

CHAPTER THREE

PUBLIC PLACES AND PROPERTY

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CHAPTER THREE

PUBLIC PLACES AND PROPERTY

ARTICLE 1 - Construction and Repair

3.0101 Supervision

All construction maintenance and repair of public streets, alleys, sidewalks and other public ways shall be under the supervision of the city by a designated official. The City designated official 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 ordinance.

3.0102 Construction and Repair - Permits

It shall be unlawful to construct, reconstruct, alter, grade or repair any public street, sidewalk, driveway, curbs or gutters without having first secured a permit therefore, unless said work is approved by a city official. Applications for such permits shall be made to the Auditor and shall state the location of the intended pavement or repair, the extent thereof and the person or firm who is to do the actual construction work. No such permits shall be issued except where the work will conform to the ordinances of the City.

3.0103 Indemnification

Each applicant shall indemnify the City for any loss or damage resulting from the work undertaken or the manner of doing the same.

3.0104 Specifications

All construction, maintenance and repair herein shall be made in conformity with specifications laid down or approved from time to time by the governing body.

3.0105 Duty of 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 so to maintain such sidewalks, the city designated official shall direct him to make such repairs as may be necessary to restore such sidewalk to a safe condition. Should he fail, within 30 days, to follow the directions of the city designated official, the city designated official shall report the facts to the governing body, which shall then proceed as provided in Chapter 40-29 of the North Dakota Century Code.

3.0106 Application for Permit

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

1. Name and address of the owner, or agent in charge, of the property abutting the proposed work area.

2. Name and address of the party doing the work.
3. Location of the work area.
4. 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 or street commissioner shall find reasonably necessary to the determination whether a permit should be issued hereunder.

It shall be an infraction for any violation of these ordinances when there is no specific penalty stated in the chapter or Article, which means that it is possible of a fine up to \$500.00.

3.0107 Standards for Issuance of Permit

The city designated official shall issue a permit hereunder when it is determined:

1. That the work will be done according to the standard specifications of the City for public work of like character.
2. That the operation will not unreasonably interfere with vehicular and pedestrian traffic, the demand and necessity for parking spaces, and the means of ingress and egress to and from the property affected and adjacent properties.
3. That the health, welfare and safety of the public will not be unreasonably impaired.

3.0108 Sidewalks Built to Grade Specifications

All sidewalks shall be constructed in accordance with the elevations and grade therefore to be furnished by the city engineer and shall be constructed under his direction and supervision or under the direction and supervision of the street commissioner. All sidewalks shall meet the following requirements:

1. All sidewalks shall be constructed of concrete.
2. All sidewalks in residential areas shall be constructed not less than five (5) feet in width and shall have a minimum slope one-eighth (1/8) inch per foot from the inside edge toward the street.
3. All sidewalks shall be of concrete (six bag mix/cubic yard) and of at least four (4) inches in thickness. Driveways shall be six bag/cubic yard and at least six (6) inches thick.
4. All sidewalks shall be laid out as follows:

- a. In locations where the right-of-way is seventy (70) feet or less the sidewalks shall be constructed on the property line.
 - b. In locations where the right-of-way is greater than seventy (70) feet the sidewalk shall be constructed eighteen (18) inches out from the property line.
 - c. In no case in the residential district shall the sidewalk be constructed adjacent to the curb unless right-of-way and topographic features require it.
 - d. Notwithstanding any other provision herein all sidewalks shall be set out so that they are in conformity with existing sidewalks to which they may attaché.
5. All sidewalks along Lincoln Avenue south of the Minneapolis, St. Paul & Sault Ste. Marie Railway Co.'s right-of-way to Fourth Street shall be ten (10) feet wide; all sidewalks one block east and west from Lincoln Avenue south of Railroad right-of-way shall be eight (8) feet wide. All sidewalks on any other point or street shall not be less than five feet wide.

3.0109 Materials and Manner of Construction

The kind and quality of material which, and the manner in which driveways, curb and gutter, relaying of block walks and paving repairs shall be constructed shall be determined by the city designated official.

3.0110 City Contractor

The city auditor shall receive bids for the construction of sidewalks, driveways, curb and gutter and paving repairs as the City may find necessary to have done. Such bids shall be made upon blanks furnished by the city designated official and shall conform to specifications filed with the city auditor by the city designated official and approved by the governing body.

All sidewalks, driveways, curb and gutter and alley returns lying between the property line and the abutting street hereafter constructed within the City must conform to this chapter, and the specifications filed with the city engineer, and approved by the governing body must specify the details with respect thereto. 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 governing body, running to the City, conditioned that said contractor shall maintain and keep in good repair, for a period of two (2) years, from date of final acceptance all sidewalks, driveways, curb and gutter, and paving repairs so constructed by such contractor under the terms of the

contract, and that in case of default under the part of such contractor to so maintain and keep such improvements in good repair made by him for the said period of two (2) years, or in case they shall within said time begin to crumble or disintegrate or become cracked or broken to such extent that, in the opinion of the city engineer, the same is not a satisfactory compliance with the specifications for the construction thereof, then the city engineer may direct that such sidewalks, driveways, curb and gutters 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 failure so to repair or to relay the same, the City at any time within said two- (2) year period or thereafter, may cause the same to be repaired or re-laid, 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.

ARTICLE 2 - Use and Care of Streets, Sidewalks and Public Places

3.0201 Obstructions - Penalty

It shall be unlawful for any person, firm or corporation to cause, create or maintain any obstruction of any street, alley, sidewalk, easement, right-of-way, or other public way, except as may be specified by ordinance or by the city engineer or street commissioner.

Any person violating the provisions of this section shall be guilty of an infraction and upon conviction thereof, shall be fined not less than twenty-five dollars (\$25.00) nor more than five hundred dollars (\$500.00).

3.0202 Destruction of City Property - Prohibited - Penalty

It shall be unlawful for any firm, person or corporation to willfully and without just cause or excuse, to injure, deface or destroy any property owned by the City or held by the City for public use. Any person violating the provisions of this section shall be guilty of an offense and be fined not less than twenty-five dollars (\$25.00), nor more than one thousand dollars (\$1,000.00) or be imprisoned in the jail for not to exceed thirty (30) days or by both such fine and imprisonment.

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 governing body. All such lawfully maintained openings shall be guarded by a suitable strong cover or railing to be approved by the street commissioner or the city engineer or the official who supervises public improvements.

3.0204 Wires

It shall be unlawful to erect any poles or wires or maintain any poles or wires over any public place, street, alley or other public way without having first secured permissions from the governing body. Franchise ordinances Otter Tail and Midco etc.

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 Commissioner of Streets and Public Improvements, so that no injury shall be done either to the poles or wires or to the shrubs and trees by their contact.

3.0205 Littering - Prohibited

No person, firm or corporation shall throw or deposit or cause to be thrown or deposited any garbage, glass, bottles, boxes or rubbish of any kind upon any street or alley in the City. (Source NDCC 23-29-05.1)

3.0206 Burning

It shall be unlawful for any person, firm or corporation to burn any leaves, paper, rubbish or other substances in the City, unless approved by the City or Fire Department.

3.0207 Distributing Hand Bills, Etc.

The scattering, throwing or placing of bills, posters, advertising matter, hand bills and other similar items on private premises, sidewalks, streets or other public places in the City must be done in such a manner so as to prevent the items from being blown about these premises, sidewalks, streets or other public places. It shall be unlawful to place them upon any street sign, such as stop signs, utility poles, regulatory poles, etc. Any person or entity violating the provisions of this section shall be guilty of an infraction.

3.0208 Heavy Vehicles

No person, firm or corporation shall move, or cause to be moved over the paved streets, sidewalks, curb and gutter, crosswalks, culverts, bridges and viaducts within the City any engine, tractor, wagon, truck or other vehicle, object or thing which will tend to injure the paving, sidewalks, curb and gutter, crosswalks, culverts, bridges or viaducts over which the same are transported, or which exceeds in weight, 16,000 (usually 16,000) pounds per axle and exceeds 750 (usually 750) pounds per inch of tire widths, or any vehicle to the wheels of which are attached spurs, bars, angle irons or cleats which will tend to mar or deface the paving, sidewalks, curb and gutter, crosswalks, culverts, bridges or viaducts, except under the direction and permission of the governing body and, in addition thereto, shall pay or cause to be paid to said City, upon demand, any and all damages done to the paving, sidewalks, curb and gutter, crosswalks, culverts, bridges or viaducts, provided that when the specified load limits herein contained will cause damage to the City's paved streets, the governing body by resolution adopted, and made public, may lower said load limits for such period of time it may deem necessary. The provisions of this section shall not apply to state and federal highways through the City.

Any person, firm, or corporation causing injury to any paved streets, sidewalks curb and gutter, crosswalks, culverts, bridges and viaducts

within the City for any reason shall be responsible for any and all damages and shall repair or replace the damaged paved streets, sidewalks curb and gutter, crosswalks, culverts, bridges and viaducts as directed by the City.

3.0209 Snow Emergency Declaration

1. When the director of public works or designate determines on the basis of existing weather conditions that a snow emergency declaration is necessary it must be broadcast by the local radio and television station.
2. The declaration must include a list of the snow emergency routes on which a parking prohibition is in effect, unless the declaration is in effect for all designated snow emergency routes, in which case the declaration shall so state. The snow emergency routes are outlined in the City Snow Removal Plan.
3. The snow emergency declaration a parking prohibition are effective until terminated or modified by the director of public works by public announcement.

3.0210 Parking on Snow Emergency Route During Prohibition

1. Following the declaration of a snow emergency and parking prohibition it is illegal to stop or park on any affected route.
2. When a vehicle stalls on a snow emergency route during a parking prohibition the operator has one (1) hour to secure the assistance needed to remove the stalled vehicle.
3. Any vehicle parked, stopped or abandoned on a snow emergency route in violation of this chapter may be impounded by the police department. The owner of the vehicle, whether or not the driver at the time, shall be liable for the storing and towing charges associated with impoundment.
4. In prosecuting parking violations of this chapter, proof that the vehicle listed in the complaint was parked in violation of this chapter and that the Defendant was the registered owner of the vehicle, gives rise to a rebuttable presumption that the Defendant was the person who parked the vehicle in violation of this chapter.

3.0211 Removal of Snow and Ice

1. All property owners within the designated hauling area shall remove snow and ice within **24 hours** after the snow falls or ice forms, and keep the sidewalk free of ice and snow. Sand may be used to make the area safe for pedestrian travel if removal of the ice is impracticable.
2. Should snow and ice not be removed in the manner required, it shall be removed under the direction of the director of public works, and costs assessed to the abutting property pursuant to Chapter 40-29 NDCC.

3. All other property owners who are not within the designated hauling area are strongly encouraged to keep the sidewalk clean and unobstructed at all times.
4. A person may not move, dump or deposit, by any means, any snow or ice accumulated on private property or public sidewalks onto any public street or alley, except as otherwise permitted by this section. Snow or ice may be deposited on the public boulevard or area between the edge of the curb or paved surface of a street or alley and the sidewalk or right-of-way boundary if there is no sidewalk.

This subsection does not prohibit the dumping or depositing of snow or ice accumulated on public sidewalks adjacent to streets designated as hauling areas onto streets so designated.

3.0212 Penalty

1. In any case where a citation is issued for the violation of moving, dumping or depositing snow, as stated above in this ordinance, the following fees shall be paid by the offender to the Harvey Municipal Court:
 - a. First Offense - a fine of fifteen (\$15.00) Dollars shall be paid.
 - b. Second Offense - within a 12 month period, a fine of twenty-five (\$25.00) dollars shall be paid.
 - c. Third offense and each subsequent offense - within a 12 month period, a fine of forty (\$40.00) dollars shall be paid.
2. Violations of illegal parking or stopping could result in the vehicle being impounded, and fines being issued.

3.0213 Impounding Vehicles and Equipment

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 at 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. Vehicles that are parked in violation on emergency snow removal routes may be immediately impounded to facilitate any snow removal.

3.0214 Loitering

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 of said street, alley, lane or avenue, so as to prevent the free passage of persons traveling or passing on foot.

It shall be unlawful for any person to loiter, loaf, wander, stand or remain idle either alone and/or in consort with others in a public place in such manner so as to:

Commit in or upon any public street, public highway, public sidewalk or any other public place or building any act or thing which is an obstruction or interference any business lawfully conducted by anyone in or upon or facing or fronting on any such public street, public highway, public sidewalk or any other public place or building, all of which prevents the free and uninterrupted ingress, egress, and regress, therein, thereon, and thereto.

3.0215 Excavations - Permit

It shall be unlawful for any person, firm or corporation, except public utilities which have received a franchise from the City, to tunnel under or to make any excavation in any street, alley or other public place in the City without having obtained a permit as is herein required, or without complying with the provisions of this article or in violation of or variance from the terms of any such permit.

3.0216 Guarding or Excavations and Openings

It shall be unlawful for any person within the City limits to leave or keep open, uncovered or unguarded any cellar door, pit, grating, vault or other subterranean passage opening from, into or upon any street, alley or sidewalk, or upon any private property if not suitably guarded.

3.0217 Application for Excavation Permits

Applications for excavation permits shall be made to the Auditor, and shall describe the location of the intended excavation or tunnel, the size thereof, the purpose therefore, 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.

3.0218 Fees for Excavation Permits

The fee for excavation permits shall be: \$100.00.

3.0219 Bond - Excavations

No excavation permit shall be issued unless and until the applicant therefore has filed with the Auditor a bond in the sum of ten thousand dollars (\$10,000.00), conditioned to indemnify the City for any loss, liability or damage that may result or accrue from or because of the making, existence or manner of guarding or constructing any such tunnel or excavations. Such bond shall have as surety a corporation licensed to do business in the state as a surety company.

3.0220 Repair - Excavations

In the event that Excavations require Repair work, to insure the proper restoration of the area, the City may choose to charge for the actual

repair costs, or the City may choose to allow the contractor to complete the repairs. From the Bond shall be deducted the expense to the City of relaying the surface of the ground or pavement and of making the refill if this is done by the City or at its expense, and the balance shall be returned to the applicant without interest after the tunnel or excavation is completely refilled and the surface or pavement is restored. Contractors or private individuals with large excavations will need to complete repair work as the City does not have equipment to lay large quantities of asphalt or concrete.

3.0221 Making Excavations - Notice

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 therefore. Proper bracing shall be maintained to prevent the collapse of adjoining ground, 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 the making of any such excavation or tunnel before such pipes, cables or conduits shall be disturbed. Notice shall be given as required by Chapter 49-23 of the North Dakota Century Code.

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

3.0222 Restoration of Excavations

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 tamped down, and any bracing in such tunnel or excavation shall be left in the ground.

Any opening in a paved or improved portion of a street shall be repaired and the surface re-laid by the applicant, in compliance with the ordinances of the City and under the supervision of the street commissioner or city engineer.

The owner and/or contractor shall be responsible for any and all costs, expenses for restoration for up to one (1) year from the date of completion of the excavation project..

3.0223 Supervision of Excavation Work

The street commissioner 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.

3.0224 City Parks - Hours

All City parks shall have established hours of public access. Notice of the same may be published in the official newspaper or posted at the public parks. Any variance from the hours of use shall be under special permission granted by the Park Board.

3.0225 City Buildings, Equipment and Vehicles - Smoking
Smoking is not permitted in City buildings, equipment and vehicles.

ARTICLE 3 Unclaimed and Abandoned Property and Abandoned, Wrecked, Non-Operative Vehicles

3.0301 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.

3.0302 Seizure of Unclaimed or Abandoned Property

Whenever 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 commissioner or other officer of the City.

3.0303 Holding of Personal Property - Notice of Sale

Abandoned personal property shall be held by the City for a period of not less than sixty (60) days after its seizure as provided herein, and after the expiration of said sixty (60) days the city auditor shall cause notice to be published in the official newspaper of said City, said notice specifying and stating 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 ten (10) days from and after the date of the publication of such notice and the hour, date and place where said sale will be held. If prior approval is obtained from the governing body such unclaimed or abandoned property may be sold at a community auction provided that the chief of police or a police officer shall be responsible for the notice and reporting requirements of this article.

3.0304 Report of Abandoned Property 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 police officer 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. The report shall contain the description of the property sold, the time and place of the sale, the name or names of the purchaser or purchasers and the amount received therefore. The report shall be made under oath and subscribed by the officer making such sale and shall be filed with the city auditor within three (3) days after the date of such sale. The officer

upon filing the report shall pay to the city auditor the proceeds of said sale.

3.0305 Bill of Sale - Abandoned Property

Upon the receipt of the report as specified in Section 3.0304 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 presiding officer of the governing body and attested by the city auditor and delivered to the purchaser.

3.0306 Proceeds of Sale - Abandoned Property

The city auditor shall retain such money as is received from such sales in a separate account for a period of six (6) months from and after the time of such sale and if proceeds of such sale are not claimed as hereinafter provided by the owner of said property, the said money shall thereupon be transferred to the general fund of the City.

3.0307 Redemption of Personal Property

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 governing body, 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.

3.0308 Annual Report - Unclaimed and Abandoned Property

The chief of police prior to June 1 of each year shall submit to the city auditor a written list of all unclaimed and abandoned property held by the City which as not been sold pursuant to the provisions of this article. The city auditor shall bring such list to the attention of the governing body at the next regular meeting.

3.0309 Abandoned, Wrecked, Non-Operative Vehicles - Definitions

1. "Person" The term "person" shall mean any person, firm, partnership, association, corporation, company or organization of any kind.
2. "Vehicle" The term "vehicle" shall mean a machine or equipment propelled by power other than human power, designed to travel along the ground by use of wheels, treads, runners or slides, and transport persons or property or pull machinery, and shall include without limitation, automobile, truck, trailer, motorcycle, tractor, buggy, wagon, machines and various equipment.
3. "Street, Highway or Public Property" The term "Street, Highway or Public Property" shall mean the entire width between the boundary lines of every way publicly maintained when any part thereof is

open to the use of public for purposes of vehicular travel, recreational purposes or other municipal use.

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4. "Property" The term "Property" shall mean any real property within the City or any City property within or without the corporate limits which is not a street or highway.
5. "Police Department" The term "Police Department" shall mean the Chief of Police of the City of Harvey, any member of the police force, or authorized representative thereof.
6. "Abandoned Vehicle" The term "Abandoned Vehicle" shall mean any vehicle which has remained on the property for a period of 72 hours, or more, without the consent of the owner or occupant of the property, or for a period of 72 continuous hours or more after the consent of the owner or occupant has been revoked.
7. "Junk" The term "Junk" shall mean vehicles, machinery, remnants or castoff parts thereof, or materials of any kind, whether or not the same could be put to any reasonable use.
8. "Junk Vehicles" The term "Junk Vehicles" shall mean any motor vehicle which is not licensed for use upon highways of the state for a period in excess of 60 days, and shall also include, whether licensed or not, any motor vehicle, machine or equipment, which is inoperative for any reason, including such vehicles as are being used for parts in the repairing or restoration of another vehicle for a period in excess of 30 days; provided there are excepted from this definition unlicensed but operative vehicles, which are kept as the stock in trade of regularly licensed and established new and used vehicle dealer.
9. "Antique Automobiles" The term "Antique Automobiles" shall mean a motor vehicle which is at least 40 years old and is permanently licensed by the Registrar of Motor Vehicles upon the payment of a license fee required by Section 39-04-43 North Dakota Century Code, and Amendments thereof.
10. "Special Interest Vehicle" shall mean a motor vehicle which is at least 10 years old and which has not been altered or modified from original manufactures' specifications and, because of its historic interest, is being preserved by hobbyists.
11. "Seized Vehicle" shall mean that a vehicle was parked in violation of a parking ordinance as an immediate hazard, and/or in violation of an emergency snow removal route, and/or violation of 4 or more parking citations, and the vehicle was towed and impounded.

3.0310 Abandonment of Vehicles:

No person shall abandon any vehicle, machine, equipment or scrap metal within the city or on city property within or without the corporate limits, and no person shall leave any vehicle, machine, equipment or scrap metal at any place within the city, or on city property within or without the corporate limits, for such time, or under such

circumstances, as to cause the vehicle, machine, equipment or scrap metal reasonably to appear to have been abandoned.

3.0311 Leaving wrecked, discarded or nonoperating vehicles, machines or equipment on street:

1. Parking Violation

No person shall leave any partially dismantled, discarded, nonoperative, wrecked or junk vehicles, machine or equipment on any street or highway within the city or on city property within or without the corporate limits of the City of Harvey.

2. Impound Notice of Parking Violation

The police department is hereby authorized to remove, or have removed, any vehicle machine, equipment or scrap metal left at any place within the city, or on any city property within or without the corporate limits, which reasonably appears to be in violation of this ordinance, such vehicle, machine, equipment or scrap metal shall be impounded until lawfully claimed or disposed of in the manner hereinafter provided and shall be retained until the expense of removal, storage and impounding is paid, together with the amount of any fine, cost balance or other claims of the city against the owner, or any other person lawfully entitled to the possession thereof. Provided, however, that any vehicle, machine, equipment and scrap metal left at any place other than on city property shall not be removed and impounded as provided herein until the police shall have given written notice to remove and impound such vehicles within 10 days and of the intention of the police department to remove and impound such vehicles if it has not been removed at the end of such time. Such notice shall be given by:

- (1) affixing notice on such vehicle, machine, equipment or scrap metal,
- (2) sending notice by mail to the owner of such item or article at his last known address if the owner is reasonably ascertainable, and
- (3) by sending notice by mail to the person owning or controlling the property on which such vehicle, machine, equipment or scrap metal is located.

3.0312 Wrecked, nonoperating or discarded vehicles, machines, or equipment on property:

No person in charge or control of any property other than city property within the city, either as owner, tenant, occupant, leasee or otherwise, shall allow any partially dismantled, nonoperating, wrecked, junked or discarded vehicle, machine or equipment to remain on such property

longer than 30 days, and no person shall leave any such items or articles on any property other than city property within or without corporate limits for longer than **72 hours**; except that this ordinance shall not apply with regard to any vehicle, machine or equipment in an enclosed building or sheltered from public view by another acceptable method; an operating vehicle on the premises of business enterprise operating in a lawful place and manner, when necessary to the lawful operation of such enterprise, antique automobiles or special interest vehicles.

3.0313 Impounding Authority and Procedure

1. Impounding Authority

The police department is hereby authorized to remove, or have removed, any vehicle machine, equipment or scrap metal left at any place within the city, or on any city property within or without the corporate limits, which reasonably appears to be in violation of this ordinance, such vehicle, machine, equipment or scrap metal shall be impounded until lawfully claimed or disposed of in the manner hereinafter provided and shall be retained until the expense of removal, storage and impounding is paid, together with the amount of any fine, cost balance or other claims of the city against the owner, or any other person lawfully entitled to the possession thereof. Provided, however, that any vehicle, machine, equipment and scrap metal left at any place other than on city property shall not be removed and impounded as provided herein until the police have followed the Parking Violation Tows Procedure.

2. Parking Violations Tows Procedure:

- a. When a Vehicle is parked in violation of a parking ordinance, and it is an immediate hazard, the officer shall immediately impound that vehicle.
- b. When a vehicle has accumulated four (4) or more parking citations that have not been paid, and at least two (2) of these citations are over 72 hours old, and the vehicle presently is in violation of the parking ordinance, the vehicle shall be immediately impounded.
- c. When an officer finds an automobile in violation of the parking ordinance requiring vehicles be moved every 72 hours, the officer shall mark the vehicle in such a manner as to be able to come back and check to see if the vehicle has been moved. At least 48 hours later, the officer shall return, and if the vehicle was not moved, a tow sign shall be placed on the vehicle.
- d. When a tow sign has been placed on a vehicle, a diligent effort shall be made to find the owner and have it moved. If the owner cannot be located after 24 hours, the vehicle shall then be towed.

- e. Vehicles that are parked in violation on emergency snow removal routes may be immediately impounded to facilitate snow removal.
- f. All violation tows shall require that a citation to be issued, and the violation may result in fines, and may result in the vehicle being impounded, and the vehicle being sold if not reclaimed after being impounded.

3.0314 Right to Hearing regarding Vehicles

Any person aggrieved by such immediate impoundment, Notice of Impoundment, or Tow Sign, shall have the right to a hearing before the City Council concerning the removal and impoundment of such vehicles, machine, equipment and scrap metal, by notifying the City Council, in writing, within ten (10) days from the date of the impoundment, Notice, or Tow Sign. Upon notification to the City Council within the time herein provided, such Notice of Impoundment shall be held in abeyance until such hearing. Upon notification to the City Council within the time herein provided, a hearing will be held upon the immediate impoundment, and/or Tow Sign. If the City Council determines it is appropriate, the vehicle could be released without further cost for the towing fees, and impoundment fees, and/or if the vehicle only received a Notice of Impoundment the vehicle will not be towed, but the Municipal Court shall determine whether or not there is a parking violation if a citation has been issued, and then, the Municipal Court shall determine the appropriate penalties thereof for the citation.

3.0315 Authority regarding Vehicles

The chief of police, or any member of the police department, or authorized representative thereof, is hereby authorized to enter upon private property at all reasonable hours for the purpose of inspecting such vehicles, machinery, equipment or scrap metal, posting notice thereon, and removing and impounding such item and article. It shall be unlawful for any person to prevent or attempt to prevent, a member or representative of the police department from entering onto private property for the purpose of carrying out the purposes of this ordinance, or to interfere with him in a lawful performance of his duties under the provision of this ordinance.

3.0316 Removal and Impounding - When Sold:

If any vehicle, machine, equipment or scrap metal found in violation of this ordinance is not reclaimed and redeemed by the true owner, or the person lawfully entitled to the possession thereof, with any period of 11 days after impounding, any article or personal property described in the above sections of Chapter 3 may be sold and disposed of by the police department in the manner hereinafter provided. Notice that such property will be sold, the time and place of sale, and shall be signed by the chief of police. Any such sale shall be held between the hours of

9:00 o'clock in the morning and 5:00 o'clock in the afternoon of the day specified in the notice. Such sale shall be held at the front door or the building filed in the notice. Such sale shall be held at the front door of the building where the official city offices are located, 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 where the amount offered is grossly inadequate, or for such other reasonable cause. The city may become a purchaser at such sale a certificate of purchase of such property.

3.0317 Impounding - Sale Proceeds:

Within 10 days after such sale the person making the sales shall prepare in writing, and file with the city auditor, a full report of sale, specify property sold, the amount received therefore, the amount of costs and expenses, and disposition made by him of the proceeds of the sale. The proceeds arising from such sales shall be delivered to the City treasurer and credited to the general fund of the city.

3.0318 Violations regarding Vehicles

Each day such violation is committed or permitted to continue shall constitute a separate offense, and shall be punishable as such.

3.0319 Penalties regarding Vehicles

Any person violating any of the provisions of this ordinance shall, upon conviction thereof, be punished by a fine of not less than \$10.00 and not more than \$25.00, for each offense. Further, the owner of the vehicle that has had a vehicle impounded may be subject to having that vehicle sold if said vehicle is not reclaimed.

ARTICLE 4 - House Numbering

3.0401 House Numbering Required

All lots, buildings and structures in the City shall be numbered.

3.0402 Numbers of Houses

It shall be the duty of the owner and occupants of every house in the City to have placed thereon, in a place visible from the street, figures at least two and one-half (2 ½) inches high, showing the number of the house.

ARTICLE 5 - Trees - Tree Committee

3.0501 Definitions:

For the purpose of this Article, the following terms, phrases, words, and their deviations shall have the meaning given herein.

1. "City" is the City of Harvey, State of North Dakota and shall mean all parks, airport, land fill and lagoon.
2. "Person" means any person, firm, partnership, association, corporation, company, or organization of any kind.
3. "Streets" means the entire width of every public way or right-of-way when any part thereof is open to the use of th public, as a matter of right, for the purposes of vehicular and pedestrian traffic.
4. "Boulevard" means the space between the sidewalk, or the normal location of the sidewalk and the curb line or curb.
5. "Width of Boulevard" means the distance between the sidewalk, or the normal location of the sidewalk and the curb line or curb.
6. "Property lines" means the outer boundaries of any lot or parcel of land.
7. "Property Owner" means the person owning such property as is shown by the Wells County, North Dakota, Register of Deeds.
8. "Public Trees" are all shade and ornamental trees now or hereafter growing on any public right-of-way or in any public place or park.

3.0502 Tree Committee

1. A tree committee is hereby created and shall be composed of one (1) member of the Harvey City Council appointed by the mayor, one (1) member of the Harvey Park Board to be appointed by that body, and three (3) other members to be appointed by the Harvey City council.

Group I. For a term of one (1) year: the three (3) members

Group II. For a term of two (2) years: The City Council member and the Park Board Member.

Annually thereafter, Group I and Group II shall be reappointed alternately.

The duties of the Tree Committee shall be to advise and to aid in the coordination of the tree care programs in the City of Harvey, on properties controlled by the City of Harvey, City Forester, County Extension Agent, District Conservationist for SCS, shall be ex-officio members of the Tree Committee.

The members of the Tree Committee shall serve without compensation.

2. City Forester position is hereby created to be filled by appointment by City Council in consultation with Tree Committee.

3.0503 Authority and Jurisdiction of the City Forester:

1. The authority and jurisdiction of the City Forester shall be as follows:

The City Forester shall have the authority and jurisdiction, through the Board, to regulate the planting, maintenance, protection, and removal of all trees on streets and other public places, to ensure safety, or preserve the esthetics of such streets and public places.

2. The City Forester shall have the authority to make known, with the approval of the Tree Committee, the rules and regulations of the Arboriculture Specifications and Standards of Practice governing the planting, maintenance, protection, and removal of trees, as specified on the streets and public areas of the City of Harvey.
3. The City Forester shall have the authority to supervise all work done under any permit, issued in accord with the terms of this ordinance.

3.0504 Public Nuisances:

The following conditions are public nuisances whenever they may be found within the City of Harvey:

1. Any living or standing elm tree or part thereof infected to any degree with the Dutch elm disease fungus, *Ceratocystis ulmi*, and which harbors any of the elm bark beetles, *Scolytus multistriatus* or *Hylurgopinus rufipes*, or other tree species infected by a disease determined a nuisance by the City Tree Committee.
2. Any dead elm tree or part thereof, including logs, branches, stumps, firewood or other elm material from which the bark has not been removed or chipped and buried in a city land fill during the part of the year, April 1 to October 14, each year.
3. Any tree, shrub or hedge, or part thereof, growing upon public property or upon private property but overhanging or interfering with the use of any public walk, street or highway, park, or public place within the City of Harvey, which in the opinion of the majority of the Tree Committee, endangers the life, health, safety or property of the public, shall be declared a public nuisance.

3.0505 Public Nuisance is Unlawful

It is unlawful for any person to willfully permit any public nuisance as defined in Section 3.0504 to remain on any premises owned or controlled by him within the City, such nuisance may be abated in the manner prescribed by this ordinance.

3.0506 Inspection and Investigation:

1. Th Forester, under the direction of Tree Committee, shall inspect all premises and places within the City annually, and at other necessary times, to determine whether any condition described in section 4 exists therein.

2. The inspection shall determine all hazards as specified in Section 3.0504. The owner shall be notified in writing of the existence of the nuisance and given a reasonable time for its removal.
3. The Tree Committee or City Forester may enter upon private premises at any reasonable time for the purpose of carrying out any of the duties assigned to it under this ordinance.
4. It shall be up to the Tree Committee or City Forester to determine if a laboratory diagnosis of suspect Dutch elm diseased tree or other diseased tree is necessary. A field evaluation will usually be adequate unless there is some question about the tree being diseased or if the landowner requests that a sample be sent into the lab.
5. The Tree Committee or City Forester upon finding a suspect Dutch elm diseased tree, immediately shall take and send appropriate specimens or samples to a qualified plant disease diagnostician. No action to remove suspect trees or wood shall be taken until positive diagnosis of the disease has been made.
6. Within five days of receipt of the diagnosis, the owner of the property from which the specimen was obtained shall be notified by City forester if the result by mail.

3.0507 Abatement of Nuisance in the City of Harvey:

1. In abating the nuisance on public streets, alleys, boulevards, public ways and private property as defined in Section 3.0504 (1) and 3.0504 (2), the City of Harvey shall cause the infected tree or wood to be removed or otherwise effectively treated so as to destroy and prevent as fully as possible the spread of Dutch elm disease fungus and elm bark beetles. Such abatement procedures shall be carried out in accordance with the latest technical and expert method and plans as may be designated by the Commissioner of Agriculture of the State of North Dakota. The Tree Committee shall establish specifications for tree removal and disposal methods consistent therewith.
2. In abating tree hazards on public property as defined in Section 3.0504(3), the City Forester shall cause such hazards to be removed and disposed in accordance with tree care specifications which the Committee shall accept, the cost to be assessed as defined in Section 13.

3.0508 Abatement of Nuisance on Private Property:

1. Whenever the Tree Committee or City Forester finds with reasonable certainty that the Dutch Elm or other disease defined in Section 3.0504(1) exists in any tree or wood located on private property, outside of any public way in the City, he shall notify the owner or person in control of any public way in the City, he shall notify the owner or person in control of such property on which the nuisance is found by mail within five (5) days of receipt of the diagnosis. The tree committee shall

direct that the diseased tree be removed and effectively treated in a manner approved by the Committee within ten (10) days after receipt of such notice. If such owner cannot be found, a copy of said notice shall be posted upon said infected tree. If said tree is not removed and/or treated as specified within ten (10) days after posting of the notice, the City of Harvey shall remove and/or treat said tree. The owner or person in charge may be charged with a violation of this ordinance for maintaining a nuisance and that the City may abate the nuisance, the cost to be assessed as defined in Section 3.0513.

2. The nuisance as defined in Section 3.0504(3) shall be abated by the owner following notification of the existing nuisance. If not corrected or removed within the time allotted, the Tree Committee shall authorize the removal or correction to be done in accordance with recommended procedures, the property owner to bear the cost.

3.0509 Certification as Special Assessment

1. The City Auditor shall keep in the City Office a book called "Nuisance Abatement, Special Assessment Book" and shall enter the cost of the abatement of a nuisance as declared by the City Council therein as the nuisance was abated, with the name of the owner.
2. At the regular meeting of the City Council in October of each year, the City Council shall review all such assessments and hear all such complaints against the same and approve the same as finally a list of the lots and parcels of land specifically assessed for such purpose, and the sum shall be collected as other city taxes are collected.

3.0510 Spraying:

1. Whenever the Tree Committee or the City Forester determines that any elm tree or part thereof is infected with Dutch Elm disease fungus and is in a weakened condition, he may cause all elm trees within a 1,000 foot radius thereof to be treated with an effective elm bark beetle destroying concentrate as recommended by the State Entomologist.
2. Whenever the Tree Committee or City Forester determines that other diseases or insects pose a problem, it may cause all trees to be
3. In order to facilitate the work and minimize the inconvenience to the public of any treating operation conducted under this ordinance, the Tree Committee or City Forester shall cause to be given in advance public notice of such operations by newspaper, radio, public service announcements or other effective means and shall also cause the posting of appropriate warning notices in the areas and along the streets where trees are to be treated at least 24 hours in advance.

4. When appropriate warning notices have been given and posted in accordance with subsection (3) of this section, the City shall not allow any claim for damages to any vehicle damaged by such treating operations.
5. When trees on private property are to be treated, the City Forester shall notify the owner of such property and proceed in accordance with the requirements of this ordinance.

3.0511 Transporting elm wood Prohibited:

It shall be unlawful for any person to transport within the City any bark bearing elm wood between April 1 and October 15, without having obtained a permit from the City Forester. The Forester shall grant such permits only when the purpose of this ordinance shall be served thereby.

3.0512 Interference Prohibited:

It shall be unlawful for any person to prevent, delay or interfere with the Tree Committee or City Forester while it is engaged in the performance of duties imposed by this ordinance.

3.0513 Costs:

The costs for abating of the public nuisances as defined in Section 4 shall be borne as follows:

1. For the abatement of the nuisance as defined in Section 3.0504(1) and with the nuisance occurring on public trees and on park district lands, the cost will be borne by the City of Harvey.
2. For the abatement of the nuisances defined in Section 3.0504(2), the costs shall be borne as defined in Section 3.0504(1).
3. For abatement of the nuisance as defined in Section 3.0504(3), and the nuisance occurring on public trees and on park district lands, the cost will be borne by the City of Harvey.

When the nuisance occurs on any street, alley, boulevard or other public way, the cost shall be borne by the property owner adjoining the street, alley, boulevard or public way.

4. The cost of spraying for abatement of the nuisance as defined in Section 3.0504(1) and 3.0504(2) shall be borne by the City of Harvey when the nuisance is on public trees and on park district land. The cost of spraying on private property shall be borne by the property owner.
5. The cost of tree planting for replacement of diseased trees on public property will be borne by the respective government body owning the property.

6. All permits relating to this ordinance will be issued at no cost fee.
7. The cost of the diagnostic test stated in Section 6(d) shall be borne by the property owner.

13.0514 Tree Planting:

1. The office of the City Forester shall issue permits to plant trees on public parkways and berms and alleys in accordance with Section 3.0503(2)
2. The planting on private premises within the City of Harvey of those selections and species of the Genus Populus producing the pistillate flowers and bearing the cotton filled seed capsules shall be considered a public nuisance and is hereby declared unlawful.
3.
 - (a) That the boulevard to be planted has been brought to the final grade.
 - (b) In new plantings, the trees will be planted no closer than three (3) feet to the curb line or closer than four (4) feet to any sidewalk or the normal location of the sidewalk from the curbline to the curb. In old plantings, the trees shall be planted in line with existing old trees situated in the block.
 - ©) That the planting will be completed in the season stated on the permit, and not later than ninety (90) days after the date the permit is issued.
 - (d) That the species of trees to be planted shall be Summit Green Ash, Block Ash, European Mountain Ash, Hop Hornbeam, Horsechestnut, Common Hackberry, Native Bur Oak, Patinore Ash, American Linden, Silver Queen Maple, Honeylocust, Mayday, Snowy Mountain Ash. Other species of trees may be planted with the approval of the City Forester.
 - (e) That the Planting of trees shall not be closer than four (4) feet to any sidewalk or the normal location of the sidewalk from the curb line or curb on any street corner intersection or closer than five (5) feet to any alley entrance or exit.
 - (f) That the trees to be planted will not be less than twenty (20) feet apart. Smaller species may be planted less distance apart with the approval of the City Forester.
 - (g) Unless otherwise allowed for specific reasons, that all trees shall have comparatively straight trunks, well developed leaders and tops and that all trees must be free of insects, diseases, medical injuries, and other objectionable features at the time of planting.

(h) That the boulevard to be planted is not less than seven (7) feet in width.

(I) On private property, all trees, shrubs, or hedges planted must be set back a minimum of three (3) feet from all property lines.

4. Prohibited species. The following trees may not be planted on the parkways, berms or boulevards of Harvey:

Cottonwood and poplar, Siberian elm, American Elm, Willow and Conifers.

In order to achieve certain landscape effects, the City Forester may at time use trees not generally recommended.

3.0515 Tree Topping:

1. It shall be unlawful as a normal practice for any reason, firm or city department to top any street tree, park tree or other tree on public property. Topping is defined as the severe cutting back of limbs to stubs larger than three (3) inches in diameter within the tree's crown to such a degree so as to remove the normal canopy and disfigure the tree.
2. Exemptions are made to subsection 1 of this section in the event of an emergency condition, as determined by the public instead of indiscriminate topping where overhead wires are a problem.

3.0516 Pruning, Corner Clearance:

1. Every owner of any tree overhanging any street or right-of-way within the city shall prune the branches so that such branches shall not obstruct the light from any street lamp or obstruct the view of any street intersection and so that there shall be a clear space of eight (8) feet above the surface of sidewalk and twelve (12) feet above street.
2. Visibility at intersections in residential districts, refer to Zoning Ordinance which states: In any corner lot in any residential district, nothing shall be erected, placed, or allowed to grow in such manner as materially impedes vision between a height of twenty-four (24) inches and eight (8) feet within thirty (30) feet of the intersecting curb line of the intersection.

3.0517 Severability:

In case any section of this ordinance is held invalid by a court of competent jurisdiction, the invalidity shall extend only to the section affected and other sections of this ordinance shall continue in full force and effect.

3.0518 Penalty:

In the event that any person, firm or corporation violates any provision of the above ordinance sections they will be subject to revocation of their license and a fine not to exceed \$500.00 and thirty days (30) in jail or both.