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CHAPTER FOUR

FIRE PROTECTION AND PREVENTION

ARTICLE 1 - Organization and Regulation of the Fire Department

4.0101           Establishment of Fire Department

There is hereby created and established a fire department, and if hereto created, such department is hereby continued, 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 by Fire Chief

The fire chief shall have control, subject to the order and direction of the City governing body, of the fire department and all fire apparatus belonging to the City. Whenever any fire apparatus needs repairing, the fire chief shall cause the same to be done without delay.

4.0103           Volunteer Fire Department

The fire department of the City shall be composed of volunteer firemen who shall receive reasonable compensation and/or reimbursement as set by the fire department.

4.0104           Officers of Fire Department

The officers of the volunteer fire department of the City shall consist of a chief of the fire department and an assistant chief of the fire department, who shall be duly elected from the membership of said department and approved by the City governing board, plus such other officers as the members thereof deem necessary. Said officers are to be elected in January of each year.

4.0105           Chief of Fire Department - Powers of

The chief of the fire department shall be a competent and experienced fireman who shall have entire charge and control of the department at all fires. He shall further have charge, supervision and control over all property, equipment and supplies of the fire department entrusted to his care during his tenure of office.

4.0106           Duties of Fire Chief

The fire chief shall have the following duties and powers, and authority to appoint persons to comply with these duties:

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 when required to do so to the City governing body. The chief of the fire department shall file reports on fires to the state fire marshal as required by North Dakota Century Code Section 18-01-06.
4. To make annual inventory. The chief of the fire department shall, during the month of January 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 judgment may be needed to properly maintain his department.
5. To prepare a budget. To 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.
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 systems of the City, in conjunction with 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.
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 the badge and uniform to be worn by the members of the department.

4.0107 Fire Chief to Report New Equipment Needed

Whenever, in his judgment it is necessary, the fire chief or other representative of the fire department shall meet with and render a report to the City governing board as to the supplies, new apparatus and equipment that are needed for the efficient operation of this department.

4.0108 Police Powers of Fire Department

All members of the fire department of the City, while on active duty, shall have the powers of the 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.

4.0109 Unlawful to Hinder Fire 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.

4.0110 Right of Way - Fire Department Vehicles

Any engine, truck or apparatus belonging to the fire department shall, going to or returning from a fire, have the right of way in all streets, alleys and public places over any wagon, street car, automobile or other vehicle of any kind whatsoever, and any person in charge of any such vehicle must stop the same when necessary to permit any engine, truck or apparatus of the fire department to pass without hindrance or delay.

4.0111 Driving Over Fire Hoses

No person shall drive any team, wagon, cart, street car, railroad car, steam engine, automobile or other vehicle of any kind whatsoever, upon or over any hose belonging to the fire department while the same is laid in the streets and alleys of the City.

4.0112 False Alarms of Fire

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 the 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.

4.0113 Taking Fire Equipment

No person shall take, receive 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 written consent of the chief of the fire department.

4.0114 Entering Fire Department

No person shall occupy any rooms in any building which are used by the Fire Department or enter such rooms or handle any apparatus used by the fire department without permission.

4.0115 Fire Department Service Outside Corporate Limits

Members of the fire department are authorized to go outside the corporate limits of the City for the purpose of rendering aid to other fire departments or of extinguishing fires or rendering aid in the case of accidents upon orders of the chief of the fire department, the assistant chief or presiding officer of the City governing body. Where the City has undertaken by contract to render service to property outside the corporate limits, the fire department may leave the corporate limits in the fulfillment of such contract.

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. All those parts of the City shall comply with the ND State Building Code, unless the City Governing Body shall grant a permit or variance.

4.0202 Fire Limits - Erection of Buildings Within

No buildings or parts of any buildings shall be erected within the fire limits unless the construction meets the provisions of the North Dakota State Building Code. Outbuildings may be erected of any other material, not necessarily of fireproof qualities, by obtaining a permit from the City governing board upon application therefore which may be granted or refused in the City governing board's discretion. The city governing board, at their discretion, may deviate from the building code if conditions or circumstances warrant it such as: distance a proposed structure is from the property line or other structures-- or if it has an adequate sprinkler system.

4.0203 Alterations and Additions in Fire Limits

Within the fire limits no buildings or structure of frame construction or of unprotected metal construction shall be hereafter extended on any side unless the construction of such extension conforms to all

requirements of this article for new construction. All ordinary construction buildings and all frame buildings hereafter built or altered in which the lower stories or portions thereof are used for business, and the stories above for residence purposes shall have all partitions and ceilings separating the business portions from the residence portions covered with metal lath and plaster or other equivalent fireproofing material.

4.0204 Inspection of Premises, Materials, Discovery, Order

The building official, or chief of fire department, or other designated official, shall as often as practical, inspect all buildings or structures during construction for which a permit has been issued to see that the provisions of law are complied with and that construction is prosecuted safely. All building materials shall be of good quality and shall conform to generally accepted standard specifications. Whenever in his opinion, by reason of defective or illegal work in violation of a provision of this article the continuance of a building operation is contrary to public welfare, he may order all further work to be stopped and may require suspension of work until the condition in violation has been remedied.

4.0205 Repairs to Damaged Buildings

Without prior approval by the Governing Body, 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 percent (50%) of its value, and any existing frame building damaged by fire otherwise over fifty percent (50%) of its value shall be torn down and removed.

ARTICLE 3 - Fires in Public Places

4.0301 Smoking - Setting Fires

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 furnishings whatsoever in any hotel, public rooming house, tenement house or any public building, so as to endanger life to property in any way or to any extent shall be guilty of violating this article.

4.0302 Notice - Smoking Ordinance

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

4.0303 Bonfires Prohibited - Exception

No person shall kindle, maintain or assist in maintaining any bonfire or other exposed fire within the City except upon approval of the chief of the fire department or the City of Harvey under proper safeguards as may be directed. Permission may be granted only on condition that carries an obligation on the part of the grantee to keep a sufficient

safe control of said fire and to be responsible for all damages therefrom, and that all resultant embers shall be extinguished and the hot ashes removed or wet down at the close of said fire.

4.0304 Hot Ashes and Other Dangerous Materials - Depositing of

Ashes, smoldering coals or embers, greasy or oily substances and other matter liable to spontaneous ignition shall not be deposited or allowed to remain within ten (10) feet of any combustible materials or construction made up of combustible materials, except in metal or other non-combustible receptacles. Such receptacles shall be placed on non-combustible stands, unless resting on a non-combustible floor or on the ground outside the building, and shall be kept at least two (2) feet away from any combustible wall or partition. Ashes shall not allowed to be mixed with or deposited with regular garbage that will be disposed of by the City Sanitation Department.

4.0305 Open Burning Prohibited

No person shall kindle, maintain or burn any garbage or other refuse either openly or in containers.

4.0306 Reports of Hotel of Apartment Fires

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

ARTICLE 4 - Fire Prevention

4.0401 Adoption of Fire Codes

The City hereby adopts the ND State Fire Code and any Amendments.

4.0402 Amendments, Additions, and Deletions Made in ND Fire Code

The City hereby incorporates all of the Amendments, Additions and Deletions as made in the ND State Fire Code

4.0403 Appeals from Decisions of Fire Chief or Building Inspector

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 City governing body within thirty (30) days from the date of the decision of the appeal.

ARTICLE 5 - Firearms, Fireworks and Explosives, and Weapons

4.0501 Firearms not to be Furnished to Minors

It shall be unlawful for any person, firm or corporation to sell or rent firearms to minors within the limits of this City.

4.0502 Exploding Firearms

It shall be unlawful for any person or persons to fire or discharge within the city limits of this City, any cannon, gun, fowling piece, pistol or **other firearms (including BB guns, spring and air guns and paint ball guns)** of any description without the written permission of the City governing board which permit shall limit the time of such firing and be subject to revocation by the City governing board at any time after being granted. Provided, however, that nothing in this section shall be construed to apply to the firing of any gun or other firearms when done in cases of actual necessity or in the performance of lawful duty or by militia companies or veterans' organizations when on parade.

of 4.0503 Blank Cartridges, Pistols, Etc. - Manufacture, Use and Sale

No person except a licensed dealer shall manufacture, use, sell or keep for sale within the City any blank cartridges, pistols, blank cartridge revolver or other blank cartridge firearms, blank cartridge caps containing dynamite or firecrackers exceeding three (3) inches in length and exceeding one-half (½) inch in diameter.

4.0504 Fireworks Defined

As used in this article, the term "fireworks" means any substance or combination of substances or articles prepared for the purpose of producing a visible or an audible effect by explosion or detonation and includes blank cartridges, toy cannons and toy canes in which explosives are used, firecrackers, torpedoes, sky rockets, roman candles, daygo bombs or other fireworks of like construction, and any containing any explosive or compound, or any tablets, or other device containing any explosive substance and commonly used as fireworks. The term "fireworks" shall not include toy pistols, toy guns in which paper caps containing twenty-five hundredths grains or less of explosive compound are used, and toy pistol caps which contain less than twenty-five hundredths of a grain of explosive composition per cap. (Source: North Dakota Century Code Section 23-15-01)

4.0505 Fireworks - Regulations

1. Hours and Days of Sale

Pursuant to 23-15-01 of the North Dakota Century Code, fireworks may be sold by any person, firm or corporation having a retail license, as provided by 23-15-04 of the North Dakota Century Code, to any person of twelve (12) years of age or older, during the period commencing June 27 and ending July 5, both dates inclusive, and only between the hours of 8:00 o'clock a.m. and 10:00 o'clock p.m.

2. Hours and Days of Use

May be used or exploded within the Corporate Limits of the City of Harvey only during the period commencing June 27 and ending July 5, both dates inclusive, and only between the hours of 9:00 o'clock a.m. and 11:00 o'clock p.m., except for the day of July 4, when fireworks may be used or



exploded until 12:00 a.m. Persons under twelve (12) years of age may not use or explode any fireworks unless they are under the direct supervision of a parent or guardian or other responsible adult.

3. Bottlerockets

The use or explosion of fireworks commonly known as bottlerockets" within the Corporate Limits of the City of Harvey is strictly prohibited.

4. Penalty

Any person, firm or corporation violating any of the provisions of this Ordinance shall, upon conviction thereof, be subject to a fine not to exceed One Thousand Dollars (\$1,000.00), or by imprisonment not to exceed thirty (30) days or both such fine and imprisonment,

5. Saving Clause

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

4.0506 Exceptions to Fireworks Restriction

Nothing in this article shall be construed to prohibit the sale or use of fireworks to airplanes, railroads and other transportation agencies for signal purposes or illumination or the sale or use of blank cartridges for a show or theater or for signal or ceremonial purposes in athletics or sports or for use by military organizations.

4.0507 Loaded Firearm Prohibited

1. Definitions

a. A "Loaded Firearm" for these purposes means a firearm in which one (1) or more bullets or other ammunition is physically within the weapon itself, irrespective of whether the firing chamber is occupied by a bullet or other ammunition.

b. "Possession" A person possesses a firearm on his person for purposes of this article if the weapon does not fall to the ground because it is directly or indirectly attached to , resting upon, or is grasped by some portion of the body (including appendages) of the person who possesses it.

c. "Possession Within Control" A person possess a weapon within his/her control for the purposes of this article if:

(1) The weapon is not possessed on his person or the person of any other individual; and

- (2) Its proximity to him along with the surrounding physical circumstances are such that as a matter of right and without the consent of another person he can readily obtain possession of the weapon on his person. IT shall be an Affirmative Defense to a charge involving the element of "possessing a weapon within his control" that the Defendant did not have the capacity to obtain possession of a firearm on his person at the time of the offense charged because it was within a securely locked container or other restricted space to which he did not then possess a key or other means of entry.

2. Loaded Firearm; When prohibited

- a. No person shall knowingly possess on his person or shall possess within his control a loaded firearm:
  - (1) On a public street, thoroughfare, or other public property except as provided in subsection (b) hereof.
  - (2) On private property without the consent of the owner of the private property or person lawfully in charge thereof.
- b. Paragraph (1) of subsection "a." shall not apply if the firearm is a sidearm and the person in possession thereof has been issued a permit under state law, and the permit explicitly, or the showing made to gain the permit by implication, indicates that the permitting authority contemplated that the permittee be allowed to carry a loaded sidearm on the streets and in public places as when, for example, a permit is issued to an armored car guard.

4.0508 Knives

1. No person shall knowingly possess an unsheathed or uncased knife on his person:
  - a. On public streets, thoroughfares or other public property;
  - b. On premises licensed for the sale of alcoholic beverages at retail;
  - c. Places of public accommodations or public assembly; or
  - d. On private property without the consent of the owner of the private property or the person lawfully in charge thereof.
2. No person shall possess a knife with a blade larger than three (3) inches on premises licensed for the retail sale of alcoholic beverages.

ARTICLE 6 - Adoption of Electrical Code

4.0601 Electrical Code Adopted

There is hereby adopted the laws and regulations and wiring standards of North Dakota adopted by the State Electrical Board.

ARTICLE 7 - Penalty for Violation of this Chapter

4.0701           Penalty - Violations of Fire Protection and Prevention Chapter

Any person who shall violate any provisions of this chapter 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 one thousand dollars (\$1,000.00) 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.