcoholic beverage portion of the premises. The annual fee for said license shall be \$1,000.00 per year, payable in the manner provided in Section 10.0404 above.
- 7. Any eating establishment that (i) is licensed to engage in the sale of alcoholic beverages at retail pursuant to ordinances pertaining thereto, (ii) and who shall meet the definitions hereafter, and (iii) has paid the fee hereinafter described, shall have the right to dispense and sell beer and wine in conjunction with the sale of prepared meals on Sunday between the hours of 12:00 noon and 9:00 p.m. for consumption only in that part of the eating establishment habitually used for the serving of prepared meals.
 - (a) As used in this subsection 7 "eating establishment" means a restaurant or other commercial establishment that is licensed as above described to engage in the sale of alcoholic beverages, and which derives 50% or more of its annual gross receipts from the sale of prepared meals and not alcoholic beverages.
 - (b) Any establishment conducting sales on Sunday under this subsection 7 shall pay an additional annual fee of \$150.00.

10.0406 AMENDED BY ORD. 387

10.0406 LIMITATION ON NUMBER OF LICENSEES ISSUED UNDER

CLASSIFICATIONS 1 THROUGH 4 OF SECTION 10.0405.

1. On July 1, 1981, there were presently existing a total of five (5) licenses, including both on-sale and off-sale only licenses. The last official federal census of the City prior to that date revealed the population of the City to be 1,392. No additional licenses under Section 1 through 4 shall be granted, except as hereinafter provided, until the population of the City reaches an estimated 2,100 people, at which time one additional license under said Sections 1 through 4 may be added. Thereafter an additional license under Sections 1 through 4 may be granted for each population increase of 700 people, as determined by the City Council from annexations, household units or other methods of estimated population.
2. In addition to the licenses provide for in Section 10.0405, it is hereby provided that the City shall license any alcoholic beverage premises in existence on July 1, 1981, outside the City, which may hereafter become annexed to and become a part of the City; provided that the licensee can meet the other requirements of this chapter; and provided and that each such alcoholic beverage establishment shall be located in the same place at the time of licensure by the City as it was located on July 1, 1981. Any alcoholic beverage establishments, either on-sale and off-sale or off-sale only, that are established and approved outside the City limits after July 1, 1981, shall not be entitled to a license under this chapter, except under the provisions of subsection (1) of this section providing additional licenses upon an increase in population. Any commercial license which is added to the City by virtue of annexation as approved in this subsection (b) shall not be included in any computation under subsection (a) hereinabove relating to requisite population increases for any additional commercial licenses.
3. Each year when the issuance of licenses is considered by the City Council it shall first consider applications from persons holding existing licenses before considering any requests for new applicants. In considering whether or not to issue licenses to those previously licensed, the City Council will review and evaluate the past record of such licensees, including any violations of City Ordinance and state law and also the general manner in which the licensed premises has been conducted and managed. The actual decision of whether or not a license should be issued under this chapter, whether it be a previous license or to a new applicant, shall be made only in the discretion of the City Council and in accordance with the various requirements of this chapter. No licensee shall necessarily be entitled to an automatic renewal of his license. In the event of the issuance of a license to a new applicant, such license shall be granted to the applicant deemed most qualified by the City Council.

10.0406: AMENDED BY ORD. 387

10.0407 LICENSE -- QUALIFICATIONS FOR: No retail license shall be issued to any person unless the applicant shall file a sworn application, accompanied by the required fee, showing the following qualifications:

1. Applicant, if an individual, must be 21 years of age or older, must be a citizen of the United States, a resident of the State of North Dakota, and a resident of Golden Valley County, North Dakota.
2. If applicant is a corporation, the manager of the licensed premises and the officers, directors and stockholders must be citizens of the United States. The corporation must obtain a certificate of incorporation authorizing it to do business within the State of North Dakota, issued by the Secretary of State, State of North Dakota. The manager must be a resident of the State of North Dakota in the County of Golden Valley.
3. If the applicant is a partnership, all members of the partnership must be citizens of the United States. The manager must be a resident of the State of North Dakota, Golden Valley County.
4. Residency requirement herein is a continuing requirement during the term of any license issued hereunder.
5. Applicant or manager must not have been convicted of a felony.
6. The premises upon which business is to be conducted must meet local and state requirements regarding the sanitation and safety.
7. Taxes on property for which the application for license is made must not be delinquent.
8. If applicant's place of business is to be conducted by a manager or agent, said manager or agent must possess the same qualifications required of the individual licensee.

10.0408 LICENSE -- APPLICATION FOR: Any person desiring a license to sell alcoholic beverages at retail as hereinbefore described shall make and present a written verified application to the City Council of this City, filed with the City Auditor, containing the following information:

1. The name and address of the applicant; if the applicant is a co-partnership, the name and address and place of residence of each member of said co-partnership; if the applicant is a corporation, the name and address of the

officers and directors of the corporation, the name and address of the shareholders of the Corporation, unless a public corporation, and the name and address of the manager of the licensed premises.

2. Whether the applicant is a citizen of the United States, and if a naturalized citizen, the date and place of naturalization and place of residence of the applicant for a period of one year last preceding the date of application; if the applicant is a co-partnership the same preceding information for each member of said co-partnership; and if the applicant is a corporation, the name and address of the officers, directors and shareholders holding 10% or more of the issued stock of the corporation, the date of incorporation, the state where incorporated, the purpose for which said corporation was incorporated, and if such corporation is a subsidiary of any corporation, the name of the parent corporation.
3. The legal description and the address of the premises for which license is sought.
4. The date on which the applicant acquired title to the premises sought to be licensed, and if the applicant does not have title to said premises, the name and address of the owner of the premises together with a copy of the applicant's lease, if written, under which he holds possession of said premises.
5. Whether there are any delinquent taxes against the premises sought to be licensed.
6. Whether the applicant has ever engaged in the sale or distribution of alcoholic beverages prior to this application, and if so, the date and type of business and place where so engaged whether within or without the State of North Dakota, the date the application first began to operate.
7. Whether the applicant has ever had a license revoked or canceled by any municipal, state or federal authority, and if so, the date of such cancellation, the place and authority canceling same, and the reason for such cancellation.
8. Whether the applicant has ever been convicted of the violation of any law of the United States or of any state, or of the violation of any local ordinance, with regard to the manufacture, sale, distribution or possession of alcoholic beverages, and if so, the dates, names of places, and Courts, in which said convictions were had.
9. Whether the applicant has ever had a license for the sale of alcoholic beverages revoked for any violation of state laws or local ordinances, and if so, the names of the bodies revoking such license, the dates of such revocation, and the reasons assigned therefore.
10. Whether the applicant has ever been convicted of any other crime than

stated in subsections 8 and 9 hereof, in this state or any other state, or under any federal law, and if so, the date of such conviction, the name of the crime for which convicted, the amount and terms of sentence passed, and the Court in which convicted.

11. The name and address and the place of residence for a period of one year prior to the date of application of any person who will have charge, management, or control of the establishment for which license is sought.
12. Whether any other person than the applicant has any right, title, estate or interest in the leasehold or in the furniture, fixtures, or equipment in the premises for which license is sought, and if so, the name and address of such person, together with a statement of the interest so held.
13. Whether the applicant has any interest whatsoever, directly or indirectly, in any other establishment dispensing alcoholic beverages, either at wholesale or retail, within or without the State of North Dakota, and if so, the names and addresses of such establishments. This provision is meant to include the holders of capital stock in any corporation dealing in alcoholic beverages, either at wholesale or retail, and within the borders of the United States.
14. The occupation which the applicant has followed during the past five years.
15. The names and addresses of at least three business references.
16. Whether the applicant is rated by any commercial agency, and if so, the name and address of said agency.
17. Whether the applicant is engaged in any other business or intends to be engaged in any other business than the sale of alcoholic beverages under the license for which application is made, and if so, the type of business, and if an employee, the name and address of the employer.
18. The classification of license applied for.
19. If the applicant is a lodge or a club, the date of organization, the number of members, the purpose for which organized, and the purpose for which profits to be derived from the sale of alcoholic beverages are to be applied; and whenever required by the governing body a list of the members belonging to such lodge or club.
20. A statement by the applicant that he consents to entry and inspection of the premises for which license is sought or any part thereof at any time by any police officers, sheriff or any peace officer of this City or of the State of North

Dakota.

21. If the applicant is a partnership, corporation, lodge, club or legal entity other than an individual, the manager shall supply the information required by 2, 6, 7, 8, 9, 10, 13, 14, 15 and 17 above, as they apply to said manager.

10.0409 LICENSE -- APPLICANT FITNESS: The chief of police or such other person or officer as may be designated by the City Council, upon the filing of an application, and upon a request of the City Council shall investigate the facts as stated in the application and the character, reputation and fitness of the applicant, and shall report on said matters to the governing body. **AMENDED BY ORD. 387**

10.0410 LICENSES, GENERAL LIMITATION: No more than one license of each classification shall be issued or granted to any applicant, except that an applicant may hold up to two licenses for on and off sale beer if said licenses are used at separate premises. Each license issued under this chapter shall be valid only for the specific premises licensed.

10.0411 LICENSE -- LOCATION OF: At the time of the consideration of an application to license a particular premises, the City Council shall, in its discretion, determine if said location is in harmony with public interest and welfare of the community and may consider among other things the following factors:

1. The convenience of police regulation.
2. Public health and sanitation.
3. Proximity of other licensed businesses.
4. Proximity of schools, churches, funeral homes, public buildings, or buildings used by or for minors.
5. Any protests of neighboring property owners or occupants.
6. Zoning regulations.
7. Proposed on or off sale or both of licensee.
8. Interference with or proximity to residential property.
9. Interference with neighboring property.
10. Suitability of premises for sale of beer, liquor or alcoholic beverages.
11. Public convenience and necessity.

10.0412 LICENSE -- POSTING OF: License issued hereunder shall be posted in a conspicuous place in the premises for which the license has been issued.

10.0413 LICENSE -- TRANSFERABILITY-PERSON-LOCATION: No license issued hereunder shall be transferred to any person, and no change of location shall be permitted without first making application and receiving the approval of the City Council. For the purpose of this section, any sale or transfer of a licensed premises to any individual, partnership, trustee or corporation shall be considered a transfer of license. Also, the transfer of 25% or more of capital stock of any licensee corporation, or the change in the vesting of voting rights of over 25% of the stock of the licensee corporation shall be deemed a transfer and the procedure hereinafter set forth shall be required.

10.0414 PROCEDURE FOR TRANSFER OF LICENSE-BETWEEN PERSONS:
Any person wishing to transfer a license issued hereunder to another shall follow the following procedure:

1. The holder of the license shall file with the City a written notice of intention to transfer a license. The notice shall set forth: 1. the name and address of the present license holder; 2. the type of license presently held; 3. the expiration date of the present license term; 4. a description of the premises licensed; 5. the name and address of the person to whom the present holder wishes to transfer the license; 6. the date the transfer is to be effective; 7. a request to appear before the City Council to present the application.
2. The person to whom the license is sought to be transferred shall file an application for license and supply the information required by section 10.0407 and 10.0408.
3. The person intending to transfer the license and the person to whom the license is to be transferred shall appear before the City Council and request consideration of the proposed transfer. The City Council shall review the notice and application to determine if same is complete. If the applications are complete, the City shall set a public hearing on the matter, notice thereof shall be given by publication in the official newspaper at least fifteen (15) days before the hearing date.
4. At the time of the consideration of the matter, the City Council shall hear the applicants and persons in support of the transfer and those that may be opposed to the transfer. The council shall also consider the qualifications of the proposed licensee holder as defined in 10.0408, and the factors regarding the proposed location of the premises as set forth in 10.0411. The council shall then determine if it will permit the transfer of license. If the transfer is denied, the council shall set forth in the minutes the reasons for

the denial.

5. If the transfer is approved, the City Auditor shall issue a new license to the applicant. The new license shall be for the unexpired term of the previous license. Any conditions the City may have put on the transfer of license shall be in writing and attached to the license. Failure to comply with the conditions set forth shall be grounds for revocation of license.

10.0415 CHANGE OF LOCATION OF LICENSED PREMISES: Any person wishing to transfer the location of the licensed premises shall follow the following procedure:

1. The holder of the license shall file with the City a written notice of intention of move the location of the licensed premises. The notice shall set forth: 1. the name and address of the present license holder; 2. the type of license presently held; 3. the expiration date of the present license; 4. a description of the premises presently licensed; 5. the description of the premises sought to be licensed 6. the date the transfer is to be effective; 7. a request to appear before the City Council to present the application.
2. The person intending to transfer the licensed premises shall appear before the City Council and request consideration of the proposed transfer. The City shall review the notice and application to determine if same is complete. If the notice is complete, the City shall set a public hearing on the matter. Notice thereof shall be given thereof by publication in the official newspaper at least fifteen (15) days before the hearing.
3. At the time of the consideration of the application to transfer the City Council shall hear the applicant and persons in support of the transfer of premises and those that may be opposed to the transfer of the premises. The council shall also consider the elements set forth in 10.0411. The council shall then determine if it will permit the requested transfer. If the transfer is denied, the council shall set forth, in the minutes, the reason for the denial.
4. If the transfer is approved, the City Auditor shall issue a new license to the applicant for the approved premises. Any conditions the City may have put on the relocation of premises shall be in writing and attached to the licensee. Failure to comply with the conditions shall be grounds for the revocation of license.

10.0416 CHANGE OF MANAGER: A licensee, other than an individual who shall change manager, shall notify the City and furnish the City with the information concerning the new manager as required by Section 10.0408. Failure to so inform the City and failure of the manager to meet the requirements of a manager as described in this Ordinance shall be grounds for revocation of the license.

10.0417 LICENSE FEES -- DISPOSITION OF: All license fees collected under this article shall be credited to the general fund of the City.

10.0418 HOURS AND TIME OF SALE: No licensee shall sell, serve, or permit to be sold, served or consumed on the premises named in the license any alcoholic beverages at any time or on any day on which sales are prohibited by state law.

10.0419 LICENSEE'S RESPONSIBILITY: Every licensee is hereby made responsible for the conduct of his place of business and is required to maintain order and sobriety in such place of business, permitting no disorderly conduct on the premises. Alcoholic beverages shall not be served to any intoxicated person, nor shall any intoxicated person be permitted to remain upon the premises.

10.0420 SALES PROHIBITED -- ITEMS: No licensee shall sell on the licensed premises any item other than alcoholic beverages, soft drinks, tobacco products, drink mixing supplies, peanuts, pretzels, potato chips and related sundries; except a licensee may sell alcoholic beverages in a restaurant separated from the room in which alcoholic beverages are opened or mixed if gross sales of goods are at least equal to sales of alcoholic beverages in the dining room.

10.0421 SALES PROHIBITED, PERSONS: No licensee, his agent, or employee shall sell any alcoholic beverages to a person under 21 years of age, a habitual drunkard, an incompetent or an intoxicated person.

10.0422 MINORS IN LICENSED PREMISES: No licensee shall permit any person under 21 years of age to remain on the licensed premises while alcoholic beverages are being sold or displayed thereon, except that a person under 21 years may remain in a restaurant where alcoholic beverages are being sold if accompanied by a parent or legal guardian. **AMENDED BY ORD. 387**

10.0423 AGE IDENTIFICATION: Before selling alcoholic beverages to any person, or before determining whether any person shall remain upon the licensed premises, a licensee, his agent or employee may require a statement in writing and signed by said person of such person's age. Any person who makes a false statement as to his or her age, or signs a name other than his own or her own to any such statement, shall be guilty of a violation of this article.

10.0424 STREET SALES PROHIBITED: The sale or consumption of alcoholic beverages upon or across any street, alley or public way is prohibited, except if permitted by special permit as set forth in 10.0429 or 10.0430.

10.0425 PREMISES, EQUIPMENT OF: Premises licensed hereunder for on-sale alcoholic beverages shall be equipped with tables, chairs, booths and stools in a sufficient number to accommodate reasonably the patrons.

10.0426 CLOSED OR SCREENED AREAS: No premises licensed for on-sale of alcoholic beverages shall contain any side rooms, closed booths or other screened enclosures, nor shall any screen, partition, curtain, blind or obstruction of any kind prevent a clear view at all times of all parts of the interior of the premises licensed. All booths located in such premises shall open directly into the main part of said premises and shall be accessible from the aisles therein.

10.0427 PURCHASE FROM LICENSED WHOLESALER: No licensee hereunder shall purchase, have or possess any alcoholic beverages other than those purchased from a wholesaler duly licensed by the State of North Dakota pursuant to the provisions of Title V of the North Dakota Century Code; and each licensee hereunder shall keep on file all invoices covering purchases by him of such alcoholic beverages showing the name and license number of the wholesaler, and such records shall be retained in the possession of the licensee and shall be at all times open to inspection by any police officer or peace officer in the State of North Dakota.

10.0428 TOILETS REQUIRED: The premises where On-Sale License is granted must be equipped with adequate and sufficient lavatories and toilets, separately maintained for men and women, and kept in a clean and sanitary condition. The On-Sale license may be revoked when the foregoing requirements, or any other health ordinance or regulation, is not, at all times, strictly observed. **AMENDED BY ORDINANCE 389**

10.0429 BOTTLE CLUBS: No person shall operate an establishment whereby persons are allowed to bring their own alcoholic beverages on the premises where the proprietor sells soft drinks, mix, ice, or charges for bringing such beverages on the premises.

10.0430 TERMINATION OR REVOCATION OF LICENSES:

1. Licenses issued pursuant to this article shall be deemed canceled and revoked and terminated upon the happening of any one or more of the following contingencies:
 - (a) The death of the licensee unless upon application to the governing body by personal representative of the decedent, the governing body shall consent to the carrying on of the business by the personal representative.
 - (b) When the licensee ceases business at the location licensed for a period of six (6) months or more, unless a new location is approved or a transfer of license is approved and business is commenced within six (6) months from the date of approval, or such other time as the City Council may have specified in the approval.

- (c) When the licensee be adjudged bankrupt.
 - (d) When the licensee ceases to possess the qualifications required of an applicant for a license as set out in this article.
 - (e) When the licensee fails to comply with conditions placed upon the license by the City Council.
 - (f) When the license or permit of the licensee from the United States Government or the State of North Dakota to sell alcoholic beverages at the location licensed has been terminated or been revoked.
2. License issued pursuant to this ordinance may, in the discretion of the governing body, be either revoked or suspended for such period of time as deemed appropriate, upon the following grounds:
- (a) When the licensee has been convicted of violating any of the provisions of this article.
 - (b) When the business of the licensee at the location licensed shall be conducted in violation of health or sanitary regulations or other provisions of this Ordinance or other ordinances of the City.
 - (c) When the licensee, if an individual, or one of the partners, if the licensee be a partnership, or one of the officers or the manager if the licensee be a corporation, be convicted in the municipal court of the City of drunkenness or disorderly conduct, or if any appeal be taken from such conviction then when such conviction be sustained by the higher court or courts.
3. Such causes as are hereinbefore detailed shall not be deemed to be exclusive and such license may also be canceled and revoked or suspended at any time by the City Council for any cause deemed by said City Council for any caused deemed by City Council to be sufficient cause and justified by reason of public health or public morals. Such termination shall be subject only to review the Courts of the State of North Dakota.
4. When any license is terminated or revoked for cause, or the licensee voluntarily ceases his business, no portion of the license fee previously paid shall be returned to the licensee or to anyone claiming under or through him.

10.0431 PERSONS LESS THAN TWENTY-ONE YEARS PROHIBITED --
EXCEPTIONS: It shall be unlawful for any person under twenty-one years of age to purchase, attempt to purchase or be in possession of alcoholic beverages or furnish money to any person for such purchase or enter any licensed premises where such

beverages are being sold or displayed, except a restaurant when accompanied by a parent or legal guardian.

10.0432 PERMIT REQUIRED FOR CATERING ALCOHOLIC BEVERAGES: The holder of an alcoholic beverage license issued pursuant to this chapter may obtain a permit to cater alcoholic beverages to private grounds, or parties, conventions or similar social gatherings, excluding any public dance, show, exhibition or similar event sponsored, operated or conducted in the expectation of a profit; such permit to allow catering of alcoholic beverages at a location other than the holder's licensed premises and upon the further following terms and conditions:

- A. That application for such permit shall be made to the City Auditor prior to the date of the event to be catered and such application shall be accompanied by payment of an application fee in the amount of twenty-five dollars (\$25.00). The City Council shall have approved such application. If such application shall be approved, the City Auditor shall issue such permit and shall state on such permit the period of time for which it shall be valid not to exceed three (3) days, and such other conditions as the City Council may direct.
- B. That the catering and dispensation of alcoholic beverages pursuant to a permit issued under this section shall be fully in compliance with the remaining provisions of this chapter which are consistent with the purposes and intent of this section.
- C. Failure to comply with the ordinances of the City and The conditions set forth on the permit shall be grounds for revocation thereof.

10.0432 AMENDED BY ORD. 381

10.0433 SPECIAL EVENT ALCOHOLIC BEVERAGE PERMIT:

- A. Authorization and Fee: The City Council by special permit authorize an alcoholic beverage licensee to engage in the sale of alcoholic beverages at special events, on premises other than those licensed on such premises as may be designated by such permit. The fee for such local special permits shall be fifty dollars (\$50.00), and such permits shall not be valid for a period greater than three consecutive days.
- B. Application for Permits: An alcoholic beverage licensee desiring to conduct a special event, wherein alcoholic beverages will be sold, or to sell alcoholic beverages at a special event, by any other person who has been granted a permit to do so by the governing body, shall make an application for a special permit to do so to the governing body. The application shall be filed

with the City Auditor at least thirty (30) days prior to the date on which the special event is to be conducted or held. Failure to file the applications for permit within the required time may be deemed as cause for denial of the application. The application shall set forth:

- (1) The name of the applicant;
- (2) The time or period for which the permit is desired;
- (3) The place where such special event is to be conducted or held; and
- (4) A description of the premises upon which the event is to be held, which shall include how the area is enclosed, how the control of dispensing liquor will be handled and policed.

C. Refusal and Revocation of Permit for Cause: The governing body of the City shall refuse to issue such permit and revoke a permit already issued, where it appears that:

- (1) The permitted site is or is likely to become a public nuisance or detrimental to public morals;
- (2) Alcoholic beverages or controlled substances are being sold or given away except as provided by such permit;
- (3) Any of the ordinances of the City or of the laws of the state are being violated; or
- (4) In the sole judgment of the governing body, protests to the issuing of such permit are made, either orally or in writing, by a sufficient number of the people living in the neighborhood of the site for which application for such permit is made to warrant refusal or revocation of such permit as being in the public interest.

Unless otherwise directed by the City Council, each special event permit as contemplated herein shall include a condition stating that the licensee provide at least two (2) security personnel for the event designated.

If such application is approved, the City Auditor shall issue such permit for the period specified and shall state such other conditions as the City Council may direct. Failure to comply with the conditions shall be grounds for revocation of the permit.

10.0433 AMENDED BY ORD. 381

10.0434 PENALTY: Any person violating the provisions of this Section, in addition to being subject to having the license revoked or suspended as above described, may be subject to the general penalty provisions of Ordinance No. 294, Sections 2.0106 through 2.0112.

10.0435 REPEAL OF CONFLICTING ORDINANCES: All prior ordinances or parts of prior ordinances in conflict herewith are hereby repealed.

10.0436 MINORS IN CONSUMPTION: It shall be unlawful for any person under twenty-one years of age to attempt to purchase alcoholic beverages, consume alcoholic beverages other than during a religious service, be under the influence of alcoholic beverages, or be in possession of alcoholic beverages, or furnish money to any person for such purchase.

ARTICLE 5.

SHOWS, CARNIVALS AND CIRCUSES

10.0501 LICENSE REQUIRED: No person, firm, association or corporation shall exhibit or cause to be exhibited or assist in exhibiting any natural or artificial curiosity or conduct a circus, menagerie, tent, show, carnival or carnival show, continuous theatrical performance, shooting gallery, or other like exhibition without first obtaining license from the city.

10.0502 FEES FOR: The fees to secure license to conduct the exhibitions mentioned in the foregoing section shall be as follows:

Any carnival, per day \$100.00

Any circus, per day \$100.00

In addition to the above fees any carnival or circus granted a license shall deposit with the city auditor cash bond in the amount of \$1,000.00 guaranteeing that the premises upon which such carnival or circus is located shall be cleaned after the showing of such carnival or circus to the satisfaction of the city engineer or street officer and upon certification of the city engineer or street officer to the city auditor that the same has been done said cash deposit shall be returned to the licensee. Provided, further, that in addition to such fees an additional fee in an amount from \$10.00 to \$1,000.00 to be fixed by the city council shall be paid at the time of obtaining license to provide for fire and police protection and additional policing in connection with showing of such carnival or circus.

ARTICLE 6 ENACTED BY ORD. 370

CHAPTER XI.

PROCEDURE FOR GRANTING, REGULATING, MAINTAINING AND TERMINATING A CABLE TELEVISION SYSTEM FRANCHISE

ARTICLE I.

IN GENERAL

11.0101 REPEAL: Articles I through III of Chapter XI of Ordinance #294 is hereby repealed and there is substituted therefore the following articles and sections:

11.0102 DEFINITIONS: For the purposes of this chapter, the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory.

- A. "Basic Cable Service" means the service tier which includes the retransmission of local broadcast signals.
- B. "City" is the City of Beach, North Dakota.
- C. "Cable Television System" or "Cable System" is a system utilizing certain electronic and other components which deliver to subscribing members of the public various communications services.
- D. "Cable Television Reception Service" means the delivery by the Grantee to television receivers or any other suitable type of electronic terminal or receiver of the electronic signals and other communications services carried over said system.
- E. "FCC" shall mean Federal Communications Commission.
- F. "Person" is any person, firm, partnership, association, corporation or organization of any kind and any other legally recognized entity.
- G. "Grantee" is a person to whom a franchise is granted hereunder or anyone who succeeds the franchisor in accordance with the provision of this Ordinance.
- H. "Subscribers" are those person contracting to receive cable television reception services furnished under this Ordinance by Grantee.

11.0103 GRANT OF AUTHORITY--GENERALLY: Authority is hereby made available by the city to any Grantee who qualifies under all of the provisions of this chapter, to construct, erect, operate and maintain in, upon, along, across, above, over and under the streets, alleys, public ways and public places now laid out or dedicated and all extensions thereof and additions thereto in the city poles, wires, cables, underground conduits, manholes and other television conductors and fixtures necessary for the

maintenance and operation in the city of a system for the transmission of television, FM radio and electrical impulses and signals for all public and private uses.

11.0104 SAME--EXCLUSIVENESS: The right to use and occupy such streets, alleys, public ways and places for the purposes herein set forth shall not be exclusive and the city reserves the right to grant a similar use of such streets, alleys, public ways and places to any other person or persons at any time during the period of any franchise granted pursuant to this chapter.

11.0105 COMPLIANCE WITH APPLICABLE LAWS AND ORDINANCES: Any Grantee shall at all times during the life of its franchise be subject to all lawful exercise of the police power by the city and to such reasonable regulations as the city shall hereafter by resolution or ordinance provide, except in those areas which have been preempted by the Cable Communications Policy Act of 1984 or which are regulated by the Federal Communications Commission.

11.0106 LIABILITY AND INDEMNIFICATION: Grantee shall, at all times, keep in effect the following types of insurance coverage:

- A. Workmen's Compensation upon its employees engaged in any manner in the installation or servicing of its plant and equipment within the City of Beach, North Dakota.
- B. Property Damage Liability insurance to the extent of Two hundred fifty thousand DOLLARS (\$250,000.00) as to each occurrence and Two hundred fifty thousand DOLLARS (\$250,000.00) aggregate, and personal injury liability insurance to the extent of Five hundred thousand DOLLARS (\$500,000.00) as to each occurrence and Five hundred thousand DOLLARS (\$500,000.00) aggregate. Excess bodily injury and property damage of One Million DOLLARS (\$1,000,000.00) each occurrence and One Million DOLLARS (\$1,000,000.00) aggregate. Automobile bodily injury and property damage liability combined One Million DOLLARS (\$1,000,000.00) each occurrence.

Grantee shall indemnify, protect, and save harmless the City from and against losses and physical damage to property and bodily injury or death to persons, including payments made under any Workman's Compensation law which may arise out of the erection, maintenance, presence, use or removal of said attachments or poles within the City, or by any act of Grantee, its agents or employees. Grantee shall carry insurance in the above described amounts to protect the parties hereto from and against all claims, demands, actions, judgments, costs, expenses and liabilities which may arise or result, directly or indirectly, from or by reason of such loss, injury or damage. Grantee shall also carry such insurance as it deems necessary to protect it from all claims under the Workmen's Compensation laws in effect that may be applicable to Grantee. All insurance

required shall be and remain in full force and effect for the entire life of the rights granted hereunder. Insurance certificates evidencing such insurance coverage shall be deposited with and kept on file by the City.

These damages or penalties shall include, but shall not be limited to, damages arising out of copyright, infringements, and all other damages arising out of the installation, operation, or maintenance of the cable system authorized herein, whether or not any act or omission complained of is authorized, allowed or prohibited by this Ordinance.

11.0107 EMERGENCY USE OF FACILITIES: In the case of any emergency or disaster, the Grantee shall, upon request of the City Council, make available its facilities to the City for emergency use during the emergency or disaster. If the city wishes to operate a civil emergency alert system on a plan that is mutually acceptable to the city and Grantee and provides Grantee with the necessary equipment for such system, Grantee will permit the system to be used on the cable system.

11.0108 SAFETY REQUIREMENTS: The Grantee shall, at all times, employ ordinary care and shall use and maintain commonly accepted methods and devices for preventing failures and accidents which are likely to cause damages, injuries or nuisances to the public.

11.0109 LIMITATIONS ON RIGHTS GRANTED:

- A. All transmission and distribution structures, lines and equipment erected by Grantee within the City shall be so located as to cause minimum interference with the proper use of streets, alleys and other public ways and places, and to cause minimum interference with the rights and reasonable convenience of property owners who join any of the said streets, alleys or other public ways and places, and said poles or towers shall be removed by Grantee whenever the City Superintendent or Engineer reasonably finds that the same restrict or obstruct the operation or location of any future streets or public places in the City of Beach, North Dakota.
- B. Construction and maintenance of the transmission distribution system shall be in accordance with the provisions of the national Electrical Safety Code, prepared by the National Bureau of Standards, the National Electrical Code of the national Board of Fire Underwriters, and such applicable Ordinances and regulations of the City of Beach, North Dakota, affecting electrical installation, which may be presently in effect, or changed by future Ordinances.
- C. In case of disturbance of any street, sidewalk, alley, public way, or paved area, the Grantee shall, at its own cost and expense and in a manner approved by the City Superintendent or Engineer, replace and restore such street, sidewalk, alley, public way, or paved areas in as good a condition as

before the work involving such disturbance was done. Grantee shall not be required to pay a fee for street openings.

- D. If at any time during the period of this Ordinance the City shall lawfully elect to alter or change the grade of any street, sidewalk, alley, or other public way, the Grantee, upon reasonable notice by the City, shall remove, relay and relocate its poles, wires, cables, underground conduits, manholes and other fixtures at its own expense.
- E. The Grantee shall, on the request of any person holding a building moving permit issued by the City or any person who wishes to remove trees or structures from their property, temporarily raise or lower its wires to permit the moving of buildings or tree removal. The expense of such temporary removal or raising or lowering of wires shall be paid by the person requesting the same, and the Grantee shall have the authority to require such payment in advance. The Grantee shall be given not less than forty-eight (48) hours advance notice to arrange for such temporary wire changes.
- F. The Grantee shall have the authority to trim trees upon the overhanging streets, alleys, sidewalks and public ways and places of the City so as to prevent the branches of such trees from coming in contact with the wires and cables of the Grantee, except that at the option of the City, such trimming may be done by it or under its supervision and direction at the expense of the Grantee.
- G. Grantee shall, at its expense, protect, support, temporarily disconnect, relocate on the same street, alley or public place, or remove from the street, alley or public place, any property of Grantee when required by the City by reason of traffic conditions, public safety, street vacation, freeway and street construction, change or establishments of street grade, installation of sewers, drains, water pipes, power lines, signal lines, and tracts or any other types of structures or improvements by governmental agencies when acting in a governmental or proprietary capacity, or other structure of public improvement; provided, however, that Grantee shall in all cases have the privileges and be subject to the obligations to abandon any property of Grantee in place as hereinafter provided.
- H. In all sections of the City where the City designated an area where all presently above ground services are to be placed underground, the Grantee shall place its wires underground on the same time schedule and on the same conditions that are applicable to the providing of other above ground services in the designated areas.
- I. In the event that the use of any part of the system is discontinued for any

reason for a continuous period of twelve (12) months, or in the event such systems or property has been installed in any street or public place without complying with the requirements of this ordinance, or the rights granted hereunder have been terminated, canceled or have expired, Grantee shall, be subject to the rights of the City to acquire or transfer the system as specified in Section XVIII, promptly remove from the streets, or public places all such property and poles of such system other than any which the City may permit to be abandoned in place. In the event of such removal, Grantee shall promptly restore the street or other area from which such property has been removed to a condition satisfactory to the City.

- J. Any property of Grantee to be abandoned in place shall be abandoned in such a manner as the City may prescribe. Upon permanent abandonment of the property of Grantee in place, it shall submit to the City an instrument to be approved by the City, transferring to the City the ownership of such property.

11.0110 ERECTION, REMOVAL AND COMMON USE OF POLES:

- A. No poles or other wire-holding structures shall be erected by the Grantee without prior approval of the designated representative of the City Council with regard to locations, height, type or any other pertinent aspect, which approval shall not be unreasonably withheld. However, no locations of any pole or wire-holding structure of the Grantee shall be a vested interest and such poles or structure shall be removed or modified by the Grantee at its own expense whenever the City Council or its designated representative determines that the public convenience would be enhanced thereby.
- B. Where poles or other wire-holding structures already exist in use in serving the City are available for use by Grantee, but it does not make arrangements for such use, the City Council may require the Grantee to use such poles and structures if it determines that the public convenience would be enhanced thereby and the terms of the use available to the Grantee are just and reasonable.
- C. Where the City or a public utility serving the City desires to make use of poles or other wire-holding structures of the Grantee but agreement therefore with the Grantee cannot be reached, the City council may require the Grantee to permit such use for such consideration as is just and reasonable and upon such terms as the Council determines the use would enhance the public convenience and would not unduly interfere with the Grantee's operations.

11.0111 OWNERSHIP AND REMOVAL OF FACILITIES: All cable and passive equipment for cable television reception service installed by Grantee at a subscriber's

location shall remain the property of Grantee and Grantee shall have the right to remove said cable and equipment. Upon termination of service by any subscriber, the Grantee shall promptly remove all its above ground facilities and equipment from the premises of such subscriber upon his request.

11.0112 WARRANTING BY CITY OF AUTHORITY TO USE STREETS: It is understood that there may be within the city various streets, alleys and other public ways which the city does not have the unqualified right to authorize any Grantee to use because of reservations in favor of the dedicators or because of other legal impediments. Therefore, in granting any franchise pursuant to this chapter, the city does not warrant or represent as to any particular street or portion thereof that it has the right to authorize any Grantee to install or maintain portions of its systems therein, and in each case the burden and responsibility for making such determination in advance of the installation shall be upon the Grantee.

11.0113 GENERAL SYSTEM SPECIFICATIONS: The facilities used by the Grantee shall consist of a minimum of 12 active channels with 35-channel capacity (300 MHZ). The facilities shall also be capable of distributing color television signals, and when the signals the Grantee distributes are received in color, they shall be distributed in color where technically feasible.

11.0114 TECHNICAL STANDARDS: Grantee shall be governed by technical standards established by the FCC.

11.0115 OPERATION AND MAINTENANCE OF SYSTEM:

- A. The Grantee shall render efficient service, make repairs promptly, and interrupt service only for good cause and for the shortest possible time. Such interruptions, in so far as possible, shall be preceded by notice and shall occur during periods of minimum use of the system.
- B. All service requests and complaints should be responded to within 24 hours of receipt.
- C. Complaints regarding the quality of service, equipment malfunctions and similar matters shall first be directed to Grantee's office. Should Grantee fail to satisfy a Complaint, it may then be directed to the Finance Officer for investigation. The complaining party and Grantee shall be afforded a reasonable opportunity to present written statements of their position. The Finance Officer shall attempt to resolve the complaints and, if this cannot be achieved, he shall submit a recommendation to the City Council, which shall either (1) dismiss the complaint, or (2) specify corrective steps to be taken by Grantee. Appeal from the Council's action may be made to the appropriate judicial or administrative forum.

11.0116 APPROVAL OF TRANSFER OF SYSTEM: The Grantee shall not transfer any right under any franchise except by operation of law to any person without prior approval of the city council. No sale or transfer of franchise rights of interest shall be effective until the vendee, assignee or lessee has filed in the office of the city auditor an instrument duly executed, reciting the fact of such sale, assignment or lease, accepting the terms of the franchise by the transferee and agreeing to perform all the conditions thereof. The proposed transferee shall submit the information required by a new applicant under Article II. This Ordinance upon complying with all requirements and a showing to the City Council that the transferee is a capable, financially sound, responsible operator, approval of the transfer will not be unreasonably withheld.

11.0117 ACCESS TO PLANS, ETC.; FILING OF RULES AND REGULATIONS; INSPECTION OF RECORDS: The city shall have access at all reasonable hours to all of the Grantee's plans, engineering drawings and statistical customer records (subject to the subscriber privacy provisions of the Cable Communications Policy Act of 1984) relating to the property and operation of Grantee, in the city, and to all other records required to be kept hereunder insofar as the same are concerned with the community antenna television system of the Grantee in the city. Along with the other matters required to be filed by this chapter, a complete copy of any of Grantee's rules and regulations adopted by the Grantee for the conduct of its business they may have adopted shall be filed with the city auditor and in the local office of the Grantee.

The city shall (subject to the subscriber privacy provisions of the Cable Communications Policy Act of 1984) be entitled to inspection of any records bearing on the number of subscribers for service with the Grantee and to require reasonable documentation of such information by the Grantee when the franchise fee is tendered.

11.0118 RATES GENERALLY: The regulation of rates charged by any Grantee for service shall be as specified in the Ordinance granting franchise to the Grantee.

The Grantee shall not discriminate in rates between customers of the same category except to the extent permitted by the Cable Communications Policy Act of 1984 and Federal Communications Commission regulations.

11.0119 MODIFICATION OF FCC RULES: Any modification or amendment of the rules of the Federal Communications Commission shall, to the extent applicable, be considered part of this Ordinance as of the effective date of such amendment, and shall be incorporated herein by specific amendments within one (1) year from the effective date of the amendment or at the time of the Federal Communications Commission's amendment or at the time of renewal of this Ordinance, whichever occurs first.

11.0120 MODIFICATION OF OBLIGATIONS: In addition to any other remedies provided by law of regulation, Grantee's obligations under this Ordinance may be modified, at its request, in accordance with Section 625 of Cable Communications Policy Act of 1984

as it now exists, or as hereafter amended.

11.0121 PROMULGATION OF RULES AND REGULATIONS BY COMPANY: The Grantee shall have the authority to promulgate such rules, regulations, terms and conditions governing the conduct of its business as shall be reasonably necessary to enable the Grantee to exercise its right and perform its obligations under its franchise and to assure an uninterrupted service to each and all of its customers provided, however, that such rules, regulations, terms and conditions shall not be in conflict with the provisions of this Ordinance or the laws of the state and any other duly authorized law, regulation, agency or board pertaining thereto.

ARTICLE II.

FRANCHISE

11.0201 APPLICATION GENERALLY; FINAL APPROVAL OF APPLICATION:

- A. Any person wishing to apply for a franchise under this chapter shall fill out its application and file the same in the office of the city auditor for consideration by the city council. Such application need not be in any particular form but shall include the following information:
- (1) The complete name and address of the Grantee.
 - (2) If a corporation, the amount of authorized and issued stock, the names and the addresses of all stockholders owning more than five percent of the stock of such corporation and the interest held by each.
 - (3) If a corporation, the names and addresses of all officers and managing agents thereof insofar as the same are concerned in any respect with community antenna television system of such corporation.
 - (4) A complete financial statement of the assets and liabilities of the applicant insofar as such are concerned with completion of the community antenna television project.
 - (5) A statement of the number of channels of television service to be offered by the Grantee and an explanation of the source and method of transmission of such signals. Each applicant shall be required to guarantee to offer no less than five separate channels of viewing throughout the period of the franchise with a minimum of duplication of programs.

- (6) Any other information which may time to time be requested by the city auditor or by the city council.
 - (7) Any other information that the applicant may wish to submit bearing on its qualifications.
 - (8) A complete schedule of all rates and charges to be effective following the issuance of the franchise.
- B. All applications received shall be considered by the city council, which shall be authorized to accept any number that it deems advisable. Such acceptance shall be considered a preliminary approval and thereafter each successful applicant shall secure and submit, as required elsewhere in this chapter, all insurance policies, surety bonds, its extension policy and everything else required for the issuance of a franchise. The final approval shall be indicated by the final passage of a special ordinance granting the franchise to the successful applicant, subject to all of the terms and conditions of this Ordinance, except such as may be waived by the council.

11.0202 APPLICATION FEE: Every applicant for a franchise shall be required to pay a franchise fee of One hundred DOLLARS, which shall be submitted at the time of the initial application. In the event that the franchise is refused by the city council, the fee shall be refunded in full.

11.0203 BONDS AND COMMITMENTS:

- A. Before any franchise shall be finally approved by the city council, the Grantee shall submit and file with the city auditor, bonds and commitments in such form and amounts to be approved by the city council at the time or prior to the issuance of a franchise.
- B. Any bond or commitment required under this section is subject to approval by the city council which approval may be revoked at any time for cause. Such bond, etc., shall at all times be file in the office of the city auditor. Any franchise granted hereunder shall be immediately revoked upon the noncompliance of any franchisee with any requirements of this section.

11.0204 SUBMISSION OF EXTENSION POLICY; EXTENSIONS MADE UNDER FRANCHISE: At the time that any application is submitted under the terms of this chapter, the applicant shall submit therewith its extension policy which shall be considered in connection with such application by the City Council. Such extension policy shall specify in detail the area of the city that will be served following the initial installation of the Grantee's system and shall further indicate the plans of the Grantee to extend services to other areas of the city, indicating the times and the conditions precedent for such extensions. No

precise form of an extension policy is specified herein but any applicant shall agree to furnish any information that may be requested from time to time by the City Council in clarification of the Grantee's extension policy. Once Grantee is granted a franchise under this chapter, following approval of its extension policy as submitted and filed, it shall not make or refuse to make any extension thereunder except as provided by such extension policy or as may otherwise be permitted by this chapter or subsequent enactments of the commission. The extension policy, and any amendments thereto, which in turn must be first approved by the City Council before coming effective, shall at all times be on file at the office of the City Auditor and be available to inspection by the public.

11.0205 PAYMENT TO CITY FOR PRIVILEGE; METHOD OF COMPUTATION OF PAYMENT TO CITY: The Grantee shall pay to the city for the privilege of operating a system pursuant to any franchise granted under this chapter a fee as shall be set by the city council in the Ordinance granting the franchise to the Grantee.

11.0206 TERM: Any franchise and rights granted thereunder shall take effect and be in full force from and after final approval thereof by the City Council, as specifically provided in Section 11.0201, and upon filing a written acceptance of such franchise by the Grantee with the City Auditor, and such franchise shall continue in full force and effect for a term specified in the Ordinance granting the franchise (not to exceed twenty (20) years); provided, however, that if a written acceptance is not filed within sixty days after such final approval of the franchise by the City Council or if the system authorized thereunder is not operational and capable of furnishing service to its subscribers within one (1) year after the time of such acceptance, unless such construction is prevented by strike, insurrection, an act of God or other cause beyond the control of the applicant, the provisions of such franchise shall then become automatically null and void, unless such delay in construction is reasonable explained to the City Council and the City Council in its sole discretion elects to grant an extension of time in which to complete such construction work. In the event that any system contemplated hereunder requires approval by the Federal Communication Commission or any other state or federal board or agency prior to the commencement of construction, the one year period allowed herein for construction to completed shall not begin until after such federal or state approval is obtained although application therefor must be made no later than sixty days after the final approval of the franchise by the city council.

11.0207 RIGHTS OF CITY IN FRANCHISE:

- A. Adoption of rules: The right is hereby reserved to the city to adopt, in addition the provisions herein contained and existing applicable ordinances, such additional regulations as it shall find necessary in the exercise of the police power and in the exercise of its power over any franchise that is granted; provided, that such regulations, by ordinance or otherwise, shall be reasonable and shall not be in conflict with the state or federal laws, rules

and regulations pertaining thereto.

- B. Use of system: The city shall have the right during the life of any franchise, free of charge where aerial construction exists, of maintaining upon the poles of the Grantee within the city, wire and pole fixtures necessary for a police and fire alarm system; such wires and fixtures shall be constructed and maintained to the satisfaction of the Grantee and in accordance with its specification. The city in its use and maintenance of such wires and fixtures shall at all times comply with the rules and regulations of the Grantee so that there may be a minimum danger of contact or conflict between the wires and fixtures of the Grantee and the wires and fixtures used by the city. The city shall be solely responsible for all damage to persons or property arising out of the construction or maintenance of such wires and fixtures authorized by this section and shall save the Grantee harmless from all claims and demands whatsoever arising out of the attachment, maintenance, change or removal of such wires and fixtures to the poles of the Grantee. In case of rearrangement of the Grantee's plant or removal of poles or fixtures, the city shall save the Grantee harmless from any damage to persons or property arising out of the removal of construction of the wires or other fixtures belonging to the city.
- C. Supervision and Inspection: The city shall have the right to supervise all construction or installation work performed subject to the provisions of this chapter and to make such inspections as it shall find necessary to insure compliance with governing laws, ordinances and resolutions.
- D. Procedures After Termination, Etc., of Franchise: Upon the revocation or termination of any franchise granted hereunder, the city shall have the right to determine whether the Grantee may continue to operate and maintain its distributing system pending the decision of the city as to the future maintenance and operation of such system. Upon termination of any franchise granted hereunder, the renewal thereof shall be subject to the provisions of the Cable Communications Policy Act of 1984.

ARTICLE III.

PENALTIES AND MISCELLANEOUS

11.0301 PENALTY: Should any Grantee fail or refuse to reasonably comply with all of the provisions of this chapter or any other rules, regulations, ordinances or resolutions enacted by the city or with any state law or rules or regulations promulgated pursuant to state law or laws, rules or regulations issued pursuant to the laws of the United States or any of its duly authorized agencies or boards, the City Council shall have the power and authority, upon reasonable notice to Grantee upon its failure thereafter to

comply, to revoke or suspend, in the sole discretion of the City Council, the franchise granted hereunder.

11.0302 UNAUTHORIZED CABLE USE: It shall be unlawful for any person or persons to obtain any cable television reception service from Grantee, or any firm or private person by installing, rearranging, or tampering with any facilities or equipment of Grantee, unless the same is done with the prior permission of the Grantee. Any person or persons found guilty of violation of any of the provisions of this section may be fined not more than One hundred DOLLARS (\$100.00) or by imprisonment not exceeding thirty (30) days, or by both such fine and imprisonment.

11.0303 SEVERABILITY: If any section, subsection, sentence, clause, phrase or portion of this Ordinance is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, or is superseded or preempted by Federal Communications Commission regulation, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof.

11.0304 ORDINANCE REPEALED: All ordinances or parts of ordinances in conflict herewith are hereby repealed.

ARTICLE IV.

GRANT OF NON EXCLUSIVE AUTHORITY:

11.0401 GRANT OF NON-EXCLUSIVE AUTHORITY:

- A. There is hereby granted by the City of Beach, North Dakota, to Beach Cable, LLC (the "Grantee") and to its successors, assigns or designees, the non-exclusive right to erect, maintain and operate in, under, over, along, across and upon the present and future streets, lanes, avenues, sidewalks, alleys, bridges, highways, easements dedicated for compatible uses and other public places in the City and subsequent additions thereto, towers, poles, lines, cables, wires, manholes and all other fixtures and equipment necessary for the maintenance and operation in the City of a cable television system, for the purpose of transmission and distribution of audio, visual, electronic and electric impulses in order to furnish television and radio programs and various other communication services to the public by what is commonly called a Community Antenna Television System, for a period ending April 7, 2011.

- B. The right to use and occupy said streets, alleys, public ways and places for the purposes herein set forth shall not be exclusive.

11.0401 AMENDED BY ORD. 382, SEE ALSO ORD. 388 (TERMINATING FRANCHISE AGREEMENT)

11.0402 TERRITORIAL AREA INVOLVED: This Ordinance relates to the present territorial limits of the City and to any area annexed thereto during the term of this Ordinance. Grantee shall not be required to service residents of newly annexed areas of the City that are beyond four hundred feet (400') from existing distribution lines except upon payment by such residents of the capital costs incurred by the Grantee in bringing service to such residents. Grantee may, but shall not be required to, serve areas or individual homes adjoining, but outside the city limits, that may be served from its existing facilities. Grantee may negotiate directly with such customers the amount to be charged for the bringing of the service to the customer.

11.0403 FRANCHISE SUBJECT TO GENERAL PROVISIONS: This franchise is issued subject to the provisions of Chapter XI of the Beach City Code entitled "Procedure for Granting, Regulating, Maintaining, and Terminating a Cable Television System Franchise".

11.0404 FRANCHISE CONDITIONS: In addition to the franchise herein granted, being subject to the provisions of Chapter XI of the Beach City Code, this franchise is further subject to the terms and conditions of this Ordinance.

11.0405 RATES

- A. The Grantee shall at all times maintain on file with the City Finance Officer a schedule setting forth all rates and charges to be made to subscribers for basic cable television service, including installation charges.
- B. This provision does not limit the right of the Grantee to pass along to the subscribers state and local sales tax, programming cost increases, or any specific copyright fee.
- C. This article is not applicable to rates for premium or pay service.
- D. The City may regulate rates only if the cable television system in the city is defined by Federal Communication Commission regulations as one not subject to effective competition and then such regulation shall only be in accordance with the provisions of such regulations.
- E. Any rate subject to regulation under the above provisions may be increased without the approval of the City, at the discretion of the Grantee by an amount not to exceed five percent (5%) per calendar year.

- F. The monthly rate set forth in subsection (A) above shall be payable in advance.

11.0406 SERVICE TO SCHOOLS AND CITY: The Grantee shall provide to public and parochial schools within the city, one terminal junction, for education purposes and at no cost to the city or the public or parochial school system, upon request.

Grantee shall also provide to the city without charge, in a location to be selected by the council of Beach, one junction terminal to said building and shall also furnish to the building, without charge, basic service to all sets connected within such building to the terminal junction.

The Grantee shall allocate one channel to the City as a public, educational or governmental access channel. Until such time as the city files a written request with Grantee for full-time use of the channel, Grantee shall have the right to use that portion of the channel capacity that is not being used by the city. Grantee shall have a reasonable period of time after notification to vacate its use of the channel. Grantee shall assist the city in obtaining the necessary licenses and frequency clearance to enable the city to use said channel.

11.0407 LOCAL MAINTENANCE REPRESENTATIVE: The Grantee shall designate a qualified maintenance technician person or persons to maintain the system in the City of Beach. Such representative shall maintain a record of any and all complaints received by the company concerning quality of service, equipment malfunction, and similar matters during each calendar year. The representative who shall provide maintenance service shall be readily available to subscribers upon telephone request.

11.0408 FRANCHISE FEE: During the term of the rights granted hereunder, and so long as the Grantee operates said system, the Grantee shall pay compensation to the city a sum equal to three percent (3%) of the annual total gross receipts of the cable system; "Gross Receipts" shall consist of those revenues derived from the monthly service charges paid by subscribers for basic cable service and premium pay services, such as HBO. Gross receipts shall not include revenues received as installation charges, and fees for reconnections, inspections, repairs or modifications of any installation, and all state and federal taxes relating thereto.

In no event shall any of such payments be payable until the system is actually in operation with paid subscribers, but there shall be no minimum number of subscribers hereunder. The payments that Grantee makes to the city shall be in lieu of any occupation tax, license tax, or similar levy by the city and shall be paid on a monthly basis based on the preceding years' gross subscriber revenues. Upon completion of Grantee's audit, Grantee shall pay to the city within 15 days, the balance due, if any, for the operating year

covered by the audit.

This amount payable by the Grantee to the city shall be the sole amount payable for all of its rights under this ordinance including, but not limited to, the use of the streets and other facilities of the city in the operation of the cable system and for the municipal supervision thereof and shall be in lieu of any other occupational tax.

Notwithstanding the annual gross receipts fees or tax payable hereunder, if the Grantee is legally obligated to collect or pay any sales tax or other taxes, the Grantee shall have the right to charge the subscribers an additional amount equal to such tax.

11.0409 DURATION AND RENEWAL OF ORDINANCE: The rights granted to Grantee herein shall, except as provided in this Section, terminate fifteen (15) years from the first grant of the franchise. The franchise shall be subject to the renewal pursuant to the provisions of the Cable Communications Policy Act of 1984 applicable to new ordinances that are in the nature of a franchise. Pending final completion of renewal proceedings, this Ordinance shall remain in effect even if the original fifteen (15) year term has expired. If this Ordinance is not renewed or if it is revoked for cause by the City, the transfer of Grantee's system shall be governed by Section 627 of the Cable Communications Policy Act of 1984.

11.0410 TRANSFER: The Grantee shall not transfer or assign its interest or any rights under this franchise to another without the approval of the Beach City Council. In the event approval is given, said sale or transfer shall not be effective until the transferee has filed in the office of the City Auditor an instrument duly executed, reciting the fact of such transfer, accepting the terms of the franchise and agreeing to all the conditions thereof, as well as filing all duly executed certifications of insurance and bonds required hereunder.

The Grantee must comply with the transfer provisions of 11.0116 of the Beach City Code.

11.0411 SEVERABILITY: If any section, subsection, sentence, clause, phrase or portion of this Ordinance is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, or is superseded or preempted by Federal Communications Commission regulation, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof.

11.0412 ORDINANCE REPEALED: All ordinances or parts of ordinances in conflict herewith are hereby repealed.

ARTICLE 5.

TELEPHONE AND TELEGRAPH SYSTEM

11.0501 RIGHTS GRANTED: Mid State Telephone Company, its successors and assigns, are hereby granted the right to use and occupy the streets, alleys and other public places of the city of Beach, North Dakota, for a term of ten (10) years from the effective date hereof, for the purpose of constructing, maintaining and operating a general telephone and telegraph system within said city. **AMENDED BY ORD. 379**

11.0502 RIGHTS SUBJECT TO LAW ENFORCEMENT POWER: The rights herein granted are subject to the exercise of the police power as the same now is or may hereafter be conferred upon said city.

11.0503 BINDING CONTRACT: This ordinance shall be in full force and effect and shall constitute a binding contract between the city of Beach and Mid State Telephone Company when it shall have been enacted according to law, and when the provisions hereof shall have been accepted in writing by said Mid State Telephone Company and such acceptance filed with the City Auditor.

11.0504 UNNECESSARY IMPEDIMENTS OR CONDITIONS: During the construction, maintenance or enlargement of any part of said telecommunications system, Mid State Telephone Company shall not unnecessarily impede or block travel in said streets and highways in said City and shall leave all streets, highways, alleys, sidewalks, curbs, lanes and public places and all grounds disturbed by said contraction in good condition upon the completion of said work.

The rights and privileges hereby granted shall at all times be and remain subject to such reasonable regulations of a police nature as the City may deem necessary for the best interests of the City, but the City will not by any such regulations or by acts of its own or agents do anything to prevent or interfere with Mid State Telephone Company carrying on its business in accordance with the franchise hereby granted.

11.0505 DISTURBANCE AT OWN COST: In case of disturbance of any street, sidewalk, alley, public way, or paved area, Mid State Telephone Company shall, at its own cost and expense and in manner approved by the City Public Works Superintendent or Engineer, replace and restore such street, sidewalk, alley, public way, or paved areas in as good a condition as before the work involving such disturbance was done. Mid State Telephone Company shall not be required to pay a fee for street openings.

ARTICLE 6. **ALL OF ARTICLE 6 AMENDED BY ORD. 384**

MONTANA DAKOTA UTILITIES COMPANY GAS TRANSMISSION AND DISTRIBUTION; ELECTRIC TRANSMISSION AND DISTRIBUTION

11.0601 DEFINITION: For convenience herein, the municipal corporation of the City of Beach, North Dakota, is designated and referred to as "Municipality" and Montana

Dakota Utilities Company is designated and referred to as “Grantee”. Any reference to either includes their respective successors and assigns.

11.0602 RIGHTS GRANTED: There is hereby granted to Montana Dakota Utilities Company, a division of MDU Resources Group, Inc. a corporation, Grantee, its successors and assigns, subject to the limitations herein stated, the right and franchise to occupy and use the streets, alleys, and public grounds of the Municipality, as now or hereafter constituted, for the purposes of constructing, maintaining, and operating, within, upon, in, and under the same, a gas distribution system for transmitting and distributing natural or manufactured gas, or a mixture of both, and an electric distribution system for transmitting and distributing electric energy for public and private use.

11.0603 OPERATION AND MAINTENANCE OF SYSTEM: Grantee shall maintain an efficient distribution system for furnishing natural or manufactured gas, or a mixture of both, and an electric distribution system for transmitting and distributing electric energy for public and private use at such reasonable rates as may be approved by the Public Service Commission of the State wherein said Municipality is located and under such orders, rules, or regulations as may be issued by any federal agency having jurisdiction thereof.

11.0604 EXCLUSIVENESS: This franchise shall not be exclusive and shall not be construed to prevent the Municipality from granting to any other party the right to use the streets, alleys, and public grounds of the Municipality for any purpose.

11.0605 RIGHTS SUBJECT TO LAW ENFORCEMENT POWER: The Municipality reserves any right it may have, under its police power or otherwise, to control or regulate the use of said streets, alleys, and public grounds by the Grantee.

11.0606 LIABILITY AND INDEMNIFICATION: Grantee shall indemnify and save and hold the Municipality harmless from any loss or damage due to the construction, installation and maintenance of its distribution system, and its use of the streets, alleys and public grounds of the Municipality.

11.0607 TRANSFER OF FRANCHISE: Grantee shall have the right to assign this franchise to any party, or corporation, but all obligations of the Grantee hereunder shall be binding upon its successors and assigns.

11.0608 FINAL APPROVAL: Within thirty (30) days after Grantee is notified of passage and final approval of this Ordinance, Grantee shall file with the City Auditor of the Municipality its written acceptance of this franchise.

11.0609 DURATION OF FRANCHISE: This franchise shall continue and remain in full force and effect for a period of twenty (20) years from the date upon which this ordinance shall become effective as provided by law, which date of final passage and approval is July 19, 1999.

CHAPTER XII.

PUBLIC NUISANCES

ARTICLE 1.

NOXIOUS WEEDS

12.0101 DEFINITION: Whenever used in this ordinance, the term "noxious weeds" shall mean and include all weeds of the kind known as Canada Thistle, sow thistle, quack grass, leafy spurge (*Euphorbia esula* or *Euphorbia virgata*), field bindweed, Russian Knapweed, (*Centaurea picris*), hoary cress (*Lepidium draba*, *Lepidium repens*, and *Humenophysa pubescens*), dodder, or any similar unwanted vegetation.

12.0102 WEEDS PROHIBITED: No owner of any lot, place or area within the city, or the agent of such owner, shall permit on such lot, place or area and the one-half of any road or street lying next to the lands or boulevards abutting thereon noxious weeds, nor shall any such owner permit the growing of any other deleterious plants in excess of eight inches.

12.0103 NOTICE TO DESTROY: The City Council or person appointed by the City Council is hereby authorized and empowered to notify in writing the owner of any such lot, place, or area within the city or the agent of such owner, to eradicate, cut, destroy, and/or remove any such noxious weeds found growing, lying, or located on such owner's property or upon the one-half of any road or street lying next to the lands or boulevards abutting thereon. Such notice shall be by registered or certified mail addressed to said owner or agent of said owner at his last known address and shall give such owner or his agent a minimum of five days to cut or destroy said noxious weeds.

12.0104 ACTION UPON NON-COMPLIANCE: Upon the failure, neglect, or refusal of any owner or agent so notified to eradicate, cut, destroy and/or remove noxious weeds growing, lying or located upon the owner's property or upon the one-half of any road or street lying next to the lands or boulevards abutting thereon after receipt of the written notice provided for in 12.0103 above or within five days after the date of such notice in the event the same is returned to the City Post Office Department because of inability to make delivery thereof, provided the same was properly addressed to the last known address of such owner or agent as indicated in the office of the County Register of Deeds, the health officer is hereby authorized and empowered to pay for the cutting, eradication, destroying, and/or removal of such noxious weeds or to order their removal by the City.

12.0105 COST ASSESSED TO PROPERTY: When the City has effected the removal of such noxious weeds or has paid for their removal, the actual cost thereof, if not paid by said owner prior thereto, shall be charged and assessed against the property upon which the noxious weeds were eradicated, cut or destroyed.

An assessment list showing the lots or tracts to be assessed with the cost against each lot or tract shall be prepared as are other special assessments lists, and shall be approved by the city council and shall bear interest at seven percent. Such assessments shall be subject to the same procedure for certification to the county auditor, payment and collection as are other special assessments under State law.

ARTICLE 2.

SANITARY NUISANCES

12.0201 RESIDENCES--WHEN SEWER AND WATER REQUIRED: It shall be unlawful for any person to use or occupy or permit to be used or occupied for residence purposes, any premises or building within the corporate limits of this City without first making or causing to be made proper connections with City sewer and water facilities and mains; provided, however, that the City Council may in its sole discretion waive this requirement for good cause shown.

The term "Proper Connections" when used in this section shall be construed to mean connections with such water mains and sanitary sewers which are equipped and furnished with proper valves and fittings so as to enable such water connections to be used at all times and sanitary toilets and drains and such equipment shall at all times be kept in repair and in a manner so as to make them available for household use and in condition to be used at all seasons of the year.

12.0202 OUTHOUSES--CESSPOOLS--A NUISANCE: The use, construction, maintenance, building or erection of any outhouse, privy, vault or cesspool within this City is hereby declared to be a nuisance and a menace to public health, when in violation of Section 12.0201.

12.0203 OUTHOUSES--CESSPOOLS, EXCEPTIONS:

- A. Private sewage system and private water supplies may be constructed to serve new buildings to be built in areas not included in Section 12.0201, providing such lot area complies with the requirements of any zoning requirements.
- B. Private sewage systems and private water systems may be installed in existing buildings in areas not included in Section 12.0201.

- C. Each private sewage system or private water supply hereafter altered or constructed shall conform to the State Health Department Standards.

12.0204 OUTHOUSES--CESSPOOLS, OFFENSIVE ODORS: It shall be unlawful for the owner or occupant of any lot or piece of ground within the corporate limits of this City to suffer or permit any private sewer system to emit any offensive odors or to become dangerous or injurious to public health or offensive to sense of smell of the people of the City, and any private sewer system emitting such odor is hereby declared to be a nuisance and menace to public health of the City.

12.0205 OUTHOUSES--CESSPOOLS, CLEANING OF: In the cleaning of private septic tanks and sewage systems the contents thereof shall be removed in containers fitted so as to prevent the escape of odors or materials therefrom and disposed in a manner approved by the City Health Officer.

The pumping of a private sewage system on the surface of the ground or hauling contents thereof in such a manner as to allow the material to spill on the ground, street or public ways is hereby declared to be a public nuisance.

12.0206 DEAD ANIMALS: Any person who owned or had possession or control of a dead animal prior to its death shall remove or cause the same to be removed within five (5) hours from the time the animal dies and have the same buried or disposed of in some other sanitary way approved by the City Health Officer. Any dead animal remaining in any street, alley or other public place in this City, or in any private premises within this City, for more than five (5) hours after the animal shall have died, is hereby declared to be a nuisance; and any person permitting any dead animal in the street, alley or public place of the city or allowing any animal which he owned or which was in his possession or under his control prior to its death, to remain in any street, alley or public place, or on any private premises within the city for more than five (5) hours after its death shall be guilty of a violation of this article.

12.0207 WATER POOLS--PUTRID SUBSTANCES: It shall be unlawful for the owner or occupant of any parcel of ground in this City to suffer or permit water or putrid substance whether animal or vegetable to accumulate or stand so as to cause an offensive odor to be emitted therefrom or to become injurious or dangerous to the health of the neighborhood, and any pool of water and any putrid substance permitted to become offensive or injurious to the public health is hereby declared to be a nuisance.

12.0208 DIRT, FILTH, ETC., IN STREETS AND PROPERTY: It shall be unlawful for any person, firm or corporation to throw, place, deposit, leave or cause to be thrown, placed, deposited or left in any of the public streets, highways, alleys, parks or thoroughfares, or on any private premises in this City any dirt, filth, sewage, sweepings, rags, dung, garbage, compost, wastepaper, excelsior, straw, hay, leaves, brush, weeds, dry grass, shavings, barrels, boxes, wooden crates, lumber, stable manure, ashes, vegetables, slops or litter of any kind, and any place or property having left or deposited

thereon any of the things or substances aforesaid is hereby declared to be a nuisance.

12.0209 STABLES, BARNs, SHEDS: It shall be the duty of all persons having stables, barns, or sheds, whether as owners or tenants or as agents having control thereof, to remove or cause to be removed therefrom all manure and refuse of every kind and shall not allow same to accumulate or to cause offensive odors.

12.0210 SPITTING: This section is hereby repealed. No person shall spit upon any sidewalk or upon the stairs, hallway, floor, carpet, furniture, or walls of any public or office buildings in this city.

12.0211 VIOLATION OF PROVISIONS, ENFORCEMENT PROCEDURE: In the event any person shall fail to comply with the provisions of this Article 2, such person shall be subject to the penalties as follows:

FIRST OFFENSE: A fine of twenty-five dollars (\$25.00)

SECOND OFFENSE: A fine of fifty dollars (\$50.00)

THIRD OFFENSE: A fine of not less than seventy-five dollars (\$75.00) nor greater than the maximum penalty of fine or imprisonment set forth in Section 2.0106 of the Beach City Code.

In addition, the City may notify the owner of the property as shown by the records of the County Register of Deeds, of the violation and demand that the violation be corrected. If the owner fails to comply with the demand to correct the violation or fails to appeal to the District Court within 30 days from the date of notice, the City through its officers and employees may enter upon the premises and take such action as may be necessary to correct the violation, and the cost thereof shall be billed to the owner. If the owner shall fail to pay said costs within 30 days from the date of billing, the amount may be deemed a municipal lien and shall be levied against the property as a special assessment and certified to the County Auditor for collection with the general taxes, or the City may seek to recover the amount in a suit at law against the owner.

ARTICLE 3.

SMOKE--GASES

12.0301 SMOKE, DUST, ASHES, GASES, CINDERS, A NUISANCE: The emission of dense smoke, ash, dust, soot, cinders or noxious gases from any machinery, contrivance, or from the smoke stack or chimney of any building or premises in such quantities as to cause injury or detriment, to any person or persons, or to the public, or to endanger the comfort, health or safety of any person or persons, or in such manner as to

cause or tend to cause damage or injury to property, is hereby declared to be a nuisance.

12.0302 SMOKE, DUST, ASHES, CINDERS, GASES, PROHIBITED: No person, persons, association or corporation shall cause, permit or allow the escape from any smoke stack or chimney into the open air, of such quantities of dense smoke, ash, dust, soot, cinders, acid or other fumes, dirt, or other material, or noxious gases, in such place or manner as to cause injury, detriment or nuisance to any person or persons, or to the public, or to endanger the comfort, health, or safety of any such person or persons, or the public or in such manner as to cause or have natural tendency to cause injury or damage to business or property.

12.0303 BURNING: It shall be unlawful for any person, firm or corporation to burn any leaves, paper, rubbish or other substances within the city limits; provided, however, that the City Council may, upon occasion and in its sole discretion, allow for the burning of such materials and upon such other terms and conditions as the City Council may from time to time determine and establish.

A violation of the terms, conditions, or requirements of this section shall be considered an offense, with the disposition of such offense to be made in Golden Valley County District Court. The penalty for such offense shall be as follows:

FIRST OFFENSE: A fine of twenty-five dollars (\$25.00)

SECOND OFFENSE: A fine of fifty dollars (\$50.00)

THIRD OFFENSE: A fine of not less than seventy-five dollars (\$75.00) nor greater than the maximum penalty of fine or imprisonment set forth in Section 2.0106 of the Beach City Code.

ARTICLE 4.

RADIO INTERFERENCE AND NOISE CONTROL

12.0401 RADIO INTERFERENCE PROHIBITED: It shall be unlawful for any person knowingly to maintain, use, operate or cause to be operated within this City, any machine, device, appliance, equipment or apparatus of any kind whatsoever, the operation of which shall cause reasonably preventable electrical interference with radio reception within said municipal limits, and the maintenance, use of operation within said city of any machine, device, appliance, equipment or apparatus of any kind so as to interfere with radio reception in violation hereof, is hereby declared a common nuisance.

12.0402 LOUD, DISTURBING, UNNECESSARY NOISES PROHIBITED: The making, creating, or maintenance of loud, unnatural or unusual and disturbing noises are a detriment to public health, comfort, convenience, safety and welfare are hereby declared to be unlawful and a public nuisance. The following acts, among others, are declared to be prohibited noises in violation of this section, but such enumeration is not exclusive:

1. HORNS AND SIGNAL DEVICES: The sounding of horns or signaling devices on any motor vehicle, or motorcycle on any street or public place except as a danger warning or their sounding for an unnecessary and unreasonable period of time.

2. RADIOS, PHONOGRAPHS, ETC.: The using, operating, or permitting to be played, used or operated any radio receiving set, musical instrument, phonograph, or other machine or device for the producing or reproducing of sound in such manner as to disturb the peace, quiet and comfort of the neighboring inhabitants, or at any time with louder volume than is necessary for convenient hearing for the person or persons who are in the room, vehicle or chamber in which such machine or device is operated, and who are voluntary listeners thereto. The operation of any such set, instrument, phonograph, machine or device in such a manner as to be plainly audible at a distance of fifty (50) feet from the building, structure or vehicle in which it is located shall be prima facie evidence of a violation of this section.

3. LOUDSPEAKERS, AMPLIFIERS FOR ADVERTISING: The use, operating, or permitting to be played, used or operation of any radio receiving set, musical instrument, phonograph, loudspeaker, amplifier, or other machine or device for the producing or reproducing of sound which is cast upon the public streets for the purpose of commercial advertising or attracting the attention of the public to any building or structure.

4. YELLING, SHOUTING, ETC.: Yelling, shouting, hooting, whistling or singing on the public streets, particularly between the hours of 11:00 P.M. and 7:00 A.M., or at any time or place so as to annoy or disturb the quiet, comfort, or repose of persons in any office, or in any dwelling, hotel, or other type of residence, or of any person in the vicinity.

5. SCHOOLS, COURTS, CHURCHES, HOSPITALS: The creation of any excessive noise on any street adjacent to any school, institution of learning, church or Court while the same are in use, or adjacent to any hospital, which unreasonably interferes with the workings of such institution, or which disturbs or unduly annoys patients in the hospital, provided conspicuous signs are displayed in such streets indicating that the same is a school, hospital or court street.

12.0403 JAKE BRAKING PROHIBITED: It shall be unlawful for the driver of any vehicle, including but not limited to motor carriers, trucks, semi-trailers and tractor trailers, to cause their vehicle to brake or slow by any method which increases the noise emission levels of the engine, including but not limited to the use of compression brakes, commonly known as "Jake Braking" which use the vehicle's engine compression to reduce the engine's revolutions per minute.

Notice of this Section shall be placed at the corporate limits.

The penalty for violation of this article is twenty-five dollars (\$25.00) for the first offense and fifty dollars (\$50.00) for the second and each subsequent offense.

12.0404 LOUD, DISTURBING, UNNECESSARY NOISES- PENALTIES: A violation of the terms, conditions, or requirements of this Article 12.04 shall be considered an offense, with the disposition of offense to be made in the Golden Valley County District Court. The penalty for such offenses shall be as follows:

FIRST OFFENSE: A fine of twenty-five dollars (\$25.00)

SECOND OFFENSE: A fine of fifty dollars (\$50.00)

THIRD OFFENSE: A fine of not less than seventy-five dollars (\$75.00) nor greater than the maximum penalty of fine or imprisonment set forth in Section 2.0106 of the Beach City Code.

ARTICLE 5.

AUTOMOBILES--PERSONAL PROPERTY

12.0501 AUTOMOBILES, PERSONAL PROPERTY--WHEN A NUISANCE: Unsheltered storage of old, used, stripped, junked and other automobiles not in good, safe operating condition, and of any other vehicles, machinery implements and/or equipment and personal property of any kind which is no longer safely usable for the purposes with which it was manufactured for a period of thirty days or more (except in a licensed junk yard) within the city, and any motor vehicle, animal and article or personal property which constitutes an obstruction to, hazard or detriment to public traffic, snow removal operations, public safety and public health and morals or which may be abandoned or unclaimed within this City is hereby declared to be a nuisance and dangerous to public safety and shall be abated in the manner prescribed in this article.

12.0502 ABATEMENT REQUIRED BY OWNERS: The owner, owners, tenants, lessees and/or occupants of any lot within the corporate limits of this city upon which such storage is made, and also the owner, owners, and/or lessees of said property involved in such storage (all of whom are hereinafter referred to collectively as "owners"), shall jointly and severally abate said nuisance by the prompt removal of said personally into completely enclosed buildings authorized to be used for storage purposes, if within the corporate limits of the city, or otherwise to remove it to a location outside of corporate limits.

12.0503 ABATEMENT REQUIRED, PENALTY FOR FAILURE: If said owners

allow said nuisance to exist or fail to abate said nuisance they, and each of them, upon conviction thereof shall be fined not less than twenty-five dollars nor more than five hundred dollars for each offense and a separate offense shall be deemed committed on each day during or on which such nuisance is permitted to exist.

12.0504 REMOVAL AND IMPOUNDMENT BY CITY: The Police Department may remove or cause to be removed any personal property described in 12.0501 and may impound and retain the same until the expense of removal, storage and impounding is paid, together with the amount of any fine, costs, bail or other claims of the City against the owner, or any other person lawfully entitled to the possession thereof.

12.0505 REMOVAL AND IMPOUNDMENT, WHEN SOLD: If not reclaimed and redeemed by the true owner or the person lawfully entitled to the possession thereof within a period of thirty (30) days after impounding, any article or personal property described in 12.0501 may be sold and disposed of by the Police Department in the manner hereinafter provided. Notice that such property will be sold shall be published once, at least six (6) days prior to the sale, in a newspaper published in the City or if none in the official newspaper of the County. Such notice shall specify a description of the property to be sold, the time and place of sale, and shall be signed by the Chief of Police. Such sale shall be held between the hours of 9:00 A.M. and 5:00 P.M. on the day specified in the notice. Such sale shall be held at the front door of the City Hall, or at the location of the property to be sold. Any sale may be postponed or discontinued by public announcement at the time of the sale where there are no bidders or when the amount offered is grossly inadequate, or for other reasonable cause. The City may become a purchaser of any or all property at such sale. The Chief of Police shall give the purchaser at such sale a certificate of purchase of such property.

12.0506 REMOVAL AND IMPOUNDMENT PROCEEDS: Within thirty (30) days after such sale, the person making the sale shall make out, in writing, and file with the City full report of such sale specifying the property sold, the amount received therefor, the amount of costs and expenses, and disposition made by him of the proceeds of the sale. The proceeds arising from such sale shall be credited to the General Fund.

CHAPTER XIII

ANIMALS AND FOWL

ARTICLE 1.

GENERAL REGULATIONS

13.0101 DEFINITION:

1. "ANIMAL" or "ANIMALS". The word "animal" or "animals" shall mean any horse, cattle, jackass, sheep, goat, swine, rats, mice, guinea pigs, rabbits, dogs, cats or other animals or rodents.
2. "FOWL". The word "fowl" shall mean chickens, ducks, geese, turkeys, pigeons or other domestic fowl.
3. "DOG". The word "dog" shall be any animal of the canine family, both male and female.
4. "CAT". The word "cat" shall be any member of the feline family, either male or female.
5. "AT LARGE". The words "at large" shall mean not under the control of a person. The animal shall be attached to a leash held by a person, or attached to a leash which is securely fastened, or kept within a fenced area from which it cannot readily escape, or within a trailer or vehicle. The animal shall be controlled in such a manner so that it may not come in contact with persons using the public streets and sidewalks.

6. "OWNER". The word "owner" means any person owning, keeping or harboring a dog, cat, animal or fowl, wherever the context requires the different usages.

13.0102 CRUELTY: No person shall cruelly treat any animal or fowl in the city in any way; any person who inhumanely beats, underfeeds, overloads or abandons any animal shall be deemed guilty of a violation of this Section.

13.0103 DANGEROUS ANIMALS: It shall be unlawful to permit any dangerous animal or vicious animal of any kind to run at large within the city; exhibitions or parades of animals which are ferai naturai in the eyes of the law may be conducted only upon securing a permit from the Chief of Police.

13.0104 NOISES: It shall be unlawful to harbor or keep any animals which disturb the peace by loud noises at any time of the day or night.

13.0105 STRAYS: It shall be unlawful to permit any animals to run at large in the city; any such animal running at large in any public place in the city shall be impounded. It shall further be unlawful to picket or tie any such animal in any of the streets of the city for the purpose of grazing or feeding.

13.0106 KILLING DANGEROUS ANIMALS: Members of the Police Department or any other person in the city are authorized to kill any dangerous animal of any kind when it is necessary for the protection of any person or property.

13.0107 DISEASED ANIMALS: No domestic animal afflicted with a contagious or infectious disease shall be allowed to run at large or to be exposed in public places whereby the health of man or beast may be affected; nor shall such diseased animal be shipped or removed from the premises of the owner thereof except under the supervision of the Chief of Police or the Health Officer.

It is hereby made the duty of the Health Officer or Chief of Police to secure such disposition of any diseased animal and such treatment of affected premises as to prevent the communication and spread of the contagion or affection except in cases where the State Veterinarian is empowered to act.

13.0108 HOUSING: No person shall cause or allow any place where any animal is or may be kept to become unclean or unwholesome, and it shall be unlawful to keep any live swine or pigs, cattle, goats and sheep in the city.

ARTICLE 2.

ANIMALS AND FOWL

13.0201 NO CHICKEN OR POULTRY WITHIN THE CITY LIMITS: No person shall keep chickens or poultry within the city unless kept within an enclosure. The keeping of any chickens, ducks, geese, turkeys, pigeons or other domestic fowl which cause unpleasant odors or the noise from which is any annoyance to the persons in the vicinity or which attract vermin or which are a hazard or danger to the health of persons living nearby is declared to be a nuisance. Any person who owns or keeps at any time, within the city limits, any fowl of any kind declared to be a public nuisance as defined in this Section who shall fail, neglect or refuse to abate such nuisance by destroying such fowl or removing such fowl from the city or shall not do whatever is necessary to abate such nuisance within ten (10) days after the notice thereof shall be deemed guilty of maintaining a public nuisance as the same is defined by the North Dakota Century Code.

13.0202 RAISING AND KEEPING ANIMALS FOR SALE: The raising of and keeping for sale of animals is prohibited except by laboratories, clinics or doctors, medical or veterinary, for scientific research, when kept in such place directly connected therewith. The veterinary clinic shall be permitted to care for animals at an enclosure and under terms and conditions approved by the Beach City Council.

13.0203 ANIMALS AT LARGE AND TETHERING: It shall be unlawful for the owner or any person who has the care, custody or control of any animal to permit or allow the running at large, picketing, tethering, staking out or pasturing of such animal within the corporate limits of the city and the driving of any unrestrained animal over, through or on any street, alley or public way within the city.

13.0204 INDECENT EXHIBITION OF ANIMALS: No person shall indecently exhibit or cause to allow to be indecently exhibited any animal within the city limits or let, cause or allow to be let any such animal to any animal of the opposite sex on any street, avenue, alley, park or other public place within the city. No person shall let or cause or allow to be let any such animal to any animal of the opposite sex on any private property or grounds within the city unless in some enclosed place entirely out of public view.

ARTICLE 3.

RABIES AND DISTEMPER

13.0301 RABIES AND DISTEMPER SHOTS: Every owner of any cat or dog six (6) months of age or older, within the city limits shall have such cat or dog inoculated against rabies and distemper by a licensed veterinarian or his agent or employee under his direction. Said dog or cat shall thereafter be inoculated against rabies and distemper each two years or for such longer period of time as the veterinarian's certificate hereinafter mentioned shall specify that the inoculation is effective.

At the time that the animal is inoculated, a certificate shall be issued by the veterinarian making such inoculation, which certificate shall describe the type of inoculation received, the date of the inoculation, and the effective period of the inoculation.

13.0302 GENERALLY: The owner of any cat or dog which has contracted rabies or which has been subjected to rabies or which is suspected of having rabies or which shall have bitten any person shall, upon demand of the Chief of Police or Health Officer produce and surrender such dog or cat to such department to be held in quarantine for observation for a period determined by the public health officer or veterinarian in charge. If upon examination any dog or cat shall prove to be infected with rabies, such dog or cat shall be disposed of as directed by the public health officer, Chief of Police, or veterinarian in charge.

ARTICLE 4.

DOGS

13.0401 LICENSES, GENERALLY: All dogs or cats kept, harbored or maintained by their owners in the city shall be licensed if over one (1) month of age. Dog or cat licenses shall be issued by the Auditor upon payment of a license fee of \$10.00 for a female dog or cat and \$6.00 for a spayed female or male dog or cat. The owner shall state at the time that application is made for such license, upon a printed form provided for such purpose, the owner's name and address, and the breed, color, sex and name of the animal, and date of rabies and distemper inoculation. No license or renewal of the license shall be issued for any dog or cat unless the owner shall produce a certificate from a duly licensed veterinarian showing the dog or cat has been duly vaccinated by a veterinarian for rabies and distemper as required by Section 13.0301 of this ordinance. The provisions of this Section shall not apply to dogs or cats whose owners are nonresidents temporarily within the city, nor to dogs or cats brought into the city to participate in shows. The license herein provided for shall be in force regardless of the date of its issuance until the 1st day of July after the date of its issuance and thereafter such license shall be renewed yearly, not later than the 1st day of July of each year.

13.0402 TIME FOR FEE PAYMENT AND DELINQUENCY: The annual license and licensing fee for all dogs as provided herein shall be due the 1st day of July in each year or when such dog becomes one month of age. Such annual license fee shall become delinquent after the 1st day of July unless paid; except that any license fee falling due after such date shall become delinquent upon the expiration of five (5) days after such fee becomes due. A penalty of fifty (50) cents for every month or fraction thereof for the period of time such license fee shall be delinquent shall be added to the license fee required herein.

13.0403 CERTIFICATES, TAGS, COLLARS, DUPLICATE TAGS, TRANSFER OF TAGS, REFUND OF LICENSE FEE: Upon payment of license fee provided for herein and in compliance with the provisions of this Article, the Auditor shall issue to the owner applying for a dog or cat license a copy of the printed application form, stamped paid and dated, which shall be evidence of such license, and a tag for each dog or cat so licensed.

The color of the tag shall be changed every year and shall have stamped thereon the year for which it was issued and the number corresponding with the number on the certificate. Every owner shall be required to provide each dog or cat licensed with a collar to which the license tag must be affixed and shall see that the collar and tag are constantly worn. In case a tag is lost or destroyed a duplicate will be issued by the City Auditor upon presentation of a receipt showing the payment of the license fee for the current year and a payment of 50 cents for such duplicate. Dog and cat tags shall not be transferable from one dog or cat to another and no refund shall be made on a dog or cat license fee because of the death of a dog or cat or because the owner of a dog or cat leaves the city before the expiration of the license.

13.0404 CERTAIN DOGS DECLARED NUISANCE: Any dog or cat is hereby declared a public nuisance within the city which shall:

- A. Frighten, annoy, bark or chase any person or vehicle;
- B. By loud and frequent yelping, barking or howling annoying any person;
- C. Destroy any property not the property of the owner or keeper;
- D. Not have been inoculated against rabies and distemper as required by Section 13.0301 of this ordinance;
- E. Not have a collar and license tag as required by the provisions of this ordinance.

13.0405 FEMALE DOGS IN HEAT: All female dogs shall be kept in confinement while in heat.

13.0406 VICIOUS DOGS: No person shall keep, harbor or shelter a vicious dog within the city. A vicious dog is hereby defined as being a dog which has bitten any person while the person bitten was not at the time of the biting trespassing on the property of the owner of the dog or doing damage or injury to the person or property of such owner. Whenever any person makes a complaint in writing and verified under oath before the police magistrate that any dog is a vicious dog, having bitten the person under the circumstances set forth in this section, the municipal judge shall issue a warrant for the arrest of the owner of such dog, who shall be brought before the municipal judge for trial upon the charge as in other cases. If such person is found guilty, the municipal judge, in addition to the other penalties provided for in this paragraph, may issue an order directing the owner to forthwith surrender such dog to the police department and failure to do so shall constitute a violation of this section. In the event the owner fails to surrender the dog, such dog shall be seized by the police. Whether the dog is surrendered or seized, the dog shall be impounded in the city dog pound for a period of five (5) days, during which time the owner of the dog may, if he chooses, make arrangements to remove the dog from the city after paying the cost of such impoundment and if he fails to do so within such time,

then such dog will be destroyed by the police or the pound master as designated by the city.

ARTICLE 5.

IMPOUNDING AND PENALTIES

13.0501 POUNDMASTER: Any licensed veterinarian within the City of Beach, County of Golden Valley and State of North Dakota is hereby declared and appointed a poundmaster. Any veterinarian clinic capable of restricting and maintaining animals therein operated by such licensed veterinarian is declared to be a pound as the case may require. The city shall from time to time make arrangements for the per diem care of animals at such clinic under the care of the poundmaster.

13.0502 IMPOUNDMENT, GENERALLY: It shall be the duty of every police officer to apprehend any dog or cat found running at large contrary to the provisions herein and to impound such dog or cat in the pound or other suitable place in the event that a pound is not available. The poundmaster or other such official as may be designated, upon receiving any dog or cat, shall make a complete registry entering the breed, color and sex of such dog or cat and whether or not licensed. If licensed he shall enter the name and address of the owner and number of the tag. Licensed dogs or cats shall be separated from unlicensed dogs or cats whenever possible.

All dogs and cats constituting a nuisance hereunder shall likewise be impounded.

13.0503 NOTICE AND REDEMPTION: Not later than the day after impounding of any dog or cat under the preceding section, and provided the animal has tags and the owner can be identified, the owner shall be notified. If the animal does not have tags or if the owner of the animal cannot be located, the city may proceed pursuant to ' 13.0504 of the City Ordinances. The owner of any dog or cat so impounded may reclaim such dog or cat upon payment of license fees (if any are unpaid) inoculation cost (if the dog or cat has not been inoculated) and all costs and charges incurred by the City for impounding and maintaining such dog or cat. Likewise, any other animal impounded because of a violation of the terms and conditions of this ordinance or any other animal which is a nuisance by the terms and conditions hereof may be reclaimed by the owner thereof upon payment of all costs and charges incurred by the City for impounding and maintenance of such animal and further provided that any nuisance in connection with the said animal be abated.

13.0504 DESTRUCTION OF UNCLAIMED ANIMALS: It shall be the duty of the poundmaster and of the Chief of Police or any other official designated by the City Council to keep all dogs, cats or other animals impounded under the provisions hereof for a period of one day from the date of notice to the owner provided the dog, cat or other animal has a tag or its owner can be identified. If at the expiration of three days from the date of notice

to the owner, such dog, cat or other animal has not been claimed, it shall be destroyed, or in the alternative, a home provided pursuant to the rules and regulations established by this ordinance. Any dog or cat which does not have a current tag and whose owner cannot be readily identified, shall be destroyed immediately or, in the alternative, a home provided pursuant to the rules and regulations established by this ordinance.

13.0505 VIOLATION: A violation of any of the terms, conditions or requirements of this Ordinance shall be considered an offense against the City of Beach, North Dakota, with disposition of each such offense to be made in the Golden Valley County Court, Beach, North Dakota. The penalty schedule for violations of this Ordinance is as follows:

1. 1ST OFFENSE - \$25.00 Fine. Appearance in court is NOT required.
2. 2ND OFFENSE - \$50.00 Fine. Appearance in court is NOT required.
3. 3RD & SUBSEQUENT OFFENSES - Appearance in court is MANDATORY. The fine to be imposed can range from a minimum of \$75.00 to the maximum amount set forth in the general penalty provision of Chapter II, Article V, OFFENSES. The Court may also impose a jail sentence of any length permitted by the aforementioned penalty provision.

Keeping a nuisance animal shall also constitute a violation of this ordinance.

CHAPTER XIV.

WATER AND SEWERS

ARTICLE 1.

UTILITY ESTABLISHED

14.0101 WATER AND SEWER UTILITY CREATED: The waterworks and sewerage facilities now owned by this city or hereafter acquired, were and are hereby declared to be and to constitute a public utility of the city, to be held, operated, maintained, improved, extended and administered as a single undertaking to be known as the "water and sewer utility". The properties of said utility shall include all plants, systems, works,

instrumentalities, equipment, materials, supplies, lands, easements, rights in land, water rights, contract rights, franchises, dams reservoirs, sewage disposal plants, intercepting sewer, truck connections, sewer and water mains, filtration works, pumping stations, and all parts and appurtenances of the foregoing which are used or useful in connection with the obtaining of a water supply and the conservation, treatment and disposal of water for public and private uses and/or useful in connection with the collection, treatment and disposal of sewage, waste and storm waters.

14.0102 SCOPE OF UTILITY: The properties of said utility and all future improvements, extensions and enlargements thereof, together with all cash and other assets held in the City's Water and Sewer Utility Fund and all moneys to be derived thereafter from the services, facilities, products and by-products of said utility, shall be and are hereby appropriated and dedicated to the purpose of insuring the public health, safety and welfare by furnishing and making available water and sewerage service to the City and its inhabitants and industries. Said utility shall at all times be under the management and control of the city council of the city and shall by it be operated and maintained in such manner as to provide its service with maximum efficiency and at the minimum cost which is compatible with the plan of operation herein described.

14.0103 SERVICE CHARGES--USE OF: Said utility shall at all times be so operated and maintained, and rates and charges for its services, facilities, products and by-products shall be such, as to make the utility self-supporting and self-perpetuating. Such charges from time to time imposed and collected shall be made and kept adequate to pay as incurred all costs of operation and maintenance of said utility and to establish and maintain reasonable operating reserves; to produce net revenues which shall be sufficient at all times to pay promptly the principal and interest due on all obligations of the city incurred for the improvement, extension and enlargement of said utility, to the extent that such obligations are according to their terms payable from said net revenues and to establish and maintain adequate reserves for the security of said obligations; and to produce surplus net revenues, over and above current principal, interest and reserve requirements, in amounts sufficient to provide reasonable allowances for depreciation and replacement of the utility plus a reasonable return on the city's capital investment therein which surplus net revenues, when actually on hand, and to the extent that they are not required as a reserve for depreciation and replacement, may from time to time be appropriated by the city council to pay or contribute to the cost of any other city functions, subject to the limitations now or hereafter prescribed by law.

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

ARTICLE 2.

CONTRACT TO PURCHASE WATER FOR WATER DISTRIBUTION SYSTEM

14.0201 CONTRACT TO PURCHASE WATER: That the City Council of the City of Beach, may contract to purchase water from the North Dakota State Water Commission, a state agency and public corporation created and existing pursuant to Chapter 61-02 NDCC, acting through the North Dakota State Engineer, which water shall be supplied through its Southwest Water Pipeline Project.

14.0202 TERM AND PERIOD OF CONTRACT: That the terms of said contract and the period of said contract, not exceeding forty years, shall be as the City Council shall deem appropriate.

14.0203 BINDING CONTRACT: That by such contract, the City may bind itself:

14.0203-1. To establish and maintain rates and charges for supplying water by it to its inhabitants and industries, either according to a prescribed schedule agreed upon or sufficient to prove due said stated amounts for specific periods during the life of the contract, or both, and to appropriate and use the same for payments to become due under the contract, and if the contract so provides, the City shall be obligated to pay for such water solely out of such net revenues. If payments under the contract are to be made solely out of net revenues, the contract may fix and prescribe the method or basis on which net revenues are to be computed.

14.0203-2. To pay, at agreed rate or rates, for all water taken by the City under such contract and not resold by it; and

14.0203-3. To do and perform any other acts or things which, in the discretion of the City Council, are deemed reasonable and appropriate for the procurement of such water on the most efficient and economical basis.

ARTICLE 3.

14.0301 POLICY ON IMPROVEMENTS--EXTENSIONS: It is hereby declared to be the policy of the city, subject to such modifications as shall be deemed by the city council to required by special circumstances in individual cases, and subject to such modifications as may hereafter be made by ordinance amendatory hereof or supplemental hereto, that the cost of capital improvements, enlargements and extensions of said utility shall be paid in the following manner:

1. Where water mains not exceeding six inches or sanitary sewer mains not exceeding eight inches in diameter are installed adjacent to residential

properties, and where water mains not exceeding eight inches or sewer mains not exceeding ten inches in diameter are installed adjacent to commercial properties, the total cost thereof shall be assessed against the properties abutting on such improvements, in sums proportionate to and not exceeding the total benefits determined to be derived therefrom by the respective properties. Water and sewer mains of the dimensions above described are referred to herein as "lateral" mains, and other mains are referred to as "trunk" mains.

2. Where a trunk main is installed, the city council upon advice of the city engineer shall estimate the probable cost of construction of a lateral main at the same time and place, and such estimated cost shall be assessed against the properties abutting on such main and in the manner above provided.
3. Twenty (20) percent of the cost of any sanitary sewer in excess of the estimated cost of a lateral sewer at the same time and place shall be assessed against all properties determined by the city council to require the immediate construction of such main as a trunk sewer, including properties abutting thereon and properties served or capable of being served by lateral sewers connected thereto, in amounts proportionate to and not exceeding the benefits determined to be derived by said respective properties from such trunk sewer.
4. The total cost of storm sewers shall be assessed against properties within the area determined to be benefited thereby, in amounts proportionate to and not exceeding the benefits determined to be derived therefrom by the respective properties.
5. Where a portion of the benefits of any of the foregoing improvements is deemed to accrue primarily to the city at large, a portion as determined by the city council, may be paid by the levy of ad valorem taxes upon all property within the city over the same period as the levies of assessments for such improvements, or any portion or all of such cost may be paid out of current funds duly provided in the budget, or from the proceeds of general obligation bonds duly authorized by the electors.
6. Such portion of the cost of any improvement, extension or addition to the utility as is not paid by special assessments and taxes levied and actually collected in respect thereof shall be paid from the net revenues of the utilities.
7. Where due to any error or omission or to any special circumstances a special assessment is not levied against any property benefitted by an improvement at the time of the construction thereof in accordance with the

program described in this section, the city reserved the right to levy a supplemental special assessment upon such property or to impose and collect a special charge for the connection of such property with the utility system in such amount as shall be required to pay its just share of the assessable cost of such improvement.

14.0302 UTILITY FUND--SEPARATE ACCOUNTS: All moneys received by the city in respect of the services, facilities, products and byproducts furnished and made available by said utility, except collections of special assessments and taxes appropriated to improvement district funds and moneys borrowed for capital improvements, and all money, receipts and returns received from any investments of such earnings, shall be paid into the treasure of the city and kept in a special fund which shall be permanently maintained on the books of the city, separate and distinct from other funds, and designated as the Water and Sewer Utility Fund, in the records of which fund all receipts and disbursements of money on account of or in connection with the utility shall be entered and reflected; but the moneys from time to time on hand therein shall always constitute public municipal funds and shall be deposited and their safekeeping secured like other city funds. Separate accounts within the Water and Sewer Utility Fund shall be permanently maintained for the purpose of segregating the revenues required to meet the several expenses and obligations of the utility, as provided below, and such revenues shall be administered and accounted for as follows:

1. Operation and maintenance account: There shall be credited at least once in each calendar month to the Operation and Maintenance Account of said fund, as a first lien and charge on the gross revenues of the utility such sum as shall be needed, over and above any credit balance then held therein, to pay all claims due which by accepted accounting practices constitute normal, reasonable and current expenses of operation and maintenance of the utility, and to pay such expenses estimated to accrue for a period of approximately one month and to maintain a reasonable reserve for contingencies. Moneys in said account shall be used only to pay expenses of the foregoing type, and not for repairs or replacements or for capital improvements properly chargeable to replacement and depreciation reserves or surplus funds.
2. Principal and interest account: The previous Principal and Interest Accounts of the Funds, created by resolutions by the city council, shall continue to be maintained as provided in those resolutions until the payment in full of the improvement warrants issued against said fund.
3. Revenue bond account: The net revenues of the utility are herein defined as the aggregate of all sums on hand in the Water and Sewer Utility Fund from time to time in excess of the current requirements defined in (1) and (2) above. The entirety of the said net revenues shall be credited each month to

the Revenue Bond Account of the Water and Sewer Fund until there shall have been credited within said account, and thereafter so much of the net revenues as shall be necessary to maintain at all times, a reserve in an amount at least equal to the sum of the principal and interest payments due within each next succeeding twelve months period upon all revenue bonds of the city heretofore or hereafter issued and made payable from said accounts. After said reserve has been created, there shall continue to be credited out of the net revenues to the Revenue Bond Account each month, over and above sums required to maintain such reserve, an amount not less than one-twelfth (1/12) of the sum of the principal and interest to become due on all such revenue bonds within the then next succeeding twelve months. Moneys in said account shall be used only for the payment of principal and interest as it becomes due on said revenue bonds, and said reserve shall be used for such purpose only when other moneys in the account are insufficient. All revenue bonds heretofore and hereafter issued and made payable from said account, subject to the limitations upon such issuance contained in Section (6) hereof, shall constitute a first lien and charge on the net revenues of said utility as hereinbefore defined without preference or priority of one bond over any other; provided that if at any time the moneys in the Revenue Bond Account should be insufficient to make all payments of principal and interest due on such revenue bonds, and cannot be made sufficient by transfer of moneys from the other accounts described below, the moneys available shall be first used to pay interest then accrued on all bonds payable from said account, and any excess moneys available shall be used to pay matured principal of such bonds in order of their maturity dates, provided that moneys available for payment of bonds maturing on the same date shall be prorated equally among such bonds.

4. Improvement warrant account: There shall also be maintained in said fund an Improvement Warrant Account, for the purpose of segregating net revenues required for the payment of any portion of the cost of improvements hereafter instituted, for which such revenues have been pledged in accordance with provisions of 40-22-15 and 40-22-16 of the North Dakota Century Code. There shall be transferred from said account as required, to the fund of each improvement district for which such pledge has been made, sums sufficient, together with tax and assessment collections held in such funds, to pay when due the principal and interest on all improvement warrants drawn upon such funds for the financing of such improvements. Moneys sufficient for the requirements of said improvement district funds shall be credited and paid into the Improvement Warrant Account out of the net revenues remaining from time to time after provision for the current requirements of the Revenue Bond Account, and the lien and charge on said net revenue in favor of improvement warrants for the payment of which such pledges have been made shall be subordinate only

to the lien and charge on said net revenues in favor of revenue bonds payable from the Revenue Bond Account. In the event that money in the Improvement Warrant Account shall be insufficient for the making of all transfers required to be made to the several improvement district funds to which such pledges have been made, and cannot be made sufficient by the transfer of funds from the remaining accounts described below, the available moneys shall be apportioned first to the several improvement district funds in sums sufficient to pay interest then accrued on all warrants drawn on such district funds, and any remainder shall be applied in payment of matured principal of such warrants in order of the maturity dates thereof. As among warrants maturing on the same date, such available moneys shall be applied to the warrants of the several issues in proportion to the matured principal amount thereof for the payment of which taxes and assessments in the respective improvement funds are insufficient.

5. Replacement and depreciation account. Finally, there shall be maintained a Replacement and Depreciation Account, into which there shall be credited and paid as received, except as otherwise stated below, all net revenues in excess of the current requirements of the other accounts above described. In said account there shall be maintained such balances as the city council shall from time to time determine to constitute an adequate reserve for depreciation and replacement of the utility, which reserve may be used to redeem prior to maturity obligations payable from the net revenues as and when the same become prepayable according to their terms, or to replace worn out or obsolete properties of the utility, or to make extensions, enlargements or improvements thereto. Any moneys in said account determined to be surplus to the immediate requirements therefor may be invested or may be transferred to other city funds in the discretion of the board, in the manner and subject to the limitations set forth in Section 40-33-12 of the North Dakota Century Code; and any acts amendatory thereof or supplemental thereto.
6. Moneys on hand. The moneys on hand in any of the accounts of the Water and Sewer Utility Fund shall at all times be available and shall be used to the extent necessary to restore any deficiency in the funds on hand in any of the preceding accounts, in the order listed above, for the fulfillment of the requirements of such preceding accounts as herein defined.
7. Additional accounts. The city also reserves the right to create additional accounts within said Water and Sewer Utility Fund for the purpose of segregating any surplus net revenues which may be pledged and appropriated to the payment of obligations hereafter issued to finance improvements, enlargements or extensions of said utility, other than the obligations made payable from the Revenue Bond Account and the

Improvement Warrant Account, pursuant to the authority for such issuance reserved in 14.0303 hereof, provided that moneys on hand in any such account shall at all times be available for and used to the extent necessary to meet the current requirements of all of the foregoing accounts except the Replacement and Depreciation Account.

14.0303 PROVISIONS FOR FINANCING CAPITAL IMPROVEMENTS: In borrowing money for capital improvement, extensions or additions to said utility the following provisions shall at all times be observed:

1. For the purpose of this section, whenever the net revenues of the utility hereinabove appropriated to the Improvement Warrant Account are pledged to pay a portion of the cost of any improvement to be financed by improvement warrants, such warrants and the interest accruing thereon shall be deemed to be payable from said net revenues in the same proportion as that part of the cost payable from said net revenues bears to the principal amount of such warrants; and the portion of such costs payable from net revenues shall be deemed equal to the principal amount of the warrants less the principal amount of the taxes and assessments agreed to be levied for the payment thereof.
2. Except as provided in parts (3) and (4) below, no obligations shall be issued and made payable from the Revenue Bond Account or the Improvement Warrant Account at any time unless the net revenues of the utility, as defined in Section 14.0302 (3) hereof, received during the then next preceding fiscal year, shall have been in an aggregate amount at least equal to 125% of the average annual principal and interest payments due on all bonds payable from the Revenue Bond Account which are then outstanding or then to be issued, plus such percentage of the average of the annual principal and interest payments due on each issue of improvement warrants then outstanding or then to be issued as shall be payable from said net revenues, which averages shall be computed on the basis of the principal and interest payments due in the fiscal years of the then remaining term of all such revenue bonds and improvement warrants then outstanding. For the purpose of such computation, whenever rates for water and sewerage service have been changed in the course of any fiscal year, the net revenues for such year shall be deemed to be those which would have been received if such amended rates had been in effect during the entirety of such year, based upon the actual quantities of service furnished to each class of customers and the actual expenses of the utility during such year; provided that in no case shall the net revenues so computed be deemed to exceed 125% of the net revenues actually received during such year.
3. Refunding revenue bonds may be issued for the purpose of prepaying and

refunding bonds payable from the Revenue Bond Account when and as they become prepayable according to their terms, in the manner and to the extent permitted by law, provided that such refunding revenue bonds shall be subject to the requirements set forth in part (2) hereof, as applied to the past net revenues and future principal and interest requirements as of the date of the issuance of such refunding revenue bonds. However, the city shall and does hereby also reserve the right and privilege of issuing refunding revenue bonds, when permitted by law, for the maturities of any bonds payable from the Revenue Bond Account which have matured and for the payment of which the moneys in the Revenue Bond Account are insufficient, and cannot be made sufficient by transfer of moneys from other accounts, and such refunding revenue bonds shall be payable from the Revenue Bond Account on a parity as to interest with all then outstanding bonds payable therefrom, but the maturities of such refunding revenue bonds shall be subsequent to the maturities of all such outstanding bonds. Nothing herein shall be deemed to require the holder of any revenue bond to accept a refunding revenue bond in exchange therefor.

4. The city also reserved the right and privilege of issuing refunding improvement warrants in the manner and to the extent provided in Chapter 40-27 of the North Dakota Century Code and acts amendatory thereof and supplemental thereto. The lien and charge of such refunding warrants on the net revenues appropriated to the Improvement Warrant Account shall be the same as that in favor of the improvement warrants refunded thereby; provided that for the purpose of the computations directed to be made in this section, the maturities and the rate or rates of interest payable on such refunding warrants shall be substituted for the maturities and interest rates of the improvement warrants refunded thereby.
5. Nothing herein shall be deemed to affect the obligation of the city, under the laws of the State of North Dakota, to levy advalorem taxes upon all taxable property within its corporate limits for the purpose of paying a deficiency, if any, in the fund of any improvement district, at the time of the maturity of the last warrant drawn thereon, or at such earlier time as may be hereafter directed by such laws; provided that it shall be the policy of the city that the amounts of any deficiency tax levies so made shall be restored to the general funds of the city out of any surplus net revenues thereafter received, over and above the requirements of the several accounts of the Water and Sewer Utility Fund as stated in Section 14.0302 hereof.
6. Except as hereinbefore authorized, no obligation of any kind shall be issued and made payable from said net revenues unless the lien thereof is expressly made subordinate and junior to the lien and charge on said net revenues in favor of all revenue bonds and improvement warrants payable

from the Revenue Bond Account and the Improvement Warrant Account.

14.0304 AGREEMENTS WITH BOND AND WARRANT PURCHASERS: The city shall and does hereby covenant and agree with the original purchaser and each holder from time to time of each bond or warrant issued and made payable from the Revenue Bond Account or the Improvement Warrant Account, as follows:

1. It will complete all improvements financed by the issuance of such obligations with due diligence and with the greatest economy consistent with good workmanship and efficient results, and will do so without creating or permitting the creation of any liens or encumbrances on said utility or on the revenues thereof other than the liens and charges of said revenues expressly authorized in this article.
2. As long as any obligations payable from said accounts are outstanding, it will continue to own and operate said utility as a municipal utility, free from all competition as to the services thereby provided and in good and efficient operating condition.
3. It will at all times maintain a schedule of rates, charges, and rentals for all service, facilities, commodities and benefits furnished by said utility and will impose and collect the same in amounts at least sufficient to make the minimum payments into the respective accounts of the Water and Sewer Utility Fund as specified in Section 14.0302 hereof, and will revise such schedules in such manner and whenever and as often as needed to perform this covenant.
4. Under each such schedule, the city shall be obligated to pay and will pay from its other funds to the Water and Sewer Utility Fund a fair and equitable amount for any and all services, facilities, commodities and benefits furnished to the city or any of its departments by the utility.
5. It will at all times maintain books of account adequate to show all receipts and disbursements of the city respecting the utility, and application of such receipts to the purposes of the several accounts described in Section 14.0302 hereof, which books of account shall be open to inspection by the holder of any obligation payable from the Revenue Bond Account or the Improvement Warrant Account at any reasonable time, and that it will furnish a certified transcript therefrom of any information which any such bond or warrant holder may request, upon payment of a reasonable fee therefor.
6. It will cause the annual financial statement of the city required by the provisions of Section 40-16-05 of the North Dakota Century Code to include

a statement as to the financial condition and the receipts and disbursements of the Water and Sewer Utility Fund and of its several accounts during each fiscal year, and will furnish a copy of such statement to the original purchaser of each issue of bonds or warrants upon request.

7. Upon written demand of the holder of 20% or more of the bonds or warrants of any issue payable from the Revenue Bond Account or Improvement Warrant Account and then outstanding, it will cause an audit of the books of account of the utility to be made by a certified public accountant satisfactory to the holders of such obligations, the cost thereof to be paid as an operating expense of the utility and will furnish a copy of the report of any such audit to such party as shall be designated in such demand.
8. It will at all times keep the properties of said utility insured in reasonable amounts against loss or damage by fire, tornado and other risks for which similar properties are customarily insured by prudent owners, and will carry adequate public liability insurance, insuring against any claim of personal injury or property damage which is or may become a charge against the revenues of the utility, and will cause all persons handling funds of the utility to be bonded in suitable amounts for the protection of the city and the holders of obligations of the utility, and the expense of all such insurance and bonds to be accounted for as an operating cost of the utility, and the city will use the proceeds of any such insurance and bonds to restore the loss or damage compensated thereby.
9. The city and its city council and each and all of its officers will punctually perform all duties with reference to said utility and the revenues thereof and the obligations issued hereunder which are imposed or the ordinances and resolutions of the city, in force on the date upon which any such obligations are issue, and all provisions of the Constitution and laws and of such ordinances and resolutions which provide security for the holders of bonds issued hereunder are acknowledged to be a part of the city's contract with the holders from time to time of such obligations; provided that nothing herein shall be deemed to preclude the city from modifying the policies set forth in Section 14.0301 hereof with reference to any improvements constructed and financed after the effective date of such modification.
10. The holders of 20% or more in principal amount of each issue of bonds or warrants payable from the Revenue Bond Account or the Improvement Warrant Account and at the time outstanding shall be privileged, and are hereby empowered, to institute and maintain, 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 herein provided to be performed or observed by the city or its city

council or any of its officers, whether or not any of such obligations are then in default as to principal and interest, and each and all of the rights and remedies specified and mentioned in Sections 40-35-15 and 40-35-19, inclusive, of the North Dakota Century Code are hereby acknowledged to be available to the holders of such obligations.

ARTICLE 4.

WATER SERVICE

14.0401 WATER SYSTEM: All land, buildings, machinery, equipment, tools and apparatus, water mains, hydrants, service connections and all other property used for the purpose of furnishing a water supply to this city, and the inhabitants thereof, now owned or to be owned by this city, whether acquired by the issue of general obligation bonds, special assessment warrants or other obligations of this city, shall constitute and be known as the waterworks system.

14.0402 WATER SUPERINTENDENT: A water superintendent shall be appointed by the city council. If he is a part-time employee, and if he is also a city employee in some other capacity, only his services respecting the water system shall be an operating charge of the system. It shall be the duty of the water superintendent to exercise control and management of the operation of the waterworks system. He shall have power and authority to employ, subject to the approval of the city council, all such engineers, filter plant operators, meter readers, laborers and other employees, as may be necessary to the operation of the waterworks system. All such employees shall be subject to his orders and directions, and he shall be responsible for their acts. He shall have power and authority to purchase such materials, supplies, and repairs for the waterworks system, with the approval of the city council of the city, as shall be reasonably necessary for the operation of such system. He shall keep such books and records of matters pertaining to the operation of the system, as are necessary to show the operation and condition thereof. He shall at all times be subject to the supervision and direction of the city council. He shall perform such other duties and have such other powers and authority as are hereinafter provided for.

14.0403 WATER SERVICE--APPLICATION FOR: Any party desiring water service from said utility for premises not theretofore connected with the system shall apply for a connection on a form provided by the municipality. Such application shall state an exact description of the premises to be served, and, the uses, both general and special, to which the water is to be put, and the estimated amount of water to be used for a quarter-annual period. Such application shall be filed with the city auditor, and the applicant shall thereupon pay to the city auditor, as and for a connection charge, the sum equal to the city cost of material and labor, or in lieu thereof shall deliver a written agreement to pay said sum, without interest in equal monthly installments, the first to be due and payable immediately upon delivery of such agreement and the succeeding installments one with

each of the monthly water bills next thereafter issued. Such payment or written agreement shall be returned to the applicant if the application is refused. Said connection charge shall be in full payment of the cost of installing the service pipe or pipes from the municipality's main opposite the premises to the owner's property line (unless the cost thereof has been assessed against the property) and for water curb cocks, installation of water meters, and supervision of the customer's connection with the system.

14.0404 WATER SERVICE--CONSTRUCTION OF--MAINTENANCE OF BY OWNER: The cost of original installation of all plumbing between the curb and any service devices maintained by the consumer and all extensions made to such plumbing, as well as all repairs, shall be borne entirely by the consumer, although such plumbing and services as well as the meters shall at all reasonable times be subject to inspection by duly authorized representatives of the municipality. Any repairs found to be necessary by such representatives shall be made promptly, or the municipality will discontinue service.

All services shall be constructed by licensed plumbers at the owner's expense, and each service shall be maintained by the owner. Services heretofore acquired by the issuance of special assessment warrants and assessed against the property, or which may be acquired in the future in like manner, shall likewise be maintained by the owner. Services means the service line running from the point of corporation with city main to owner's premises.

14.0405 WATER SERVICE--TO PROPERTY NOT PREVIOUSLY ASSESSED: No permit shall be issued for the making of any connection between any water or sewer lines and any property which has not previously been benefited by existing water and/or sewer lines, or whenever the owners of such property have not been assessed for such water and sewer facilities, unless and until such person shall have paid or made a written agreement with the city to pay under conditions and an amount of money as may be therefore determined by the city council. Such amount shall be based upon the area served and benefit resulting to the property involved. Within thirty days from the date of receipt of such application, the city council shall determine the amount of money required to be paid before such connection shall be made and shall advise the applicant property owner of such determination. All such moneys paid and received pursuant to the provisions of this section shall be placed in the water and sewer utility fund and shall be expended in accordance with the purposes of such fund.

14.0406 WATER SERVICE--TO PROPERTY WITH DELINQUENT ASSESSMENTS: No permit shall be issued for the making of any connection between any water main of the city and any property on which any special water main assessment taxes are delinquent.

14.0407 WATER SERVICE--WHO MAY TAP: No person other than an employee of the water department, or a duly designated and authorized contractor or agent thereof, under the supervision of the water superintendent, shall make any tap or connection to a

main. The tapping of any water mains of said system and the insertion of the corporation cock in said main shall be done under the supervision of the water superintendent.

14.0408 WATER SERVICE--METER REQUIRED: It shall be unlawful for any person to use water from any premises without the consent of the owner, or to use water from the municipal water system except when drawn through a meter installed by the municipality. No person except an authorized representative of the water superintendent shall turn on or off or tamper with any curb cock.

14.0409 WATER SERVICE--BRANCH SERVICE--WHEN: Unless special permission is granted by the water superintendent, each premise shall have a separate and distinct water service connection, and where permission is granted for branch service systems each branch system must have its own separate meter and separate curb cock.

14.0410 WATER SERVICE--METER REQUIRED--LOCATION, SEALS: Meters shall be firmly and substantially set in a workmanlike manner in a convenient and readily accessible location for reading and inspection. No tap or withdrawal of water by the consumer for any purpose shall be permitted ahead of the city meter, or between the meter and the main line. The consumer shall not, after original installation of a meter, make any alterations or additions which will interfere with the repair, maintenance, reading, or operation of the meter.

Meters shall at all times be sealed and such seals shall not be broken. Meters shall be removed only by authorized employees of the waterworks department.

14.0411 WATER SERVICE--METER DEPOSITS: There shall be and is hereby established a water meter deposit of \$50.00, payable with the application for water service. Whenever the premises are sold, or water service thereto is discontinued at the request of the owner, the vendor or owner shall upon demand made by him be entitled to a refund of the deposit provided the meter is in satisfactory operating condition and no charges for water services to the premises are then delinquent.

14.0412 WATER SERVICE--SERVICES--INSTALLATION OF: In installing water service, all taps shall be driven, street excavations made, corporation cocks inserted, pipes installed from main to curb, and the curb cock installed in an iron box to which the service is to be connected, by the municipality's employees only or master plumber under the direction of the City Superintendent. All sewer service pipes shall be of a material approved by the water superintendent.

14.0413 CURB COCKS: There shall be a curb cock in every service line attached to the water mains, the same to be placed as near as possible to the curb if on a street, or within one foot of the alley line if the main is located in the alley. Curb cocks shall be supplied with strong and suitable "T" handles and shall be enclosed in a substantial iron case covered with a

tight fitting iron lid with the letter "W" cast upon it. There shall be one or more stops and waste cocks attached to every supply pipe at some point between the curb cock and the meter so that the water can be shut off and the meter and the house plumbing entirely drained. There shall be another such stop and waste cock in the pipe on the house side of the meter.

14.0414 CHECK VALVES: Check valves are hereby required on all water connections to steam boilers or any other connection deemed by the water superintendent to require one. Safety and release valves shall be placed on all boilers or other steam apparatus connected with the water system where the steam pressure may be raised in excess of fifty pounds per square inch.

14.0415 REGULATIONS GOVERNING SERVICE: The following rules and regulations shall be considered a part of the contract with every person who takes water supplied by the city through the city waterworks system and every such person who takes water shall be considered as having expressed his agreement to be bound thereby.

1. Shutting off water: Who authorized. No person except an authorized employee of the water department shall shut off or turn on the water at the curb cock to any premises without first obtaining permission from the water department.
2. City reserved right to shut off water, notice. In the case of making repairs or constructing new work, the city reserved the right to shut off the water at once and keep the same shut-off as long as may be necessary to accomplish such purposes. The city shall in such case make such effort as is practicable to give previous notice to consumers.
3. Non-liability of city for deficient supply or quality of water. It is expressly provided that the city shall in no event be or become liable to any consumer of water for a deficiency in the supply of water or the quality thereof, whether by shutting off the same to make repairs or to construct new work or for any other cause whatsoever.
4. Shutting off water: Charge for. The City shall charge the sum of \$25.00, plus the cost of materials, for shutting off and turning on services to the City Water System for the purpose of repairs or tests on behalf of the owner or consumer. There shall be a further charge of \$25.00 for each time members of the City Water Department are requested to enter the premises for shutting off and turning on services to the City Water System for other purposes at the request of the owners or consumers.
5. Entrance and access to premises by waterworks employees. Authorized employees of the water department shall have free access to any premises

supplied with water, at proper times, to inspect and ascertain the condition of the meters and fixtures, or for reading meters, and no owner or occupant shall refuse such employees such access. The water department shall have the right to enter any premises and remove the meter for the purpose of examination and test after first notifying the owner or occupant, and to shut off the water to premises where free access is prevented.

6. Fire hydrants, who may open. No person except city employees and fire department personnel in the performance of their official duties shall open or cause to be opened any fire hydrant without the written permission of the water superintendent.

14.0416 RATES AND CHARGES: The City Council of the City of Beach shall establish rates and charges for service and availability of the water utility, which rates and charges shall at all times be imposed and collected according to schedules which are reasonable and are adequate to produce net revenues sufficient for the payment of all obligations to which said net revenues may be pledged, with interest thereon, and to maintain a reserve securing such payment in accordance with the ordinances or resolutions of the City authorizing the issuance of said obligations, and the moneys from time to time on hand in said account shall be available and shall be used to the extent necessary to restore any deficiency from time to time existing in the funds maintained in the amounts necessary to provide adequately for the operation and maintenance of the utility. Any cash surplus over and above the requirement shall be invested or transferred pursuant to the laws and statutes pertaining thereto.

The rates and charges for service and availability of the utility and the procedure for the enforcement of the collection of said rates and charges shall be established from time to time by resolution of the City Council of Beach, North Dakota, as they shall, in their discretion, determine.

14.0417 RATES AND CHARGES--LIABILITY FOR: Owners of premises where water is supplied shall notify the water department in case any tenant moves from said premises, prior to such moving. In case said tenant moves from said premises to other premises in the city, and is there supplied with water, he shall be liable for the water used at his former residence up to the time of moving, and the water department shall take such measures to enforce the collection of such water bill, as are provided for in the case of non-payment of other water bills. In case said tenant moves away from said city where he is not directly supplied by said water department with water and refuses or neglects to pay said bills within fifteen (15) days after notice thereof, then and in that event the owner of the property for which said bill was rendered shall be liable for said bill, and the water department shall take such measures to enforce collection of such water bill, as are provided for in the case of non-payment of other water bills.

The owner of owners of all real property in the city furnished water service or

service line repairs shall be responsible for the payment of any and all such charges, regardless of who the occupant or tenant may be. On request of the owner or owners the city auditor will bill the occupant or tenant for such charges, but if such charges are not paid when due by the occupant or tenant, the owner or owners shall be responsible for such charges and they shall be assessed to the property served. It shall be the duty of the city auditor to certify to the county auditor such unpaid water or service charges that are unpaid in the same manner and at the same time as other assessments are certified, and they shall be assessed and collected in the same manner.

ARTICLE 5.

SEWER SERVICE

14.0501 APPLICATION FOR: Application for sewer service shall be filed with the city auditor upon a form to be supplied by the city. The application shall state the name of the applicant and the premises to be served. ALL applications shall be accompanied by a fee of \$5.00, payable to the city for the connection charge.

14.0502 RATES: The sewer rates to be charged shall be fixed from time to time by resolution of the city council, and the city reserves the right to change the rates from time to time as it deems best.

14.0503 CHARGES: The city is hereby authorized to add the sewer charges provided for herein to its charge for water services and waste collections and submit the same on a bill in connection with said water service bills. The city shall be authorized to discontinue all utility services if the entire bill shall not be paid, including the bill for sewer charges. In all places where water service is provided, the monthly charges set forth shall be added to and collected as a part of the water bill and collected by the city. Said sums shall become delinquent upon the same dates of the water bill upon which the same is charged. If said service charge is not paid when due, the water service of said premises may be shut off in the same manner as provided for water.

In all places where water service is not provided, the charge above set forth shall be paid to the city upon monthly bills from said city.

If the service charge so established is not paid when due, said sum may be recovered by the city, in an action at law against the owner or occupants or both, of the property so served and may also be assessed against the premises so served and

collected and returned in the same manner as other county and municipal taxes are assessed, certified, and collected and returned.

14.0504 INSTALLATION OF SERVICES: All sewer tops, street excavations and replacement thereof and installation of lines from the city sewer mains to the property line shall be under the control of the city or an authorized person.

ARTICLE 6.

WATER WELLS

14.0601 REQUIRED NOTIFICATION: Every owner and occupant of real property within the city upon which any water well is presently located or is hereafter constructed and located, is required to notify the office of the city auditor of the existence of such well, giving in detail requested by the city auditor, the location, description and use of such well.

14.0602 APPLICATION AND PERMIT: Any person hereinafter constructing any water well within the city, before undertaking such construction, shall first make application to the office of the city auditor, describing in detail the proposed location, dimensions and use of such well and shall then obtain a written permit before undertaking construction of such well. The fee for such permit shall be the sum of \$25.00.

14.0603 NO CONNECTION WITH PRIVATE WATER SUPPLY: No owner or occupant of any property within the city shall at any time have or permit a direct connection from a private water well supply to any service line, outside or inside of any building, which is served by the municipal water system of the city. Any use made of such private water well shall be lawful only if the distribution and service lines used in connection therewith are entirely separate and disconnected from distribution and service lines utilized in connection with water obtained from the municipal water system. Valving between private well water line and lines served by the municipal water supply system shall not be acceptance and shall be in violation of this article.

14.0604 PENALTY: Any violation of the provisions of this Article 14.06 shall be considered an offense. The penalty for such an offense shall be as follows:

FIRST OFFENSE: A fine of fifty dollars (\$50.00)

SUBSEQUENT OFFENSES: A penalty not greater than the maximum penalty of fine or imprisonment set forth in Section 2.0106 of the Beach City

Code.

ARTICLE 7.

WASTE WATER BACKUP CLAIMS

14.0701 WASTEWATER BACKUP FEE: A monthly wastewater backup charge shall be collected from each wastewater customer or per living unit which is at or below grade of the City of Beach. The amount of the wastewater backup fee shall be one dollar (\$1.00) per month per sewer hookup.

14.0702 CLAIMS FOR WASTEWATER BACKUP DAMAGE: Any property owner who suffers damages as a result of a wastewater backup incident may submit a claim to the City of Beach. All claims will be evaluated and handled as follows:

(A) The City will consider claims that result from the city infrastructure, regardless of whether they City is negligent or at fault for the claim. A wastewater backup eligible for reimbursement shall be a backup of sewage into a residence or commercial station, or a backup caused by city equipment. Wastewater backups caused by failure of a service line or from a storm, flood, act of God, or natural disaster or failures resulting from other parties providing service to the City are not eligible for reimbursement. The determination of whether a wastewater backup under this definition has occurred shall be made solely by the City of Beach.

(B) Property owners shall notify the City Auditor or City Water Superintendent of a wastewater backup incident within three (3) working days of the incident, unless the property owner can demonstrate extenuating circumstances that make compliance with the three day requirement impossible.

(C) The City may conduct such investigation as it deems necessary and appropriate to adjust the claim, including retaining the services of an independent adjuster.

(D) Authorized employees or agents of the City shall have access to any premises for which a claim is submitted.

(E) If the City determines that the claim is eligible for reimbursement, the City will pay for cleanup expenses and the replacement cost of personal property or other items damaged by the wastewater backup. The City will not pay for jewelry, guns, furs, artwork, fine arts, antiques, collectibles, or other similar items. The maximum amount the City may pay on any wastewater backup claim is \$3,000.

(F) Payment will be made to a claimant when the claimant executes all such documents that the City may require, including a release of claims. No payment will be made to any claimant unless the claimant first signs and executes a release of the City of Beach, its officers, agents, and employees from any and all further claims and damages as a result of the wastewater backup.

(G) The wastewater backup fund shall accumulate until a balance of \$20,000 exists in the fund. Thereafter, any amounts contributed to the fund over and above \$20,000 shall be transferred to the Sewer & Water Reserve.

This Section (Article 7) Repealed by Ordinance 367

CHAPTER XV.

CURFEW FOR PERSONS UNDER 18 YEARS OF AGE

ARTICLE 1.

15.0101 MINOR UNDER 18 YEARS OF AGE: It shall be unlawful for any minor under the age of eighteen years to loiter, idle, wander, stroll or play in or upon the public grounds, public places and public buildings, places of amusements and entertainment, vacant lots or other unsupervised places between the hours of 10:00 PM and 5:00 AM of the following day on Sunday through Thursday and 12:00 AM and 5:00 AM on Friday and Saturday. The provisions of this section do not apply to a minor accompanied by his or her parent, guardian or other adult person having the care and custody of the minor or where the minor is upon an emergency errand or legitimate business directed by his or her parent, guardian or other adult person having the care and custody of the minor.

15.0102 THOSE IN CARE OF MINOR: It shall be unlawful for the parent, guardian, or other adult person having the care and custody of a minor under the age of eighteen years to knowingly permit such minor to loiter, idle, wander, stroll or play in or upon the public streets, highways, roads, parks, playgrounds or other public grounds, public places and public buildings, places of amusement and entertainment, vacant lots or other unsupervised places between the hours of 10:00 PM and 5:00 AM of the following day on Monday through Friday and 12:00 AM and 5:00 AM on Friday, Saturday and Sunday. The provisions of this section do not apply when the minor is accompanied by his or her parent, guardian or other adult person having the care and custody of the minor or where the minor is upon an emergency errand or legitimate business directed by his or her parent, guardian or other adult having custody of the minor.

15.0103 PENALTY: Any violation of the provisions of this Chapter XV shall be considered an infraction. The penalty for such an infraction shall be as follows:

FIRST OFFENSE: A fine of twenty-five dollars (\$25.00)

SECOND OFFENSE: A fine of fifty dollars (\$50.00)

THIRD OFFENSE: A fine of one hundred dollars (\$100.00)

SUBSEQUENT OFFENSES: A penalty not greater than the maximum penalty of fine or imprisonment set forth in Section 2.0106 of the Beach City Code.

CHAPTER XVI.

CITY TREE BOARD

ARTICLE 1.

16.0101 CREATION AND ESTABLISHMENT OF A CITY TREE BOARD:

There is hereby created and established a City Tree Board for the City of Beach, North Dakota, which shall consist of a five member Board, residents of this city, who shall be appointed by the Mayor of the City with the approval of the City Council.

16.0102 TERM OF OFFICE: The terms of the five persons to be appointed by the Mayor of the City Council shall be three years, except that the term of two of the members appointed to the first board shall be for only one year, and the term of two members of the first board shall be for two years. In the event that a vacancy shall occur during the term of any member, his successor shall be appointed by the Mayor for the unexpired portion of the term.

16.0103 COMPENSATION: Members of the Tree Board shall serve without compensation. The board shall be reimbursed for expenses incurred.

16.0104 OPERATION: The Board shall choose its own officers, make its own rules and regulations and keep a journal of its proceedings. A majority of the members shall be a quorum for the transaction of business.

16.0105 DUTIES AND RESPONSIBILITIES: It shall be the responsibility of the Board to study, investigate, counsel and develop and/or update annually a written plan of the general maintenance and preservation, including trimming, planting, replanting, removal or disposition, fertilization, pruning, and bracing of trees and shrubs in public ways, streets and alleys. Such plan will be presented annually to the City Council and upon their acceptance and approval shall constitute the official comprehensive city tree plan for the City of Beach, North Dakota.

The Board shall appoint a City Forester, who shall have the authority and jurisdiction, through the Board, to regulate the planting, maintenance, and protection of trees on streets and public places, and the removal of trees from streets, public and private places, and to ensure safety or preserve the aesthetics of streets and public places.

16.0106 POLICY: The policy of the City Tree Board with regard to trees and shrubs shall be one of cooperation with the public and all property owners in the City of Beach; that no trees shall be removed from public places unless they constitute a hazard to life or property or become a public nuisance; and that the Tree Board will serve with the education of the public in mind.

16.0107 DEFINITIONS: For the purpose of this ordinance, the following words and their definitions shall hereby and hereafter have the meaning given herein:

(A) "Tree" shall be defined as a woody perennial plant having

a well-defined stem, more or less definitely formed crown, and usually attaining a height of at least ten(10) feet when full grown.

- (B) “Shrub” shall be defined as a low-growing perennial plant with several persistent woody stems and a low branching habit.
- (C) “Public right of way” shall be generally defined as the fifteen (15) foot distance from the center point of any city alley and the thirty-three (33) foot distance from the center point of any city street.
- (D) “Topping” shall be defined as a tree pruning technique designed to reduce tree size and that makes heading cuts through a stem more than two (2) years old; a type of tree pruning that destroys tree architecture and serves to initiate discoloration and perhaps decay in the cut stem.

16.0108 PLANTING:

- (A) NOTICE - No person shall plant, remove, or otherwise disturb any tree located on any city property along a public street, alley, or other public site within the City of Beach without first obtaining the written permission of the City Tree Board and the approval of the City Council.
- (B) GRADE - Unless otherwise allowed for a specific reason, all trees shall have comparatively straight trunks, well-developed leaders, and roots characteristic of the species, cultivar, or variety, and show evidence of proper nursery pruning. All trees must be free from insects, disease, mechanical injuries, and other objectionable features at the time of planting.
- (C) LOCATION -
 - 1.) Trees shall be planted at least ten (10) feet from all street curb line intersections, at least four (4) feet back from the curb line or sidewalk, and at least eight (8) feet from all driveway and alley intersections.
 - 2.) No tree shall be planted closer than ten (10) feet from a utility pole or fire hydrant.

3.) All planting on unpaved streets without curbs must have the special permission of the City Tree Board, who shall determine the tree's location, so it will not be injured or destroyed when the street is curbed and paved.

(D) SPACING - Spacing of public trees will be determined by the City Tree Board according to local conditions, species, cultivars, or varieties used, and their mature height, spread, and forms.

16.0109 MAINTENANCE OF BOULEVARD TREES AND SHRUBS:

(A) Visual Obstruction Maintenance

1.) Trees - All preexisting trees within ten (10) feet of the curb or curb corners, which obstructs a sidewalk or creates a traffic hazard by obstructing the view of an intersecting street, shall have all branches removed with are less then seven (7) feet in height above the ground.

2.) Shrubs- All preexisting bushes, hedges, shrubs, or other such growth within ten (10) feet of the curb or curb corners, which obstructs a sidewalk shall be trimmed to eliminate any such obstruction. If any such growth is of a height sufficient to create a traffic hazard by obstructing the view of an intersecting street, it shall be trimmed to a height not to exceed three (3) feet above the ground.

(B) Vehicular Obstruction Maintenance - It shall be the duty of any person or persons owning or occupying real property bordering on any street or alleyway upon which property there may be trees, to prune such trees in such a manner that they will not obstruct or shade the street lights, obstruct the passage of pedestrians on sidewalks, obstruct vision of traffic signs, or obstruct view of any street or alleyway intersection.

The minimum clearance of any overhanging portion thereof shall be seven (7) feet over sidewalks, and twelve (12) feet over all streets and alleyways, except truck thoroughfares which shall have a clearance of sixteen(16) feet.

Pruning of City right of way trees

shall be under the direction of the City Council.

(C) Topping - No person shall engage in the practice of "topping" a tree within the city limits of the City of Beach without first obtaining the approval of the City Tree Board and City Council.

16.0110 DEAD OR DISEASED TREE REMOVAL: The City shall have the right to cause the removal of any dead or diseased tree on private property or on a street or public right of way within the City when such tree constitutes a hazard to life and property, or harbors insects or disease which constitute a potential threat to other trees within the city. The City Tree Board will notify the owner if said tree is privately owned, or adjoining property owner if said tree is on a street or public right of way. Removal of said tree if on private property shall be done by the owner at their own expense within sixty (60) days after the date of service notice. In the event of failure of said person to comply with such provisions, the City shall have the authority to remove such tree and charge the cost of removal against the owner or adjoining property owner on his tax notice. Removal of said tree if on a public street or public right of way within the City shall be accomplished at the expense of the City.

16.0111 FIREWOOD INSPECTION: From time to time as the Tree Board shall deem necessary, the City Forester shall inspect all log or wood piles in the city. Any dead elm tree or part thereof, including logs, branches, stumps, firewood or other elm material from which the bark has not been removed shall be burned (or destroyed) prior to April 1st of each year. No such elm wood shall be allowed in the City from April 1st to October 15th of each year. The City Forester may enter upon private property at any reasonable time upon notice to the owner for the purpose of carrying out the duties assigned by this section.

16.0112 PENALTY: Any person violating any provision or section shall, upon conviction therefore, be subject to a fine not to exceed Five Hundred Dollars (500.00), and thirty days imprisonment, or both such fine and imprisonment.

CHAPTER XVII.

PARK DISTRICT

ARTICLE 1.

17.0101 CREATION OF DISTRICT: That the Creation of a Park District, by the City Council of Beach, North Dakota, pursuant to Ordinance No. 83, approved May 15, 1922, which states:

All territory within the City of Beach is hereby created into and shall constitute a park district of the State of North Dakota, to be known as the Park District of the City of Beach.

is hereby confirmed.

17.0102 AUDITOR EX OFFICIO TREASURER: That the Auditor of the City of Beach shall be Ex Officio Treasurer of the Park District.

17.0103 ORGANIZATION AND POWERS: The Park District shall be operated pursuant to the terms and conditions of Chapter 40-49 NDCC as now enacted or as maybe hereinafter amended.

CHAPTER XVIII.

FLOOD PLAIN

ARTICLE 1.

STATUTORY AUTHORIZATION, FINDINGS OF FACT, PURPOSE AND OBJECTIVES.

18.0101 STATUTORY AUTHORIZATION: The Legislature of the State of North Dakota has in North Dakota Century Code Chapters 40-47, 11-33 and 58-03 delegated the responsibility to local governmental units to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry. Therefore, the City Council of Beach, North Dakota, does ordain as follows:

18.0102 FINDINGS OF FACT:

1. The flood hazard areas of Beach, North Dakota, are subject to periodic inundation which can result in loss of life and property, create health and safety hazards, disrupt commerce and governmental services, cause extraordinary public expenditures for flood protection and relief, and impair the tax base, all of which adversely affect the public health, safety, and general welfare.
2. These flood losses are caused by the cumulative effect of obstructions in areas of special flood hazards which increase flood heights and velocities, and when inadequately flood proofed, elevated or otherwise protected from flood damage also contribute to the flood loss.

18.0103 STATEMENT OF PURPOSE: It is the purpose of this ordinance to promote public health, safety, and general welfare, and to minimize public and private losses due to flood conditions in specific areas by provisions designed:

1. To protect human life and health;
2. To minimize expenditure of public money for costly flood control projects;
3. To minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
4. To minimize prolonged business interruptions;
5. To minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets and bridges located in areas of special flood hazard;

6. To help maintain a stable tax base by providing for the second use and development of areas of special flood hazard so as to minimize future flood blight areas;
7. To insure that potential buyers are notified that property is in an area of special flood hazard; and
8. To ensure that those who occupy the areas of special flood hazard assume responsibility for their actions.

18.0104 METHODS OF REDUCING FLOOD LOSSES:

In order to accomplish its purpose, this ordinance includes methods and provisions for;

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

ARTICLE 2.

DEFINITIONS

18.0201: Unless specifically defined below, words or phrases used in this ordinance shall be interpreted so as to give them the meaning they have in common usage and to give this ordinance its most reasonable application.

- A. "Appeal" means a request for a review of the City Auditor's interpretation of any provision of this ordinance or a request for a variance.
- B. "Base flood or 100-year flood" means the flood having a one (1) percent chance of being equaled or exceeded in any given year.

- C. "Base Flood Elevation" (BFE) means the height of the base flood or 100-year flood usually in feet above main sea level.
- D. "Basement" means any area of the building having its floor subgrade (below ground level) on all side.
- E. "Best Available Data" (BAD) means water elevation information from any source used to estimate or determine a base flood elevation (i.e. high water mark).
- F. Conveyance or hydraulic conveyance" means a geometric characteristic of a river or watercourse at a given point that determines the flow-carrying capacity at that point
- G. "Development" means any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations located within the area of special flood hazard.
- H. "Flood Insurance Rate Map" (FIRM) means the official map issued by the Federal Emergency Management Agency where special flood hazard areas are designated as Zone A, AE, AO, AH, A-1-A30 or A-99.
- I. "Flood Insurance Study" means the official report provided by the Federal Emergency Management Agency that includes flood profiles. The Flood Insurance Rate Map, the water surface elevation of the base flood.
- J. "Flood" or "flooding" means a general and temporary condition of partial or complete inundation of normally dry land areas from the overflow of inland or tidal waters and/or; from the unusual and rapid accumulation or runoff of surface waters from any source.
- K. "Floodproofing" (Dry) means protection provided a structure, together with attendant utilities and sanitary facilities, which is watertight two feet above the base flood elevation with walls that are substantially impermeable to the passage of water.
- L. "Floodway or regulatory floodway" means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one (1) foot.
- M. "Lowest floor" means the lowest floor of a structure including the basement.

- N. "Manufactured Home" means a structure that is transportable in one or more sections, built on a permanent chassis, and designed to be used with or without a permanent foundation when connected to the required utilities. The term "manufactured home" does not include a "recreational vehicle", but does include "mobile home".
- O. "Manufactured home park or subdivision" means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.
- P. "New construction" means structures for which the "start of construction" commenced on or after the effective date of this ordinance.
- Q. "Reasonably safe from flooding" means base flood waters will not inundate the land or damage structures to be removed from the special flood hazard area, and that any subsurface waters related to the base flood will not damage existing or proposed buildings.
- R. "Recreational vehicle" means a vehicle which is:
- (a) built on a single chassis;
 - (b) 400 square feet or less when measured at the largest horizontal projection;
 - (c) designed to be self-propelled or permanently towable by a light duty truck;
 - (d) designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational camping, travel, or seasonal use; including, but not limited to;
 - (e) travel trailers, trailers on wheels, park-model trailers, and other similar vehicles.
- S. "Special Flood Hazard Area" (SFHA) means an area of land that would be inundated by a flood having a one percent chance of being equaled or exceeded in any given year.
- T. "Start of construction" includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, placement, or other improvement was within 180 days of the permit date. The actual start means the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings,

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

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

The term does not, however, include either:

- (1) Any project for improvement of a structure to comply with existing state or local health, sanitary, or safety code specifications which are solely necessary to assure safe living conditions, or;
 - (2) Any alteration of a structure listed on the National Register of Historic Places of a State Inventory of Historic Places.
- X. "Variance" means a grant of relief from the requirements of this ordinance which permits construction in a manner that would otherwise be prohibited by this ordinance.

ARTICLE 3.

GENERAL PROVISIONS

18.0301 LANDS TO WHICH THIS ORDINANCE APPLIES: This ordinance shall apply to all area of special flood hazards within the jurisdiction of the City of Beach, North Dakota.

18.0302 BASIS FOR ESTABLISHING THE AREAS OF SPECIAL FLOOD HAZARD: The areas of special flood hazard identified by the Federal Emergency Management Agency in a scientific and engineering report entitled "The Flood Insurance Study for the City of Beach, North Dakota, September 29, 1986, with an accompanying Flood Insurance Rate Maps and all subsequent revisions thereto is hereby adopted by reference and declared to be a part of this ordinance. The Flood Insurance Study is on file at City Hall, Beach, North Dakota.

18.0303 COMPLIANCE: No structure or land shall hereafter be constructed, located, extended, converted, or altered without full compliance with the terms of this ordinance and other applicable regulations.

18.0304 GREATER RESTRICTIONS: This ordinance is not intended to repeal, remedy, or impair any existing easements, covenants, or deed restrictions. However, where this ordinance and another ordinance, easement, covenant, or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

18.0305 INTERPRETATION: In the interpretation and application of this ordinance, all provisions shall be:

1. Considered as minimum requirements;
2. Liberally construed in favor of the governing body, and;
3. Deemed neither to limit nor repeal any other powers granted under state statutes.

18.0306 WARNING AND DISCLAIMER OF LIABILITY: The degree of flood protection required by this ordinance is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by man-made or natural causes. This ordinance does not imply that land outside the areas of special flood hazards or uses permitted within such areas will be free from flooding or flood damages. This ordinance shall not create liability on the part of the City of Beach, North Dakota, any officer or employee thereof, or the Federal Emergency Management Agency, for any flood damage that result from reliance on this ordinance or any administrative decision lawfully made thereunder.

ARTICLE 4.

ADMINISTRATION

18.0401 ESTABLISHMENT OF DEVELOPMENT PERMIT: A Development Permit shall be obtained before construction or development begins within any area of special flood hazard established in Section 18.0302. Application for a Development Permit shall be made on forms furnished by the City Auditor and may include, but not be limited to: plans in duplicate drawn to scale showing the nature, location, dimensions, and elevations of the area in question; existing or proposed structures, fill, storage of materials, or drainage facilities; and the location of the foregoing. Specifically, the following information is required:

1. Elevation in relation to mean sea level, of the lowest floor of all proposed structures;
2. Elevation in relation to mean sea level to which any structure has been flood proofed;

3. Certification by a registered professional engineer or architect that the flood proofing methods for any non-residential structure meet the flood proofing criteria in Section 18.0602-2; and,
4. Description of the extent to which any watercourse will be altered or relocated as a result of proposed development.

18.0402 DESIGNATION OF THE CITY AUDITOR AS ADMINISTRATOR: The City Auditor is hereby appointed to administer and implement this ordinance by granting or denying development permit applications in accordance with its provisions.

18.0403 DUTIES AND RESPONSIBILITIES OF THE CITY AUDITOR: Duties of the City Auditor shall include, but not be limited to:

18.0403-1 Permit review.

1. Review all development permits to determine that the permit requirements of this ordinance have been satisfied.
2. Review all development permits to determine that all necessary permits have been obtained from those federal, state, or local governmental agencies from which prior approval is required.
3. Review all development permits to determine if the proposed development is located in the floodway. If located in the floodway, assure that the encroachment provisions of Section 18.0503(1) are met.

18.0403-2 Use of other flood data. When base flood elevation data has not been provided in accordance with Section 18.0302, Basis for Establishing the Areas of Special Flood Hazard, the City Auditor shall obtain, review, and reasonably utilize any base flood elevation data available from a federal, state, or other source, as criteria for requiring that new construction, substantial improvements or other development in the flood plain are administered in accordance with Section 18.0602, Specific Standards.

18.0403-3 Information to be obtained and maintained.

1. Obtain and record the actual elevation (in relation to mean sea level) of the lowest habitable floor (including basement) of all new or substantially improved structures, and whether or not the structure contains a basement.
2. For all new or substantially improved flood proofed structures:
 - (a) Obtain and record the actual elevation (in relation to mean sea level) to which the structure has been flood proofed; and
 - (b) Maintain the flood proofing certifications required in Section 18.0401 (3).

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

18.0403-4 Alteration of watercourses.

1. Notify adjacent communities and the North Dakota State Engineer prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency.
2. Require that maintenance is provided within the altered or relocated portion of said watercourse so that the flood carrying capacity is not diminished.

18.0403-5 Interpretation of FIRM boundaries. Make interpretations where needed, as to the exact location of the boundaries of the areas of special flood hazards (for example, where there appears to be a conflict between a mapped boundary and actual field conditions). The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in Article 5.

ARTICLE 5.

VARIANCE PROCEDURE

18.0501 APPEAL BOARD:

1. The City Council as established by the city of Beach, North Dakota, shall hear and decide appeals and requests for variances from the requirements of this ordinance.
2. The City Council shall hear and decide appeals when it is alleged there is an error in any requirement, decision, or determination made by the City Auditor in the enforcement or administration of this ordinance.
3. Those aggrieved by the decision of the City Council or any taxpayer may appeal such decision to the District Court, as provided in NDCC 27-05-06.
4. In passing upon such applications, the City Council shall consider all technical evaluations, all relevant factors, standards specified in other section of this ordinance, and:
 - (a) The danger that materials may be swept onto other lands to the injury of others;
 - (b) The danger to life and property due to flooding or erosion damage;
 - (c) The susceptibility of the proposed facility and its contents to flood

damage and the effect of such damage on the individual owner;

- (d) The importance of the services provided by the proposed facility to the community;
 - (e) The necessity to the facility of a water front location, where applicable;
 - (f) The availability of alternative locations, for the proposed use which are not subject to flooding or erosion damage;
 - (g) The compatibility of the proposed use with existing and anticipated development;
 - (h) The relationship of the proposed use to the comprehensive plan and flood plain management program for that area;
 - (i) The safety of access to the property in times of flood for ordinary and emergency vehicles;
 - (j) The expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site; and
 - (k) The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.
5. Generally, variances may be issued for new construction and substantial improvements to be erected on a lot of one-half acre to less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing items (a-k) in Section 18.0501 have been fully considered. As the lot size increases beyond the one-half acre, the technical justification required for issuing the variance increases.
6. Upon consideration of the factors of Section 18.0501 and the purpose of this ordinance, the City Council may attach such conditions to the granting of variances as it deems necessary to further the purpose of this ordinance.
7. The City Auditor shall maintain the records of all appeal actions and report any variances to the Federal Emergency Management Agency upon request.

18.0502 CONDITIONS FOR VARIANCES:

1. Generally, variances may be issued for the reconstruction, rehabilitation, or

restoration of structures listed on the National Register of Historic Places of the State Inventory of Historic Places without regard to the procedures set forth in the remainder of this section.

2. Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.
3. Variance shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
4. Variances shall only be issued upon:
 - (a) A showing of good and sufficient cause;
 - (b) A determination that failure to grant the variance would result in exceptional hardship to the applicant; and
 - (c) A determination that the granting of a variance will not result in substantially increased flood heights, additional threats to public safety, cause fraud on or victimization of the public as identified in Section 18.0501, or conflict with existing local laws or ordinances.
5. Any applicant to whom a variance is granted shall be given written notice that the structure will be permitted to be built with a lowest floor elevation below the base flood elevation and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest flood elevation.

ARTICLE 6.

PROVISIONS FOR FLOOD HAZARD REDUCTION

18.0601 GENERAL STANDARDS: In all areas of special flood hazards, the following standards are required:

18.0601-1 Anchoring.

1. All new construction and substantial improvements shall be anchored to prevent flotation, collapse or lateral movement of the structure.
2. All manufactured homes must be elevated and anchored to resist flotation, collapse or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable State and local anchoring

requirements for resisting wind forces.

18.0601-2 Construction materials and methods.

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

18.0601-3 Utilities.

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

18.0601-4 Subdivision proposals.

1. All subdivision proposals shall be consistent with the need to minimize flood damage;
2. All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage;
3. All subdivision proposals shall have adequate drainage provided to reduce exposure to flood damage; and,
4. Base flood elevation data shall be provided for subdivision proposals and other proposed development which contain at least fifty (50) lots or five (5) acres (whichever is less).

18.0602 SPECIFIC STANDARDS: In all area of special flood hazards where base flood elevation data has been provided as set forth in Section 18.0302, Basis for Establishing the Areas of Special Flood Hazard or in Section 18.0403-2, Use of Other

Base Flood Data, the following provisions are required:

18.0602-1 Residential construction. New construction and substantial improvement of any residential structure shall have the lowest floor, including basement, elevated to or above base flood elevation.

18.0602-2 Nonresidential construction. New construction and substantial improvement of any commercial industrial or other nonresidential structure shall either have the lowest floor, including basement, elevated to the level of the base flood elevation; or, together with attendant utility and sanitary facilities, shall:

1. Be flood proofed so that below the base flood level the structure is water tight with walls substantially impermeable to the passage of water;
2. Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. Fully enclosed areas below the lowest floor that are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of flood waters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or must meet or exceed the following minimum criteria:
 - (a) A minimum of two openings having a total net area of no less than one square foot of enclosed area subject to flooding shall be provided;
 - (b) The bottom of all openings shall be no higher than one foot above grade;
 - (c) Openings may be equipped with screens, louvers, or other coverings or devices provided that they permit the automatic entry and exit of flood waters, and;
3. Be certified by a registered professional engineer or architect that the standards of this subsection are satisfied. Such certifications shall be provided to the official as set forth in Section 18.0403-3(2).

18.0602-3 Manufactured homes.

1. Manufactured homes shall be anchored in accordance with Section 18.0601-1(2).
2. All manufactured homes or those to be substantially improved shall be elevated on a permanent foundation such that the lowest floor on the manufactured home is at or above the base of flood elevation and is securely anchored to an adequately anchored foundation system.

18.0603 FLOODWAYS: Located within area of special flood hazard established in Section 18.0302 are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of flood waters which carry debris, potential projectiles, and erosion potential, the following provisions apply:

1. Prohibit encroachments, including fill, new construction, substantial improvements, and other development unless a technical evaluation demonstrates that encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge.
2. If Section 18.0603(1) is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of Article 6 Provisions for Flood Hazard Reduction.

ARTICLE 7.

PENALTIES FOR VIOLATIONS

18.0701 PENALTIES FOR VIOLATIONS: Violation of the provisions of this ordinance or failure to comply with any of its requirements, including violations on conditions and safeguards established in connection with grants or variances or conditional uses, shall constitute a misdemeanor. Any person who violates this ordinance or fails to comply with any of its requirements shall upon conviction thereof be punished by a fine not exceeding \$500 or by imprisonment not to exceed 30 days or by both such fine and imprisonment for each such offense, and in addition shall pay cost and expenses involved in the case. Each day such violation continues shall be considered a separate offense.

Nothing herein contained shall prevent the City of Beach from taking such other lawful action as is necessary to prevent or remedy any violation.

CHAPTER XIX.

ZONING

ARTICLE 1.

INTRODUCTION

19.0101 TITLE: This ordinance and the zoning district map shall be known as the Zoning Ordinance for the city of Beach, North Dakota.

19.0102 PURPOSE AND INTENT: The zoning regulations and districts, as herein set forth, are designated to promote the health, safety and welfare of the people of the city of Beach and are established for the purpose of promoting the sound and desirable use of land. More specifically to:

1. Economize on the costs of municipal facilities and services and to carefully phase residential development with the provision of public improvements.
2. Establish and maintain municipal control over the eventual character and form of development.

3. Establish and maintain a desirable balance among the various uses of the land, and;
4. Establish and maintain essential quality of community services and facilities.

19.0103 AUTHORITY: Code reference is Chapter 40-47 and Section 40-05-02 (13) of the North Dakota Century Code.

19.0104 INTERPRETATION AND APPLICATION: In interpreting and applying the provisions of this ordinance, they shall be held to be the minimum for the promotion of the public health, safety and general welfare.

It is not intended by these provisions to interfere with abrogate or annul rules or permits previously adopted according to the law relating to the use of buildings or premises; nor is it intended to interfere with, abrogate or annul any easements, covenants or agreements between parties; provided, however, that where such provisions impose greater restrictions as to use than this ordinance, the greater shall prevail.

19.0105 SEVERABILITY: If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of said ordinance. The city council of the city of Beach, North Dakota, hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause or phrase thereof irrespective of the fact that any one or more sections, subsections, sentence, clauses or phrases may be declared invalid or unconstitutional.

19.0106 REPEAL: All regulations, parts of regulations, existing zoning ordinances or resolutions in conflict with this ordinance and its provisions are hereby repealed.

19.0107 JURISDICTION: This ordinance and the zoning district map shall apply to the area within the corporate limits of the city of Beach and to the area within the one (1) mile extra-territorial boundary as acquired and adjusted through the provisions of Section 40-47-01.1 of the North Dakota Century Code (NDCC).

19.0108 AMENDMENT: To be effective, the Zoning Ordinance and zoning map may have to be amended, supplemented or changed. The Beach City Council, city of Beach Zoning Commission or any person may initiate an amendment to this ordinance through the procedures described in Section 19.0602-3 of this ordinance.

19.0109 COMPLIANCE AND EFFECTIVE DATE: The regulations set by the Provisions of this ordinance shall apply uniformly within each district to each class or kind of structure or use.

From this 1st day of January 1982, each new use shall be in compliance with the provisions of this ordinance.

19.0110 DEFINITIONS: The words herein defined shall have the meaning intended in this ordinance. Words and phrases not defined in this or any other section will be applied as they are in common usage.

19.0110-1 General terms.

The word shall is taken to mean mandatory; may is taken as permissive.

The word person is taken to mean any individual, group, firm, partnership or corporation.

Words used in the present tense shall also be applied in the future; words used in the singular shall also be applied in the plural.

19.0110-2 Specific terms.

1. Accessory Use or Structure - a use or structure on the same or adjacent lot, with and of a nature customarily incidental and subordinate to the principal permitted or conditionally permitted use of structure. Accessory uses in residential districts include storage sheds and garages not used for commercial purpose, but do not include fences.
2. Agriculture - all land and areas used for: cultivating the soil, producing crops and/or the raising of livestock. Such areas include greenhouses and nurseries.
3. Alley - a recorded public easement which provides access to the rear or the side of two or more properties.

Rear Alley - an alley along the rear lot line.

Side Alley - an alley located along a side lot line.
4. Amendment - any change, revision or modification of either the text of this ordinance or the district zoning map.
5. Animal Hospital or Clinic - an establishment where animals are admitted principally for examination, treatment, board and care by a doctor of veterinary medicine.
6. Automobile Repair Shop - an area of land, including structures thereon, that is used for the repair and servicing of automobiles and/or trucks under one ton gross weight.

7. Basement - a story of a multi-story structure which has a greater portion of its height below the ground surface.
8. Board of Adjustment - the Beach city council or a body authorized by them, which hears appeals on the enforcement of the provisions of this ordinance and grants any necessary specific variances to a provision of this ordinance.
9. Building - any structure designed, or intended, for the enclosure, shelter or protection of persons, animals or property.
10. Building Height - the vertical dimension measured from the average elevation of the finished lot grade at the front of the building to the highest point of a flat roof; and to the average height between the plat and ridge of a gable, hip or gambrel roof.
11. Camper - a vehicular, portable structure built on a chassis, designed as a temporary dwelling for travel, recreation and vacation having a body width not exceeding eight (8) feet and a body length not exceeding thirty- two (32) feet.
12. Camper Park - includes every plot of land kept, used, maintained, advertised or held out to the public as a place for use by guests for parking recreational vehicles.
13. Clear Sight Triangle - an area of unobstructed vision at a street intersection defined by lines of sight between points at a given distance from the intersecting street center lines.
14. Coal Exploration - the drilling of exploratory holes by an agent of a registered coal company for the purpose of defining coal seams and/or identifying coal characteristics.
15. Commercial Parking - a lot, building or area developed and marked as an area for the parking of automobiles, trucks, semi-trailers or farm equipment.
16. Commercial Sand, Gravel and Scoria Operations - the lease, sale or rental of land for the purpose of opening a sand, gravel and/or scoria pit and the processing of the material of said pit for sale or resale. The provisions of this ordinance regarding commercial sand, gravel and/or scoria operations do not apply to a farmer's incidental use of his private operations or to an operation by a political subdivision.
17. Commercial Storage - the storage of materials, chemicals or equipment which is not generally considered hazardous and should not represent any

danger or risk to adjacent property owners or to the general public. Storage yards in which heavy equipment is in constant use may be considered hazardous.

18. Conditional Use - such uses as are allowed by special permit only. Said permit shall be granted according to provisions of this ordinance.
19. Condominium - a single residential unit within a multiple-family structure which is acquired through purchase.
20. Contained Sports Facility - a sports or recreational complex which is confined to a building or set of lots. The use is properly fenced when it could represent a hazard to neighborhood residents.
21. Convenience Store - a grocery or general merchandise store which is designed primarily to serve walk-in neighborhood customers.
22. Construction Workforce Housing - a temporary unit development which includes housing facilities and associated nominal services for a portion of the labor force involved in the construction of a major industrial project. Proposed facilities shall be subject to the approval of the zoning commission.
23. County Highways and/or Roads - any and all roads over which the board of county commissioners has authority and for which said commissioners provide maintenance.
24. District - the areas the Beach zoning jurisdiction for which these regulations governing the use of land and the use, density, bulk and location of structures and buildings are uniform.
25. Double-wide Mobile Home (Manufactured Home) - A factory built structure which is to be used as a place for human habitation, which is not constructed or equipped with a permanent hitch or other device allowing it to be moved other than to a permanent site; does not have permanently attached to its body or frame any wheels or axles; bears a label certifying that it was built in compliance with the National Manufactured Home Construction and Safety Standards promulgated by the US Department of Housing and Urban Development; and which complies with the following architectural and aesthetic standards:
 - (a) The home shall have at least 960 square feet of floor area;
 - (b) The home shall have an exterior width of at least 24 feet and length of 40 feet;
 - (c) The roof shall be pitched with a minimum pitch of 3:1.

- (d) The exterior material shall be or have the appearance of being wood siding or masonry, but siding with a vertical orientation; shall not be sheet
- (e) The home shall have a non-reflective roof material which is or simulates asphalt or wood shingles, tile, or rock;
- (f) Permanent utility connections shall be installed in accordance with local regulations;
- (g) The home shall have all wheels, axles, transporting lights, and towing apparatus removed; and
- (h) The home shall be installed upon a permanent foundation that is constructed and built in accordance with local regulations.
- (i) The home shall be manufactured within five (5) years of the current year.
- (j) The home shall blend with existing structures in the neighborhood to maintain the integrity of the area.

19.0110-2 (25) AMENDED BY ORD. 374

26. Duplex - a structure made up of two (2) dwelling units which is designed for occupancy by two separate household units.
27. Dwelling - any building or portion thereof which is designed and used exclusively for residential purposes.
28. Easement - a vested or acquired right to use land, other than as a tenant, for a specific purpose, such right being held by someone other than the owner who holds title to the land.
29. Family - one or more persons occupying the premises as a single house-keeping unit.
30. Farm - a tract of land which is devoted to commercial agricultural activities.
31. Feedlot - any livestock feeding, handling or holding facility which is not used for pasture or crop raising and where either more than 100 animals units are held or less than six hundred (600) square feet of space is available per animal unit.
32. Frontage or Service Road - minor streets which are parallel to and adjacent to arterial streets and highways, which provide access to abutting properties and protection from through traffic.
33. Gathering Line - pipelines which carry oil and gas between the well lease site and the first processing station. Said pipelines are not involved in public commerce and are not under the jurisdiction of the Public Service Commission (PSC).

- 34. Garage - a building for the storage, repair or maintenance of motor vehicles. Maximum side wall height of a garage in Residential Zoning is 14'. Zoning Board approval is required for garages with side walls over 14' in height.
- 35. Historical Monuments and/or Structures - any structure or building associated with an outstanding person, event or period of history.
- 36. In-Home Apartment - a self-contained dwelling unit built within an existing residential structure which was not originally designed as a multiple-family unit.
- 37. In-Home Occupations - any occupation or profession carried on by members of a family residing on the premises, which is clearly incidental and secondary to the use of the dwelling for residential purposes and does not change the character thereof, nor does it alter the character of the neighborhood.
- 38. Junk and/or Salvage Yard - a tract of land, structure or part thereof, used primarily for the collecting, storage, and sale of scrap or discarded material or for the collecting, dismantling or storing and salvaging of machinery or vehicles not in running order or for the sale of parts thereof.
- 39. Livestock Auction Yard - an enclosure or structure designed or used holding livestock for purpose of sale or transfer by auction, consignment or other means.
- 40. Lot - a tract of land at least sufficient size to meet minimum zoning requirements for use, coverage and area and to provide such yards and other open space as are herein required.

Lot, Coverage - the total area of buildings expressed as a percentage of the total plot, lot or tract.

Lot, Front Line - the lot line opposite the rear lot line. The front lot line is generally fifteen (15) feet from the edge or curb of a dedicated street.

Lot, Rear Line - the lot line which extends across the narrow dimension of the lot. The rear lot line represents the edge of the alley easement and is nine (9) feet from the center of the alley easement.

Lot, Side Line - the lot lines adjacent to the front lot lines on interior and corner lots.

- 41. Manufacture - any method of processing, developing, fabricating

assembling, either raw materials, semi-finished materials or parts thereof into a semi-finished or finished products.

42. Mineral Exploration Operations - any operation involved in the search, exploration or prospecting of any substance or mineral which may involve the penetration of the land surface by digging, drilling or excavating.
43. Mobile Home - A mobile structure manufactured upon a chassis or an undercarriage which is an integral part of the structure and which is transported to the site on wheels: comes fully equipped with flush toilet or shower and kitchen facilities; is ready for immediate occupancy upon its arrival to the site and its connection with utilities; and is designed for long-term use as a single-family residence without permanent foundation.
44. Mobile Home Park - any parcel of land whereupon a minimum of three (3) mobile homes are placed on rented lots of determined size which provide hookups for required utilities, forming a long-term residential area. Mobile home parks shall be considered a single land use unit.
45. Mobile Home Skirting - Skirting is required and shall be constructed of brick, stone, finished metal, or other acceptable materials approved by the zoning administrator. White pole barn metal is not acceptable for skirting. The skirting shall be in place within thirty days of placement of the mobile home on the lot. The tongue and axle of the mobile home shall be removed if not covered by the skirting. Mobile homes having perimeter foundations shall not be required to have the above types of skirting. These requirements shall be fulfilled before a certificate of occupancy is issued. **19.0110-2 (45): AMENDED BY ORD. 374**
46. Modular Home - A structure, transportable in one or more sections, having an exterior width of at least 24 feet and length of 40 feet and which is not constructed on a metal chassis and designed to be used as a dwelling with a permanent foundation when connected to the required utilities, and includes plumbing, heating, air-conditioning and electrical systems contained therein, and complies with standards established under Title 42 USCS, Section 5401 et seq.
47. Motel - a building or group of buildings used for the temporary residence of motorists or travelers.
48. Multiple Dwelling - a residential building designed for occupancy of two (2) or more families with the number of families in residence not exceeding the number of dwelling units.
49. Nonconforming Use - any building or tract of land lawfully occupied by a

use at the time of passage of this ordinance or amendments thereto, which does not conform with the provisions of this ordinance or amendments thereto.

50. Non-farmer - any person:
- (a) Who does not normally devote a major portion of their time to the activities of producing products of the soil, poultry, livestock or dairy farming in such products unmanufactured state; or
 - (b) Who did not receive in their most recent tax year at least fifty percent(50%) of their annual net incomes from any of the foregoing activities.
51. Non-farm Residence - a single-family dwelling which is to be situated on a parcel and whose initial occupant may or is to be a non-farmer or any other person who does not intend to farm such parcel or engage in upon such parcel the raising of livestock or other similar operations normally associated with farming and ranching or who does not expect to receive thereafter fifty or more percent of his annual net income solely from the foregoing farming and other activities engaged in upon such parcel.
52. Parking Space - an area for the purpose of storing one (1) parked automobile. For the purpose of this ordinance, one (1) parking space shall have a minimum width of nine (9) feet and a minimum length of twenty (20) feet. In computing off-street parking, additional space shall be required off-street for access drives to each parking space.
53. Permit - a written document issued by a designated representative of the city of Beach which grants permission to perform an act or service.
54. Permitted Use - any use which complies with the requirements of a zoning district and is unconditionally allowed.
55. Planned Unit Development (PUD) - an area of land controlled by a landowner to be developed as a single entity for a number of dwelling units and commercial and industrial uses, if any, the plan for which may not correspond in lot size, bulk or type of dwelling or commercial or industrial use, density, lot coverage and required open space to the regulations established in any one or more districts created, from time to time, under the provisions of this ordinance.
56. Public Utility - any business which furnishes the general public either telephone, telegraph, electricity, natural gas or water service and any other business so affecting the public interest as to be subject to the supervision

or regulation by an agency of the state.

- 57. Recreational Vehicle - a vacation trailer or other vehicular or portable unit which is either self-propelled or towed or is carried by a motor vehicle and which is intended for human occupancy and is designated for vacation, recreational or residential use.
- 58. Recreational Vehicle Park - a tract of land designed, utilized and operated on a fee or other basis as a place for the temporary parking of occupied recreational vehicles.
- 59. Right-of-way - the area, either public or private, over which the right of passage exists. The right-of-way shall not be considered as land area when computing lot size.
- 60. Rooming Housing - a dwelling in which more than two rooms are let for hire or more than four persons are given lodging for compensation.
- 61. Setback - the line within a property defining the required minimum distances between any structure or use and the adjacent right-of-way or property line of any lot.
- 62. Sewage Disposal System - a sanitary privy, flush toilet, absorption field or similar device used in the collection and/or disposal of sewage or human excretes. This includes all similar contrivances used in the collection and/or disposal of sewage whether enumerated herein or not.
- 63. Sign - any outdoor advertising having a permanent location on the ground or attached to or painted on a building, including bulletin boards, billboards, name plates and poster boards.
- 64. Storage - As used in the Zoning Ordinance, regarding fuel storage tanks, the term storage shall mean the keeping or accumulating of liquid, gas bulk, explosives or other hazardous material at a bulk plant. A bulk plant shall be deemed tanks or structures wherein the liquid, gas bulk, explosives or other hazardous material is normally transferred to a new location before it is consumed. This definition of storage shall apply only when used in the Zoning Ordinance.
- 65. Street - except for the section lines, a way for vehicular traffic whether designated as a street, highway, thoroughfare, parkway, thoroughway, road, avenue, boulevard, land place or however other designated.

Major Arterial Street or Road - a street or road which provides for through traffic movements of light and heavy vehicles between or

around areas and across the county. Access to abutting property may be provided and street or road design speeds shall exceed 30 mph.

Collector Streets - those which carry traffic from minor streets to the major system of arterial streets and highways, including the principal entrance streets of a residential development and streets for circulation within such a development.

Minor Streets - those which are used primarily for access to the abutting property.

66. Structure - anything constructed or erected, the use of which requires permanent location on the ground or attached to something having a permanent location on the ground.
67. Subdivision - the division of land into two (2) or more lots for the purpose, immediate or future, of sale or lease for building development. If a new street is involved, any division of a parcel of land constitutes a subdivision. The division of agricultural land into lots five (5) acres or more in size where no new street is created does not constitute a subdivision.
68. Transmission Facility - means any of the following:
 - (a) An electrical transmission line and associated facilities with a design of forty-one and six tenths (41.6) kilovolts or more.
 - (b) A gas or liquid transmission line and associated facilities designed for or capable of transporting coal, gas or liquid hydrocarbon products for public commerce.
 - (c) A liquid transmission line and associated facilities designed for or capable of transporting water from or to an energy conversion facility being the same as that defined by subsection 5 of NDCC Section 49-22-03.
69. Variance - a realization of the terms of the zoning ordinance where such variance will not be contrary to the public interest and where, owing to conditions peculiar to the property and not the result of the actions of the applicant, a literal enforcement of the ordinance would result in unnecessary and undue hardship. As used in this ordinance, a variance is authorized only for area and size of structure or size of yards and open space. Establishment or expansion of a use otherwise prohibited shall not be allowed by variance, nor shall a variance be granted because of the presence of nonconformities in the zoning district or uses in an adjoining zoning district.
70. Yard - the space on a lot remaining once the area is occupied by all

buildings or structures is subtracted from the total lot area.

Yard, Front - the yard extending from side lot line to side lot line and from the face of the primary structure to the front lot line.

Yard, Rear - the yard extending from side lot line to side lot line and from rear lot line to the face of the primary structure.

Yard, Side - the yards extending from the front of the primary structure to the rear of the primary structure and from the face of the structure to the side lot lines.

19.0111 STATEMENT OF INTENT: It is the intent of this ordinance that persons shall be able to store fuel and draw upon it as needed, for the purpose of supplying fuel for heating systems located on their property. It is also the intent of this ordinance that any person or business licensed to sell fuel, shall be able to store and sell the fuel to a retail customer, that takes delivery of the fuel on the property the fuel is stored, under this ordinance.

It is the further intent of this ordinance that a permit must be obtained from the Chief of the Fire Department of the City of Beach, North Dakota, for each installation of a fuel tank over 299 gallons of water capacity, or when more than one tank is installed, when the combined contained quantity exceeds 499 gallons, irrespective of individual container sizes. The above tank sizes may change as the building and fire codes adopted by the City of Beach, North Dakota (UFC) is periodically revised.

It is also the intent of this ordinance that the (UFC) Uniform Fire Code must be complied with regarding the minimum distances which must be allowed between the fuel tanks and buildings, lot lines and other fuel tanks which have been installed.

ARTICLE 2.

GENERAL PROVISIONS

19.0201 NONCONFORMING USE: Any parcel of land, structure, use of land or use of structure which are lawful before this ordinance was passed, but would be prohibited, regulated or restricted under the terms of this ordinance or future amendments shall be known as nonconforming uses.

If a nonconforming use of land or structure ceases for a period of two (2) years, any subsequent use of such land or structure shall conform to the regulations of the district in which it is located.

Notwithstanding any provision hereof to the contrary, a nonconforming use may be enlarged, extended, expanded, rebuilt or repaired if a conditional use permit is obtained.

Single-family residential units existing at the time of ordinance adoption are exempt from the nonconforming use clause.

19.0202 CONDITIONAL USES: Use of lands or structures which are not considered a desired use of lands or structures within a described zoning district, but deemed allowable by the Beach City Council shall be known as conditional uses and shall require a permit acquired through the procedure described in Section 19.0602-7 of this ordinance.

19.0203 TEMPORARY USES: Uses of lands or structures which are deemed allowable by the Beach City Council for a prescribed length of time shall be known as temporary uses and shall require a permit acquired through the procedure described in Section 19.0602-7 of this ordinance.

19.0204 PROHIBITED USES: All uses identified as prohibited uses in this ordinance shall be prohibited. All uses not identified in this ordinance shall be considered prohibited, but may be listed as permitted or conditionally permitted following a public hearing.

19.0205 MAINTENANCE OF MINIMUM ORDINANCE REQUIREMENTS: No lot areas, yard or other open space existing on or after the effective date of this ordinance shall be reduced below the minimum required for it by this ordinance. Further, any lot area, yard or other open space required for one use shall not be used for another use.

19.0206 ANNEXATIONS: Any lands or areas annexed to the city of Beach may retain the Agricultural District designation or may be rezoned to any other district through the provisions of Section 19.0602 of this ordinance.

ARTICLE 3.

DISTRICTS

19.0301 DISTRICT ZONING MAP: The city of Beach is hereby divided into zones or districts as shown on the district zoning map, which, together with all explanatory matter thereon is hereby adopted by reference and declared to be part of this ordinance. A copy of said map is on file in the office of the city auditor.

The zoning districts of the city of Beach shall be known as:

R-1 Single-Family Residential
R-2 Multi-Family Residential
MH Mobile Home
TR Temporary Residential
C-1 Commercial - High Density
C-2 Highway Commercial
I Industrial
A Agricultural
PUD Planned Unit Development

19.0302 DISTRICT BOUNDARIES: Where uncertainty exists with respect to the boundaries of the various districts hereby established and as shown on the district zoning map, the following rules shall apply:

1. The district boundaries are the center lines of streets or alleys, unless otherwise shown.
2. Where the district boundaries are the center lines of streets or alleys and where the land has been or may hereafter be divided into lots or blocks and lots, the district boundaries shall be construed to be lot lines.
3. Where land has not been subdivided into lots or blocks and lots, the district boundary lines on the district zoning map shall be determined by the use of the scale of measurement shown on said map.
4. Where uncertainty may exist as to the exact boundary line of a district, the same shall be determined by the board of adjustment and a record kept thereof.

19.0303 RESIDENTIAL DISTRICT (R-1):

19.0303-1 Intent. It is the intent of this district to provide for the orderly development of low density residential neighborhoods. It is further the intent of this district to insure the comfort and quiet of low density residential neighborhoods as well as protecting the value of properties.

19.0303-2 Permitted uses. **AMENDED BY ORD. 383**

1. Single-family residential.
2. Parks.

19.0303-3 Conditionally permitted uses. **AMENDED BY ORD. 374 & 383**

1. An in-house apartment unit;
2. Duplex;
3. Communal housing;
4. In-house occupations which do not affect the integrity of the neighborhood;
5. Churches;
6. Libraries;
7. Day care center or private kindergarten;
8. Hospital or nursing home;
9. City or county building or facility;
10. Golf courses and contained sports facilities;
11. Double-Wide Manufactured Home.

19.0303-4 Prohibited uses.

1. Rooming houses;
2. Multi-family residential structures;
3. Condominiums;
4. Mobile homes;
5. Motel/hotel;
6. Laundromat or commercial cleaner;

7. Senior citizen housing;
8. Primary commercial structures;
9. Industrial uses;
10. Commercial or agricultural storage;
11. Commercial agriculture;
12. Animal kennels;
13. All other uses not listed as permitted or conditionally permitted in a R-1 district.

19.0304 MULTIPLE FAMILY DISTRICTS (R-2):

19.0304-1 Intent. It is the intent of this district to provide for the orderly development of multiple-family, high density residential neighborhoods.

19.0304-2 Permitted uses. **AMENDED BY ORD. 383**

1. Single-family residential;
2. Duplexes;
3. Parks.

19.0304-3 Conditionally permitted uses. **AMENDED BY ORD. 383**

1. Multi-family residential structures;
2. Condominiums;
3. Boarding/rooming houses;
4. Convenience stores;
5. Laundromats;
6. Senior citizen housing and centers;
7. Structures for private clubs;
8. Medical clinics;

9. Professional office structures;
10. Mortuaries;
11. Public parking garages;
12. All uses conditionally permitted in a R-1 district.

19.0304-4 Prohibited uses. All uses listed as prohibited in a R-1 district except those listed as conditionally permitted in a R-2 district.

19.0305 MOBILE HOME DISTRICT (MH):

19.0305-1 Intent. It is the intent of this district to provide for the orderly development of mobile home park areas.

19.0305-2 Permitted uses.

1. Mobile homes;
2. Parks.

19.0305-3 Conditionally permitted uses.

1. Double-wide mobile homes;
2. Mobile home parks;
3. Single-family residential;
4. Duplexes;
5. Construction workforce housing;
6. In-house occupations or temporary offices;
7. Public parking garages;
8. Day care center or private kindergarten;
9. Contained sports or recreational facilities;
10. Libraries;

11. Convenience stores;
12. Laundromat;
13. City or county structures or facilities.
14. Recreational vehicles

19.0305-4 Prohibited uses.

1. Multiple-family residential structures;
2. Condominiums;
3. In-house apartment units;
4. Senior citizen housing or centers;
5. Boarding or rooming houses;
6. Churches;
7. Hospital or nursing home;
8. Golf course;
9. All uses listed as prohibited in a R-1 district except those listed as permitted or conditionally permitted in a MH district.

19.0305-5 Compliance with regulations: All mobile home parks shall comply with all requirements of the State Laboratories Department except those amended through this section of any other section of this ordinance. All other residential units allowed or conditionally permitted within this district shall adhere to the R-2 district requirements.

19.0306 TEMPORARY HOUSING DISTRICT (TH):

19.0306-1 Intent. It is the intent of this district to provide for temporary or impermanent housing facilities and associated convenience facilities.

19.0306-2 Permitted uses.

1. Recreational vehicles;

2. Mobile homes;
3. Parks.

19.0306-3 Conditionally permitted uses.

1. Trailer and mobile home parks;
2. Construction workforce housing;
3. Communal residential;
4. Campgrounds;
5. In-house occupations or temporary offices;
6. Libraries;
7. Contained sports facilities or recreational facilities;
8. Laundromat.

19.0306-4 Prohibited uses.

1. Single-family residences;
2. Public parking garages;
3. All uses listed as prohibited in a MH district except campgrounds.

19.0307 COMMERCIAL DISTRICT (C-1).

19.0307-1 Intent. It is the intent of this district to provide for the orderly and efficient development of high density commercial areas.

19.0307-2 Permitted uses.

1. Convenience stores;
2. Clothing and similar dry good stores;
3. Specialty stores which deal in retail merchandise only;
4. Financial establishments;
5. Professional office facilities;
6. Medical clinics;

7. Mortuaries;
8. Walk-in restaurants;
9. Laundromat.

19.0307-3 Conditionally permitted uses.

1. Single-family residential units;
2. Apartments;
3. Boarding or rooming houses;
4. Senior citizen housing or centers;
5. Commercial residential;
6. In-house occupations;
7. Motel/hotel;
8. Liquor establishments;
9. Take-out restaurants;
10. Private clubs;
11. Contained sports facilities;
12. Commercial storage and warehousing;
13. Automotive sales and service;
14. Lumber yard;
15. Farm and ranch supply;
16. Greenhouse;
17. Grain elevators;
18. Animal clinics;

19. Churches;
20. Libraries;
21. City or county buildings or structures;
22. Commercial cleaners;
23. Daycare centers or private kindergartens.

19.0307-4 Prohibited uses.

1. Deleted
2. Hospital or nursing home;
3. All uses listed as prohibited in an R-1 district except those listed as permitted or conditionally permitted in a C-1 district.

19.0308 HIGHWAY COMMERCIAL (C-2):

19.0308-1 Intent. It is the intent of this district to provide for the orderly development of low density commercial activities which require extensive lot space and good vehicular access.

19.0308-2 Permitted uses.

1. Motel/hotel;
2. Lumber yard;
3. Commercial parking;
4. Automotive sales and services;
5. Farm implement sales and services;
6. Restaurants;
7. Financial establishments;
8. Medical clinics;
9. Professional office;

10. Mortuaries;
11. Laundromats;
12. Parks.

19.0308-3 Conditionally permitted uses.

1. Single-family residential;
2. Commercial storage;
3. Dairy plant;
4. Riding stable;
5. Campground;
6. Golf course or driving range;
7. Welding or metal fabricating;
8. Sand, gravel and scoria extraction and/or processing;
9. Ready mix cement plant;
10. All uses conditionally permitted in a C-1 district except those listed as permitted or prohibited in a C-2 district.

19.0308-4 Prohibited uses.

1. Senior citizen housing or center;
2. Communal residential;
3. All uses listed as prohibited in a C-1 district except those listed as permitted or conditionally permitted in a C-2 district.

19.0309 INDUSTRIAL DISTRICT (I):

19.0309-1 Intent. It is the intent of this district to provide for the orderly development of industrial and heavy commercial activities in locations where conflicts with other uses will not arise.

19.0309-2 Permitted uses.

1. Automotive sales and services;
2. Commercial storage;
3. Temporary yard storage;
4. Commercial parking;
5. Farm implement sales and services;
6. Welding and metal fabricating;
7. Parks.

19.0309-3 Conditionally permitted uses.

1. Airport/heliport;
2. Salvage yard;
3. Livestock sales ring or stockyard;
4. Commercial business;
5. Motel/hotel;
6. Professional office structures;
7. Restaurants and liquor establishments;
8. Mobile homes;
9. Construction workforce housing;
10. Apartments in commercial structures;
11. Liquid, gas bulk, explosives and other hazardous material storage.

19.0309-4 Prohibited Uses.

1. Churches;
2. Libraries;
3. Convenience stores;

4. Commercial agriculture;
5. Mortuaries;
6. Structures for private clubs;
7. Beauty shops;
8. Financial establishments;
9. Medical clinics;
10. Senior citizen housing or centers;
11. Communal residential;
12. All uses listed as prohibited in a C-1 district except those listed as permitted or conditionally permitted in a I district.

19.0310 AGRICULTURAL DISTRICT (A):

19.0310-1 Intent. It is the purpose of this ordinance and this district to encourage first and foremost, the use of this land for agricultural activities, (that is general farming and ranching) and to discourage any use which would be detrimental to carrying out agricultural practices. Further, the provisions of this district are set forth to regulate scattered non-farm development and to promote the orderly and economic development of public service utilities and schools.

19.0310-2 Permitted uses.

1. All types of farming and ranching operations including dairying, livestock and poultry raising, and fur farming.
2. Truck gardening, nurseries, greenhouse and roadside stands offering for sale only those farm products which have been grown on the premises.
3. Accessory buildings and structures necessary to the operation of farms or ranches to include the farm residences, septic systems, feedlots and storage facilities.
4. All uses permitted in the Golden Valley conservation district.
 - (a) Hunting, fishing and trapping;

- (b) Raising of game animals, fowl and fish;
- (c) Harvesting of any natural crops;
- (d) Cropping and grazing activities which do not require the construction of any permanent buildings;
- (e) Public parks, undeveloped recreational areas and natural preserves;
- (f) Floodwater management structures;
- (g) Tree farms;
- (h) Historical monuments and structures.

19.0310-3 Conditionally permitted uses.

- 1. Single-family, non-farm residential units on lot of three (3) acres or more, depending on soil characteristics, unless said lots are part of an existing recorded plat;
- 2. Residential units in established shelter belts;
- 3. Public and parochial schools;
- 4. Churches and related facilities;
- 5. Cemeteries;
- 6. Commercial grain elevators and accessory structures;
- 7. Feed lots only when located more than one-half ($\frac{1}{2}$) mile from an existing residential district or two (2) feet per animal unit from a water course;
- 8. Livestock auction yards;
- 9. Sewage lagoons and sediment ponds that comply with the state health standards;
- 10. Sanitary landfills and hazardous waste sites that comply with state health standards;
- 11. Facilities for the manufacturing and/or processing of agricultural products indigenous to Golden Valley County;

12. Railroad tracks and spurs;
13. Airports with adequate flight path buffers;
14. Radio, television and telephone transmission and receiving towers and/or facilities;
15. Governmental administrative, maintenance and research facilities;
16. Electric transmission facilities and water, gas, oil or coal slurry transmission pipelines in accordance with the following restrictions:
 - (a) The applicant shall provide the summary opinion of the application for a transmission facility permit submitted to the North Dakota Public Service Commission (PSC) for said transmission facility if an application is required under Chapter 49-22 of the NDCC.
 - (b) The applicant shall submit all materials which constitute a ruling by the PSC on said transmission facility including maps of the approved corridor.
17. Oil and gas production sites which include well service, water and product hauling and site maintenance;
18. Oil and gas gathering line systems:

The applicant shall provide the following information to obtain a permit:

- (a) A map of the pipeline route which clearly indicates that the pipeline right-of-way does not pass within two hundred (200) feet of a building or surface water body and is not within one hundred (100) feet of a highway right-of-way or section line unless perpendicular to said right-of-way or line.
- (b) An identification of pipeline origin, destination, size, minimum burial depth, road crossing methods and product.
- (c) An identification of areas where the pipeline right-of-way transverses a slope which exceeds 15 degrees and a plan for the construction of water bars to reduce erosion in such areas.
- (d) An indication of the steps that will be used to reclaim and re-

vegetate the right-of-way.

- (e) The name and telephone number of the senior engineer and permit man with the project.

19. Other subsurface mineral mining and surface extraction except coal;

The provisions of this section shall not apply to any excavation for agricultural purposes or for uses which require less than 10,000 cubic yards of excavation or which disturb less than ½ acre per year. The applicant for a permit shall submit the following:

- (a) Written evidence of a reclamation agreement with the surface owner;
- (b) Evidence of written agreement between the applicant and property owner that excavation or processing shall not take place within fifty (50) feet of an adjacent property line or within five hundred (500) feet of an existing residence unless allowed by property owners;
- (c) Copies of all non-confidential information submitted to the state geologist as required under Section 38-16-02 NDCC which identified production methods and likely outputs, reclamation procedures and state geologist recommendations;
- (d) Posting a performance bond for reclamation of the site, with the county auditor in the amount of not less than \$10,000, if not already posted with the state.

19.0310-4 Temporarily permitted uses.

- 1. Mineral Exploration- the provisions of this section shall not apply to any digging, drilling or excavation for agricultural purposes, the operation of coal mines, oil and gas drilling and production, and digging or excavation by Golden Valley County and its incorporated cities. The operators must furnish the following to the zoning director:
 - (a) Evidence of compliance with Section 38-08.1-04 NDCC, "Filing of notice of intention to engage in drilling." A copy of the approved North Dakota State Industrial Commission Permit Application form for Coal Exploration pursuant to Section 38-12-03 NDCC.
 - (b) Plan drawn to scale showing the location of lines or areas to be explored.

- (c) Schedule of commencement and completion of operations.
- (d) Evidence that the surface owner has been notified in writing of the operator's intended activities prior to the commencement of said activities.
- (e) Evidence that permission for the use of water has been obtained from surface owner and tenant before exploration activity begins.
- (f) The seismic source shall not be positioned within one-quarter $\frac{1}{4}$ mile of any building, spring, well or underground water line unless the position is approved by the landowner.
- (g) Exploration shall only occur during periods of dry or frozen soil conditions.
- (h) A fee of \$250.00 for each exploration permit shall be paid to the county auditor before a Temporary Use Permit shall be issued. Said permit shall cover the activities of all crews of a registered exploration company on all lands within the county for a period of one year. Each re-issuance of a permit will entail an additional fee of \$250.00.
- (i) The county commission shall, pursuant to Section 38-08.1-07 NDCC, notify the Industrial Commission of the issuance of all temporary permits relating to mineral exploration. The county commissioners may revoke or suspend any temporary permit relating to mineral exploration.
- (j) A copy of the Temporary Use Permit shall be carried by the recording truck, permit agent and party chief.
- (k) Upon completion of operations, a final plan drawn to scale, showing the actual survey location of all seismic exploration lines and if requested the location of all shot holes or other drill holes pursuant to Section 38-08.1-05 NDCC.
- (l) Certification that all wire flags and/or other objects related to the exploration activities have been removed.
- (m) All exploratory drill holes shall be plugged according to state law within thirty (30) days of being drilled. The top twenty-four (24) inches of the hole shall be replaced and hole cuttings shall be dealt with in a fashion approved by the landowner or tenant.

- (n) A performance bond in the amount of \$15,000.00 per seismic crew or \$30,000 per company shall be paid to the county auditor or evidence that a state bond has been acquired pursuant to Section 38.08.1-04 NDCC shall be provided before the initial Temporary Use Permit shall be issued. The bond may be released to the operator upon the delivery of a written statement from each affected landowner and tenant indicating that the operator's satisfactorily completed. The zoning director shall then review all pertinent materials and determine if all, some or none of the performance bond shall be released. The bond will be in effect for the period of one (1) year.
2. Oil and gas drilling- the operator shall submit the following data and documents to the zoning director prior to any drilling operation:
- (a) The legal description of the tract of land on which the well is located.
 - (b) The location of the proposed well.
 - (c) The name of the owner of the mineral estate lying in and under the proposed well site.
 - (d) The location of all buildings within one-quarter ($\frac{1}{4}$) mile of the proposed well site.
 - (e) The name and address of the drilling contractor.
 - (f) Approximate date of commencement of operations.
 - (g) A copy of the drilling permit issued pursuant to state and/or federal regulations.
 - (h) Proof of compliance with all county rules and regulations relating to mineral, land or water use and development.
 - (i) A written agreement signed by the surface owner and tenant indicating that toxic materials have been removed, topsoil replaced, site reclaimed satisfactorily and compensation paid.
 - (j) A permit fee will be charged in the amount of \$500.00 for each oil and gas well drilling site for the length of the operation and a bond of \$10,000 shall be posted.

19.0311 PLANNED UNIT DEVELOPMENTS (PUD):

19.0311-1 Intent.

The Planned Unit Development (PUD) is a design and development technique which allows a developer the flexibility to create a residential and/or light commercial unit or complex which may not be required to adhere to standards set elsewhere in this ordinance provided the overall development unit fits the general nature of the district and reflects creative and efficient use of structures and open space.

19.0311-2 Permitted uses.

The PUD district has no permitted uses. All developments will have to go through the conditional use application process.

19.0311-3 Conditionally permitted uses.

1. All uses permitted in R-1, R-2, C-1 and C-2 districts plus conditionally permitted uses in R-1, R-2, MH and TH districts. All developers must adhere to the following conditions.
 - (a) Separate structures may be developed on a single lot.
 - (b) Structures are faced, oriented, setback, screened or buffered in a way that insures that adjacent structures or uses are protected from noise, dust or pollutants and unsightliness.
 - (c) The total ground area occupied by structures shall not exceed 40 percent of the buildable area; the gross area of the development less streets and drives.
 - (d) Due consideration is granted natural drainage, topography, soils, and vegetation cover in the development design.
 - (e) Open space and recreation areas equal or exceed the parkland set-aside provisions in action 19.0505-4 of this ordinance. The care and maintenance of such areas shall be discussed.
 - (f) Water and sanitary sewer systems shall be efficient and safe in design and shall be extensions of existing city of Beach water or sanitary sewer facilities. Such systems shall meet city of Beach design, parking areas, and utility services are safe, adequate and efficient in design. The developer must address responsibilities for constructing and maintaining such systems.
 - (h) Phases of development are articulated.

- (i) If the development represents a new plat or re-platting information and material on the development shall be submitted in accordance with the provisions of Article V of this ordinance. If a re-platting is not required developer shall still submit the information required for sketch plans in accordance with Section 19.0504-1 of this ordinance.

ARTICLE 4.

SPECIAL PROVISIONS

The provisions of this chapter shall apply to all zoning districts except where otherwise indicated. The PUD district is not regulated by the provisions of this chapter.

19.0401 LOT SIZE AND DENSITY:

1. Lots used for the construction or placement of any buildings or structures shall not be less than 25 feet in width. Lots shall not be less than 100 feet in length except in temporary housing districts.
2. Lots shall be a minimum of 2,000 square feet in temporary housing districts, 6,000 square feet in mobile home districts and 7,000 square feet in R-1 districts. Duplexes shall be constructed on lots of at least 8,000 square feet. Multiple-family and workforce housing structures shall be built on lots of at least 9,000 square feet plus and additional 1,000 square feet for each additional residential unit or additional three residents.
3. Combined structures on lots shall cover less than 40 percent of the total lot area in R-1 districts, 50 percent of the total lot area in R-2 and MH districts or 60 percent in TR districts.

19.0402 YARD SETBACKS:

19.0402-1 General.

- (a) Buildings and structures in a C-1 district shall adhere to any front and side setback requirements considered necessary for sidewalks.
- (b) Mobile homes and recreational vehicles shall be a minimum of 7.5 feet from any lot line, 15 feet from any other residence or commercial structure and 25 feet from a zoning district boundary.

19.0402-2 Front Yards. **AMENDED BY ORD. 383**

- (a) A front yard depth of not less than 15 feet from the frame or face of the structure to the lot line shall be required in R-1, R-2 and C-2 districts. A front yard depth of not less than 50 feet from the frame or face of the structure to the lot line shall be required in A and I districts.
- (b) Where 30 percent or more of the residential block street frontage of the block in which the lot in question is located is developed, the face of the new residential structure may be aligned with the face of the remaining structures. The 30 percent rule may be applied to both front and side yards on corner lots.

19.0402-3 Side Yards. **AMENDED BY ORD. 383**

- (a) A side yard setback of not less than either 10 percent of the lot width or six (6) feet from the side lot line to the face of any primary or accessory structure shall be required on interior lots in R-1, R-2, and C-2 districts.
- (b) Side yard setbacks on the street side of corner lots shall be either ten (10) feet or in alignment with the existing structures on that specific block frontage when 30 percent or more of the frontage is developed. These side setback requirements apply in R-1, R-2, and C-2 districts.

19.0402-4 Rear Yards.

Rear yards shall be a depth of not less than fifteen (15) feet from the center of the alley easement to the face of any structure in R-1, R-2, and C-2 districts.

19.0403 HIGHWAY SETBACKS: All buildings, structures and visual obstructions shall be setback not less than 25 feet from any federal, state or county highway right-of-way line and not less than 60 feet from the center line of any highway frontage road.

19.0404 HIGHWAY ACCESS:

1. Access points to a federal, state or county highway shall be limited to one per quarter mile outside the city limits and one per 300 feet within the city limits.
2. The landowner shall provide for a frontage road or deed to the nearest access point.

3. Evidence of approval of access points by state or county highway authorities shall be provided to the zoning commission.

19.0405 OFF-STREET PARKING:

1. Yard setback areas may be used for off-street parking.
2. Two off-street parking spaces shall be provided for each residential unit in an R-1 district.
3. One and one-half off-street parking spaces shall be provided for each residential unit in an R-2, MH, TH, C-1 or C-2 district.
4. Commercial establishments shall provide off-street parking for all commercial vehicles.
5. One off-street parking space shall be provided for every three employees of a commercial enterprise.

19.0406 SIGNS AND OBSTRUCTIONS:

1. All signs shall be constructed and maintained in compliance with Chapter 24-17 of the North Dakota Century Code. When a discrepancy occurs between his ordinance and state regulations this ordinance shall prevail.
2. Signs, structures, fences, hedges and other visual obstructions shall not be constructed or planted within nor shall they extend into areas described as clear sight triangles. The points of such triangles are the intersection of the center lines of two streets and the points 75 feet from the center line intersection along each street. Maximum height for a fence is 6.5' in Residential Zoning.
3. Signs, structures, fences or hedges shall not obstruct the passage of vehicles or pedestrians on public ways.
4. Signs shall be maintained in good repair or their removal may be ordered.

19.0406 AMENDED BY ORD. 383

ARTICLE 5.

SUBDIVISION REGULATIONS

19.0501 PURPOSE AND INTENT: The city of Beach herein provides standards and guidelines for development, submission and approval of plats or subdivisions. These guidelines are established to insure that new or altered developments in Beach occur in a sound, efficient, economic and safe manner.

These guidelines shall be followed in plat design and plat execution in each zoning district in the City of Beach jurisdiction with the exception of the PUD district.

These guidelines shall affect the design of streets and easements, utilities and public services, and lot and block size and layout. **AMENDED BY ORD. 380**

19.0502 JURISDICTION: These regulations shall apply to all plats and subdivisions within the jurisdiction of the city of Beach Zoning Commission; that is the corporate limits of the city of Beach plus the one-half mile extra-territorial zone acquired through the provisions of Section 40-48-18 NDCC.

19.0503 VARIANCES: Where the Board of Adjustment finds that the strict compliance with the regulations of this ordinance would cause undue hardship to land owners because of unique conditions, a variance or relaxing of certain provisions of this ordinance may be granted through the procedures presented in Section 19.0603 of this ordinance. A use otherwise not allowed within a particular district may not be established through variance procedures.

19.0504 PLAT APPROVAL PROCEDURES: Any person wishing to establish a subdivision shall follow the provisions of this section affecting plan approval and preliminary and final plat approval. Initial contact is with the zoning administrator, action is taken by both the zoning commission and the city council of the city of Beach.

19.0504-1 Sketch plan.

Any person wishing to initiate a plat approval shall contact the zoning administrator on the following:

1. To receive pertinent materials on subdivision regulations and zoning regulations.
2. To clarify plat submission procedures.
3. The submission of a sketch plan which shows topographic and physical features, proposed street layouts, proposed lots, acreage, plat location. Date, scale and the developers name, address and telephone number shall also appear on the sketch plan.
4. To investigate compatibility with adjacent plats, properties, land uses and zoning.
5. To examine area public services including sewer, water, streets and parks.

Following a review of all submitted plans the zoning administrator shall identify in writing potential concerns which may arise at the preliminary plat phase. Following such a review the sub divider may proceed with the submission the preliminary plat.

19.0504-2 Preliminary plat.

Any person receiving approval on a sketch plan may submit a preliminary plat. A filing fee of fifty (50) dollars shall accompany the filing of each preliminary plat.

The sub divider shall submit four copies of the plat and related materials.

Consideration of the preliminary plat shall take place in the following fashion:

1. The plat and related materials shall be submitted to the zoning administrator who shall record the date of filing and present the plat at the next regularly scheduled meeting of the zoning commission.
2. At the initial meeting, the zoning commission shall review the preliminary plat and provide recommendations to the sub divider. The zoning commission shall direct the zoning administrator to prepared public hearing on the preliminary plat.
3. The zoning administrator shall make proper public notice of the hearing and shall contact the sub divider on the time and place of the hearing at least five (5) days in advance pursuant to Section 40-48-21 NDCC.
4. Prior to the public hearing the zoning administrator shall seek comments and recommendations on the preliminary plat from the city council, engineer, water superintendent, attorney, park board and planner.
5. Within ten (10) days following the public hearing on the preliminary plat the zoning commission shall approve, conditionally approve or reject the preliminary plat. The zoning commission shall inform the sub divider in writing of the reasons for rejecting the preliminary plat.
6. Upon receipt of approval or conditional approval the sub divider may proceed with final plat submission.

Any preliminary plat submitted shall contain the following information:

1. Name of subdivision, developer(s) and surveyor;

2. Legal description of the property;
3. Date, scale and north point;
4. The location and dimensions of existing platted streets, parks, building, easements and right-of-ways drawn at a scale of not more than one hundred (100) feet to the inch;
5. All existing sewer lines, water mains, utilities and culverts in and adjacent to the proposed subdivision;
6. Developers of subdivisions which cover 10 acres or more shall describe the topography of the area shown in contour intervals of less than five (5) feet plus prominent natural features to include water ways or bodies, marshes and wooded areas;
7. The location and dimensions of all proposed streets, alleys, pedestrian ways and easements;
8. The general arrangement and dimensions of proposed blocks and lots;
9. The general plan for sewer lines and water mains including the size of pipe and locations of holding or pumping facilities;
10. The general plan for managing surface water run-off including an indication of flow directions;
11. The location and dimensions of parks, playground and other parcels for public use.

19.0504-3 Final plat.

Any person receiving conditional approval or approval of a preliminary plat may submit a final plat. The final plat shall be recorded in the county register of deeds office once approved and shall be developed and submitted in compliance with Chapter 40-50 NDCC.

The sub divider shall submit to the zoning administrator seven (7) days prior to the public hearing the original final plat on Mylar or tracing paper and four copies.

Final plat submission procedures shall be carried out in compliance with the following:

1. The first zoning commission meeting on the final plat shall serve as the public hearing. The sub divider shall contact the zoning administrator far enough in advance of the hearing to allow for proper public notice.
2. The zoning administrator shall indicate to the zoning commission whether or not all state and city subdivision regulations have been met.
3. The zoning commission shall review the final plat and shall approve or reject the plat. If rejected, written notice shall be forwarded to the Sub divider within ten (10) days. Approval shall take the form of a recommendation to the city council. Should the zoning commission fail to act on the final plat within thirty (30) days it shall be considered approved and shall warrant action by the city council.
4. The approved final plat, signed by the president of the zoning commission and the mayor, shall be recorded in the office of the county register of deeds within thirty (30) days of approval.

The final plat and support and support material shall include all the information required on a preliminary plat except topographic in the same format with the addition of the following:

1. An indication that all lines and boundaries on the plat have been surveyed, staked and monumented by a registered surveyor or engineer. All monuments shall appear on the plat.
2. Block and lot numbering.
3. The acknowledged and notarized names and signatures of the owner and owners of all property involved in the subdivision.
4. A statement dedicating all easements, streets, alleys, parks and other public areas.
5. A title opinion.

19.0505 DESIGN STANDARDS: The designing and development of subdivisions within the jurisdiction of the city of Beach Zoning Commission shall be carried out in accordance with standards and guidelines described in this section. These guidelines shall cover the design of streets, blocks and lots as well as public easements and utilities. Park set-aside requirements and lot size and set-back requirements are described in the district and special provisions chapter of this ordinance and shall be complied with.

19.0505-1 Blocks and lots.

1. Blocks shall be of such length to allow for easy vehicular and pedestrian access. When blocks exceed 600 feet in length pedestrian ways through the blocks may be required.
2. Lots designed for any use except mobile homes shall be a minimum size of fifty (50) by one hundred forty (140) feet or seven thousand (7,000) square feet. Lots designed for mobile homes shall be fifty (50) by one hundred twenty (120) feet.
3. Lots shall be of an adequate size to allow for proper building set-backs as described in the district and special provisions of this ordinance.
4. Each lot shall abut a street of adequate width and capacity to be considered a collector street.

19.0505-2 Streets, alleys and public ways.

1. Streets shall be arranged as extensions of adjoining streets whenever possible.
2. Streets shall be laid out to intersect at as near as possible to a right angle.
3. Cul-de-Sacs shall not exceed six hundred (600) feet in length and shall have circle turn-arounds with a diameter of not less than one hundred twenty (120) feet.
4. Alleys, when deemed necessary, shall have a public right-of-way of twenty (20) feet.
5. All streets shall be of a grade and pitch to allow for proper surface drainage and shall be designed and constructed in accordance with city engineer specifications.
6. Streets shall be arranged so as to not create any undue traffic load on existing adjacent streets.

19.0505-3 Public easements.

1. Where alleys are not provided, permanent easements of ten (10) feet in width shall be provided for needed utilities.

2. Where water courses cross a subdivision, adequate drainage-way easements shall be adequate to handle any likely flow rate. The zoning commission shall determine the level of adequacy.

19.0505-4 Parkland dedication.

1. Any new subdivisions or residential districts within the city's jurisdiction which are rezoned to a higher density district shall have land and/or a cash payment dedicated to a city of Beach Park and Recreational Board in accordance with the following:
 - (a) New R-1 subdivisions shall have set-aside five percent of the land area of the subdivision to be developed as parkland under the direction of the city of Beach Park and Recreation Board or shall have dedicated \$75.00 per R-1 lot to the city of Beach Park and Recreation Board.
 - (b) Any residential subdivision which exceed the average R-1 block density of 24 persons per block (2 acres) shall have set-aside 10 percent of the land area of the subdivision to be developed as parkland under the direction of the city of Beach Park and Recreation Board or shall have dedicated \$75.00 per possible residential unit to the city of Beach Park and Recreation Board.

19.0505-5 Other improvements.

Sewer and water services shall be provided in all subdivisions and shall represent extensions of existing municipal systems. The services shall be designed and supported in accordance with city specifications and state health requirements.

ARTICLE 6.

ADMINISTRATION AND ENFORCEMENT

19.0601 BEACH CITY COUNCIL:

19.0601-1 Authority.

The Beach City Council has the authority to divide the city into districts for the purpose of zoning pursuant to Chapter 40-47 of the North Dakota Century Code (NDCC). Further, the Beach City Council has the authority to appoint a zoning administrator, zoning technical review committee, zoning commission and a board of adjustment pursuant to Section 40-47-06 and 40-47-07 NDCC.

19.0602 CITY OF BEACH ZONING COMMISSION:

19.0602-1 Authority.

Authority found in Section 40-47-06 of the North Dakota Century Code.

19.0602-2 Members.

That as of the effective date of this Ordinance, the Zoning Commission shall consist of five members. Four members who shall be residents of the City of Beach, North Dakota, shall be appointed by the City Council of Beach, North Dakota. One member who shall reside outside the Corporate limits of Beach, North Dakota, but within the territorial limits of the jurisdiction of the zoning ordinances of the City of Beach, North Dakota, shall be appointed by the Board of County Commissioners of Golden Valley County, North Dakota after the effective date hereof.

19.0602-3 Duties.

1. Develop recommendations on the planning and zoning affairs of the city of Beach.
2. Present a report to the city council on recommendations.
3. Conduct hearing on zoning amendments.
4. Conduct hearings on conditional and temporary use applications.
5. Establish application procedures.

19.0602-4 Organization.

The Zoning Commission shall elect its President and Vice President for a term of one year from among the appointed members. President of the Zoning commission shall be the presiding officer of the Commission. In the absence or disability of the President of the Commission, the Vice President shall be the presiding officer. The commission shall hold at least one regular meeting each month. It shall adopt rules for the transaction of business and shall keep a record of its resolutions, transactions, findings and determinations, and such records shall be of public record.

19.0602-5 Terms.

Upon the effective date of this Ordinance, the terms of the members presently serving on the Zoning Commission shall expire. The first term of the new members appointed by the City Council of Beach, North Dakota, shall be staggered in a manner as determined by said Council. After the original staggered terms of the members expire, successors shall be appointed for a term

of five (5) years. The terms of the first members appointed after the effective date of this Ordinance shall commence upon their appointment and expire on April 30 of the year their term is designated for termination. Thereafter, regular terms of the members shall commence on May 1 of the year of appointment and terminate on April 30 of the year of termination.

19.0602-6 Removal vacancy.

The City Council of the City of Beach, North Dakota, may remove members from the Commission, that it has appointed, showing that the member has missed three regularly called meetings per year without reasonable explanation or excuse or upon a showing of cause that it is not in the best interest of the City of Beach, North Dakota, for the member to continue to serve.

Vacancies on the Zoning Commission shall be filled by the City Council of Beach, North Dakota within forty-five (45) days after the vacancy occurs. Those appointed to fill the vacancy shall be appointed for the unexpired term. If a vacancy should exist in the position which is required to be filled by the Board of County Commissioners of Golden Valley County, North Dakota, said Board shall fill said vacancy.

19.0602-7 Procedure for making amendments.

1. Applications for amendments shall be filed with the zoning administrator of technical review committee.
2. The zoning administrator shall present said application to the city zoning commission at its regular scheduled meeting.

19.0602-8 Notice of amendment hearings.

1. Once a week for two (2) successive weeks notice of the time and place of the hearing shall be published in the official newspaper of the city of Beach.
2. The zoning administrator shall notify applicant of the time and place of said hearing.
3. The zoning administrator shall post notice of time and place of said hearing on the affected site.
4. Notice of the hearing shall be mailed to owners of property within one hundred fifty feet (150')(excluding the width of street), of the property described in the application IT SHALL BE THE DUTY of the applicant to notify said adjoining owners. Notice shall be given at least 14 days prior to the date of hearing. Notice shall be given by certified mail, return receipt requested. Proof of

service to said notice shall be filed with the board hearing the matter, prior to the hearing.

19.0602-9 Public hearings by zoning commission and city council.

1. Following a public hearing conducted by the zoning commission, said commission shall submit its recommendations concerning the proposed amendment to the city council.
2. Upon receipt of the zoning commission's recommendations, the city council shall set a final hearing date for the proposed amendment.
3. Procedure for the notice of the final hearings shall follow that of the hearing conducted by the zoning commission.
4. Following the final hearing, the city council shall approve or disapprove the proposed amendment.

19.0602-10 Protests to amendments.

1. If a protest against an amendment is signed by the owners of twenty (20) percent or more:
 - (a) Of the area of the lots included in such proposed change; or
 - (b) Of the area adjacent, extending one hundred and fifty (150) feet from the area to be changed, excluding the width of streets, the amendments shall not become effective except by the favorable vote of three-fourths (3/4) of all the members of the city council of Beach.
2. A public hearing shall be held by the city council on all protests to amendments.
3. Once a week for two (2) successive weeks notice of the time and place of the hearing shall be published in the official newspaper of the city of Beach.
4. All protest to amendments shall be filed in writing with the city auditor within ten (10) days following approval of the amendment being protested.

19.0602-11 Application procedure for conditional use or temporary use permits.

1. Applications for a use permit shall be filed with the zoning administrator.

2. Application shall include:
 - (a) A description of the property, existing adjacent structures and proposed uses and structures.
 - (b) Assurance that the health, safety and welfare of the neighbors and the general public is being protected as well as the integrity of the neighborhood. Such an assurance shall indicate that the design and layout represents proper lot setbacks, visual screens, noise controls, air quality controls, public service access, parking, road access, and traffic levels. The zoning director, zoning commission or city council may request further information on additional matters of concern.
3. The zoning administrator shall present the completed application to the zoning commission for consideration at its next regularly scheduled meeting.
4. The zoning commission shall conduct a public hearing on the conditional or temporary use application. Minutes of the hearing and a recommendation which may include conditions on the permit shall be submitted to the city council for consideration at their next regularly scheduled meeting.
5. The city council shall reject, approve or conditionally approve all applications for a conditional or temporary use permit.
6. Conditional or temporary use permits are only valid for the period indicated on the approved application or for the use or structure specified in the application. When a conditionally or temporarily permitted use or structure is terminated or vacated for a period of 24 months another conditional or temporary use permit must be applied for and a permit granted prior to re-occupation.

19.0602-12 Notice of conditional use or temporary use permit hearings.

1. Once a week for two (2) successive weeks notice of the time and place of the hearing shall be published in the official newspaper of the city of Beach.
2. The zoning administrator shall notify applicant of the time and place of said hearing.

3. The zoning administrator shall post notice of time and place of said hearing on the affected site.
4. Notice of the hearing shall be mailed to owners of property within one hundred fifty (150) feet of the affected site, excluding width of streets. The notice shall be mailed at least seven (7) days prior to the date of the hearing.

19.0602-13 Fees.

All applicants requesting a zoning amendment, conditional use permit, temporary permit and/or variance shall attach \$5.00 with the permit in payment of the zoning application fee. If action on the application requires additional expense will be submitted to the applicant for payment.

19.0602-14 Appeals.

Any person aggrieved by the decision of the zoning commission may appeal to the board of adjustment as provided for in Section 40-47-08 of the North Dakota Century Code.

19.0603 BOARD OF ADJUSTMENT:

19.0603-1 Authority.

Authority found in Section 40-47-07 of the North Dakota Century Code.

19.0603-2 Duties.

1. The board shall hear and decide appeals from and shall review any order, requirement, decision or determination made by the zoning commission charged with enforcement of the provisions of this ordinance pursuant to Chapter 40-47-08 NDCC.
2. The board shall grant variance from the terms of this ordinance when the literal enforcement of the provisions of this ordinance would result in unnecessary hardship and said variance would not be contrary to the public interest.
 - (a) The special conditions and circumstances which are peculiar to the land or structure and not applicable to other land or structures in the same district;
 - (b) The special interpretation of the ordinance would deprive the applicant of rights commonly enjoyed by other properties in

the district;

- (c) The literal interpretation of the ordinance would deprive the applicant of rights commonly enjoyed by other properties in the district.
- (d) The granting of the variance shall not confer any special privilege on the applicant that is denied by the ordinance to others in the same district.

19.0603-3 Application procedures.

1. Application for a variance shall be filed with the zoning administrator.
2. Application shall include:
 - (a) A description and map of the property including an indication of the dimensions and location of all structures.
 - (b) A description of the conditions which are unique to this situation which warrant a variance.
 - (c) An indication of the nature and severity of the hardship endured.
 - (d) All other information required by the zoning administrator.
3. The zoning administrator shall complete then forward said application to the Board of Adjustment. The Board shall set a hearing date for the application and shall publish notice of said hearing once a week for two successive weeks in the official county paper pursuant to Chapter 40-47-09 NDCC.
4. The board shall conduct the hearing and make a determination in the case. Parties aggrieved by decisions of the Board of Adjustment may appeal the decision to the District Court of the county pursuant to Chapter 40-47-11 NDCC.

19.0604 ZONING ADMINISTRATOR:

19.0604-1 Authority.

The City Council shall appoint a Zoning Administrator to carry out the directives and duties as assigned by the Zoning Commission. The Administrator shall be ultimately responsible to the City Council. In the absence or disability of the Zoning Administrator, the President of the Zoning Commission may carry out the duties of the Zoning Administrator as assigned herein. In the absence or disability of the Zoning Administrator or the President of the Zoning Commission, the Vice President of the Zoning Commission may carry out the directives and duties assigned to the Zoning Administrator herein.

19.0604-2 Duties.

1. Shall participate in all hearings for amendment, variance or appeal.
2. Shall maintain updated copies of this ordinance and the district zoning map.
3. Shall keep copies of all records.
4. Shall post notice of amendment hearing on affected site.
5. Shall make inspection of land and/or structures to determine compliance with the provisions of this ordinance.
6. Shall issue building permits.
7. Shall carry out any other duties assigned by the city council.
8. May defer any decision to the zoning commission.

19.0605 VIOLATIONS AND PENALTIES:

19.0605-1 Action of correct violations.

If any building or structure is erected, constructed, reconstructed, altered, repaired, converted or maintained or if any building, structure or land is used in violation of this ordinance, the proper city authorities or any affected citizen or property owner, in addition to other remedies, may institute any appropriate action on proceedings pursuant to Section 40-47-06 of the North Dakota Century Code to:

1. Prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance or use.
2. Restrain, correct or abate such violations.

3. Prevent the occupancy of the building, structure or land; or
4. Prevent any illegal act, conduct, business or use in or about such premises.

19.0605-2 Penalty.

Any person, firm or corporation violating any of the provisions of this ordinance shall, upon conviction thereof, be punished by a fine of not more than five hundred dollars (\$500.00) or by imprisonment in the city jail for not more than thirty (30) days or by both fine and imprisonment. Each and every day that a violation of this ordinance shall be continued shall constitute and be considered a separate offense.

ARTICLE 7.

ZONING OF CERTAIN PROPERTIES

19.0701 PROPERTIES FROM R-2 TO MH:

19.0701-1: Lot Seven (7), in Block Six (6), of Hunters 3rd Addition to the City of Beach, Golden Valley County, North Dakota.

19.0702 PROPERTIES FROM C-2 TO C-1:

19.0702-1: A parcel of land located in the **NE $\frac{1}{4}$ NE $\frac{1}{4}$** of Section 23, Township 140 North, Range 106 West of the 5th Principal Meridian, Golden Valley County, North Dakota, more particularly described as follows:

PARCEL NO. 23-C

Beginning at a point on the north line of said NE $\frac{1}{4}$ of Section 23, and 100 feet west of the northeast corner of said Section 23; thence in a southerly direction parallel with the east line of said Section 23 a distance of 205 feet to a point on the north right-of-way line of Interstate Highway 94 as recorded in Parcel No. 4, Document No. 53632, Book 24 of Mortgages, pages 137-138; thence southwesterly along the said north right-of-way line of Interstate Highway 94 on a bearing **of south 64°32' west a distance of 442.9 feet; thence** northerly and parallel with the east line of said Section 23 a distance of 399.3 feet to a point on the north line of said Section 23; thence east along the north line of said Section 23 a distance of 400 feet to the point of beginning.

19.0703 PROPERTIES FROM AGRICULTURE TO R-2:

19.0703-1: Tracts: E, F, HH, FF, GG, in Nears-re Survey Addition, to the City of Beach, Golden Valley, North Dakota.

19.0703-2: Tracts: E, F, FF, GG, and HH of the resurvey of Near's Second Addition, bound by the railroad right-of-way on the north, Thor or Eighth Street on the east, Fairview on First Avenue on the south and Ninth Street on the west, from Agriculture to R-2.

19.0704 PROPERTIES FROM AGRICULTURE TO C-2:

19.0704-1: Tracts 57 and 58 in the northern part of **SW** $\frac{1}{4}$ of Section 24 and the **NW** $\frac{1}{4}$ of Section 24. This will take in the land along Highway 16 from the section line north of I-94 to the Ronald Johnstone property. It will also include the small parcels of land just north of I-94 east of Highway 16 for one-half mile.

19.0704-2: **N** $\frac{1}{2}$ of Section 23, Township 140 North, Range 106 West, Golden Valley County, North Dakota, insofar as it falls within the zoning jurisdiction of the City of Beach, North Dakota.

19.0705 PROPERTIES FROM AGRICULTURE TO PUBLIC AND MH AND R-2: All properties are within Parkside Addition to the City of Beach, Golden Valley, North Dakota.

Lot 1, Block 1 to Public (P)

Lots 2 thru 7 of Block 1, to Mobile Home (MH)
Lots 15, 16, 17 of Block 3,
All of Block 4

All of Block 2, to Residential
Lots 1 thru 14 of Block 3 Multiple (R-2)

19.0706 PROPERTIES FROM AGRICULTURE TO INDUSTRIAL:

19.0706-1: The North 300.0 ft. of the South 400.0 ft. of The West 750.0 ft. of the East 1550.0 ft. of the Southeast Quarter (**SE** $\frac{1}{4}$) of Section 24, Township 140 North, Range 106 West, 5th P.M., containing 5.16 acres.

19.0706-2: A tract of land lying in the **SW** $\frac{1}{4}$ **SE** $\frac{1}{4}$ of Section 24, Township 140 North, Range 106 West of the 5th P.M., Golden Valley County, North Dakota, more particularly described as follows, to-wit:

Beginning at a point 693 feet east of the South Quarter corner of said section 24; thence in an easterly direction on an azimuth bearing of **090°16'** a distance of 400 feet along

the previously incorporated city limits; thence in a northerly direction on an azimuth bearing of **360°00'** a distance of 427 feet; thence in a westerly direction on an azimuth bearing of **270°16'** a distance of 400 feet; thence in a southerly direction on an azimuth bearing of **180°00'** a distance of 427 feet to the point of beginning. Tract contains 3.9 acres, according to the above description.

19.0706-3: A tract of land located in the **NE¼** of Section 25, Township 140 North of Range 106 West of the 5th P.M., Golden Valley County, North Dakota, being more particularly described as follows, to-wit:

Beginning at a point 564 feet west and 100 feet south of the northeast corner of said **NE¼**, said point lying on the south right-of-way line of U.S. Highway No. 10; thence south along a line parallel to the west line of that tract known as Tract A-50 a distance of 300 feet; thence west along a line parallel to the north line of said Tract A-50 a distance of 300 feet to the west line of said Tract; thence south along said west line a distance of 992 feet to a point on the northerly right-of-way line of the Burlington Northern Railroad; thence easterly along said northerly railroad right-of-way line a distance of 765.2 feet to a point on the west right-of-way line of North Dakota State Highway No. 16; thence north along said right-of-way line a distance of 1,240 feet; thence northwesterly along said right-of-way line a distance of 141.4 feet to a point on the southerly right-of-way line of U.S. Highway No. 10; thence westerly along said southerly right-of-way line a distance of 364 feet to the point of beginning. The above described parcel includes all that north portion of Tract A-50 less all highway and railroad rights-of-way and less a 300 square foot tract in the northwest corner, and includes 20.9 acres according to the above description.

19.0706-4: The north 300.0 feet of the south 400.0 feet of the west 750.0 feet of the east 1550.0 feet of the **SE¼** of Section 24, Township 140

North, Range 106 West, 5th P.M., Golden Valley County, North Dakota. Containing 5.16 acres.

19.0706-5: Township 140N, Range 105W, Golden Valley County, ND
Section 30: SE¼ NW¼, S½ NE¼ and Lot 2