

TITLE I.

CITY GOVERNMENT - GENERAL PROVISIONS

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- 1-02. Ordinances.
- 1-03. City Council.
- 1-04. Appointive Officers.
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- 1-07. Disposal of City Property.
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CHAPTER 1-01

THE ENACTING ORDINANCE.

SECTIONS:

- 1-0101. Title of Ordinances.
- 1-0102. Repeal--Exceptions.
- 1-0103. Separability Provisions.
- 1-0104. Existing Licenses and Permits.
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1-0101. **TITLE OF ORDINANCES.** The ordinances of the City of Harwood shall be known as the Revised Ordinances of 2006 of the City of Harwood, North Dakota.

1-0102. **REPEAL--EXCEPTIONS.** All ordinances of the City of Harwood adopted prior to October 1, 2006, are hereby repealed, except the following ordinances which shall continue in full force and effect regardless of the fact that they are herein omitted.

1. All existing ordinances or any part thereof creating contract obligations on the part of the City, which obligations shall remain binding until fully performed by the parties thereto.
2. All existing ordinances establishing special improvement districts.
3. All existing ordinances levying taxes for previous years which are still unpaid or for future years under the provisions of any law relating to the issuance of municipal bonds, warrants, certificates of indebtedness, or other municipal obligations, whether general or special.
4. All salary and appropriation ordinances.
5. Any and all other ordinances adopted in said Revised Ordinances of 2006 by reference, although the same are not set forth in full therein.
6. All existing ordinances establishing, extending, or reducing the city limits of the City and all existing ordinances by which the zoning of any area has been established or modified.
7. The incorporation herein of any ordinances of the City granting franchises to individuals, associations, or corporations shall not operate to repeal the same in their original form nor to extend the term of any franchise beyond that permitted by law or fixed in the ordinances granting the same which is re-enacted herein.

1-0103. **SEPARABILITY PROVISIONS.** If any section, subsection, sentence, clause or phrase of these ordinances is, for any reason, held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of any other section, subsection, sentence, clause, phrase, or portion thereof. The City Council hereby declares that it would have passed these ordinances and each section, subsection, sentence, clause or phrase thereof, irrespective of the fact that any one or more other sections, subsections, sentences, clauses, or phrases may be declared invalid or unconstitutional.

1-0104. **EXISTING LICENSES OR PERMITS.** All licenses and permits issued prior to the date on which this ordinance becomes effective shall continue in force for the remainder of the term for which the same were issued, without additional fees, but all licensees and permittees shall be governed by the provisions of the Revised Ordinances of 2006 of the City of Harwood, North Dakota, for the remainder of the terms of said licenses and permits in the same manner and to the same extent as if said licenses and permits had been issued under the provisions of the Revised Ordinances of 2006.

1-0105. **NEW LICENSES AND PERMITS.** In the case of any license or permit not heretofore required and appearing for the first time in the Revised Ordinances of 2006 of the City of Harwood, North Dakota, such license or permit shall be secured on or before the first day of the first month following the effective date of this ordinance, and the first fee therefor shall be prorated for the remainder of the term thereof on a monthly basis, provided that the minimum fee for any such new license or permit shall be \$10.00.

1-0106. **REQUIREMENTS FOR CITY APPROVALS.** A license, permit, or other City approval or authorization of any kind may be granted only to an applicant who:

1. has complied with all relevant statutory, charter and ordinance requirements;
2. has paid all fees, charges, taxes, special assessments and other debts or obligations that are due from the applicant and payable to the City regarding any matter; and
3. is in compliance with all ordinance requirements and attached conditions regarding other City approvals that have been granted to the applicant for any matter. If the applicant has applied for a building permit, the applicant must disclose the name and address of his/her contractor and any subcontractor. If said contractor or any of his or her sub-contractors has previously violated City ordinances by not obtaining a building permit, the permit will not be granted.

Source: Ord. 2011-11, Sec. 1 (2011)

1-0107. **REQUIREMENTS FOR CITY APPROVALS – EXCEPTIONS.** The requirements of Section 1-0106(2) and (3) may be waived in the following circumstances:

1. the applicant has provided sufficient safeguards to assure payment of debts or compliance with City requirements within a reasonable time after the City approval; or

2. enforcement of the requirements would result in a significant hardship to the applicant through no fault of his/her own or would result in an otherwise unfair situation.

Source: Ord. 2011-11, Sec. 1 (2011)

CHAPTER 1-02

ORDINANCES

SECTIONS:

- 1-0201. Voting Record.
- 1-0202. Reconsideration or Rescinding Vote.
- 1-0203. Procedure in Passing Ordinances.
- 1-0204. Publication.
- 1-0205. Enactment and Revision of Ordinances.
- 1-0206. Effective Date.
- 1-0207. Effect of Repeal.
- 1-0208. Interpretation - Construction.
- 1-0209. Singular - Plural - Gender - Interpretation.
- 1-0210. Constitutionality - Ordinances - Construction.
- 1-0211. Penalty for Violation.

1-0201. **VOTING RECORD.** The yeas and nays must be taken by the governing body upon the passage of all ordinances and on all propositions to create any liability against the City or for the expenditure or appropriation of money, and, in all other cases, at the request of any member, which votes must be entered on the journal of its proceedings. A majority of all the qualified and existing members of the Council must concur on the passage of any ordinance and in the creation of any liability against the City and for the expenditure or appropriation of money. For purposes of this section, and for all other votes required by the ordinances of the City of Harwood or the State of North Dakota, any member of the City Council or Board of Adjustment who, by reason of a stated conflict of interest abstains from voting, must not be considered to be a qualified or existing member of the City Council or Board of Adjustment. A Member of the City Council who does not abstain but simply remains silent when the roll call vote is taken, shall be deemed to have voted yea, and a record of yea shall be entered in the journal. For all other matters not covered in this section and not otherwise covered by ordinance or state statute, passage of a motion or resolution shall be by a majority of existing and qualified Council members present at a meeting at which a quorum is present.

1-0202. **RECONSIDERATION OR RESCINDING VOTE.** No vote of the governing body shall be reconsidered or rescinded at a special meeting unless, at such special meeting there is present as large a number of members as was present when such vote was taken.

1-0203. **PROCEDURE IN PASSING ORDINANCES.** All ordinances shall be read twice, and the second reading shall not be had in less than one (1) week after the first reading; and after such first reading, before their final passage, such ordinances may be amended, and shall then be put upon their second reading and final passage; and, if passed by the governing body, shall be signed by the Mayor and attested by the City Auditor.

1-0204. **PUBLICATION.** The title and penalty clause of each ordinance, imposing any penalty, fine or imprisonment for its violation, after its final adoption, shall be published in one (1) issue of the official newspaper of the City.

1-0205. **ENACTMENT AND REVISION OF ORDINANCES.** The executive officer of a municipality may appoint, by and with the advice and consent of the governing body of the municipality, one or more competent persons to prepare and submit to the governing body for its adoption or rejection, an ordinance for the revision or amendment of existing ordinances or for the enactment of new and additional ordinances for such municipality. The attorney for the municipality, if it has an attorney, shall be appointed as one of the persons to prepare and submit such ordinance. The compensation of the revisor or revisors, including that of the attorney, shall be determined by the governing body and shall be paid out of the municipal treasury. Such revision, including any additional ordinances and amendments to existing ordinances contained therein, may be passed as a single ordinance and may be published in pamphlet or book form, by and under the authority of the governing body of the municipality, and shall be valid and effective without publication in a newspaper or posting, Section 1-0204 of this chapter notwithstanding.

1-0206. **EFFECTIVE DATE.** Ordinances adopted and requiring publication shall take effect and be in force from and after publication unless otherwise provided. Ordinances not requiring publication shall take effect and be in force from and after final approval unless otherwise provided.

1-0207. **EFFECT OF REPEAL.** When any ordinance repealing a former ordinance, clause or provision, shall be itself repealed, such repeal shall not be construed to revive such former ordinance, clause or provision, unless it shall be expressly so provided.

1-0208. **INTERPRETATION - CONSTRUCTION.** For the purpose of interpretation and construction of any ordinance, the term "person" includes, where relevant or not otherwise indicated, corporations, unincorporated associations, or other legal entities.

1-0209. **SINGULAR - PLURAL - GENDER - INTERPRETATION.** For the purpose of interpretation of any ordinance, where relevant or not otherwise indicated, words used in the singular include the plural, and the plural, the singular and words in the masculine gender include feminine and neuter genders.

1-0210. **CONSTITUTIONALITY - ORDINANCES - CONSTRUCTION.** If any section, subsection, sentence, clause or phrase of any ordinance is, for any reason, held to be invalid or unconstitutional by the decision of any Court of competent jurisdiction, such decision shall not affect the validity of any other section, subsection, sentence, clause, phrase, or portion thereof.

1-0211. **PENALTY FOR VIOLATION.** Any violation of an ordinance of the City of Harwood shall be an infraction unless another penalty is specifically provided for the violation in these ordinances, or unless state law defines an offense in language similar to the ordinance as a class B misdemeanor, in which case the violation of the ordinance shall be penalized as a class B misdemeanor. An infraction may be punished by a maximum fine of \$1,000. The Municipal Judge shall have the authority to establish the penalty for each infraction which is an offense up to a maximum of \$1,000, except for offenses for which a penalty is set by State law, in which case

the court must sentence in accordance with State law. Any person convicted of an infraction who has, within one year prior to the commission of the infraction of which he was convicted, been previously convicted of an offense classified as an infraction may be sentenced as though convicted of a class B misdemeanor. If the prosecution contends that the infraction is punishable as a class B misdemeanor, the complaint or citation shall specify that the offense is a misdemeanor.

A class B misdemeanor may be punished by a maximum fine of \$1,500, or 30 days imprisonment, or both.

Source: Ord. 2014-17, Sec. 1 (2014)

CHAPTER 1-03
CITY COUNCIL

SECTIONS:

- 1-0301. Meetings: Regular Day Held.
- 1-0302. Meetings: Regular Time.
- 1-0303. Meetings: Special, How Called.
- 1-0304. Meetings: Special Notice.
- 1-0305. Meetings: Regular and Special and Place Held.
- 1-0306. Salaries of City Council Members.

1-0301. **MEETINGS: REGULAR DAY HELD.** The City Council of the City of Harwood shall meet in regular meetings on the first (1st) Monday of each month.

1-0302. **MEETINGS: REGULAR TIME.** The time of the regular meetings shall be as determined by the City Council by resolution.

1-0303. **MEETINGS: SPECIAL, HOW CALLED.** The City Council of the City of Harwood may have special meetings at any time. Said special meeting may be called by the Mayor or by any two (2) members of the City Council.

1-0304. **MEETINGS: SPECIAL NOTICE.** Written notice of any special meeting shall be given to each member of the Board.

1-0305. **MEETINGS: REGULAR AND SPECIAL AND PLACE HELD.** All meetings shall be held at the Community Center in the City of Harwood, North Dakota.

1-0306. **SALARIES OF CITY COUNCIL AND MAYOR.** The salary of each member of the City Council shall be no greater than the maximum amount allowed by the laws of the State of North Dakota as may be determined from time to time by resolution of the City Council.

CHAPTER 1-04

APPOINTIVE OFFICERS

SECTIONS:

- 1-0401. Appointive Officers.
- 1-0402. Term of Appointive Officers, Oath, Bond.
- 1-0403. Removal.
- 1-0404. Salaries.
- 1-0405. Administrative Policy and Procedures.

1-0401. **APPOINTIVE OFFICERS.** At the first meeting after the qualification of its members, or as soon thereafter as possible, the City Council may appoint the following officers: Auditor, Treasurer, City Attorney, City Engineer, City Assessor, one or more assessors, City Health Officer, Chief of Police, Chief of Fire Department, one or more policemen, Superintendent of Streets, Superintendent of Water and Sewage Utilities, Housing Coordinator, and such other officers and boards as the City Council may deem necessary. The City Council by majority vote may dispense with any appointive office and provide that the duties thereof shall be performed by other officers or boards, by the City Council, or by a committee.

1-0402. **TERM OF APPOINTIVE OFFICERS, OATH, BOND.** The term of all appointive officers shall begin on May 1st after the regular election of members of the City Council and shall continue for a term of two (2) years and until their successors have been appointed and qualified. Any person appointed to fill a vacancy shall hold his office for the unexpired term unless appointed as an "acting officer." An "acting officer" shall serve at the pleasure of the governing body. Before entering upon the duties of his office, each appointed officer shall take the oath of office and give the bond required by law.

1-0403. **REMOVAL.** Appointive officers may be removed and any vacancy may be filled in the manner provided by law. "Acting officers" may be removed at any time by the governing body.

1-0404. **SALARIES.** The salary of City appointive officers, 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.

1-0405. **ADMINISTRATIVE POLICY AND PROCEDURES.** 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 his department and all activities assigned thereto.

3. Keep informed as to the latest practices in his particular field and shall inaugurate with approval of the governing body such new practices as appear to be of benefit and service to the public.
4. Submit such reports of activities of his department as the governing board may request.
5. Be responsible for the proper maintenance of all City property and equipment used in his department.
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 subordinates under him.

CHAPTER 1-05

MUNICIPAL ELECTIONS

SECTIONS:

- 1-0501. Qualifications of Electors.
- 1-0502. Elections - Provisions Governing.
- 1-0503. Compensation of Election Officers.

1-0501. **QUALIFICATIONS OF ELECTORS.** Every resident of the City of Harwood who is qualified to vote therein at general elections may vote in all municipal elections held therein. Each person shall vote in the precinct of which he is a resident.

1-0502. **ELECTIONS - PROVISIONS GOVERNING.** Municipal elections in the City of Harwood shall be conducted in accordance with the statutes of the State of North Dakota which relate to elections in cities with a council form of government.

1-0503. **COMPENSATION OF ELECTION OFFICERS.** Each inspector, judge or clerk of any City election, for services performed by that person at such election shall receive as compensation therefor an hourly wage equal to the federal minimum wage then in effect, or such higher amount as may be established by resolution of the City Council prior to such election.

CHAPTER 1-06

CIVIL DEFENSE

SECTIONS:

- 1-0601. Policy and Purpose.
- 1-0602. Creation of Municipal Civil Defense.
- 1-0603. Director, Powers and Duties.
- 1-0604. Operational Survival Plan.
- 1-0605. Personnel.
- 1-0606. Expenses and Contract.
- 1-0607. Immunity.

1-0601. **POLICY AND PURPOSE.** Because it has been forcefully emphasized that government at every level has the inescapable responsibility to take practical and sensible measures to minimize loss of life in the event of nuclear attack, sabotage or other hostile action and because of the possibility of natural disasters, and in order to take all possible actions to protect the lives and health of the people, establish continuity of government and preserve property of this City, it is hereby declared necessary:

1. To establish local civil defense;
2. Provide for continuity of government during an emergency with the maximum use of services, equipment, supplies and facilities of existing department offices and agencies of this City;
3. To cause to be written an operational survival plan for the mobilization and direction of the civil populace of this City to save the maximum number of lives and minimize property damage in an enemy attack or natural disaster;
4. To provide for the exercise of necessary powers during civil defense missions;
5. To provide for the rendering of mutual aid between this City and other political subdivisions and of other States with respect to carrying out civil defense functions.

It is further declared to be the purpose of this chapter to cause all civil defense functions of this City to be coordinated to the maximum extent with the functions of the Federal Government, of this State and of other States, of Cass County and other localities, and of private agencies of every type, to the end that the most effective preparations and use may be made of the nation's manpower, resources and facilities for dealing with any disaster that may occur.

1-0602. **CREATION OF MUNICIPAL CIVIL DEFENSE.** There is hereby created a local municipal civil defense of the City of Harwood hereinafter referred to as Harwood Civil Defense. The Harwood City Council shall retain the governing authority of the City with the Mayor serving as Chairman. The Mayor may appoint a Director of Civil Defense for the City of

Harwood who may or may not be a commissioned member, who shall be responsible to the Council. The Harwood Civil Defense Director is charged with the responsibility of plans and operations and support missions as directed by higher authority. Other activities and functions are hereinafter specified. The said Director shall be appointed for an indefinite term and may be removed by the Mayor.

1-0603. **DIRECTOR, POWER AND DUTIES.** The Director, with the consent of the Mayor, shall represent the City on any National, Regional, State or County civil defense activities. He shall execute and submit all material and sign all documents in behalf of civil defense which do not obligate funds other than those budgeted for civil defense.

The Director shall develop mutual aid agreements with other political subdivisions for reciprocal civil defense aid and assistance in a civil defense emergency to great to be dealt with unassisted, and he shall present such agreements to the Council for concurrence. Such agreements shall be consistent with the County and State operational survival plan. Any mutual aid arrangement with a political subdivision of another State shall be subject to the approval of the Governor or the State Civil Defense Director.

The Director shall utilize the personnel, services, equipment, supplies and facilities of existing departments and agencies of the City to the maximum extent practicable. The officers and personnel of all such departments and agencies shall cooperate with and extend such service and facilities to local civil defense and to the Governor upon request. The head of each department and agency, in cooperation with and under the direction of the Director, shall be responsible for the planning and programming of such civil defense activities as will involve the utilization of the facilities of his department or agency.

The Director shall direct and coordinate the general operations of all local civil defense during a civil defense emergency in conformity with controlling regulations of the City Council and instructions of Cass County and State Civil Defense authorities. The heads of departments and agencies shall be governed by his orders in respect thereto.

1-0604. **OPERATIONAL SURVIVAL PLAN.** To institute an organized effort to mobilize and direct the civil populace during civil defense emergencies, an adequate civil defense operational survival plan for the City of Harwood shall be accomplished by the civil defense director.

The operational survival plan will be coordinated with the Cass County and the State of North Dakota survival plans. It shall be the mission of said plan to accomplish the following:

1. Provide for continuity of government during an emergency with the maximum use of services, equipment, supplies and facilities.
2. Protect the people and the essential facilities of Harwood from effects of enemy attack and/or natural disaster.
3. Control the movements or evacuation of traffic, through, within and/or out of the City in accordance with instructions of higher authority.

4. Provide the forces, supplies and equipment to aid the people and rehabilitation of facilities of attacked or damaged areas.

Upon completion of the Harwood operational survival plan, the same shall be rendered to the City Council for approval or further recommendations.

1-0605. **PERSONNEL.** The City Council is authorized to employ such persons as may be necessary to carry out the functions of civil defense. Persons so employed shall be subject to all laws, ordinances and regulations now existing in and governing the employees of this City.

1-0606. **EXPENSES AND CONTRACT.** The civil defense Director shall have no right to expend public funds of the City, other than those allowed by budgets, without prior approval of the City Council, nor shall he have any right to bind the City by contract, agreement or otherwise without prior and written approval of the City Council.

1-0607. **IMMUNITY.** All functions hereunder and all other activities relating to civil defense are hereby declared to be governmental functions. The officers, agents or representatives of the State or any political subdivision thereof, shall not be liable for personal injury or property damage sustained by any person appointed or acting as a civilian defense worker, or member of any agency engaged in civilian defense activity. The foregoing shall not affect the right of any person to receive benefits or compensation to which he might otherwise be entitled under the Workmen's Compensation Law, or any pension law or any act of the United States.

No officer or employee nor any civilian defense worker or member of any agency engaged in any civil defense activity, complying with or attempting to comply with this chapter or the laws of the State of North Dakota or any order, rule or regulation promulgated pursuant to the provisions of this chapter or the laws of the State of North Dakota, or pursuant to any ordinance relating to any precautionary measure enacted by any political subdivision of the State, shall be liable for the death of or injury to persons, or for damage to property, as a result of any such activity.

CHAPTER 1-07

DISPOSAL OF CITY PROPERTY

SECTIONS:

- 1-0701. Sale of Personal Property.
 - 1-0702. Sale of Real Property.
 - 1-0703. Sale of Abandoned or Unclaimed Personal Property.
 - 1-0704. Lease of Public Buildings.
 - 1-0705. Lease of Personal Property or Real Property Other Than Buildings.
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1-0701. SALE OF PERSONAL PROPERTY.

1. Whenever any personal property owned by the City of Harwood is no longer required for a public purpose and has a value of \$500 or less, it may be offered for sale by the City Auditor, who may exercise his discretion as to the method of sale, and whether such sale shall be public or private.
2. Whenever any personal property owned by the City of Harwood is no longer required for a public purpose and is valued in excess of \$500, it may be offered for sale by the City Council, who may exercise its discretion as to the method of sale, and whether such sale shall be public or private. Provided, however, when the value of the personal property is estimated to be in excess of \$2,500, the property must be sold at a public sale, the exact method of sale to be determined by the City Council. When property is to be traded in as part of the purchase price of a new purchase, no public sale shall be required.

1-0702. SALE OF REAL PROPERTY.

1. Real property belonging to the municipality shall be sold only as approved by a two-thirds (2/3rds) vote of all members of the City Council.
2. Instruments affecting such sale shall be valid only when duly executed by the Mayor and attested by the City Auditor.
3. When the real property to be disposed of is estimated by the Council to be of a value of less than \$2,500, such property may be sold by the City either by private or public sale, with the exact method of sale to be determined by the City Council. For real property estimated by the City Council to be of value of \$2,500 or more, such sale must be by public sale pursuant to the provisions of 40-11-04.1 N.D. Cent. Code, unless the procedures set out in 40-11-04.2 N.D. Cent. Code is followed.
4. Bids for the purchase of real property belonging to the municipality, whether or not advertisement therefor has been made, shall be directed to the City Council and submitted to the City Auditor, who shall present any and all such bids to the City

Council at its next regularly scheduled meeting, or special meeting called for such purpose.

5. When specific statutory provisions contained in the North Dakota Century Code provide for a procedure which is in conflict with this section governing the sale of real property, this section shall not apply insofar as it is in conflict with such State law.

1-0703. SALE OF ABANDONED OR UNCLAIMED PERSONAL PROPERTY.

1. When personal property has been abandoned or left unclaimed upon the streets, alleys or other public ways of the City for a period exceeding ten (10) days, and, after holding such property for a period of not less than sixty (60) days, the City Auditor, or Chief of Police may sell the same at a public sale after a notice is published in the official newspaper of the City at least ten (10) days before the sale. The City Auditor or Chief of Police may exercise their discretion as to the method of sale.
2. If, after a vehicle which has been impounded or removed pursuant to Section 13-1625, the vehicle is not reclaimed and redeemed by the owner or person lawfully entitled to possession thereof within sixty (60) days after the vehicle is impounded, then the vehicle may be sold in the manner provided in subsection 1. The notice of such sale shall specify a description of the property to be sold, and the time and place of such sale. Any sale may be postponed or discontinued by public announcement at the time of sale when there are no bidders, or when the amount offered is grossly inadequate, or for other reasonable cause. The City may be a purchaser of any or all property at such sale. The amount received at such sale shall be first applied to costs and expenses of the sale, next to satisfaction of any fines, fees, costs or restitutions outstanding which formed the basis for the impoundment or removal of the vehicle, and finally to the City general fund.

1-0704. LEASE OF PUBLIC BUILDINGS. The City Council may permit the use or lease of any public building or part thereof for any legal purpose under the terms and conditions as determined by the City Council, which may include lease terms in excess of two (2) years. Notice of the intent to lease the building shall be published in the official newspaper of the City once each week for two consecutive weeks, with the last publication being at least ten (10) days in advance of the date set for the lease. Such lease shall be to a responsible party offering the highest return to the municipality whose use or occupation of the building shall not interfere with the use of such building for public purposes, if needed. The City Council reserves the right to reject any and all bids for the lease. Provided, that this section shall not apply to leases entered into pursuant to Chapter 40-57 N.D. Cent. Code.

1-0705. LEASE OF PERSONAL PROPERTY OR REAL PROPERTY OTHER THAN BUILDINGS. The City Council may lease personal property owned by the City, or real property, other than public buildings, owned by the City. The City Council may determine in each case the terms and conditions of the lease, and whether or not to publicly advertise the lease of the personal property or real property.

CHAPTER 1-08
MUNICIPAL COURT

SECTIONS:

- 1-0801. Convening of the Court.
- 1-0802. Place convened.
- 1-0803. Jurisdiction.
- 1-0804. Penalties - Fines.
- 1-0805. Sentencing Alternatives.
- 1-0806. Factors to be Considered in Sentencing.
- 1-0807. Special Sanctions for Organizations.
- 1-0808. Imposition of Fine - Response to Non-payment.
- 1-0809. Incidents of Probation.
- 1-0810. Conditions of Probation - Revocation.
- 1-0811. Restitution or Reparation - Procedures.
- 1-0812. Merger of Sentence - Sentencing for Multiple Offenses.
- 1-0813. Failure to Pay Fine or Appear in Court – Criminal Offense.

1-0801. **CONVENING OF THE COURT.** The municipal court of the City of Harwood shall convene at such time and for such duration as necessary to conduct and to transact the business of the municipal court.

1-0802. **PLACE CONVENED.** The municipal court of Harwood shall convene and sit at the Community Center in the City of Harwood, State of North Dakota, or such other place as may be designated by the Municipal Judge.

1-0803. **JURISDICTION.** The municipal court shall have such jurisdiction and authority as is authorized by the laws of the State of North Dakota.

1-0804. **PENALTIES - FINES.** The penalty or fine for violation of the provisions of the Harwood Municipal Ordinances shall be as set forth in Section 1-0211.

1-0805. **SENTENCING ALTERNATIVES.**

1. Every person convicted of an offense who is sentenced by the court shall be sentenced to one or a combination of the following alternatives, unless the sentencing alternatives are otherwise specifically provided in the ordinance defining the offense:
 - a. Payment of the reasonable costs of his prosecution.
 - b. Probation.
 - c. A term of imprisonment, including intermittent imprisonment.
 - d. A fine.
 - e. Restitution for damages resulting from a commission of the offense.

- f. Restoration of damaged property.
- g. Work detail.
- h. Commitment to an appropriate licensed public or private institution for treatment of alcoholism, drug addiction, or mental disease or defect.

Sentences imposed under this subsection shall not exceed in duration the maximum sentences provided in Section 1-0804, or as provided specifically in an ordinance defining an offense.

This subsection shall not be construed as not permitting the unconditional discharge of an offender following conviction. Sentences under subdivisions (e) or (f) shall be imposed in the manner provided in Section 1-0805. This subsection shall not be construed to prohibit utilization of suspension of sentence, nor shall this subsection limit the conditions which can be imposed on a probationer under Section 1-0805.

- 2. Credit against any sentence to a term of imprisonment shall be given by the court to a defendant for all time spent in custody as a result of the criminal charge for which the sentence was imposed, or as a result of the conduct by which such charge was based. "Time spent in custody" shall include time spent in custody in a jail or mental institution for the offense charged, whether that time is spent prior to trial, during trial, pending sentence, or pending appeal.
- 3. A court may, at any time prior to the time custody of a convicted offender is transferred to a penal institution or institution for treatments, suspend all or a portion of any sentence imposed pursuant to this section.
- 4. A court may at any time prior to imposition of sentence, refer a person convicted of driving while under the influence of an intoxicating liquor or a narcotic drug, to an approved treatment facility for diagnosis. Upon receipt of the result of this diagnosis, the court may impose a sentence as prescribed in Section 1-0805 of this chapter or it may sentence the person to treatment in a facility approved by the State's Division of Alcoholism and Drug Abuse.
- 5. All sentences imposed shall be accompanied by a written statement by the court setting forth the reasons for imposing a particular sentence. The statement shall become part of the record of the case.
- 6. If an offender is sentenced to a term of imprisonment, that term of imprisonment commences at the time of sentencing, unless, upon motion of defendant, the Court orders the term to commence at some other time.

1-0806. **FACTORS TO BE CONSIDERED IN SENTENCING.** The following factors, or the converse thereof where appropriate, while not controlling the discretion of the court, shall be accorded weight in making determinations regarding the desirability of sentencing an offender to imprisonment:

- 1. The defendant's criminal conduct neither caused nor threatened serious harm to another person or his property.

2. The defendant did not plan or expect that his criminal conduct would cause or threaten serious harm to another person or his property.
3. The defendant acted under strong provocation.
4. There were substantial grounds which, though insufficient to establish a legal defense, tend to excuse or justify the defendant's conduct.
5. The victim of the defendant's conduct induced or facilitated its commission.
6. The defendant has made or will make restitution or reparation to the victim of his conduct for the damage or injury which was sustained.
7. The defendant has no history of prior delinquency or criminal activity, or has led a law abiding life for a substantial period of time before the commission of the present offense.
8. The defendant's conduct was the result of circumstances unlikely to recur.
9. The character, history, and attitudes of the defendant indicate that he is unlikely to commit another crime.
10. The defendant is particularly likely to respond affirmatively to probationary treatment.
11. The imprisonment of the defendant would entail undue hardship to himself or his dependents.
12. The defendant is elderly or in poor health.
13. The defendant did not abuse a public position of responsibility or trust.
14. The defendant cooperated with law enforcement authorities by bringing other offenders to justice, or otherwise cooperated.

Nothing herein shall be deemed to require explicit reference to these factors in a pre-sentence report or by the court at sentencing.

1-0807. **SPECIAL SANCTIONS FOR ORGANIZATIONS.** When an organization is convicted of an offense, the court may, in addition to any other sentence which may be imposed, require the organization to give notice of its conviction to the persons or class of persons ostensibly harmed by the offense, by mail or by advertising in designated areas or by designated media or otherwise.

1-0808. IMPOSITION OF FINE - RESPONSE TO NON-PAYMENT.

1. The court, in making a determination of the propriety of imposing a sentence to pay a fine, shall consider the following factors:
 - a. The ability of the defendant to pay without undue hardship.
 - b. Whether the defendant, other than a defendant organization, gained money or property as a result of commission.
 - c. Whether the sentence to pay a fine will interfere with the defendant's capacity to make restitution.
 - d. Whether a sentence to pay a fine will serve a valid rehabilitative purpose.
2. The court may allow the defendant to pay any fine or costs imposed in installments. When a defendant is sentenced to pay a fine or costs, the court shall not impose at the same time an alternative sentence to be served in the event that the fine or costs are not paid.
3. If the defendant does not pay any fine or costs imposed, or make any required partial payment, the court, upon motion of the prosecuting attorney or on its own motion, may issue an order to show cause why the defendant should not be imprisoned for nonpayment. Unless the defendant shows that his default is excusable, the court may, after hearing, commit him to imprisonment until the fine, or costs, or both, are fully paid or discharged by labor as provided in N.D. Cent. Code § 40-18-12.

The court may not commit a person under this section when the sole reason for his nonpayment is his indigency. An order of commitment under this subsection shall not be for a period in excess of thirty (30) days. As used in this subsection, "fine" does not include a fee established pursuant to Section 13-2209.

1-0809. INCIDENTS OF PROBATION.

1. Unless terminated as provided in subsection 2, the period during which a sentence to probation shall remain conditional and be subject to revocation is two (2) years.
2. The court may terminate a period of probation and discharge the defendant at any time earlier than that provided in subsection 1 if warranted by the conduct of the defendant and the ends of justice.
3. Notwithstanding the fact that a sentence to probation can subsequently be modified or revoked, a judgment which includes such a sentence shall constitute a final judgment for all other purposes.

1-0810. CONDITIONS OF PROBATION - REVOCATION.

1. The conditions of probation shall be such as the court in its discretion deems reasonably necessary to ensure that the defendant will lead a law abiding life or to assist him to do so. The court shall provide as an explicit condition of every

sentence to probation that the defendant not commit another offense during the period for which the sentence remains subject to revocation.

2. When imposing a sentence to probation, the court may impose such conditions as it deems appropriate, and may include any one or more of the following:
 - a. Work faithfully at a suitable employment or faithfully pursue a course of study or of vocational training that will equip him for suitable employment;
 - b. Undergo available medical or psychiatric treatment and remain in a specified institution if required for that purpose;
 - c. Attend or reside in a facility established for the instruction, recreation, or residence of persons on probation;
 - d. Support his dependents and meet other family responsibilities;
 - e. Make restitution or reparation to the victim of his conduct for the damage or injury which was sustained, or perform other reasonable assigned work. When restitution, reparation, or assigned work is a condition of the sentence, the court shall proceed as provided in Section 1-0811;
 - f. Pay a fine imposed after consideration of the provisions of Section 1-0808;
 - g. Refrain from possessing a firearm, destructive device, or other dangerous weapon unless granted written permission by the court;
 - h. Refrain from excessive use of alcohol, or any use of narcotics or of another dangerous or abusable drug without a prescription;
 - i. Promptly notify the court of any change in address or employment;
 - j. Remain within the jurisdiction of the court, unless granted permission to leave by the court; and
 - k. Refrain from associating with known users or traffickers in narcotics, marijuana, or other controlled substances.
3. When a defendant is sentenced to probation, he shall be given a certificate explicitly setting forth the conditions on which he is being released.
4. The court may, upon notice to the probationer, modify or enlarge the conditions of a sentence to probation at any time prior to the expiration or termination of the period for which the sentence remains conditional. If the defendant violates a condition at any time prior to the expiration or termination of the period, the court may, pursuant to the procedure specified in N.D.R. Crim. P. 32(f), continue him on the existing sentence, with or without modifying or enlarging the conditions, or, if such continuation, modification, or enlargement is not appropriate, may impose any other sentence that was available under Section 1-0805 at the time of initial sentencing.
5. Jurisdiction over a probationer may be transferred from the court which imposed the sentence to another court of this state, with the concurrence of both courts. Retransfers of jurisdiction may also occur in the same manner. The court to which jurisdiction has been transferred under this subsection shall be authorized to exercise all powers permissible under this chapter over the defendant.

1-0811. RESTITUTION OR REPARATION - PROCEDURES.

1. Prior to imposing restitution or reparation as a sentence or condition of probation, the court shall hold a hearing on the matter with notice to the prosecuting attorney and to the defendant as to the nature and amount thereof. At or following the hearing, the court shall make determinations as to:
 - a. The reasonable damages sustained by the victim or victims of the criminal offense, which damages shall be limited to fruits of the criminal offense and expenses actually incurred as a direct result of the defendant's criminal action;
 - b. The ability of the defendant to restore the fruits of the criminal action or to pay monetary reparations, or to otherwise take action to restore the victim's property; and
 - c. The likelihood that attaching a condition relating to restitution or reparation will serve a valid rehabilitational purpose in the case of the particular offender considered.

The court shall fix the amount of restitution or reparation, which shall not exceed an amount the defendant can or will be able to pay, and shall fix the manner of performance of any condition or conditions of probation established pursuant to this subsection. Any payments made pursuant to such order shall be deducted from damages awarded in a civil action arising from the same incident. An order that a defendant make restitution or reparation as a sentence or condition of probation may, if the court directs, be filed, transcribed, and enforced by the person entitled to the restitution or reparation in the same manner as civil judgments rendered by the courts of this state may be enforced.

2. The court may order the defendant to perform reasonable assigned work as a condition of probation, which assigned work need not be related to the offense charged, but must not be solely for the benefit of a private individual other than the victim.

1-0812. MERGER OF SENTENCES - SENTENCING FOR MULTIPLE OFFENSES.

1. Unless the court otherwise orders, when a person serving a term of commitment is committed for another offense or offenses, the shorter term or the shorter remaining term shall be merged in the other term. When a person on probation or parole for an offense committed in this state is sentenced for another offense or offenses, the period still to be served on probation or parole shall be merged in any new sentence of commitment or probation. When the court merges sentences under this subsection it shall forthwith furnish each of the other courts previously involved and the penal facility in which the defendant is confined under sentence with authenticated copies of its sentence, which shall cite the sentences being merged. If the court has imposed a sentence which is merged pursuant to this subsection, it shall modify such sentence in accordance with the effect of the merger.

2. A defendant may not be consecutively sentenced to more than one year.

1-0813. **FAILURE TO PAY FINE OR APPEAR IN COURT -- CRIMINAL OFFENSE.** If a defendant willfully fails to pay any part of any fines, fees, costs or restitution imposed by the Municipal Court of the City of Harwood, or if a defendant fails to appear for any scheduled court appearance before the Municipal Court of the City of Harwood, then, in addition to the procedures and penalties set forth in Section 1-0808(3), the defendant shall be guilty of an offense pursuant to this section. Any person convicted under this section is guilty of a class B misdemeanor, regardless of whether the offense for which the defendant failed to pay any fines, fees, costs or restitution, or for which the defendant failed to appear, is an infraction or a misdemeanor.

CHAPTER 1-09

MUNICIPAL BUDGET PROCEDURES

SECTIONS:

- 1-0901. Fiscal Year of Municipality.
- 1-0902. Preliminary Budget Statement.
- 1-0903. Contents of Preliminary Budget Statement.
- 1-0904. Notice of Preliminary Budget Statement.
- 1-0905. Hearing of Protests and Objections - Changes in Preliminary Budget - Preparation of Final Budget - Contents.
- 1-0906. Determination of Amount to be Levied.
- 1-0907. Certification of Levy.
- 1-0908. County Auditor to Extend Tax Levy.
- 1-0909. County Treasurer to Collect Municipal Taxes.
- 1-0910. Municipal Taxes Collected to be Credited to Appropriate Funds.
- 1-0911. Duration of Appropriations.
- 1-0912. Supplemental Appropriations.
- 1-0913. Emergency Appropriations.
- 1-0914. Reduction in Appropriations.
- 1-0915. Expenditures Made or Liabilities Incurred Beyond Appropriation - Joint and Several Liability of the Council.
- 1-0916. State's Attorney to Sue for Excessive Expenditures.
- 1-0917. Contracts Made Prior to Appropriation Prohibited.
- 1-0918. Payment of Accounts.

1-0901. **FISCAL YEAR OF MUNICIPALITY.** The fiscal year of the City of Harwood shall commence on the first day of January of each year and shall terminate on the thirty-first day of December of that same year.

The provisions of North Dakota Century Code § 40-40-03 and all subsequent amendments shall be and are hereby incorporated by reference in this section.

1-0902. **PRELIMINARY BUDGET STATEMENT.** The City Auditor shall present to the City Council, annually on or before September 10 a proposed preliminary budget, from which the City Council shall make an itemized statement, known as the preliminary budget statement, showing the amounts of money which, in the opinion of the City Council, will be required for the proper maintenance, expansion, or improvement of the City during its upcoming fiscal year.

The provisions of North Dakota Century Code § 40-40-04 are referenced, but superseded by this section.

1-0903. **CONTENTS OF PRELIMINARY BUDGET STATEMENT.** The preliminary budget shall include a detailed breakdown of the estimated revenues and appropriations requested for the ensuing year for the general fund, each special revenue fund, and each debt service fund of

the City. The revenue and expenditure items for the preceding year and estimates of the revenue and expenditures for the current year shall be included for each fund to assist in determining the estimated revenues and appropriation requested for the ensuing year. The budget shall also include any transfers in or out and the beginning and ending fund balance for each of the funds. The budget shall be prepared on the same basis of accounting used by the City for its annual financial reports.

The amount paid for salaries may be shown as a single line item expenditure in each fund. There shall be on file with the governing body and open to public inspection a detailed statement showing the names of all persons receiving salaries, the annual amount paid to each person, and the fund charged.

The budget may include an expenditure item for equipment and building replacement, the amount of which may not exceed the total of the anticipated reasonable costs of depreciation for the ensuing year, based on current costs, of all equipment and buildings. Proceeds and disbursements for capital purchases shall be segregated in the capital improvements fund. No expenditure may be paid from the equipment and building of funds segregated into the capital improvements fund except for equipment purchases and/or the purchase, construction or remodeling of buildings or structures for public use.

The provisions of North Dakota Century Code § 40-40-05 are referenced, but superseded by this section.

1-0904. **NOTICE OF PRELIMINARY BUDGET STATEMENT.** After the Council has approved the preliminary budget statement, the City Auditor shall give notice that:

1. The preliminary budget is on file in the office of the City Auditor and may be examined by anyone upon request.
2. The Council shall meet no later than October 7 at the time and place specified in the notice as prescribed by subsection 3 for the purpose of adopting the final budget and making the annual tax levy.
3. The Council shall hold a public session at the time and place designated in the notice of hearing, at which any taxpayer may appear and discuss with the Council any item of proposed expenditures or may object to any item or amount.

The notice must contain a statement of the total proposed expenditures for each fund in the preliminary budget, but need not contain any detailed statement of the proposed expenditures.

The notice must be published at least once, not less than six days prior to the budget hearing, in the official city newspaper.

The provisions of North Dakota Century Code § 40-40-06 are referenced, but superseded by this section.

1-0905. **HEARING OF PROTESTS AND OBJECTIONS - CHANGES IN PRELIMINARY BUDGET -PREPARATION OF FINAL BUDGET - CONTENTS.** The Council shall meet at the time and place specified in the notice and shall hear any and all protests

or objections to the items or amounts set forth in the preliminary budget statement. At the hearing, the Council shall make any changes in the items or amounts shown on the preliminary budget statement as it may deem advisable except as limited in this chapter, and shall direct the preparation of the final budget, which must consist of the preliminary budget with the addition of columns showing:

1. The final appropriations for the various expenditure items specified in the preliminary budget statement. The final appropriation of any fund total may not exceed the total amount requested in the preliminary budget.
2. The estimated amount of unencumbered cash on hand at the end of the current year may not include cash or investments of the equipment replacement fund as provided in Section 1-0903.
3. The levy amount determined by subtracting the total resources from the total appropriations and cash reserve for each fund. The Council may increase the levy an additional five percent for delinquent tax collections.
4. The certificate of levy which includes a summary of the amount levied for each fund and the total amount levied.

The provisions of North Dakota Century Code § 40-40-08 are referenced, but superseded by this section.

1-0906. **DETERMINATION OF AMOUNT TO BE LEVIED.** After completing the final budget on or before October 7, the Council shall proceed to make the annual tax levy in an amount sufficient to meet the expenses for the ensuing year as determined at the budget meeting. In determining the amount required to be levied, the Council first shall ascertain its net current resources by adding the estimated revenue for the ensuing year, other than property taxes, any transfers in, and the estimated fund balance at the end of the current year. Then the Council shall ascertain its appropriation and reserve by adding the final appropriation for the ensuing year, any transfers out, and the cash reserve. The net current resources must be deducted from the appropriation and reserve and the balance shall be considered the amount that is required to be raised by taxation during the ensuing year.

The City Council shall direct an annual certification of mills levied based on the revenue requirements of the proposed budget in its entirety without regard to the specific dedications of mill levies to specific purposes as authorized and provided for in Article III, Section 2 of the Home Rule Charter of the City of Harwood. Total mills levied shall not exceed the total levies authorized by the state constitution and state statutes for cities under North Dakota Century Code Chapter 57-15, unless authorized by a vote of the City's electors.

The levy as finally adopted must be approved by a majority vote of the members of the Council and noted in the record of official proceedings.

The provisions of North Dakota Century Code § 40-40-08 are referenced, but superseded by this section.

1-0907. **CERTIFICATION OF LEVY.** Immediately after the completion of the final budget and the adoption of the annual tax levy by the Council in accordance with the provisions of this chapter, and in no case later than October 10, the City Auditor of the municipality shall send to the County Auditor two certified copies of the levy as adopted and two certified copies of the final budget.

The provisions of North Dakota Century Code § 40-40-10 are referenced, but superseded by this section.

1-0908. **COUNTY AUDITOR TO EXTEND TAX LEVY.** After the County Auditor has available the data showing the total taxable valuation of a municipality, the Auditor shall calculate the necessary tax rates to produce the sums called for in the final budget. If the Auditor finds that any amount or amounts called for in the levy cannot be produced by a tax rate within the limitation prescribed by the laws of this state in accordance with the Home Rule Charter and the Ordinances of the City of Harwood, the Auditor shall reduce the amount so that it can be produced by a tax rate within legal limitations. The County Auditor shall extend the levy, including the levy for judgments against the municipality, upon the tax lists of the county for the current year against each description of real property and all personal property within the municipality in the same manner and with the same effect as other taxes are extended. The County Auditor shall notify the Council at once of any reductions made in the levy.

The provisions of North Dakota Century Code § 40-40-11 are referenced, but superseded by this section.

1-0909. **COUNTY TREASURER TO COLLECT MUNICIPAL TAXES.** The County Treasurer shall collect all municipal taxes, together with the interest and penalties thereon, if any, in the same manner as the general taxes are collected, and shall pay over to the City Auditor, on or before the tenth working day of each calendar month, all taxes so collected during the preceding month, with interest and penalties collected thereon.

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

1-0910. **MUNICIPAL TAXES COLLECTED TO BE CREDITED TO APPROPRIATE FUNDS.** The City Auditor shall apportion the amounts received for taxes from the County Treasurer and shall credit each fund with its proportion or share according to the final budget appropriations made by the Council. The County Treasurer, at the time of paying over such funds, shall furnish the City Auditor with a statement of the amount collected for each year separately, the allocation of mill levy taxes collected will be based on the current year budget appropriations; delinquent taxes, penalties and/or interest collected in excess of the budgeted amount will be receipted into the general fund.

The provisions of North Dakota Century Code § 40-40-14 are referenced, but superseded by this section.

1-0911. **DURATION OF APPROPRIATIONS.** The budget ordinance, as amended, is valid for one fiscal year; unexpended funds will remain in fund equity unless otherwise allocated by Council action. Appropriations for capital improvement, special assessment and or enterprise

fund projects spanning multiple fiscal periods shall remain in effect until each such respective project is completed.

The provisions of North Dakota Century Code § 40-40-21 are referenced, but superseded by this section.

1-0912. **SUPPLEMENTAL APPROPRIATIONS.** In the event at fiscal year-end, revenues exceed expenses, the surplus amount may be deemed available for supplemental appropriation. Supplemental appropriations shall be prioritized, of non-recurring nature and included in the budget amendment process.

1-0913. **EMERGENCY APPROPRIATIONS.** To meet an emergency public need affecting life, health, property or the public peace, the City Council by adoption of a resolution declaring an emergency may by a majority vote approve an emergency appropriation. Any expenditures and or encumbrances resulting from the emergency declaration must be paid in full no later than the final day of the fiscal year. The Resolution authorizing any emergency expenditure must recite the facts showing the existence of an emergency.

The provisions of North Dakota Century Code § 40-40-18 are referenced, but superseded by this section.

1-0914. **REDUCTION IN APPROPRIATIONS.** In the event fiscal conditions lead to an unbalanced budget of expenses exceeding revenues, the Council may take action to amend the annual budget appropriation ordinance to reduce appropriations to available resources.

1-0915. **EXPENDITURES MADE OR LIABILITIES INCURRED BEYOND APPROPRIATION – JOINT AND SEVERAL LIABILITY OF THE COUNCIL.** Except as otherwise provided in Section 1-0913, no municipal expenditure may be made nor liability incurred, and no bill may be paid for any purpose in excess of the appropriation made therefore in the final budget. Expenditures made, liabilities incurred, or warrants issued in excess of the appropriations are a joint and several liability of the members of the governing body who knowingly or negligently authorized the making, incurring, or issuing thereof or who were present when they were authorized and did not vote against authorizing the same.

The provisions of North Dakota Century Code § 40-40-15 are referenced, but superseded by this section.

1-0916. **STATE'S ATTORNEY TO SUE FOR EXCESSIVE EXPENDITURES.** Upon good and sufficient information laid before him by any taxpayer in the municipality or obtained from any other source, the State's Attorney of the county in which the municipality lies shall bring suit to recover from the members of the governing body, jointly and severally, the amount of expenditures, payments, or warrants knowingly or negligently made in excess of the amount shown in any group of the final budget as amended.

The provisions of North Dakota Century Code § 40-40-16 are referenced, but superseded by this section.

1-0917. CONTRACTS MADE PRIOR TO APPROPRIATION PROHIBITED.

Except as otherwise provided in this chapter or in North Dakota Century Code § 40-05-05, no contract shall be made by the Harwood City Council, and no expense shall be incurred by any officers or departments of the City unless there shall have been a previous appropriation providing for such expense. The Council may enter into contracts with persons, associations, corporations, or limited liability companies for the furnishing of water for fire protection to the municipality, and in case such contract extends over a term of years, it shall be unnecessary that a previous appropriation shall have been made except to cover the amounts payable under the contract for the first year thereof. Such a contract shall not be made for a longer period than twenty years.

Contracts for capital leases, services and or purchases shall acknowledge the nature of the appropriation with either a non-appropriations clause or termination in service upon receipt of a statement of non-appropriation.

The provisions of North Dakota Century Code § 40-40-20 are referenced, but superseded by this section.

1-0918. PAYMENT OF ACCOUNTS. The authority to encumber the City is granted in the appropriations process, the disbursement of public monies in exchange for goods and services shall be conducted in an accurate, timely manner and reflected in public record.

Each request for payment shall be adequately documented with vendor information, purchase description, quantities and department approval of an appropriated expenditure account. Control numbers will be used on all disbursements; pre numbered checks, chronologically assigned claim forms and electronic fund transfer numbers.

The first Council meeting of each month shall include a record of all disbursements acknowledged and acted upon by council motion. The record of official proceedings shall summarize total disbursements by fund.

Recurrent Payments: Utilities, contracts, premiums, payroll, payroll related expenses, local vendor incidentals and reimbursements within appropriation limits shall be disbursed in a timely manner. Recurrent payments shall be disbursed on the authority of the appropriations ordinance with approval by the applicable City officer and prior to ratification of the City Council.

Contracts, Progressive Payments and Capital Expenditures: Expenditures that are significant in nature, specifically appropriated and greater than 5% of a departmental annual appropriation shall be presented to Council for authorization prior to purchase, subsequent payments may be made as requested when substantiated by prior council action.

Unappropriated or Emergency Expenditures: Cash disbursements to meet a public need affecting life, health, property or the public peace for materials essential to non-appropriated purchases shall be approved by the emergency appropriations procedure.

The provisions of North Dakota Century Code § 40-01-13 are referenced, but superseded by this Section.

CHAPTER 1-10

SALES AND USE TAX.

Source: Ord. 2008-5, Sec. 1 (2008); Ord. 2016-26, Sec. 1

SECTIONS:

- 1-1001. Definitions.
- 1-1002. Sales Tax Imposed.
- 1-1003. Use Tax Imposed.
- 1-1004. Gross Receipts of Alcoholic Beverages.
- 1-1005. Gross Receipts of New Farm Machinery and New Farm Irrigation Equipment.
- 1-1006. Exemptions.
- 1-1007. Collection and Administration.
- 1-1008. Contract with State Tax Commissioner.
- 1-1009. Dedication of Tax Proceeds.
- 1-1010. Grandfather Clause.
- 1-1011. Saving Clause.

1-1001. **DEFINITIONS.** All terms defined in Chapters 40-05.1, 57-39.2, 57-39.4, 57-39.5, 57-39.6, and 57-40.2 of the North Dakota Century Code (N.D.C.C.), including any future amendments, are adopted by reference. All references to the N.D.C.C. include amendments adopted by the North Dakota Legislative Assembly.

1-1002. **SALES TAX IMPOSED.** Subject to the provisions of N.D.C.C. § 40-05.1-06, and except as otherwise provided by this Ordinance, or the sales and use tax laws of the State of North Dakota, a tax of two percent (2%) is imposed upon the gross receipts of retailers from all sales at retail, including the leasing or renting of tangible personal property, within the corporate limits of the City of Harwood, North Dakota.

1-1003. **USE TAX IMPOSED.** Subject to the provisions of N.D.C.C. § 40-05.1-06, and except as otherwise provided in this Ordinance, or the sales and use tax laws of the State of North Dakota, an excise tax is imposed upon the storage, use, or consumption within the corporate limits of the City of Harwood, North Dakota, of tangible personal property purchased at retail for storage, use, or consumption in this City, at the rate of two percent (2%) of the purchase price of the property. An excise tax is imposed on the storage, use, or consumption within the corporate limits of the City of Harwood.

1-1004. **GROSS RECEIPTS OF ALCOHOLIC BEVERAGES.** Subject to the provisions of N.D.C.C. § 40-05.1-06, and except as otherwise provided in this Ordinance, a gross receipts tax of two percent (2%) is imposed upon all gross receipts from the sale of alcoholic beverages within the City. A person who receives alcoholic beverages for storage, use, or consumption in this state is subject to tax on storage, use, or consumption of those alcoholic beverages at the rate of two percent (2%).

1-1005. GROSS RECEIPTS OF NEW FARM MACHINERY AND NEW FARM IRRIGATION EQUIPMENT. Subject to the provision of N.D.C.C. § 40-05.1-06, and except as otherwise provided in this Ordinance, a gross receipts tax of two percent (2%) is imposed upon all gross receipts from the sale of new farm machinery and new farm irrigation equipment within the City. A person who receives new farm machinery or new farm irrigation equipment for storage, use, or consumption in this state is subject to tax on storage, use, or consumption of that machinery and/or equipment at the rate of two percent (2%).

1-1006. EXEMPTIONS. All sales, storage, use, or consumption of tangible personal property which are exempt from imposition and computation of the sales or use tax of the State of North Dakota are specifically exempt from the provisions of this chapter.

1-1007. COLLECTION AND ADMINISTRATION. Where not in conflict with the provisions of this Ordinance, the provisions of N.D.C.C. Chapters 40-05.1, 57-39.2, 57-39.4, 57-39.5, 57-39.6, and 57-40.2, and all administrative rules adopted by the Tax Commissioner, pertaining to the collection and administration of the retail sales, use, and gross receipts tax, including provisions for liability, refund, penalty, interest or credit, govern the administration by the North Dakota Office of State Tax Commissioner (hereinafter "Tax Commissioner") of the taxes imposed by this Ordinance.

1-1008. CONTRACT WITH STATE TAX COMMISSIONER. The City Auditor for the City of Harwood is hereby authorized to contract with the Tax Commissioner for the 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.

1-1009. DEDICATION OF TAX PROCEEDS. All fees, taxes, penalties and other charges imposed and collected under this chapter, less administrative costs, shall be dedicated and utilized only for infrastructure improvements, including publicly-owned utilities and buildings, job creation, business retention, expansion and recruitment. Proceeds collected pursuant to this chapter from such sales and use tax may be used to make direct payments of costs for the above purposes, or may be pledged to amortize bonds or other debt instruments which may be sold to finance such costs.

1-1010. GRANDFATHER CLAUSE. With respect to the purchase price of tangible personal property used by a contractor or subcontractor to fulfill a contract as defined in N.D.C.C. 57-40.2-03.3, the tax imposed by this section applies only to bids submitted on or after the effective date of this ordinance.

1-1011. SAVING CLAUSE. Should any section, paragraph, sentence, clause or phrase of this ordinance be declared unconstitutional, or invalid for any reason, the remainder of this ordinance shall not be affected thereby.