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CHAPTER ONE

GOVERNMENT ORGANIZATION

ARTICLE 1 - Jurisdiction

1.0101 Over Persons and Property

The jurisdiction of the City of Harvey, North Dakota, extends to all persons, places and property within its boundaries, and such extra-territorial jurisdiction as is granted to it under the provisions of the North Dakota Century Code and amendments.

1.0102 Defining City Limits

There shall be included within the municipal limits of the City all areas duly platted and recorded as being within said City and this includes any annexed property; all lots and blocks shall also include all streets, alleys and public ways included within the area and adjacent thereto which are defined as within the confines of the City limits. The City Council shall have jurisdiction within the corporate City limits and over any common or public grounds belonging to the City, and in and over all places within one-half mile of the municipal limits for the purpose of enforcing health and quarantine ordinances and police regulations and ordinances adopted to promote the peace, order, safety and general welfare of the municipality. (Source: North Dakota Century Code § 40-06-01)

1.0103 City Fines and Penalties Limited, and Minimums, and Restitution

The provisions of Section 40-05-06 of the North Dakota Century Code and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

This section shall not be construed to prohibit the utilization of the sentencing alternatives, other than a fine or imprisonment, provided by NDCC Section 12.1-32-02 for the violation of a City ordinance, nor shall this section limit the use of deferred or suspended sentences pursuant to NDCC Chapter 12.1-32.

There shall be Mandatory Minimums for offenses. Any Defendant that requests Court Appointed Counsel shall be required to pay a \$25.00 application fee, and the Court shall determine if the Defendant is indigent. Court Appointed Counsel is only required when the City Attorney is requesting jail time for the offense. Every Offense committed in the City of Harvey and brought in City Municipal Court shall have a mandatory minimum court cost of \$100.00. The City shall also be allowed to request a prosecution fee of \$100 per offense committed in the City of Harvey and brought in City Municipal Court if there are applicable fees for going to Court. The Court may waive these mandatory minimums if there is an application and showing of indigency. Charges arising from the same event and disposed of on the same day shall be treated as one case with one fee being assessed. (Source HB 1088)

Restitution shall be ordered when there are reasonable damages sustained by any victim of a criminal offense, which damages are limited to those directly related to the criminal offense and expenses actually incurred as a direct result of the Defendant's criminal action. (Source NDCC § 12.1-32-08)

ARTICLE 2 - Governing Body - City Council

1.0201 Regular Meetings

The City Council shall meet regularly at the City Hall on the first Monday of each month at the hour of 7:00 P.M. unless some other time and place shall be specifically fixed by the council. If a regular meeting falls on a holiday, it shall be held on the First (1st) Monday following the holiday at 7:00 p.m. The council shall meet in addition thereto, as often as required by Section 40-08-10 of the North Dakota Century Code.

1.0202 Special Meetings

Special meetings may be called at any time by the mayor or any two (2) members of the governing body to consider matters mentioned in the call of such meetings. Notice of any special meeting shall be given to each member of the governing body at least three hours before the time of the meeting.

1.0203 Meeting to be Public - Journal of Proceedings to be Kept

All meetings of the governing body shall be open to the public, and a journal of its proceedings shall be kept. Notice of the regular meeting time or of special meeting shall be given as provided by Section 44-04-20 of the North Dakota Century Code and amendments.

1.0204 Quorum

The provisions of Section 40-06-03 of the North Dakota Century Code and all subsequent amendment shall be and are hereby incorporated by reference in this ordinance.

A majority of the members of the governing body of a municipality shall constitute a quorum to do business but a smaller number may adjourn from time to time. The governing body may compel the attendance of absentees under such penalties as may be prescribed by ordinance, and may employ the police of the municipality for that purpose.

1.0205 Reconsidering or Rescinding Votes at Special Meeting

The provisions of Section 40-06-04 of the North Dakota Century Code and all subsequent amendments shall be and hereby are incorporated by reference in this ordinance.

No vote of the governing body of a municipality shall be reconsidered or rescinded at a special meeting unless there is present at such special meeting as large a number of members as were present when such vote was taken.

1.0206 Rules and Order of Business

Rules and order of business for the parliamentary government of the governing body shall be governed by Robert's Rules of Order. (Source: North Dakota Century Code Section 40-06-05)

1.0207 Home Rule Charter

The Governing Body was created as a City Council form of government according to the Home Rule Charter duly enacted on November 6, 1990.

ARTICLE 3 - Elective Officers

1.0301 City Council - Who Constitutes

The governing body of the City shall be the City Council which shall be composed of the mayor and council members. The mayor and six (6) council members shall be elected as provided by law. (Source: North Dakota Century Code Sections 40-08-01,03)

1.0302 Term of Office of Council Members

Council members shall hold office for four years and until their successors are elected and qualified. Terms of council members shall be arranged so that only one-half of the council members shall be elected in any one election.

1.0303 Mayor - Qualifications - Term

The chief executive officer of the City is the mayor. The mayor shall be a qualified elector within the City and shall hold office for four years and until a successor is elected and qualified. (Source: North Dakota Century Code Section 40-08-14)

1.0304 When President and Vice President of a Council are Elected

The provisions of Section 40-08-11 of the North Dakota Century Code and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance. At the organization meeting in each even numbered year, the members of the City Council shall proceed to elect from their number a president and vice president who shall hold their respective offices until their successors are elected at the organization meeting following the next biennial election.

1.0305 Vacancies on Council or in Office of Mayor - How Filled

If a vacancy occurs in the office of council member by death, resignation or otherwise, City Council may call a special City Election to fill such vacancy for the unexpired term or may, after fifteen days of the date of such vacancy appoint a person to fill such vacancy until the next City Election, at which election the unexpired term shall be filled. Upon petition of five percent of the electors, as determined by the total number of votes cast in the last general election, the council shall call a special election to fill a vacancy occurring more than six months before the next City Election, provided such petition has been submitted with in fifteen (15) days and before 4:00 p.m. of the fifteenth (15th) day of the date of such vacancy or of the vacancy being filled by appointment. If the petition is mailed, it shall be in possession of the council or its representative before 4:00 p.m. on the fifteenth (15th)

day after the vacancy occurs or after the vacancy was filled by appointment.
(Source: North Dakota Century Code Section 40-08-08)

If a vacancy occurs in the office of mayor, the City Council may call a special City Election to fill such vacancy for the unexpired term or may, after fifteen days from the date of such vacancy, elect one of its members to act as mayor, the member so elected shall possess all of the rights and powers of the mayor until the next election and until a mayor is elected and qualified. Upon petition of five percent of the electors, as determined by the total number of votes cast in the City in the last General Election, the council shall call a special election to fill a vacancy occurring more than six months prior to the next City Election, provided such petition is submitted within fifteen days of the date of such vacancy. During the interim between date when a vacancy occurs in the office of the mayor and election and qualification of a successor, the president of the City Council shall be acting mayor. (Source: North Dakota Century Code Section 40-08-16)

1.0306 Absence or Disability of Mayor - Who to be Acting Mayor

During the absence of the mayor from the City or during his temporary disability, the president of the City Council shall be the acting mayor and shall possess all of the powers of the mayor. In the absence or disability of the mayor and the president of the City Council, the vice president of the City Council shall be the acting mayor. (Source: North Dakota Century Code Section 40-08-13)

1.0307 Mayor to Preside at Council Meetings - Voting Power of Mayor

The mayor shall preside at all meetings of the City Council, but shall not vote except in case of a tie, when he shall cast the deciding vote. (Source: North Dakota Century Code Section 40-08-18)

1.0308 Mayor may Remove Appointive Officers - Reasons for Removal to be Given

The mayor may remove any office appointed by him whenever he is of the opinion that the interests of the City demands such removal, but he shall report the reasons for such removal to the council at its next regular meeting. (Source: North Dakota Century Code Section 40-08-19)

1.0309 Mayor may Suppress Disorder and Keep Peace

The mayor may exercise within the City limits the powers conferred upon the sheriff to suppress disorder and keep the peace. (Source: North Dakota Century Code Section 40-08-20)

1.0310 Mayor to Perform Duties Prescribed by Law - Enforced Laws and Ordinances

The mayor shall perform all duties prescribed by law or by the city ordinances, and shall see that the laws and ordinances are faithfully executed. (Source: North Dakota Century Code Section 40-08-22)

1.0311 Inspection of Books, Records and Papers of City by Mayor

The mayor, at any time, may examine and inspect the books, records and papers of any agent, employee or officer of the City. (Source: North Dakota Century Code Section 40-08-23)

1.0312 Ordinance or Resolution Signed or Vetoed by Mayor

The mayor shall sign or veto each ordinance or resolution passed by the council. (Source: North Dakota Century Code Section 40-08-24)

1.0313 Message to Council

The mayor annually and from time to time shall give the council information relative to the affairs of the City and shall recommend for consideration such measures that he may deem expedient. (Source: North Dakota Century Code Section 40-08-25)

1.0314 Mayor May Call on Male Inhabitants to Aid in Enforcing Ordinances

When necessary, the mayor may call on each male inhabitant of the City over the age of eighteen years to aid in the enforcing of the laws and ordinances of the City. (Source: North Dakota Century Code Section 40-08-26)

1.0315 Police Chief and Policemen Appointed by Mayor

The mayor may appoint any number of policemen which he and the City Council may deem necessary to preserve the peace of the City, and he shall appoint one of the number as chief of police. Such appointment shall be subject to approval of the council. (Source: North Dakota Century Code Section 40-08-27)

1.0316 Mayor May Administer Oath

The mayor of the City may administer oaths and affirmations. (Source: North Dakota Century Code Section 40-08-28)

ARTICLE 4 - Elective Officers Other Than Governing Body

1.0401 Municipal Judge

There shall be elected each four years a municipal judge who shall hold office until a successor is elected and qualified. The municipal judge shall perform all the duties prescribed by law and the ordinances of this City. The municipal judge shall receive an annual salary as full compensation for all services rendered.

1.0402 Report to the City Council

It shall be the duty of the municipal judge to make a full report under oath, of all proceedings in the actions or matters before him in which the City is a party, or interested therein, to the governing body of the City at the close of each month. Until such report has been filed with the city auditor, no salary shall be paid the judge for such work. The City Attorney shall also be provided a copy of said monthly report.

1.0403 Contents of Report

Such report shall contain the names of the parties to such action or proceeding, a statement of all orders made, whether the defendants be committed, fined or released from custody, the judgment, the extent thereof, the costs, the amount of costs and fine paid, if any, with the disposition thereof, together with an itemized account of any fees of all officers and witnesses and the names of each, the name or each person making the complaint, and the nature and date thereof.

1.0404 Receipt to Accompany Report

This report will be accompanied by the duplicate receipt or receipts of the city auditor for the total amount of the fees and money so collected on behalf of the City.

1.0405 Court Hours

The municipal judge shall be in attendance at municipal court for the transaction of business that may come before him and shall devote the time necessary to handle and dispose of the business coming before him.

1.0406 Duties of Municipal Judge

Additional duties of the municipal judge shall be as provided by the provisions of Chapter 40-18 of the North Dakota Century Code and all amendments.

ARTICLE 5 - Appointive Offices

1.0501 Appointive Officers in Council Cities

The mayor, with the approval of the City Council, shall appoint the following officers:

1. city auditor;
2. city assessor;
3. city attorney;
4. city engineer;
5. city chief of police;
6. city public works;
7. such other officers as the City Council deems necessary and expedient.

All appointive offices shall be appointed at the first meeting of the City Council in January of each odd numbered year. The City Council, by majority vote, may dispense with any appointive office and provide that the duties of that office be performed by others. (Source: North Dakota Century Code Section 40-14-04)

1.0502 Term of Appointive Officers

The term of all appointive officers of the City operating under the council form of government shall commence the first day of January succeeding their appointment unless otherwise provided by ordinance, and such officers shall hold their respective offices for two years, and until their successors are appointed and qualified.

1.0503 Officers Commissioned by Warrant - City Auditor to Receive Certificate of Appointment

All officers elected or appointed, except the city auditor, council members and mayor, shall be commissioned by warrants signed by the auditor and the mayor or president of the City Council. The mayor shall issue a Certificate of Appointment to the auditor. (Source: North Dakota Century Code Section 40-14-06)

1.0504 General Duties of City Auditor

It shall be the duty of the city auditor to issue the calls for all special meetings of the City Council when requested to do so by the mayor or any two (2) members of the City Council. (Source: North Dakota Century Code Section 40-08-10) He shall also keep a full and complete record of all meetings of the City Council and shall keep a book titled as the "Ordinance Book" and shall record therein at length all ordinances of the City. He shall also keep a book titled as the "Special Assessment Book" in which he shall keep all records of special assessments. All such books shall have full and complete indexes of the contents thereof. He shall report to the City Council at the end of every month a list of all warrants, interest coupons, bonds or other evidence of indebtedness which may have been redeemed or paid by him during the month and he shall duly give to the council a copy of his receipt therefore. He shall further handle all correspondence, permits and licenses and shall do and perform each, every and all duties and things prescribed for him to do by statutes of this state, or by an ordinance, resolution or proper instruction of the City Council. (Source: North Dakota Century Code Section Chapter 40-16)

1.0505 General Duties of City Attorney

The city attorney shall conduct all the law business of the City and of the departments thereof, and all law business in which the City shall be interested; he shall, when requested, furnish written opinions upon the subjects submitted to him by the City Council, or any other department. It shall also be his duty to draft all ordinances, bonds, contracts, leases, conveyances and such other instruments as may be required by the officers of the City; to examine and inspect tax and assessment rolls and all other proceedings in reference to the levying and collection of taxes and to perform each and every and all duties and things prescribed by him to do by statutes of the state, or by an ordinance, resolution or proper instruction of the City Council.

The City may determine to also employ Bond Council to draft and furnish bonds as necessary for City business.

1.0506 General Duties of Other Appointive Officers

All other appointive officers shall perform such duties as directed by the City Council, directed by these ordinances or directed or authorized by the laws of the state of North Dakota.

ARTICLE 6 - Special Provisions Regarding City Officers

1.0601 Bonds of Municipal Officers and Employees

The following officers and employees of the City shall be bonded in the sums as hereinafter set forth:

mayor
city auditor
municipal judge
city assessor
public works director

Said officers or employees shall be bonded in accordance with the provisions of Section 40-13-02 and Chapter 26.1-21 of the North Dakota Century Code.

1.0602 Oaths of Municipal Officers

Every person appointed to any municipal office, before he enters upon the discharge of the duties thereof, shall take and subscribe the oath of office prescribed for civil officers and, except in the case of the auditor, shall file the same with the city auditor within 10 days after notice of his election or appointment has been given. The oath of the auditor shall be filed in the office of the county auditor. Refusal to take the oath of office shall also be deemed a refusal to serve and, therefore, a failure to qualify for the office pursuant to NDCC 44-02-01. (Source: North Dakota Century Code Section 40-13-03)

1.0603 Salaries of Elected Officers Fixed by Ordinance or Resolution

Any elected officer of this City shall receive the salary, fees or other compensation fixed by ordinance or resolution within the limitations set by NDCC sections 40-08-07, 40-08-15 and 40-18-06.

1.0604 Salaries of Appointive Officers and Employees

Salaries of City Appointive Officers and Employees, except as otherwise provided by law, shall be in such sums and amounts as may be, by resolution of the governing body, fixed from time to time.

1.0605 Meals and Lodging - Amount Allowed

Each elective or appointive officer, employee, representative, or agent of this City, or of any of its subdivisions, boards or commissions may make claim and shall upon approval of such claim, be paid as an allowance for meals and lodging while engaged within this State, in the discharge of a public duty away from their normal working and living residence for all or any part of any quarter of a day at the rates specified by state law.

Verifications of claims shall not be required for the first three quarters listed above and only a lodging receipt shall be required for the fourth quarter.

Such persons engaged in travel outside of the state shall not claim a sum in excess of that allowed by state law a day for meals and in addition thereto actual lodging expenses. Verification by receipt for such out-of-state travel expense shall be required only for lodging expense claimed. Verification of any other type of expenses not prescribed by this section shall be by receipt.

Any person filing a false claim with the City for mileage or expenses as herein permitted is guilty of an infraction.

1.0606 Personal Interest in Contract by Public Officer - Prohibited

No contract for the furnishing of supplies to the City, or buying of property from the City shall be entered into by any officer of the municipality, provided, however, that such contracts may be entered into with an officer of the City, if such contract is unanimously approved by other members of the governing body of the City by a finding unanimously adopted by such other members, and entered in the official minutes of the governing body, to be necessary for the reason that the services or property are not otherwise available at equal cost. (Source: North Dakota Century Code Section 40-13-05)

1.0607 Retiring Officer to Turn Over Books

Any person having been an officer of the City shall, within five days after notification and request, deliver to his successor in office, all property, books and effects of every description in his possession belonging to the City or appertaining to his office; and upon his refusal to do so, shall be liable for all damages caused thereby, and guilty of an infraction.

1.0608 Administrative Policy and Procedure

PERFORM DUTIES. Each officer shall:

1. Perform all duties required of his office by law or ordinance and such other duties not in conflict as may be required by the governing body.
2. Be immediately responsible to the governing body for the effective administration of their departments and all activities assigned thereto.
3. Keep informed as to the latest practices in their particular field and shall inaugurate with approval of the governing body such new practices as appear to be of benefit to the service and to the public.
4. Submit such reports of activities of their departments as the governing board may request.
5. Be responsible for the proper maintenance of all City property and equipment used in their departments.
6. 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 governing board.
7. Cooperate with other officers, departments and employees.
8. Have power to direct and supervise all department subordinates.
9. Be available during the hours designated by the City governing body.

1.0609 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 be guilty of an infraction. Upon conviction, for a violation of this section, such person shall be fined not more than \$500.00.

ARTICLE 7 - Purchasing and Disposition of Property

1.0701 Competitive Bidding Requirements

All purchase of and contracts for supplies and contractual services with a cost in excess of one hundred thousand dollars (\$100,000.00) shall be based on competitive bids.

1.0702 Procedure

All supplies and contractual services except as otherwise provided herein, when the estimated cost thereof shall exceed \$100,000.00 shall be purchased from the lowest responsible bidder after due notice inviting proposals. Due notice shall be given by advertising for the sale or purchase of the property or service by giving written notice in the official newspaper of the City for three (3) consecutive weeks and the opening of the bids so received not less than 21 days after the first publication thereof. The lowest responsible bidder shall be the bidder who, in addition to price, has the best ability, capacity and skill to perform the contract or 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 performance of previous contracts, sufficiency of financial resources and previous and existing compliance with state laws and City ordinances.

1.0703 Open Market Purchases - Emergency

When the City governing body decides by unanimous vote that an emergency requires the immediate purchase of supplies or contractual services, the purchases may be made in the open market without competitive bidding.

1.0704 Accounts Against City to be in Writing

Accounts, claims and demands against the City for any property or services for which the City shall be liable, shall be made in writing and shall include an itemized statement of the property or services provided.

1.0705 Further Verification May be Required

It is hereby provided that any officer of the City Council before whom any bill, claim, account or demand against the City shall come for audit and approval may require to be furnished a statement made under oath, containing such other information as is deemed necessary for the further verification of any bill, claim, account or demand against the City, or any of its undertakings.

1.0706 Conveyance, Sale, Lease or Disposal of Property

Real property belonging to the municipality shall be conveyed, sold, leased or disposed of, only as approved of by a two-thirds 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. Personal property shall be conveyed by a majority vote of

all members of the governing body. When the property to be disposed of, whether real property or personal property is estimated, by the governing body of the municipality to be of a value of less than \$2,500.00, such property may be sold at private sale upon the proper resolution of the governing body. In all other cases, such property may be sold only at public sale or as provided under Section 40-11-04.2 of the North Dakota Century Code (Source: North Dakota Century Code Section 40-11-04). Bids for the purchase or lease of real property belonging to the municipality, whether or not advertisement therefore has been made, shall be made directly to the governing body and submitted to the city auditor, who shall present any and all such bids to the governing body 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. Said statutory procedures include the following:

1. Lease of airports or landing fields, or portions thereof shall be under authority granted in Section 2-02-15, NDCC. Said lease shall further be in compliance with regulations and directives appropriate federal agencies.
2. Conveyance of right of way for any state highway shall be as provided in Section 24-01-46, NDCC.
3. 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.
4. Conveyance of property to a municipal parking authority shall be as provided in Section 40-61-05, NDCC.
5. Lease of public buildings or portions thereof shall be as provided in Chapter 48-08, NDCC.
6. Granting of concessions for cafes, restaurants and confectioneries in public buildings or on public grounds shall be as provided in Chapter 48-09, NDCC.
7. Granting of right-of-way for a railway, telephone lines, electric light system or a gas or oil pipeline system shall be as provided in Section 49-09-16, NDCC.

1.0707 Real Property Transfer Requirements

The provisions of Sections 40-11-04.1 and 40-11-04.2 of the North Dakota Century Code and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

ARTICLE 8 - Municipal Elections

1.0801 Qualified Electors in Municipal Elections - Restrictions

The provisions of Section 40-21-01 of the North Dakota Century Code and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

Every resident of a municipality who is qualified to vote therein at general elections may vote at all municipal elections held therein. When elections are held by wards or precincts, no person may vote in any place other than the ward or precinct of which he is a resident.

1.0802 Elections in Council Cities - Polling Places - Polls Open - Notice

The provisions of Section 40-21-02 of the North Dakota Century Code and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

Biennial municipal elections shall be held on the second Tuesday in June in each even numbered year at such place or places as the City Council shall designate. The polls shall be opened and closed as provided by state law for the opening and closing of polls at primary, general and special elections. Ten days notice of the time and place of holding each election and offices to be filled thereat shall be given by the city auditor by publication in the official newspaper of the City as provided by Section 40-01-09.

1.0803 Designation of Polling Places for Municipal Elections

The governing body of the City, at the time of calling any general or special municipal election, or prior to the time of registration for said election, if said registration is required by law, shall by resolution, designate such voting precincts and polling places for said election as it may deem necessary for the conduct of the same, and shall, in giving notice of said election, designate such voting precincts and polling places.

1.0804 Compensation of Inspectors, Judges and Clerks at Municipal Elections

The provisions of Section 40-21-05 of the North Dakota Century Code and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

Each inspector, judge or clerk of any regular or special municipal election shall receive compensation as determined for election officials in Section 16.1-0505. The amounts determined to be due election officials at municipal elections shall be paid from the funds of the municipality holding the election. In the event a special municipal election is held on the same date as a statewide, district wide or countywide election, and if the same election officials perform services for both elections, the City shall not be required to pay the elections officials, except for any extra officials necessary for such special municipal election.

1.0805 Reference to Party Ballot or Affiliation in Petition of Candidate for Municipal Office - Prohibited

The provisions of Section 40-21-06 of the North Dakota Century Code and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

No reference shall be made to a party ballot or to the party affiliation of a candidate in a petition to be filed or in behalf of a candidate for nomination to a public office in any incorporated City in this state.

1.0806 Petition for Nomination of Elected Official in Municipalities -
 Signatures Required - Contents

The provisions of Section 40-21-07 of the North Dakota Century Code and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

A candidate for any public office in the City may be nominated by filing with the city auditor, at least sixty days and before four p.m. on the sixtieth day prior to the holding of the election, a petition signed by not less than ten percent of the number of qualified electors who voted for that office in the last City election. Qualified electors who sign such a petition shall reside within the ward or precinct in and for which such officer is to be elected, if the election is by wards, or within the corporate limits of the City if the officer is elected at large. If a petition is mailed, it shall be in the possession of the city auditor before four p.m. on the sixtieth day prior to the holding of the election. In no case shall more than three hundred signatures be required, and such signatures may be on separate sheets of paper. Each qualified elector who signs a petition shall add to the petition the petitioner's mailing address. If a City election is not held in conjunction with a state or county election, a candidate may be nominated by filing the required petition with the city auditor at least thirty-three days and before four p.m. on the thirty-third day before the holding of the election.

1.0807 Ballots in Municipalities - Makeup

The provision of Section 40-21-08 of the North Dakota Century Code and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

The auditor of the City shall place only the names of the persons nominated upon the ballot. The auditor shall arrange the offices upon the ballot in the order in which they are named in the statutes. The auditor shall determine the arrangement of the names of the candidates upon the ballot by conducting a drawing within five days following the last day for the filing of the nomination papers. The city auditor shall set the date, time and location for conducting the drawing and shall give advance notice of the drawing to the candidates involved.

1.0808 Clerks Appointed to Fill Vacancies - Oath - Powers and Duties of
 Judges and clerks of Municipal Elections

The provisions of Section 40-21-11 of the North Dakota Century Code and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

When necessary, the judges of election at a municipal election shall appoint clerks to fill vacancies. The judges and clerks of a municipal election shall take the same oath and have the same powers and authority as judges and clerks of general state elections.

1.0809 Counting Ballots - Returns - Canvass of Returns by Governing Body
 of Municipality - Agreement with the County

The provisions of Section 40-21-12 of the North Dakota Century Code and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

The ballots case in a municipal election shall be counted and the returns of the election prepared by the election board immediately after the closing of the polls. The ballots and the returns of the election shall be returned to the city auditor under seal within two days and before four p.m. on the second day after the election. Thereafter, the governing body of the municipality shall canvass the returns and declare the result of the election and cause a statement thereof to be entered in its books of minutes.

When a City election is held in conjunction with a state or county election, the City governing body shall enter into an agreement with the governing body of the county concerning the use of a single canvassing board, the sharing of election personnel, the printing of election materials, the publishing of legal notices and the apportioning of election expenses.

1.0810 Municipal Elections to be Governed by Rules Applicable to County Elections - Absent Voting

The provisions of Section 40-21-13 of the North Dakota Century Code and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

The manner of conducting, voting at, keeping poll lists and canvassing votes at municipal elections, recounts and contests of the results of such elections shall be governed, as nearly as possible and except as otherwise provided in this chapter, by the laws of this state applicable to elections and contests in the case of county officers. Absent voters' ballots must be available in municipal elections in accordance with the provisions of Chapter 16.1-07 as amended.

1.0811 City Auditor to Notify of Election or Appointments

The provisions of Section 40-21-14 of the North Dakota Century Code and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

The city auditor, within five days after the result of an election is declared or the appointment of an officer is made within the municipality, shall notify each person elected or appointed to municipal office of his election or appointment. Within the same period of time, the city auditor shall also notify the state Supreme Court of the election or appointment of any municipal judge or alternate judge.

1.0812 New Election Upon Failure to Elect

The provisions of Section 40-21-15 of the North Dakota Century Code and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

If there is a failure to elect an officer required to be elected, the governing body of the municipality may order a new election.

1.0813 Special Elections Conducted in Same Manner as General Elections

The provisions of Section 40-21-16 of the North Dakota Century Code and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

Special municipal election to fill vacancies or for any other purpose shall be held and conducted by the inspectors and judges of election of several precincts in the same manner and the returns shall be made in the same form and manner as at regular municipal elections.

1.0814 Highest Number of Votes Elects in Municipal Election - Procedure on Tie Vote

The provisions of Section 40-21-17 of the North Dakota Century Code and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

The person having the highest number of votes, not including votes that may not be counted (such as excluded write-in votes), for any municipal office shall be declared elected to such office. In case of a tie vote in the election of any municipal officer, a recount must be conducted pursuant to Section 16.1-16-01 of the North Dakota Century Code. If a recount results in a tie vote, the choice shall be determined by a coin flip in the presence of the governing body of the municipality and in such manner as it shall direct.

ARTICLE 9 - Records Management Policy

1.0901 Adoption of Policy

The management of records in the City shall meet with the provisions of the City Records Management Manual published by the Records Management Division of the North Dakota Information Technology Department. That publication is hereby made a part of this chapter by reference with the exceptions of the sections hereinafter set forth affecting local conditions in the City, which are amended, deleted or added to, for use and application in the City, and the City hereby adopts said manual as so modified.

ARTICLE 10 - Home Rule Charter Provisions

10.1001 Home Rule Charter Re-enacted

The City of Harvey duly enacted a Home Rule Charter on November 6, 1990, and by these newly enacted ordinances, the City of Harvey hereby re-enacts and adopts all of the provisions of the Home Rule Charter duly enacted on November 6, 1990, and any amendments made thereafter, and included in this Article.

10.1002 Sales and Use Tax

1. Definitions

All terms as defined in Chapters 57-39.2 and 57-40.2 NDCC, including any future amendments, are adopted by reference. All references to the North Dakota Century Code include amendments adopted by the Legislature of the State of North Dakota. [Reference Prior Ordinance 328 & 330]

2. Sales Tax Imposed

Except as otherwise provided in this Article, a tax of one percent is imposed upon the gross receipts of retailers from all retail sales within the corporate limits of the City of Harvey, North Dakota. Such sales tax shall parallel the State of North Dakota sales and use tax law. All of the exemptions applicable for state sales and use tax law apply to the Harvey sales and use tax including exemptions for tax exempt entities (Schools, counties, state agencies, etc.). Such sales tax shall be applied to the following:

- a. Tangible personal property, consisting of goods, wares or merchandise.
- b. Communications services.
- c. Tickets or admissions to places of amusement or entertainment or athletic events, including amounts charged for participation in an amusement, entertainment, or athletic activity, including the playing of any machine for amusement, or entertainment in response to the use of a coin.
- d. Magazines and other periodicals.
- e. The leasing or renting of a hotel or motel room or tourist court of accommodations.
- f. The leasing or renting of tangible personal property, the transfer of title to which has not been subjected to a retail sales tax under this chapter.
- g. Sales of alcoholic beverages and tobacco products as defined in Section 57-39.2-03.2 NDCC.
- h. Furnishing and installation of, or attachment to real property in this state by a contractor or a subcontractor who is a retailer of drapes, hardware for hanging drapes, or carpet for floor covering.

3. Use Tax Imposed.

Except as otherwise provided in this chapter, a use tax of one percent is imposed on the storage, use or consumption in the City of Harvey on:

- a. The purchase price of tangible personal property purchased at retail for storage, use or consumption within the City.
- b. The fair market value of tangible personal property which was not originally purchased for storage, use or consumption in the City, at the time which it is brought into this city.
- c. Alcoholic beverages and tobacco products which are stored, used or consumed in this City, as provided in Section 57-39.2-03.2 NDCC.
- d. The purchase price of tangible personal property used by a contractor or subcontractor to fulfill a contract as defined in Section 57-40.2-03.3 NDCC. This tax applies only to bids submitted on or after October 1, 1991.

4. Exemptions.

All sales, storage, use or consumption of tangible personal property which are exempt from imposition and consumption of the sales or use tax of the state of North Dakota are specifically exempt from the provisions of this article. In addition to the exemptions provided by state law, the Harvey tax ordinance provides exemptions for sales of natural gas, gross receipts from the sales of farm machinery and agricultural repair parts, automobiles, trucks and pickups, farm irrigation equipment and steam used for the processing of any product.

5. Maximum Tax Imposed.

No single transaction involving one or more items is subject to a tax in excess of Twenty-five (\$25.00) Dollars.

6. Contract with State Tax Commissioner.

The City Auditor for the City of Harvey is hereby authorized to contract with the Tax Commissioner for administration and collection of taxes imposed by this chapter. The City Auditor has all powers granted the commissioner and in the absence of a valid contract with the Commissioner or failure of the Commissioner to perform the delegated duties, shall perform these duties in place of the Commissioner.

7. Collection and Administration.

The Tax Commissioner and City Auditor for the City of Harvey shall have the powers enumerated in the provisions of Chapter 57-39.2 NDCC and Chapter 57-40.2 NDCC relating to the collection and administration of the state sales and use tax, including all administrative rules adopted by the Tax Commissioner. The Tax Commissioner is authorized to establish rate tables integrating the tax imposed by this chapter with other state, county and city taxes.

8. Corporate Officer Liability.

Officers of any corporation required to remit taxes imposed by this article are personally liable for the failure of the corporation to file required returns or remit required payments. The dissolution of a corporation shall not discharge an officer's liability for a prior failure of the corporation to make a return or remit the tax due. The tax, penalty and interest due may be assessed and collected pursuant to the provisions adopted by this Ordinance.

9. Dedication of Tax Proceeds.

All revenues raised and collected under this Ordinance, less administrative expenses, shall be dedicated only to a community development fund. All revenue shall be maintained in the fund, to be known as the Harvey Community Development Fund, separate and apart from all other funds, except as provided by this section.

The revenue contained in such fund shall be used for community and economic development projects. Proposed projects may include economic development and job creation, professional health care recruitment, a Harvey Area Growth

Fund, and general infrastructure development, including water, sewage, roads, utilities, and other projects that will enhance job creation.

10. Compensation

City sales and use tax permit holders are allowed to train a portion of their city tax collections or use tax obligation to help recover administrative expenses. This compensation shall equal three percent (3%) of the City sales and use tax due, however, the deduction is limited to \$83.33 per month or \$250.00 per quarter. A tax return must be filed and paid in full by the scheduled due date or the compensation will be disallowed and the tax obligation will be subject to penalty and interest.

11. Termination.

The tax imposed herein shall terminate or extend upon resolution of the City Council.

12. Option for Continuation.

Ninety (90) days prior to the termination of the sales tax, the City Council will assess the need for continuation. If determined that continuation would be beneficial to the City, the appropriate legal steps will be followed to extend sales tax collections.

10.003 Referendum and Initiative.

1. Article IV of the City of Harvey Home Rule Charter, pertaining to the right of citizens to refer actions of the City Council, and to initiate measures on behalf of the City, is hereby implemented in the following subsections. [Reference prior Ordinance 343]
2. The voters of the City of Harvey shall have the power to refer and initiate ordinances and resolutions, except that the power of initiative and referendum shall neither extend to the annual appropriations ordinance nor to those ordinances or resolutions implementing public projects upon which an election has previously been held, nor shall the power of initiative and referendum extend to special improvement projects carried out under the provisions of the North Dakota Century Code.
3. Initiative petitions must be signed by qualified voters of the City equal to at least 25 percent of the total votes cast in the City at the most recent presidential election.
4. Referendum petitions must be signed by qualified voters of the City equal to at least 20 percent of the total votes cast in the City at the most recent presidential election.
5. Each petition, whether for initiating or referring an ordinance or resolution, shall contain or have attached thereto throughout their circulation the full text of the ordinance or resolution proposed or referred. In addition, each petition shall list the names of three qualified voters of the City who shall constitute the "Committee for the Petitioners" that shall represent and act for the petitioners.

6. Each petition shall also contain an affidavit signed by the circulation of the petition affirming that the signers thereto are believed by the circulation to be qualified voters of the City of Harvey.
7. Referendum petitions for ordinances must be filed with the City Auditor within 30 days after the second reading of the ordinance referred. Referendum petitions for resolutions must be filed with the City Auditor within 30 days after the passage of the resolution referred.
8. The City Auditor shall decide upon the sufficiency of each petition and shall have 20 days after the petition is filed to certify its sufficiency . A petition shall be deemed sufficient if the City Auditor has not certified to the contrary in said 20-day period. If the City Auditor finds the petition insufficient, he shall notify the "Committee of the Petitioners", by specifying the insufficiencies and allowing 10 days for correction or amendment, and, only in the case of a petition for initiating an ordinance, for additional signatures within said 10-day period.
9. Upon the filing of a referendum petition, the ordinance or resolution referred, except emergency ordinances or resolutions, as hereafter defined, shall be suspended. Such suspension shall terminate:
 - a. If the petitions are deemed to be insufficient and not corrected or amended as above provided; or
 - b. The petitions are withdrawn by the "Committee for the Petitioners", as provided in subsection (13) of this article; or
 - c. The City Council of the City repeals the ordinance or resolution; or
 - d. After 30 days have elapsed after the City election on the referral.

An emergency ordinance or resolution is an ordinance or resolution thus designated by the City Council and passed by a 5/6 vote of such body.

10. Upon the final determination of the sufficiency of the petitions for initiating an ordinance or resolution, the City Council shall have 60 days in which to adopt the proposed ordinance or resolution. If the Council fails to adopt the proposed ordinance or resolution, without any change in substance from that proposed, within the said 60-day period, the City Council shall submit the same to the voters of the City at an election within 180 days after the final determination of the sufficiency of the petition. If no regular City election is held within said time period, the City Council shall provide for a special election; otherwise the vote shall be taken at such regular election.
11. Copies of the proposed ordinance or resolution shall be available at the office of the City Auditor for at least 10 days prior to the election. The ballot shall fairly state a summary of the provisions of the proposed ordinance or resolution and copies of the proposed ordinance or resolution shall be available at the polling places.
12. Upon the final determination of the sufficiency of the petitions for a referendum, the City Council shall cause an election on the referral to

be held within 90 days thereafter. The election shall be held at a regular City election if one is scheduled within said time period; if none, then at a special election called by the City Council. The ballot shall fairly state a summary of the ordinance or resolution referred. Copies of the City Auditor for at least 10 days prior to the election.

13. An initiative or referred referendum petition may be withdrawn at any time prior to the scheduling of the election by the City Council upon filing of a request for withdrawal signed by all members of the "Committee for the Petitioners".
14. If a majority of the qualified voters of the City that vote on an initiated ordinance or resolution vote in its favor, it shall be considered to be adopted upon certification of the election results and shall thenceforth stand the same as if adopted by the City Council. If a majority of qualified voters of the City that vote on referred ordinance or resolution vote against it, such ordinance or resolution shall be considered to be repealed upon the certification of the election results.
15. Any ordinance or resolution adopted pursuant to initiative as by this article provided may not be referred except at a regular City election taking place at least 2 years after the election at which such initiative ordinance or resolution was adopted. The City Council may not repeal or make any material amendment to an initiated ordinance or resolution or to an ordinance or resolution referred and upheld by a majority vote of the qualified voters of the City except by a vote of 5/6 of the members thereof for 10 years, but after which such an ordinance or resolution may be repealed or amended the same way as any other ordinance or resolution.
16. An ordinance or resolution referred and repealed by a vote of the electors as herein provided shall not be reenacted by the City Council before a period of at least 2 years from the date of the referral election.

1.1004 Write-In Candidates

1. Statutory Authority

The Legislature of the State of North Dakota has provided for the establishment and exercise of home rules cities. See N.D. Const. Art. VII, § 6, and NDCC ch. 40-05.1. A city home rule charter extends to all city matters. NDCC § 40-05.1-05. Home rule authority provides the right of self-government in all matters within the powers enumerated in the home rule chapters. NDCC § 40-05.1-06. The City of Harvey Home Rule Charter, in Article III, Section 6, provides the power to provide for all matters pertaining to city elections, except as to qualification of electors. [Reference prior Ordinance 348]

2. Counting of Write-in Votes

An Election Board of the City of Harvey, may **NOT COUNT** any write-in votes of the following:

- a. A person who is required to file a "Certificate of Write-In Candidacy" form and "Intent to Publish Candidacy" form according to this ordinance, but who has failed to file said Certificate form and Intention form and has not been certified as a Write-in Candidate.
 - b. A fictitious person, nonperson, or person clearly not eligible to qualify for the office of which the vote was cast, such as a person under 18 years old.
 - c. A statement concerning the candidates, but not an actual vote for any one candidate.
3. File certificate of write-in candidacy and intent to publish candidacy; and list of certified write-in candidates.

Any person who intends to be a write-in candidate at any City of Harvey Elections shall file a Certificate of Write-in Candidacy and the Intent to Publish Candidacy, according to the following terms:

a. Certificate of Write-in Candidacy Form

(1). The Certificate of Write-in Candidacy form shall contain all of the following information:

- (a). Name of the Write-in Candidate.
- (b). Address
- (c). City Position Desired
- (d). Affidavit signed by write-in candidate.

(2). The Certificate of Write-in Candidacy form shall be filed with the City Auditor **no later than Fourteen (14) days prior** to any City election, except an emergency election with notification less than Fourteen (14) days, and then, the candidate shall file the form the day after public notice of the emergency election.

b. Intent to Publish Candidacy Form

(1). The Write-in candidate shall provide proof to the City Auditor of the Notice of Write-in Candidacy which will be published in the official newspaper of the City of Harvey.

(2). The Notice of Write-in Candidacy shall run, at least once, in the public notice section of the official newspaper of the City of Harvey, **no later than ten (10) days prior** to the City Election.

(3). The Notice of Write-in Candidacy shall contain at least the following format of information to be published in the official newspaper:

"NOTICE OF WRITE-IN CANDIDACY

(Name of candidate) hereby states his/her Intention to run for Election for the office of (Name of office) as a Write-in candidate in the upcoming election, on (date of election)."

c. List of Certified Write-in Candidates

- (1). The City Auditor shall inspect both the Certificate of Write-in Candidacy form, and the Intention to Publish candidacy form for timeliness and completeness.
- (2). If both forms are timely and complete, and the Candidacy is published in the official newspaper of the City of Harvey, at least ten (10) days prior to the election, then, the candidate shall be placed on the List of Certified Write-in Candidates.
- (3). The list of certified write-in candidates, certified by the City Auditor, shall be provided to the Election Board.

NOTE: SAMPLE FORMS ATTACHED FOR WRITE-IN CANDIDATES

CERTIFICATE OF WRITE-IN CANDIDACY FORM

1. NAME:
2. ADDRESS:
3. POSITION DESIRED:
4. AFFIDAVIT OF CANDIDATE:

STATE OF NORTH DAKOTA)
)SS.
COUNTY OF WELLS)

After being duly sworn under oath, I hereby depose and state that the name and address listed above are correct; that I fill out this form because I desire to be Certified as a Write-In Candidate for the Office of , in the City of Harvey, Wells County, North Dakota, to be chosen at the election to be held on _____, and I hereby request to be placed on the List of Certified Write-In Candidates.

Candidates' Signature

Subscribed and sworn to before me this _____ day of
(month), _____ (year).

(SEAL)

My Commission Expires: _____ Notary Public
Wells County, North Dakota

INTENT TO PUBLISH CANDIDACY FORM

1. PROVIDE A PROOF OF "NOTICE OF WRITE-IN CANDIDACY" BELOW
(Note: you may attach a copy of the newspaper clipping or typed form to
be submitted to the newspaper for publication).

2. AFFIDAVIT OF CANDIDATE

STATE OF NORTH DAKOTA)
)SS.
COUNTY OF WELLS)

After being duly sworn under oath, I hereby depose and state that I
have submitted the above proof for publication in the official newspaper of
the City of Harvey, Wells County, North Dakota, to run at least ten (10) days
prior to the election.

Candidates' Signature

Subscribed and sworn to before me this _____ day of
(month), _____ (year).

(SEAL)

My Commission Expires: _____ Notary Public
Wells County, North Dakota