

CHAPTER 17

SEWERS AND SEWAGE

Article

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ARTICLE 17-01

SEWERAGE UTILITY AND REVENUE BOND FUND

Section

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17-0101. Authorization of revenue bonds.--It is hereby found, determined, and declared that the sewerage system owned and operated by the city, herein referred to as the “municipal sewerage utility,” comprising all systems, plants, works, instrumentalities, and properties used and useful in connection with the collection, treatment, and disposal of sewage, waste, and storm water, together with all parts thereof and appurtenances thereto, including, but without limitation, lands, easements, rights in land, the sewage disposal plant, intercepting sewers, trunk connections, other sewer mains, pumping stations, and equipment, constitutes a municipal undertaking as described in chapter 40-35 of the North Dakota Century Code, as amended, under the provisions of which law the city may improve, better, and extend said utility and may pay the cost thereof in whole or in part by the issuance of revenue bonds, payable exclusively from the net revenues of said utility; provided, that no holder thereof shall ever have the right to compel any exercise of the taxing power of the city to pay said bonds or the interest thereon, or to enforce payment thereof against any property of the municipality, and said bonds shall not constitute a charge, lien, or encumbrance, legal or equitable, upon any property of the city. Such bonds are hereby authorized to be issued and sold in such amounts and at such times and subject to such terms with reference to time and manner of payment of principal and interest as the board of city commissioners shall determine, by resolution duly adopted at a regular meeting thereof, to be necessary and expedient for the purpose of keeping the utility in a state of efficiency corresponding to the progress of sewerage utilities generally; provided, that all such bonds shall be issued subject to the further terms and provisions of this article.

Source: 1952 Rev. Ord. 17-0101, 1098 (1961).

17-0102. Disposition of and accounting for bond proceeds.--Upon delivery of each issue of such revenue bonds the entire proceeds thereof, except accrued interest and premium, if any, received thereon, shall be deposited by the city treasurer in a separate bank account in a duly qualified depository bank and secured as required by the laws of the state of North Dakota, and shall be held and accounted for on the books of the city as a separate and special construction fund; and the monies in said fund shall be disbursed only upon orders duly executed pursuant to claims duly allowed by this board for the payment of expenses which, in accordance with sound accounting practices, constitute legitimate capital expenditures for the improvement of said municipal sewerage utility, in accordance with plans and specifications theretofore approved by said board; provided, that any monies in such construction fund which are not immediately required for payment of such expenses may, in the discretion of said board and where authorized by resolution thereof, be invested in general obligations of the United States government maturing not more than one year from the date of such investment. The costs of improvements to be paid from said construction fund shall include all expenses incurred and to be incurred which are reasonably required for the completion thereof in accordance with the plans and specifications thereof, including, but without limitation, amounts due to the contractor or contractors for work and materials furnished, the cost of all lands, easements, equipment, materials, and labor necessary to be procured by the city in connection therewith, all costs of the issuance of the revenue bonds financing the same, and all engineering, inspection, fiscal, and legal expenses.

Source: 1952 Rev. Ord. 17-0102, 1098 (1961).

17-0103. Sewerage utility fund.--So long as the principal of or interest on any of the bonds authorized by this article to be issued shall be outstanding and unpaid, the city irrevocably covenants with the holders from time to time of each of said bonds that it will maintain within the municipal utilities fund established by § 16-0703 of chapter 16, a special subfund which is hereby created and designated as the "sewerage utility fund." The monies from time to time held in said sewerage utility fund shall be accounted for on the books and records of the city, separate from all other funds and separate from any other monies of the municipal utilities fund pertaining to any public utility other than the sewerage utility now or hereafter operated by the city. Into the sewerage utility fund there shall be credited and paid as received the entire gross revenues derived from the operation of the sewerage utility and from any future additions thereto and betterments thereof, including all income and receipts derived from rates, fees and charges for services, facilities, products and by-products of the utility furnished or sold to the city and its inhabitants and all other customers, and for the availability thereof, and from sale of any of the properties of the utility not necessary to be retained, and from the investment of any of the monies so collected; but such gross revenues shall not be deemed to include any sums realized from special assessments or taxes which may be levied or bonds or other obligations which may be issued for the financing of improvements to said utility. All such gross revenues shall be deposited as received in a duly qualified depository bank and secured as required by law. On the books and records of the sewerage utility fund there shall be established and maintained four separate accounts, to be designated as the "operation and maintenance account," "revenue bond account," "reserve account," and "surplus account," respectively. The revenues on hand, in the sewerage utility fund from time to time shall be apportioned among the said accounts at least once in each calendar month and shall thereafter be held and administered in and disbursed from the several accounts as follows:

- A. To the operation and maintenance account there shall be credited upon each such monthly apportionment, as a first lien and charge on the gross revenues, such sum as shall be needed, over and above any credit balance then held

therein, to pay all claims then due and allowed which by accepted accounting practices constitute normal, reasonable, and current expenses of operation and maintenance of the utility, and to pay such expenses estimated to accrue for a period of one month, and to maintain a reasonable reserve for contingencies. Monies in said account shall be used only to pay expenses of the foregoing type, and not for major repairs, replacements, or capital improvements which are properly chargeable to replacement and depreciation reserves or surplus funds. The net revenues of the utility, which are herein pledged and appropriated to the extent required for the payment of the bonds herein authorized and interest thereon, are hereby defined as the aggregate of all sums on hand in the sewerage utility fund from time to time in excess of the current requirements of the operation and maintenance account as herein set forth.

- B. To the revenue bond account there shall be credited out of the net revenues on hand at the time of each such distribution, an amount equal to not less than one-twelfth of the sum of the principal and interest payments to become due upon all outstanding bonds which are payable from said account within the next succeeding period of 12 months. If the net revenues on hand at any time are insufficient to permit the transfer to said account of the full amount so required, such deficiency shall be restored out of the next net revenues thereafter received. There shall also be credited to said account the premium and accrued interest, if any, paid on each issue of revenue bonds payable from said account. The monies in said account shall be used only for the purpose of paying the principal and interest, as such principal and interest respectively become due, on revenue bonds which are issued and made payable therefrom, as a first lien and charge on the net revenues, in accordance with the provisions of § 17-0104. All monies pertaining to said revenue bond account shall be deposited as received in a special bank deposit account, separate from all other funds of the city.
- C. To the reserve account there is hereby credited the sum of \$66,000, from net revenues of the sewerage system which are now on hand and available for such purpose. It is the intention hereof to establish and maintain in said account a reserve at all times at least equal to the average of the annual principal and interest payments thereafter required to be made from the revenue bond account, and in the event that such average annual principal and interest requirements shall exceed \$66,000 by reason of the authorization of any issue of bonds payable from the revenue bond account, additional net revenues shall be transferred to the reserve account monthly in amounts sufficient to increase the balance therein to the amount so required within three years from and after the issuance of such bonds. Monies in the reserve account shall be used only for the payment of maturing principal and interest on bonds primarily payable from the revenue bond account, when and as the monies in the revenue bond account are insufficient therefor, and whenever so used shall be restored out of the next net revenues thereafter received. All monies pertaining to the reserve account shall be deposited as received in a special bank deposit account, separate from all other funds of the city; provided, that such monies may be invested in the discretion of the board of

city commissioners but only in general obligations of the United States government maturing within one year from and after the date of purchase thereof.

- D. All surplus net revenues from time to time received, in excess of the current requirements of the revenue bond account and reserve account, shall be credited on the books of the city of the surplus account of the sewerage utility fund; provided, that the city reserves the right to create additional accounts within said fund for the purpose of segregating any of such surplus net revenues which may be pledged and appropriated to the payment of any obligations hereafter issued to finance improvements, replacements, or repairs of said utility, other than bonds made payable from the revenue bond account, and subject to the prior lien on the net revenues of the bonds payable from that account. Surplus net revenues on hand from time to time shall be available and shall be used to the full extent necessary to restore any deficiency in the operation and maintenance account and the revenue bond account and reserve account, but when not so needed may be used to pay for capital improvements, replacements, or repairs of the sewerage utility, or to pay principal and interest on obligations hereafter issued for such purposes, other than bonds payable from the revenue bond account, or may be used to redeem and pay prior to maturity bonds payable from the revenue bond account, when and as such bonds become redeemable according to their terms. Monies in the surplus account determined by the board of city commissioners to be in excess of the immediate requirements of said account for the repair, enlargement, alteration, improvement, or extension of the utility may be invested in accordance with the provisions of § 16-0704 of chapter 16 of the Revised Ordinances of 1965 and § 40-33-12 of the North Dakota Century Code, as amended. The board shall maintain in said account such a balance of cash and investments as it shall from time to time determine to constitute an adequate reserve for operation and maintenance emergencies and for depreciation and contemplated improvements or replacements; but monies in excess of such reserve may be transferred to other funds of the city in accordance with and subject to the limitations contained in said § 16-0704 and in § 40-33-12 of the North Dakota Century Code.

Source: 1952 Rev. Ord. 17-0103, 1098 (1961).

17-0104. Priorities among issues of revenue bonds.--The total principal amount of revenue bonds which may be issued and made payable from said revenue bond account, as a first and prior lien and charge on the net revenues of the utility, as herein defined, is limited to the amount required to pay the cost of the enlargement of the sewage disposal plant in accordance with plans and specifications approved by the board of city commissioners on and prior to May 1, 1961, less the amount of such cost to be paid from federal grants made for that purpose, which net cost is presently estimated to be approximately \$1,000,000; and after the initial issuance of revenue bonds in this amount, no additional obligations of any kind shall be issued or incurred and made payable from said net revenues unless the lien thereof upon said net revenues is expressly made junior and subordinate to that in favor of the bonds issued hereunder; save and except that:

- A. If monies on hand in the sewerage utility fund should at any time be

insufficient for the payment of the principal and interest then due on all bonds payable from the revenue bond account, any matured bonds which cannot be paid from said monies may be refunded by the issuance of refunding revenue bonds, which refunding bonds may be made payable from the revenue bond account on a parity as to interest with all then outstanding bonds payable from said account, but shall mature not earlier than one year after the latest maturity date of such outstanding bonds.

- B. In the event that the board of city commissioners shall at any time determine it to be necessary and expedient to issue additional bonds to finance capital improvements of said utility, or to refund outstanding bonds payable from the revenue bond account which are then prepayable according to their terms for the purpose of reducing the interest rate or interest cost or extending the maturities thereof, such additional or refunding revenue bonds may be made payable from the revenue bond account on a parity as to both principal and interest with the then outstanding bonds payable from said account, if the average of the annual net revenues received during the three fiscal years next preceding such issuance shall have equaled or exceeded 125% of the maximum sum of principal and interest to become due and payable from said account on all then outstanding bonds and on all additional bonds so issued, in any subsequent fiscal year of the then remaining term of said outstanding bonds.
- C. If any of the rates and charges for sewerage service shall have been increased or reduced at the date of issuance of such additional bonds from those in effect during any portion of said three fiscal years, the net revenues for such period shall be deemed, for the purpose of the computation required in part (B), to be those which would have been received by applying the revised rates and charges to the quantities of sewerage service actually rendered and made available during such period, and by deducting from the gross revenues so determined the actual operating expenses of the utility for said period; provided, that where sewerage rates are based on water consumption, the quantities consumed shall be reduced by the estimated decrease in actual consumption due to any increase in such rates. The computation of the net revenues in the event of any change in rates shall be made by a qualified and disinterested engineer and approved by the board of city commissioners. In no event shall the net revenues for any period under a revised schedule of rates and charges be deemed to be more than 150% of the net revenues actually received during such period.
- D. Upon the issuance of any additional revenue bonds pursuant to this article after the payment and discharge of all such bonds issued prior to January 1, 1972, only the net revenues received in the fiscal year immediately preceding such issuance shall be considered in applying the provisions of subsection (B) above, and no limitation shall be placed on the upward adjustment of such net revenues by the application of revised rates and charges pursuant to subsection (C) above, and the computation of such adjusted net revenues shall be made by the city auditor.

Source: 1965 Rev. Ord. 17-0104, 1495 (1973).

17-0105. Covenants for the security of revenue bonds.--The city hereby further covenants and agrees with the original purchaser and each holder from time to time of each bond issued hereunder, as follows:

- A. It will complete all improvements financed by the issuance of such bonds in substantial accordance with the approved plans and specifications therefor and with due diligence and with the greatest economy consistent with good workmanship and efficient results and will do so without creating or permitting the creation of any liens and encumbrances on said utility or on the revenues thereof other than the liens and charges on said revenues expressly authorized in this ordinance.
- B. As long as any of such bonds are outstanding, it will continue to own and operate said utility as a municipal utility, free from all competition as to the services thereby provided and in good and efficient operating condition.
- C. It will at all times maintain and collect reasonable rates, charges, and rentals for all services, facilities, commodities, and benefits furnished and made available by said utility according to schedules such that the net revenues derived therefrom will be at least sufficient to pay into said revenue bond account and reserve account the amounts required in § 17-0103 hereof at the times therein provided and to provide surplus net revenues adequate for payment of principal and interest on any obligations hereafter issued as a lien on the net revenues junior to the lien of bonds payable from the revenue bond account, and will revise such schedules in such manner and whenever and as often as needed to perform this covenant.
- D. Under each such schedule the city shall be obligated to pay and will pay from its other funds to the sewerage utility fund a fair and equitable amount for any and all services, facilities, commodities, and benefits furnished to the city or any of its departments by the utility.
- E. It will at all times maintain books of account adequate to show all receipts and disbursements of the city respecting the utility, and the application of such receipts to the purposes of the several accounts of the sewerage utility fund as provided in § 17-0103 hereof, which books of account shall be open to inspection at any reasonable time by the holder of any revenue bond, and it will furnish a certified transcript therefrom of any information which any such bondholder may request, upon payment of a reasonable fee therefor.
- F. At the close of each fiscal year, being the 12-month period ending on June 30 of each year as provided in the statutes of the state of North Dakota, it will cause an operating statement to be prepared and included in the annual financial statement of the city required by the provisions of § 40-16-05 of the North Dakota Century Code, showing the financial condition of the receipts and disbursements of the sewerage utility fund and of its several accounts during such fiscal year, and a copy of each statement will be furnished to the original purchaser of each issue of revenue bonds, and also to any holder of such bonds upon request. The city will also cause the books of account of the utility to be audited by a certified public accountant as soon as may be after the close of each fiscal year, and will furnish a copy of the report of each such audit to the original purchaser of each issue of revenue bonds, and will make the same available upon request to any holder of such bonds. The

cost of all such accounting and audits shall be paid as an operating expense of the utility.

- G. It will at all times keep the properties of said utility insured in reasonable amounts against loss or damage by all causes against which similar properties are customarily insured by prudent owners thereof, and will carry adequate public liability insurance against any claim of personal injury or property damage which is or may become a charge against the revenues of the utility, and will cause all persons handling funds of the utility to be bonded in suitable amounts for the protection of the city and the holders of said revenue bonds, and such insurance and fidelity bonds will be carried with the state fire and tornado fund or such other reputable and responsible insurers as shall be selected by the board of city commissioners, and the expense of all such insurance and bonds shall be paid as an operating cost of the utility, and the city will use the proceeds thereof, immediately upon the occurrence of any loss or damage covered thereby, to restore such loss or damage.
- H. The city will use due diligence in the selection and supervision of employees charged with the operation of said utility and the handling of the funds thereof and in the operation and maintenance and the collection of the revenues of said utility, to the end that the properties thereof shall be kept in good and efficient operating condition and the revenues shall not be lost or mishandled. Bills for sewerage service will be presented to all customers not less often than quarterly, and if any bill is not paid within 15 days from the due date thereof, the supply of water to the premises involved shall be discontinued, and such premises shall not be reconnected until full payment of all charges due for sewerage service together with penalties.
- I. The city and its governing body and each and all of its officers will punctually perform all duties with reference to said utility and the revenues thereof and the bonds herein authorized which are imposed by law and the ordinances and resolutions of the city, including this ordinance, in force upon the date upon which any of such bonds are issued, and all conditions of the constitution and laws of the state and of such ordinances and resolutions as will provide security for the holders of the bonds issued hereunder are acknowledged to be a part of the city's contract with the holders from time to time of such bonds; provided, that nothing herein shall be deemed to preclude the city from modifying the rates and charges and billing procedures now in effect to any extent which will not impair the sufficiency of the revenues of said utility to comply with the remaining provisions of this ordinance.
- J. The holders of 25% or more in principal amount of each issue of bonds payable from the net sewerage utility revenues which are at any time outstanding shall be privileged and are hereby empowered to institute and maintain, in behalf of the holders of all outstanding bonds of such issue, any suit or proceedings at law or in equity for the protection and the enforcement of any covenant, agreement, or stipulation herein provided to be performed or observed by the city or its governing body or any of its officers, whether or not any of such bonds are then in default as to the principal and interest, and

each and all of the rights and remedies specified and mentioned in §§ 40-35-15 to 40-35-19, inclusive, of the North Dakota Century Code, as amended, are hereby acknowledged to be available to the holders of such bonds.

- K. In the event that monies on hand in the revenue bond account and reserve account should be insufficient at any time to pay all principal and interest then due on bonds payable from said accounts, and cannot be made sufficient by transfers of monies from other accounts of the sewerage utility fund, such monies shall be first used to pay the interest then due or to become due on the next succeeding interest payment date on all such then outstanding bonds, and any monies on hand in excess of amounts required for the payment of all such interest shall be applied to the payment of maturing principal on such bonds in order of their maturity dates, earliest maturing bonds first, and prorata to the payment of the principal of bonds maturing on the same date.

Source: 1952 Rev. Ord. 17-0105, 1098 (1961).

17-0106. Sale, execution, and delivery of bonds.--All bonds issued in accordance with the provisions of this article shall be sold in the manner required by the laws of the state of North Dakota and shall be prepared for execution in such form as shall be determined by the board of city commissioners; provided, that all such bonds shall be deemed to be negotiable instruments as provided in § 40-35-10 of the North Dakota Century Code, and shall have coupons appurtenant, evidencing the interest payable thereon at the rate or rates specified in the contract of sale thereof, but may be issued in form permitting registration of the ownership of the principal thereof. Pending preparation of definitive bonds, interim certificates or receipts may be issued to the purchaser of any issue of such revenue bonds, in such form and with such provisions as the board of city commissioners may determine, which certificates or receipts shall also be deemed to be negotiable instruments. The bonds of each issue, or the interim certificates or receipts evidencing the same, when prepared in accordance with the foregoing provisions, shall be executed and authenticated by the signature of the president of the board of city commissioners and countersigned by the city auditor, and the interest coupons appurtenant thereto shall be executed and authenticated by the printed, engraved, or lithographed facsimile signatures of said officers, and such bonds, certificates, or receipts shall then be delivered to the purchaser upon receipt of the purchase price specified in the contract of sale thereof, and the purchaser shall not be obliged to see to the application of the purchase price. The officers of the city are further authorized and directed to furnish to the purchaser of each issue of such revenue bonds certified copies of all ordinances, resolutions, and other proceedings of the city with reference to the establishment, improvement, and administration of said utility and the funds thereof and the issuance of said revenue bonds, and such additional certificates and affidavits as to matters appearing on the records in their official custody or otherwise known to them, as may be reasonably required to evidence the legality and marketability of such bonds; and all such certified copies, certificates, and affidavits shall be deemed to constitute representations and recitals of the city of Fargo as to the correctness of all statements therein contained.

Source: 1952 Rev. Ord. 17-0106, 1098 (1961).

17-0107. Sewerage rates and rules.-- The city reserves the right to impose surcharges and to change rates for use and availability of sewerage service from time to time, in accordance with the

provisions of Article 17-04.

Source: 1965 Rev. Ord. 17-0107, 1851 (1978), 4481 (2005).

17-0108. Industrial waste--Cost recovery.—repealed by Ord. 4481 (2005).

Source: 1965 Rev. Ord. 17-0108, 1852 (1978).

ARTICLE 17-02

CONTROL AND REGULATION OF SEWERAGE SYSTEM

Section

17-0201	Definitions.
17-0202	Sanitary sewers, building sewers and connections.
17-0203	Use of public sewers.
17-0204	Prohibitions and limitations on wastewater discharges.
17-0205	Connections outside city.
17-0206	Enforcement procedures.—Repealed.
17-0207	Protection from damage.
17-0208	Power and authority of inspectors.—Repealed.
17-0209	Penalties.
17-0210	Savings clause--conflict.
17-0211	Prohibited connections to sewer system—Inspection and surcharge authority— Waiver provisions.

17-0201. Definitions.--The following words, terms and phrases are hereby defined and shall be interpreted as such throughout this chapter. Terms not herein defined shall have the meaning customarily assigned to them:

1. “Control authority” shall mean the director of utilities of the city of Fargo or his duly authorized deputy, agent or representative.
2. “BOD (biochemical oxygen demand)” shall mean the quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure in five days at 20E Celsius expressed in milligrams per liter.
3. “Building drain” shall mean that part of the lowest horizontal piping of a drainage system which receives the discharge from soil, waste, and other drainage pipes inside the walls of the building and conveys it to the building sewer.
4. “Building sewer (also house connection or service sewer)” shall mean the extension from the building drain to the public sewer or other place of disposal.
5. “City” shall mean the city of Fargo, a municipal corporation of the state of North Dakota.
6. “Clean Water Act” shall mean the Federal Water Pollution Control Act, Public Law 92-500, also known as the Clean Water Act, including the amendments made by the Clean Water Act of 1977, Public Law 95-217 and any amendments hereafter adopted.
7. “Combined sewer” shall mean a sewer intended to receive both wastewater and storm or surface water.
8. “Commercial” or “institutional users” shall mean all nonresidential users which introduce only sanitary sewage or primarily segregated domestic wastes into a building sewer.

9. "Director" shall mean the director of utilities of the city of Fargo, or his authorized deputy, agent or representative.

10. "Easement" shall mean an acquired legal right for the specific use of land owned by others.

11. "Floating oil" shall mean oil, fat, or grease in a physical state such that it will separate by gravity from wastewater by treatment in an approved pretreatment facility. A wastewater shall be considered free of floatable oil if it is properly pre-treated and the wastewater does not interfere with the wastewater facilities.

12. "Garbage" shall mean the putrescible animal and vegetable waste resulting from the handling, preparation, cooking, and serving of foods.

13. "Industrial cost recovery" shall mean recovery by the city of Fargo from the industrial users of the Fargo wastewater treatment system of the amount of federal grant money used for the purpose of constructing wastewater facilities allocable to the transportation and treatment of waste from such users.

14. "Industrial cost recovery period" shall mean a period of 30 years starting at the time of receipt of federal grant money used for the purpose of constructing wastewater facilities during which the grant allocable to the treatment of waste from industrial users is recovered from the industrial users of such facilities.

15. "Industrial user" shall mean any nondomestic source regulated under section 307(b), (c) or (d) of the Clean Water Act that introduces pollutants into the city's wastewater treatment works.

16. "Interference" shall mean inhibition or disruption of the sewage works, treatment process, or operations which cause or significantly contribute to the violation of the requirements of other agencies having jurisdiction over discharges to the receiving waters. This term also includes contamination of municipal sludge.

17. "Industrial waste" shall mean waste discharged from an industrial user.

18. "Letter of intent" shall mean notification from an industrial user to the city of Fargo of that user's intent to utilize a publicly owned treatment facility for a given period of time.

19. "Natural outlet" shall mean any outlet, including storm sewers and combined sewer overflows, into a watercourse, pond, ditch, lake or other body of surface or ground water.

20. "May" is permissive. (See "Shall").

21. "Minor industrial users" shall mean an industrial user not classified as a significant industrial user.

22. "Categorical Pretreatment Standard" or "Categorical Standard". Any regulation containing pollutant discharge limits promulgated by the U.S. EPA in accordance with Sections 307(b) and (c) of the Act (33 U.S.C. 1317) which apply to a specific category of industrial users and which appear in 40 CFR Chapter I, Subchapter N, Parts 405-471.

23. "National Pretreatment Standard", "Pretreatment Standard", or "Standard" shall mean any regulation containing pollutant discharge limits promulgated by the EPA in accordance with Section 307(b) and (c) of the Act, which applies to Industrial Users. This term includes prohibitive discharge limits established pursuant to Section 403.5.

24. "Existing Source" shall mean any source of discharge, the construction or operation of which commenced prior to the publication of proposed categorical pretreatment standards which will be applicable to such source if the standard is thereafter promulgated in accordance with Section 307 of the Act.

25. "Interference" shall mean a discharge which alone or in conjunction with a discharge or discharges from other sources: 1) inhibits or disrupts the POTW, its treatment processes or

operations or its sludge processes, use or disposal and 2) therefore is a cause of a violation of the City's NPDES permit or of the prevention of sewage sludge use or disposal in compliance with any of the following statutory/regulatory provisions or permits issued thereunder (or more stringent state or local regulations): Section 405 of the Clean Water Act; the Solid Waste Disposal Act (SWDA), including Title II commonly referred to as Resource Conservation and Recovery Act (RCRA); any state regulations contained in any state sludge management plan prepared pursuant to Subtitle D of the SWDA; the Clean Air Act; the Toxic Substances Control Act; and the Marine Protection, Research and Sanctuaries Act.

26. "New Source" shall mean:

- (1) Any building, structure, facility or installation from which there is or may be a discharge of pollutants, the construction of which commenced after the publication of proposed pretreatment standards under Section 307(c) of the Act which will be applicable to such source if such standards are thereafter promulgated in accordance with that section, provided that:
 - (a) The building, structure, facility or installation is constructed at a site which no other source is located; or
 - (b) The building, structure, facility or installation totally replaces the process or production equipment that causes the discharge of pollutants at an existing source; or
 - (c) The production or wastewater generating processes of the building, structure, facility or installation are substantially independent of an existing source at the same site. In determining whether these are substantially independent, factors such as the extent to which the new facility is integrated with the existing plant, and the extent to which the new facility is engaged in the same general type of activity as the existing source, should be considered.
- (2) Construction on a site at which an existing source is located results in a modification rather than a new source if the construction does not create a new building, structure, facility or installation meeting the criteria of Section (1)(b) or (c) above but otherwise alters, replaces, or adds to existing process or production equipment.
- (3) Construction of a new source as defined under this paragraph has commenced if the owner or operator has:
 - (a) Begun, or caused to begin as part of a continuous onsite construction program
 - (i) Any placement, assembly, or installation of facilities or equipment, or
 - (ii) Significant site preparation work including clearing, excavation, or removal of existing buildings, structures, or facilities which is necessary for the placement, assembly, or installation of new source facilities or equipment, or
 - (b) Entered into a binding contractual obligation for the purchase of facilities or equipment which are intended to be used in its operation within a reasonable time. Options to purchase or

contracts which can be terminated or modified without substantial loss, and contracts for feasibility, engineering, and design studies do not constitute a contractual obligation under this paragraph.

27. "Pollutant" shall mean any dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, minitions, medical wastes, chemical wastes, industrial wastes, biological materials, radioactive materials, heat, wrecked or discharged equipment, rock, sand, cellar dirt, agricultural and industrial wastes, and the characteristics of the wastewater (i.e. pH, temperature, TSS, turbidity, color, BOD, Chemical Oxygen Demand (COD), toxicity, odor).

28. "Pretreatment" shall mean the reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater prior to or in lieu of introducing such pollutants into the POTW. This reduction or alteration can be obtained by physical, chemical or biological processes, by the process changes, or by other means, except by diluting the concentration of the pollutants unless allowed by an applicable pretreatment standard.

29. "Pretreatment Requirement" shall mean any substantive or procedural requirement related to pretreatment imposed on an industrial user, other than a pretreatment standard.

30. "Toxic Pollutant" shall mean one of 126 pollutants, or combination of those pollutants, listed as toxic in regulations promulgated by the EPA under the provision of Section 307 (33 U.S.C. 1317) of the Act.

31. "Owner" or "occupant" shall mean the persons using the lot, parcel of land, building or premises connected to and discharging sewage into the sewage system of the city, and who pays or is legally responsible for the payment of water rates or charges made against the said lot, parcel of land, building or premises, if connected to the sewage system, or who would pay or be legally responsible for such payments.

32. "Pass through" means a discharge which exits the POTW into waters of the United States in quantities or concentrations which, alone or in conjunction with a discharge or discharges from other sources, is a cause of a violation of any requirement of the POTW's NPDES permit (including an increase in the magnitude or duration of a violation).

33. "Person" shall mean any individual, firm, company, association, governmental agency, society, corporation, group or political subdivision.

34. "pH" shall mean the logarithm of the reciprocal of the weight of hydrogen ions in grams contained in one liter of solution.

35. "Premises" shall mean all the parcels or land included in the city in a single assessor's parcel number.

36. "POTW" shall mean publicly owned treatment works or POTW shall mean a treatment works as defined by Section 212 f the Act, which is owned by a state or municipality (as defined by Section 502(4) of the Act). This definition includes any devices and systems used in the storage, treatment, recycling, and reclamation of municipal sewage or industrial wastes of a liquid nature. It is also includes sewers, pipes, and other conveyances only if they convey wastewater to a POTW as defined in Section 502(4) of the Act, which has jurisdiction over the indirect discharges to and the discharges from such a treatment works.

37. "Properly shredded garbage" shall mean the wastes from the preparation, cooking, and dispensing of food that have been shredded to such a degree that all particles will be carried freely under the flow conditions normally prevailing in public sewers, with no particle greater than one-half (1/2) inch (one and twenty-seven hundredths (1.27) centimeters) in any dimension.

38. "Public sewer" shall mean a sewer in publicly owned land or easements and controlled by the city of Fargo.

39. "Reserve capacity" shall mean the unused portion of the Fargo Wastewater Treatment Plant capacity that has or will be formally set aside for use by a specific industry, and is so identified by a formal, binding agreement. The reserve capacity shall be subject to industrial cost recovery.

40. "Sewage": See "Wastewater."

41. "Sewage Treatment Plant (also wastewater facilities)" shall mean all facilities for collecting, pumping, transporting, treating and disposing of sewage.

42. "Sewer" shall mean a pipe or conduit for carrying sewage.

43. "Sewer use charge" shall mean a monthly charge to all users of the wastewater facilities which is based on sewage volume, strength and/or flow.

44. "Shall" is mandatory. (See "May").

45. "Significant Industrial User (SIU)":

1. Any industrial user subject to Categorical Pretreatment Standards; or
2. (a) Any other industrial user that discharges an average of 25,000 gallons per day or more process wastewater to the POTW (excluding sanitary, noncontact cooling and boiler blowdown wastewater); or
- (b) contributes a process wastestream which makes up 5% or more of the average dry weather hydraulic or organic capacity of the POTW treatment plant; or
- (c) is designated as such by the Control Authority on the basis that the industrial user has a reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement.

46. "Significant noncompliance" shall mean that an industrial user is in significant noncompliance if its violation meets one or more of the following criteria:

- (a) Chronic violations of wastewater discharge limits, defined here as those in which sixty-six percent or more of all the measurements taken during a six-month period exceed (by any magnitude) the daily maximum limit or the average limit for the same pollutant parameter;
- (b) Technical Review Criteria (TRC) violations, defined here as those in which thirty-three percent or more of all the measurements for each pollutant parameter taken during a six-month period equal or exceed the product of the daily maximum limit or the average limit multiplied by the applicable TRC (TRC=1.4 for BOD, TSS, fats, oil, and grease, and 1.2 for all other pollutants except pH);
- (c) Any other violation of a pretreatment effluent limit (daily maximum or longer-term average) that the Control Authority determines has caused, alone or in combination with other discharges, interference or pass-through (including endangering the health of POTW personnel or the general public);
- (d) Any discharge of a pollutant that has caused imminent endangerment to human health, welfare or to the environment or has resulted in the POTW's exercise of its emergency authority under paragraph (f)(1)(vi)(B) of this section to halt or prevent such a discharge;
- (e) Failure to meet, within 90 days after the schedule date, a compliance schedule milestone contained in a local control mechanism or enforcement order for starting construction, completing construction,

- or attaining final compliance;
- (f) Failure to provide, within 30 days after the due date, required reports such as baseline monitoring reports, 90-day compliance reports, periodic self-monitoring reports; and reports on compliance with compliance schedules;
- (g) Failure to accurately report noncompliance;
- (h) Any other violation or group of violations which the Control Authority determines will adversely affect the operation or implementation of the local pretreatment program.

47. "Slug" shall mean any discharge of water, sewage, or industrial waste in which concentration of any given constituents or in which quality of flows exceed for any period of duration longer than 15 minutes more than five times the average twenty-four-hour concentration or flow during normal operation.

48. "State" shall mean the state of North Dakota.

49. "Storm drain (also storm sewer)" shall mean a sewer which carries storm and surface waters and drainage, but which excludes sewage and industrial wastes other than uncontaminated cooling water.

50. "Total Suspended solids (TSS)" shall mean total suspended matter that either floats on the surface of, or is in suspension in water, wastewater, or other liquids, and that is removable by laboratory filtering as prescribed in "Standard Methods for the Examination of Water and Wastewater" and referred to as nonfilterable residue.

51. "Wastewater (also sewage)" shall mean the spent water of a community. From the standpoint of source, it may be a combination of the liquid and water-carried wastes from residences, commercial buildings, industrial plants, and institutions, together with any ground water, surface water, and stormwater that may be present.

52. "Wastewater superintendent" shall mean the superintendent of the wastewater system of the city of Fargo or his authorized deputy, agent or representative.

53. "Water superintendent" shall mean the superintendent of the water system of the city of Fargo or his authorized deputy, agent or representative.

54. "Watercourse" shall mean a natural or artificial channel for the passage of water either continuously or intermittently.

Source: 2187 (1985), 2573 (1991), 2784 (1996), 2899 (1998), 4231 (2002), 4354 (2003), 4362 (2003).

17-0202. Sanitary sewers, building sewers and connections.--

- A. No unauthorized person shall uncover, make any connections with or opening into, use, alter, or disturb any public sewer or appurtenance thereof without first obtaining a written permit from the city engineer.
- B. There shall be two classes of building sewer permits:
 - 1. For residential and commercial service, and
 - 2. For service to establishments producing industrial wastes. In either case, the owner, or his agent, shall make application on a special form furnished by the city. The permit application shall be supplemented by any plans, specifications, or other information considered pertinent in the judgment of the city engineer. A permit and inspection fee shall be paid to the city at the time the application is filed. The amount of such fee

shall be established by resolution of the board of city commissioners in accordance with § 22-0114 of the Revised Ordinances of 1965 of the city of Fargo.

- C. All costs and expenses incidental to the installation and connection of the building sewer shall be borne by the owner. The owner shall indemnify the city from any loss or damage that may directly or indirectly be occasioned by the installation of the building sewer.
- D. A separate and independent building sewer shall be provided for every building; except where one building stands at the rear of another on an interior lot and no private sewer is available or can be constructed to the rear building through an adjoining alley, court, yard, or driveway, the building sewer from the front building may be extended to the rear building and the whole considered as one building sewer, but the city does not and will not assume any obligation or responsibility for damage caused by or resulting from any such single connection aforementioned.
- E. Old building sewers may be used in connection with new buildings only when they are found, on examination and test by the director to meet all requirements of this ordinance.
- F. The size, slope, alignment, materials of construction of all sanitary sewers including building sewers, and the methods to be used in excavating, placing of the pipe, jointing, testing and backfilling the trench, shall all conform to the requirements of the building and plumbing code or other applicable rules and regulations of the city. In the absence of suitable code provisions set forth in appropriate specifications of the A.S.T.M. and W.P.C.F. Manual of Practice No. 9 shall apply.
- G. Whenever possible, the building sewer shall be brought to tile building at an elevation below the basement floor. In all buildings in which any building drain is too low to permit gravity flow to the public sewer, sanitary sewerage carried by such building drain shall be lifted by an approved means and discharged to the building sewer.
- H. No person shall make connection of roof downspouts, foundation drains, areaway drains, or other sources of surface runoff or ground water to a building sewer, or building drain which in turn is connected directly or indirectly to a public sanitary sewer unless such connection is approved by the director and the North Dakota state department of health.
- L. The connection of the building sewer into the public sewer shall conform to the requirements of the building and plumbing code or other applicable rules and regulations of the city, or the procedures set forth in appropriate specifications of the A.S.T.M. and the W.P.C.F. Manual of Practice No. 9. All such connections shall be made gastight and watertight and verified by proper testing. Any deviation from the prescribed procedures and materials must be approved by the director before installation.
- J. The applicant for the building sewer permit shall notify the director when the building sewer is ready for inspection and connection to the public sewer. The connection and testing shall be made under the supervision of the director or his representative.
- K. All excavations for building sewer installation shall be adequately guarded

with barricades and lights so as to protect the public from hazard. Streets, sidewalks, parkways, and other public property disturbed in the course of the work shall be restored in a manner satisfactory to the city.

Source: 2187 (1985).

17-0203. Use of public sewers.--

A. Materials prohibited in sewers.--No person shall discharge or cause to be discharged to any public sewer any materials which may cause interference with the operation or performance of the treatment works, or which may pass through such treatment works so as to cause the treatment works to violate the terms of its discharge permit or provisions of federal, state or local laws. No person shall discharge or cause to be discharged any of the following described waters or wastes to any public sewers:

(a) Any waters or wastes containing toxic or poisonous solids, liquors gasses in sufficient quantity (either singly or in interaction with other wastes), to contaminate the sludge of any municipal system, to injure or interfere with any sewage treatment process, constitute a hazard to humans or animals, create a public nuisance, or create any hazard in the receiving waters of the wastewater treatment plant. No person shall discharge any liquid waste into the sewage system containing materials in excess of the following concentrations, or in the case of pH levels, containing a pH level less than 5 or greater than 12.5:

Pollutant	Concentration
Arsenic (As)	2.8 mg/l
Benzene	0.05 mg/l
BETX	0.75 mg/l
Cadmium (Cd)	0.20 mg/l
Chromium (III)	5.86 mg/l
Chromium (VI)	0.65 mg/l
Copper (Cu)	2.82 mg/l
Chromium (Total)	5.57 mg/l
Lead (Pb)	1.6 mg/l
Mercury (Hg)	0.001 mg/l
Nickel (Ni)	5.6 mg/l
pH	5 to 12.5
Selenium (Se)	0.26 mg/l
Silver (Ag)	2.0 mg/l
Zinc (Zn)	18.17 mg/l

Concentrations apply at the point of discharge to the city collection system. BETX shall be measured as the sum of benzene, ethylbenzene, toluene, and xylenes.

Total SIU BOD mass loading at the wastewater treatment plant headworks shall not exceed 7,353 pounds per day. Total SUI TSS mass loading at the wastewater treatment plant headworks shall not exceed 4,825 pounds per day.

Where an industrial user is subject to categorical pretreatment standard(s) that control pollutants not enumerated above, or contain limitations that are more stringent than indicated above, the industrial user is subject to the requirements of the categorical pretreatment standard(s). Under no circumstances shall the industrial user achieve compliance with the above limitations or categorical pretreatment standards by diluting its industrial waste with tap water, unpolluted water, sanitary sewage, or any other liquid diluent.

B. Industrial waste permit.--

1. No significant industrial user shall discharge wastewater to the public sewers without having a valid industrial waste permit issued by the director. A permit may be required for any industrial user as deemed necessary by the director.
2. Industrial users shall comply fully with the terms of their permits in addition to the provisions of this chapter. Violation of a permit condition is deemed a violation of this chapter.
3. All significant industrial users shall apply for an industrial waste permit within 30 days after the effective date of this provision. Other persons proposing to connect to the sewer system and determined by the director as requiring an industrial waste permit shall apply at least 90 days prior to commencing discharges to the public sewer. All permittees shall reapply for a new permit between 90 and 180 days prior to the expiration of the old permit.
4. All applications shall be in the form prescribed by the director. The application shall submit, in units and terms suitable for evaluation, all information requested in the application form any relevant supplemental information requested by the director.
5. An applicant or permittee shall notify the director of any new or increased contribution of pollutants or changes in the nature of pollutants not indicated in the permit application.
6. Industrial waste permits shall include, but not be limited to, the following terms:
 - a. Prohibitions on discharge of certain materials, determined by the director.
 - b. Notice of the general and specific prohibitions.
 - c. Notice of applicable national categorical pretreatment standards, effective under section (3).
 - d. Requirements for installation of treatment

technology necessary to achieve compliance with the requirements of this chapter including, but not limited to, that which may be required by the director. (The design and installation of such technology shall be subject to the review, inspection, and approval of the director, and is also subject to the requirements of all applicable codes, ordinances, and laws).

- e. Compliance schedules as per section (3).
 - f. Monitoring, sampling, record keeping, reporting, notice, control manhole, and measuring requirements specified.
 - g. Special requirements regarding unusual strength sewage as per agreement.
 - h. Requirements for additional payments.
 - i. Other conditions necessary to carry out the requirements of this division and applicable federal and state laws and regulations.
7. Permits are valid for five years from date of issuance of permit modification, whichever is later, unless revoked.
 8. Permits are not transferable.
 9. Permits may be modified for just cause upon 30 days notice. Just cause shall include, but not be limited to:
 - a. Promulgation of a new applicable national categorical pretreatment standard;
 - b. Changes in the requirements of this ordinance;
 - c. Changes in the processes used by the permittee or changes in discharge volume or character;
 - d. Changes in design or capability or receiving sewage treatment plant.
 10. Permits may be revoked for just cause including, but not limited to, violation of any terms or conditions of the industrial waste permit, or any other violation of this ordinance; obtaining a permit by misrepresentation or failure to disclose fully all relevant facts; and false statements in any required report.
- C. Authority to require compliance with federal categorical pretreatment standards.--Upon promulgation of the federal categorical pretreatment standards (authorized by section 307 of the Clean Water Act) for a particular industrial subcategory, the federal standard, if more stringent than the limitations imposed under this ordinance, or in the absence of the applicable pretreatment limitations in this ordinance, shall become applicable. The director shall promptly notify all affected industrial users of the reporting requirements contained in 40 CFR 403.12 and shall require that such reports be signed by a duly authorized representative of the industrial user who

certifies as to the completeness of the report.

The director shall have the authority to place all affected industrial users on compliance schedules, receive and analyze reports on progress toward compliance, and insure that all applicable industrial users install the technology necessary to achieve the required levels of treatment specified by the categorical pretreatment standard on or before the deadline specified in the standard. This authority shall also be applicable to those industrial users who discharge substances identified as prohibited discharges.

Source: 2187 (1985), 2298 (1986), 4231 (2002), 4273 (2002), 4319 (2003).

17-0204. Prohibitions and limitations on wastewater-- Discharges.--

- A. Prohibitions on wastewater discharges--No person shall discharge or deposit or cause or allow to be discharged or deposited into the wastewater treatment system any wastewater which contains the following:
1. Oils and grease.
 - a. Oil and grease concentrations or amounts from industrial facilities violating federal pretreatment standards.
 - b. Wastewater from industrial facilities containing floatable fats, wax, grease or oils in amounts which would cause interference or pass through the treatment process.
 - c. Petroleum oil, nonbiodegradable cutting oil, or products of mineral oil origin in amounts which would cause interference or pass through.
 2. Explosive mixtures. Liquids, solids or gases which by reason of their nature or quantity are, or may be, sufficient either alone or by interaction with other substances to cause fire or explosion or be injurious in any other way to the sewerage facilities or to the operation of the system. At no time shall two successive readings on an explosion hazard meter, at the point of discharge into the sewer system, be more than 5% nor any single reading over 10% of the lower explosive limit (L.E.L.) of the meter. Prohibited materials include, but are not limited to, gasoline, kerosene, naphtha, benzene, toluene, xylene, ethers, alcohols, ketones, aldehydes, peroxides, chlorates, perchlorates, bromates, carbides, hydrides and sulfides. Pollutants which create a fire or explosion hazard in the wastewater treatment works, including, but not limited to, wastestreams with a closed cup flashpoint of less than 60E Centigrade (140E Fahrenheit) using the test methods specified in 40 CFR 261.21.
 3. Noxious material. Noxious or malodorous solids, liquids or gases, which, either singly or by interaction with other wastes, are capable of creating a public nuisance or hazard to life, or are or may be sufficient to prevent entry into a sewer

for its maintenance and repair. Pollutants which result in the presence of toxic gases, vapors, or fumes within the wastewater treatment works including sewers that may cause acute worker health and safety problems.

4. Improperly shredded garbage. Garbage that has not been ground or comminuted to such a degree that all particles will be carried freely in suspension under flow conditions normally prevailing in the public sewers, with no particle greater than one-half inch in any dimension.
5. Radioactive wastes. Radioactive wastes or isotopes of such half-life or concentration that they do not comply with regulations or orders issued by the appropriate authority having control over their use and which will or may cause damage or hazards to the sewerage facilities or personnel operating the system.
6. Solid or viscous wastes. Solid or viscous wastes which will or may cause obstruction to the flow in a sewer, or otherwise interfere with the proper operation of the wastewater treatment system. Prohibited materials include, but are not limited to, grease, uncomminuted garbage, animal guts or tissues, paunch manure, bones, hair, hides or fleshings, entrails, whole blood, feathers, ashes, cinders, sand, spent lime, stone or marble dust, metal, glass, straw, shavings, grass clippings, rags, spent grains, spent hops, waste paper, wood, plastic, tar, asphalt residues, residues from refining or processing of fuel or lubricating oil, and similar substances.
7. Excessive discharge rate. Wastewaters at a flow rate or containing such concentrations or quantities of pollutants that exceed for any time period longer than 15 minutes more than five times the average 24-hour concentration, quantities or flow during normal operation and that would cause a treatment process upset and subsequent loss of treatment efficiency. Any pollutant, including oxygen-demanding pollutants (e.g., BOD), released in a discharge at a flowrate and/or pollutant concentration which would cause interference with the wastewater treatment works.
8. Toxic substances. Any toxic substances in amounts exceeding standards promulgated by the administrator of the United States Environmental Protection Agency pursuant to section 307(a) of the Act, and chemical elements or compounds, phenols or other taste or odor-producing substances, or any other substances which are not susceptible to treatment or which may interfere with the biological processes or efficiency of the treatment system, or that will pass through the system.
9. Unpolluted waters. Any unpolluted water including, but not limited to, water from cooling systems or of stormwater

origin, which will increase the hydraulic load on the treatment system.

10. Discolored material. Wastes with objectionable color not removable by the treatment process.
11. Corrosive wastes. Any waste which will cause corrosion or deterioration of the treatment system. Prohibited materials, include, but are not limited to, acids, sulfides, concentrated chloride and fluoride compounds and substances which will react with water to form acidic products. Pollutants which will cause corrosive structural damage to the wastewater treatment system or works, but in no case discharges with pH lower than 5.0 unless the wastewater treatment works are specifically designed to accommodate such discharges.
 - a. Heat. No liquid or vapor should be discharged into any sewer so as to arrive as influent at the Fargo sewage treatment plant containing heat in amounts which will inhibit biological activity in the wastewater treatment system resulting in interference, but in no case heat in such quantities that the temperature at the Fargo sewage treatment plant exceeds 104E Fahrenheit (40E Celsius).
 - b. Limitations on wastewater discharges--No person shall discharge or convey, or permit or allow to be discharged or conveyed, to a public sewer any wastewater containing pollutants of such character or quantity that will:
 - i. Not be susceptible to treatment or interfere with the process or efficiency of the treatment system.
 - ii. Constitute a hazard to human or animal life, or to the stream or water course receiving the treatment plant effluent.
 - iii. Violate pretreatment standards.
 - iv. Cause the treatment plant to violate its NPDES permit or applicable receiving water standards.
 - c. Special agreements. Nothing in this section shall be construed as preventing any special agreement or arrangement between the city and any user of the wastewater treatment system whereby wastewater of unusual strength or character is accepted into the system and specially treated subject to any payments or user charges as may be

applicable provided, however, that said special agreements shall not waive any federal categorical pretreatment standards.

12. Any trucked or hauled pollutants, except at discharge point designated by the city of Fargo.

Source: 2187 (1985), 2297 (1986), 2574 (1991), 4231 (2002).

17-0205. Connections outside city.--

- A. Approval required.--No sewer connection permit shall be issued after the effective date of this article to serve any property located outside the corporate limits of the city of Fargo, except with specific approval of the city commission. Such connections shall be authorized by resolution and shall be subject to such terms, conditions and fees as the commission finds necessary to appropriate.

Source: 2187 (1985).

17-0206. Enforcement procedures.—Repealed by Ord. No. 4482 (2005).

Source: 2187 (1985).

17-0207. Protection from damage.--

- A. Prosecution for damage to system.--No unauthorized person shall maliciously, willfully, or negligently break, damage, destroy, uncover, deface, or tamper with any structure, appurtenance, or equipment which is part of the wastewater facilities.

Source: 2187 (1985).

17-0208. Power and authority of inspectors.—Repealed by Ord. No. 4482 (2005).

Source: 2187 (1985), 2575 (1991).

17-0209. Penalties.--

- A. Every person, firm or corporation violating an ordinance which is punishable as a Class B misdemeanor shall be punished by a fine not to exceed \$1,000.00, or by imprisonment not to exceed 30 days, or by both such fine and imprisonment, in the discretion of the court; the court to have power to suspend said sentence and to revoke the suspension thereof.
- B. Costs.--Any person violating any of the provisions of this chapter shall become liable to the city for any expense, less or damage occasioned by the city by reason of such violations.

Source: 2187 (1985), 4354 (2003), 4483 (2005).

17-0210. Savings clause--Conflict.--In the event that any provision, paragraph, word, section or article of this ordinance is invalidated by any court of competent jurisdiction, the remaining provisions, paragraphs, words, sections and articles shall not be affected and shall continue in full force and effect; all ordinances and parts of ordinances inconsistent or conflicting with any part of this ordinance are hereby repealed to the extent of such inconsistency or conflict.

Source: 2187 (1985).

17-0211. Prohibited connections to sewer system.--Inspection and surcharge authority.--
Waiver provisions.--

- A. Section 22-0432 of the 1971 revised City Ordinances prohibits surface or ground water drains, including roof drains and foundation drain tiles, from being connected to the sanitary sewer. Said ordinance requires that surface or ground water drains shall be connected directly to the city storm sewer or discharged into a sump and thereafter pumped into the city storm sewer system or onto a yard in such a manner so as to drain into the city storm sewer system. The following subsections further expand on such prohibited connections and provide for inspections, surcharges, waivers and penalties.
- B. All dwellings, buildings and structures constructed after September 21, 1971, which require, because of infiltration of water into basements, crawl spaces and the like, a foundation drainage system shall have a permanently installed discharge line which, shall not at any time, discharge water into the sanitary sewer system except as hereinafter provided in 17-0211(F). A permanent installation shall be one in which the direction of flow cannot be altered and provides for year-round discharge to either the outside of the dwelling, building or structure, or is connected directly to the city storm sewer, or discharges to the curb and gutter.
- C. Prior to June 1, 2001, all dwellings, buildings or structures constructed after September 21, 1971, having surface or ground water drains, including sump pumps, now connected and/or discharging into the sanitary sewer system shall disconnect and/or remove the same. Any disconnects or openings in the sanitary sewer shall be closed or repaired in an effective, workmanlike manner, as approved by the city engineer for utilities.
- D. Authorized city personnel, or its designated representatives bearing proper credentials and identification, shall be permitted to enter all properties constructed after September 21, 1971, for the purposes of inspection and observation to identify prohibited discharges to the sanitary sewer system. Any person may furnish a certificate from a licensed plumber certifying that their property is in compliance with 22-0432 and this section, in lieu of having the city inspect their property. Any person refusing to allow their property to be inspected (or failing to furnish a plumber's certificate in lieu thereof) within fourteen (14) days of the date city employees or their designated representatives are denied admittance to the property, shall immediately become subject to the surcharge penalty as required under 17-0211(E). Any person found to have violated this provision shall make the necessary changes to eliminate the discharge of surface or ground water into the sanitary sewer system and furnish proof of the changes to the city within ninety (90) days. Each prohibited connection identified may be re-inspected by the city, its designated representative or a licensed plumber, to confirm compliance.
- E. A monthly surcharge penalty, established by resolution of the board of city commissioners, shall be imposed and added to the regular sewer billing on and after June 1, 2001, to property owners who are not in compliance with this section. The surcharge shall be added every month through December

2001 until the property is in compliance. The surcharge shall continue to be levied monthly, every year on properties not complying with this section. It is provided, however, that the surcharge shall not be charged unless and until a property has been inspected and found to be not in compliance, or if the property owner refuses to allow an inspection and fails to provide a plumber's certificate in lieu thereof as set forth in this section.

- F. The city engineer for utilities shall have the authority to grant exemptions from strict compliance with this section.

Exemptions may be granted in the form of seasonal waivers which would allow the property owner to temporarily discharge directly into the sanitary sewer system between the date of October 1 and March 31. The holder of a seasonal waiver shall allow a city employee or designated representative to certify that, prior to April 1 of each subsequent year, their discharge water connection has been removed from the sanitary sewer. Failure to provide such certification shall place the seasonal waiver holder in violation and subject to the surcharge penalty as required under 17-0211(E). Seasonal waiver requests shall be submitted on the official form provided by the city engineer for utilities.

Exemptions may be granted in the form of non-seasonal waivers for a particular property owner who can demonstrate undue hardship because of unique or extenuating circumstances, including physical or handicap limitations. A non-seasonal waiver would allow the property owner to discharge directly into the sanitary sewer system without seasonal restrictions. The non-seasonal waiver request shall be submitted to the city engineer for utilities in writing and, at a minimum, identify the property for which the waiver is being requested, the name of the property owner/applicant, and a detailed description of the circumstances justifying the request.

- G. Any person granted a seasonal waiver shall be charged an additional monthly fee on their utility bill to cover the cost of compliance inspections and the cost for treating the extra discharge water during the waiver period. The seasonal waiver amount shall be set by resolution of the board of city commissioners.

Any person granted a non-seasonal waiver shall be charged an additional monthly fee on their utility bill to cover the cost for treating the extra discharge water on a year-round basis. The non-seasonal waiver amount shall be set by resolution of the board of city commissioners.

- H. If a seasonal waiver is granted, the owner of the property may place a pipe connecting the sump pump to the sanitary sewer, which must have a shut-off valve. City staff or its designated representative, on or around April 1 of each year, will inspect the system to verify that the valve is closed so no prohibited water is discharged into the sanitary sewer. By applying for the waiver, the owner has granted permission to the city staff or its representatives to inspect the connection at any time between April 1 and October 31 to verify compliance with this section. Such inspections must be made between 8:00 a.m. and 5:00 p.m., Monday through Friday, and only when a resident of the premises is on site. Failure to allow such an

inspection or to allow city staff or its designated representatives entry for verification of compliance shall result in automatic revocation of the seasonal waiver and imposition of the surcharge penalty pursuant to 17-0211(E).

- I. When a new structure is being constructed in the city of Fargo, if, at or prior to final inspection, city staff determines that the sump pump connection has been illegally connected to the sanitary sewer system, or that there is another connection or device or lack of a plug which allows surface run-off or ground water to enter into the sanitary sewer system, either permanently or temporarily, there shall be levied an administrative fine against the general contractor for the structure thus found in violation. If, 24 hours after receiving written notice from the city, the general contractor has not remedied the situation so that no surface run-off or ground water can enter into the sanitary sewer system, there shall be an additional administrative penalty for each month such a violation exists. In addition, the building inspector shall not issue another building permit within the jurisdiction of the city of Fargo for that contractor until the violation has been remedied and any administrative penalty has been fully paid to the city. The administrative penalty shall be set by resolution of the board of city commissioners.

Source: 4150 (2001).

ARTICLE 17-03

ABANDONED SEWER PIPES

Section

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|---------|---|
| 17-0301 | Abandoned sewer pipes--Permanently closed off--Permit and deposit required. |
| 17-0302 | Closing off of sewer pipes if owner fails to do so. |
| 17-0303 | Expense of closing off to be charged as special assessment. |

17-0301. Abandoned sewer pipes--Permanently closed off--Permit and deposit required.--All sewer service pipes that may become useless because of the laying of larger or other new services, or because sewage will no longer be passing through them, or because a structure or structures have been destroyed or moved off the site must be permanently closed off at a point outside the property line, at the expense of the owner of the premises, and a permit therefor shall be secured from the city engineer and a \$100 deposit made to guarantee that the sewer service line will be properly disconnected; any such work shall be done to the satisfaction of the city engineer and the completion of the work shall be reported in writing to the city engineer, after which the \$100 deposit shall be refunded.

Source: 1952 Rev. Ord. 1131 (1962).

17-0302. Closing off of sewer pipes if owner fails to do so.--If the owner of the premises shall fail to close off any such sewer service pipe within five days after notice or demand served on him, or posted on the premises if the owner cannot be located after inquiry, then the city, through its proper officers or employees, may close off said pipes and the expense attending the closing off may be recovered from the owner in an action against him or them by the city or such expense may be

returned by the city engineer verified by his oath to the city auditor.

Source: 1952 Rev. Ord. 1131 (1962).

17-0303. Expense of closing off to be charged as special assessment.--It shall be the duty of the city auditor to enter such costs and expense so certified by the city engineer as a special assessment against the lot or parcel of land from which the sewer pipe has been closed off. In August of each year the board of city commissioners shall review all assessments, and hear all complaints against the same, and approve the same as finally adjusted, and such special assessment shall then be certified to the county auditor and be placed upon the tax roll for that year and be collected as other city taxes.

Source: 1952 Rev. Ord. 1131 (1962).

ARTICLE 17-04

SURCHARGE FOR SEWERAGE INDUSTRIAL PRE-TREATMENT

Section

17-0401	Sewerage rates and rules.
17-0402	Industrial waste surcharge.
17-0403	Maximum BOD and TSS loads.
17-0404	Transitional provision.
17-0405	Industrial waste permit fee.
17-0406	Notification of rates and charges.
17-0407	When due.
17-0407	Exemptions.
17-0408	Out-of-city sewer connections.

17-0401. Sewerage rates and rules--The city reserves the right to change the rates for the use and availability of sewerage service from time to time, by resolution, and at all times to make such sewerage service restrictions, rules, and regulations as, in the judgment of the board of city commissioners may be necessary; provided, that the schedules of such rates and charges shall be such as will provide the amounts required, over and above the current expenses of operation and maintenances for depreciation, replacement, and improvement of said utility which will keep the same in a state of efficiency corresponding to the progress of such sewerage utilities generally, including payment of principal and interest and creation and maintenance of reserves securing such payments on any bond issued to finance or refinance improvements thereto, in accordance with the resolutions and ordinances authorizing such bonds. Sewerage rates, surcharges, discounts, penalties, service, or advance charges shall be those established by the board of city commissioners by resolution:

- A. Payment of the user's wastewater service charge and penalties--The city shall submit statements on a quarterly or more frequent basis to the. The city shall add a penalty of 10% if the payment is not received by the city within 15 days. Should any user fail to pay the user wastewater service charge and penalty within three months of the due date, the city may stop the wastewater service to the property.

- B. Wastes prohibited from being discharged to the wastewater treatment system--The discharge of wastes containing materials in such quantities as to be detrimental to the wastewater treatment process is hereby prohibited. The discharge of wastes which cause or are likely to cause maintenance problems such as to hinder flow, block pipes and/or clog pumps is hereby prohibited.

Source: 4484 (2005).

17-0402. Industrial waste surcharge--

- A. There shall be collected from any permitted SIU within the city of Fargo an additional charge over and above the base sewage rates provided for commercial users based upon the extent to which the sewage or waste so discharged has a biochemical oxygen demand (BOD) concentration greater than two hundred seventy-five (275) milligrams per liter, total suspended solids (TSS) concentration greater than two hundred seventy-five (275) milligrams per liter or other pollutants in such concentration as to require special attention to treatment as determined by resolution of the board of city commissioners.
- B. Any sums so charged in addition to the base sewage charges shall be termed "surcharge" and shall be ascertained as hereinafter described.
1. Sampling and testing of the permittees' wastewater shall be conducted at periodic intervals as specified in the industrial waste permit or agreed upon by the city and permittee for the purpose of computation of the monthly surcharge and penalty fee, if any.
 2. The surcharge to the SIU shall be based upon the following:
 - a. $S = (RB (BOD-275) + RS (TSS-275) + RP (P)) 8.33VW$
 - b. If the surcharge amount for any pollutant in the above formula becomes less than zero (0) it shall not be used to offset or reduce the surcharge amount to be collected for other pollutants listed in the formula.
 3. Wastewater surcharges shall be in addition to and shall be collected with the wastewater base rate charges and all regulations which apply to the collection of these wastewater base rate charges shall also apply to wastewater surcharges.
 4. The rates to be applied in the surcharge formula for treatment of pollutants in addition to the wastewater rentals are established as follows:

For BOD: RB = is amount set by resolution of the board of city commissioners.

For TSS: RS = is amount set by resolution of the board of city commissioners.

For other pollutants (P): RP = (rate to be determined by board of city commissioners when need exists for special attention to treatment of other pollutants.)

Any person discharging any waste which by its nature or toxicity causes damage to the treatment works or increases the cost of managing the effluent, sludge or other products of treatment shall pay the costs of cleanup, restoration of such damage, and any increased treatment costs.

For purposes of this ordinance, the following terms apply:

Where:	S	--	Surcharge in dollars for billing period.
	RB	--	Rate charged for treatment of BOD, dollars per pound.
	BOD	--	Concentration of BOD in user's wastewater, mg/l.
	RS	--	Rate charge for treatment of TSS, dollars per pound.
	TSS	--	Concentration of TSS in user's wastewater, mg/l.
	RP	--	Rate charged for other pollutant, dollars per pound.
	P	--	Concentration of other pollutant(s) in user's wastewater, mg/l.
	VW	--	Volume of user's wastewater for billing period, million gallons.

Source: 4484 (2005).

17-0403. Maximum BOD and TSS loads--The board of city commissioners, by resolution, may establish the maximum load of BOD and TSS for each permittee.

Source: 4484 (2005).

17-0404. Transitional provision--The requirement of the maximum BOD and TSS loads set by the board of city commissioners, as provided by FMC §17-0403, shall take effect no earlier than July 1, 2007.

Source: 4484 (2005).

17-0405. Industrial waste permit fee--An annual fee of one hundred dollars (\$100.00) shall be charged for each industrial waste permit. The initial fee shall be submitted at the time of application for such permit and subsequent renewal fees shall be submitted with a written application for renewal of the permit prior to December 31 of each year.

Source: 4484 (2005).

17-0405. Notification of rates and charges--The charges for wastewater service (user charges) shall be stated separately from the water, refuse collection or other amounts shown on the periodic water bills issued to each user. Each user will be notified annually, or at more frequent intervals, as to the current rates for wastewater service, surcharges for high strength wastes, and any other charges made for collection and treatment of wastewater in the city of Fargo.

Source: 4484 (2005).

17-0406. When due--Wastewater charges shall be collected with the water charges of the city by the city water department, and shall become due and delinquent upon the same dates as the water bills upon which the same are charged, and for failure to pay the said wastewater charges the authorized city representative shall have the same authority to shut off water and said authorized city representative shall refuse to turn on or reconnect the same as is now provided in the case of default in the payment of water bills. Whenever the authorized city representative shall have shut off water service as provided herein for failure of the owner or occupant to pay the wastewater charges, such service shall not be reinstated until all past due bills for wastewater service are paid in full.

Source: 4484 (2005).

17-0407. Exemptions-

- A. No wastewater fees shall be charged or collected upon water meter readings for water which is carried out of the city for use. This section shall not be construed as exempting from wastewater charges water which is used for processing purposes within the city though the product thereof is carried outside of the city for use, but shall apply only to water users actually hauling or carrying their water beyond the city limits for use.
- B. No wastewater fees shall be charged upon premises outside the city limits unless said premises are served by the city wastewater system.

Source: 4484 (2005).

17-0408. Out-of-city sewer connections--

- A. No wastewater services shall be connected to the systems of the city of Fargo, North Dakota, to serve property lying outside the corporate limits of said city.
- B. Exceptions:
 - 1. Political subdivision. Wastewater service may be extended to any village, city, township, county, state, or federal governmental agency with the approval of the board of city commissioners.
 - 2. Existing connections. Any sewer connection serving property outside the corporate limits of the city of Fargo,

on the effective date of this article, shall be continued.

3. Institutions of learning and public charity. Wastewater service may be extended to schools, academies, colleges, institutions of learning, institutions of public charity, hospitals, churches and religious organizations with the approval of the board of city commissioners.
- C. Any person, firm or corporation that is permitted as an out of city sewer connection shall enter into an agreement with the city that said person, firm or corporation will construct and maintain in good repair at the user's own expense under the direction, supervision, and according to instruction of the authorized city representative, the necessary service pipe, manholes, and other appurtenances to serve the premises in compliance with all city codes and ordinances, will obtain the necessary plumbing permits therefor and will pay all sewer connection or service fees, permit fees, and inspection fees required for such installations. The authorized city representative shall have the same authority to collect monthly wastewater fees and to shut off water for failure of the user to pay the said wastewater fees as for users within the city limits.
- D. In the event an additional user desires to be connected to an existing out of city sewer service the written consent of the owner of the sewer and of the authorized city representative, together with the payment of all applicable fees shall be required. Said fees shall include the inspection fee, sewer connection or service fee, industrial waste permit fee, and/or any other fees if and when applicable to the service desired and shall accompany a written application to the city for said service.
- E. The payment of the monthly wastewater service charges provided in this article shall also apply to out of city property owners who have been heretofore connected to said service, and in addition said users shall be subject to all conditions and regulations imposed by this chapter, and amendments thereto and shall be subject to such other conditions as may be required by the authorized city representative.

Source: 4484 (2005).

ARTICLE 17-05

SEWERAGE – VIOLATIONS AND ENFORCEMENT

Section	
17-0501	Definitions.
17-0502	Responsibility for enforcement.
17-0503	Types of violations.
17-0504	Remedies and enforcement powers.
17-0505	Enforcement procedures.
17-0506	Other powers.
17-0507	Continuation.

17-0508 Power and authority of inspectors.

17-0501. Definitions--The following definitions apply to this chapter:

1. "Notice of violation" shall mean a notice of violation is a written notice of the violation of an ordinance in this chapter which identifies the nature of the violation, the section or ordinance allegedly violated and the time of occurrence of the violation, if known.

2. "Administrative compliance order" shall mean an administrative compliance order is an order issued by the director which identifies the nature of the violation, the section or ordinance allegedly violated, the time of occurrence of the violation, if known, the corrective steps necessary and the nature of subsequent penalties and enforcement actions should the situation not be corrected and ordering that the alleged violator come into compliance with the section or ordinance allegedly violated. The administrative compliance order may provide a time period within which compliance must occur. For purposes of the administrative enforcement provisions of Article 1-04, an administrative compliance order shall be deemed to be the same as an administrative order.

3. "Administrative compliance order with fine" shall mean an administrative compliance order with fine is an administrative compliance order that also provides that the city will impose a civil fine if compliance does not occur within the time provided in the order.

4. "Order to show cause" shall mean an order issued by the director issued when there is reason to believe that the violation identified in the administrative compliance order has not ceased or been corrected as required, and directing the alleged violator to appear before the administrative enforcement board to show cause why service should not be terminated.

5. "Restitution" shall mean restitution is the amount determined by the administrative enforcement board to be payable to the city by a violator of this chapter necessary to reimburse the city for damage caused to the sewage system as a result of such violation.

Source: 4484 (2005).

17-0502. Responsibility for enforcement--The director is authorized to enforce this chapter.

Source: 4484 (2005).

17-0503. Types of violations--All of the following represent violations of this article and of law and will be subject to the remedies and penalties provided in this article, the city code and state law.

A. Discharge of sewage without required permit or approval. It is a violation of this article to discharge sewage into the sewerage system of the city without obtaining all the permits, approvals, certificates and other forms of authorization required by this article.

B. Discharge of sewage inconsistent with permit. It is a violation of this article to discharge sewage into the sewerage system of the city in any way inconsistent with the terms and conditions of any permit, approval, certificate or other form of authorization required in order to engage in such activity.

C. Discharge of sewage inconsistent with conditions. It is a violation of this article to violate, by act or omission, any term, condition, or qualification imposed by a decision-making body upon a required permit, certificate, or other form of authorization.

- D. Sewerage discharge equipment and structures inconsistent with this article. It is a violation of this article to erect, construct, reconstruct, remodel, alter, maintain, move, or use any equipment, building or structure or to use any equipment, building or structure in violation or contravention of this article.
- E. Continuing violations. It is a violation of this article to continue any of the violations specified in this article. Each day that a violation continues shall be considered a separate offense.

Source: 4484 (2005).

17-0504. Remedies and enforcement powers--The city shall have the following remedies and enforcement powers.

- A. Withhold permits. The city may deny or withhold all permits, certificates or other forms of authorization as to any applicant for a permit, or to refuse the discharge into the sewerage system as to any land or structure or improvements thereon upon which there is an uncorrected violation of this article or of a condition or qualification of a permit, certificate, approval or other authorization previously granted by a decision-making body. Instead of withholding or denying an authorization, the city may grant such authorization subject to the condition that the violation be corrected. This enforcement provision applies regardless of whether the current owner or applicant is responsible for the violation in question. The city may deny or withhold all permits, certificates or other forms of authorization on any land or structure or improvements owned by a person who owns, developed or otherwise caused an uncorrected violation of a provision of this article or of a condition or qualification of a permit, certificate, approval or other authorization previously granted by a decision-making body. This provision applies regardless of whether the property for which the permit or other approval is sought is the property in violation.
- B. Revoke permits. A permit may be revoked when the director determines that:
 1. There is departure from the plans, specifications, or conditions as required under terms of the permit;
 2. The plans, specifications, or conditions were obtained by false representation or was issued by mistake; or
 3. Any of the provisions of this article are being violated.
- C. Revoke plan or other approval. When a violation of this article involves a failure to comply with approved plans or conditions to which the approval of such plans was made subject, the administrative enforcement board charged with enforcement of the provisions of this article may, upon notice to the applicant and other known parties in interest (including any holders of building or other permits affected) and after a public hearing, revoke the plan or other approval or condition its continuance on strict compliance, the provision of security or such other conditions as the administrative enforcement board may reasonably impose.
- D. Sewer service shut off. In a situation deemed by the director to be an

emergency, the director may order the shut off of sewer service pending a hearing before the administrative enforcement board. In non-emergency situations, the administrative enforcement board may order the sewer service of a violator to be shut off.

- E. Injunctive relief. The city may seek an injunction or other equitable relief in court to stop any violation of this article or of a permit, certificate or other form of authorization granted hereunder.
- F. Abatement. The city may seek a court order in the nature of mandamus, abatement, injunction or other action or proceeding to abate or remove a violation or to otherwise restore the premises in question to the condition in which they existed prior to the violation.
- G. Restitution. The city may seek an order requiring restitution as a condition to be met by a person before the person's permit is restored, before the person is allowed to lawfully discharge into the sewer system, or before other action may be taken by the person as determined by an appropriate order.
- H. Penalties. The penalty for a violation of this ordinance shall be governed by the penalty provisions of Fargo Municipal Code § 1-0305, and the city may also seek such criminal or civil penalties provided by North Dakota law.
- I. Other remedies. The city shall have such other remedies as are and as may be from time to time provided by North Dakota law and municipal codes for the violation of this article or related provisions.
- J. Remedies cumulative. The remedies and enforcement powers established in this article are cumulative. An administrative enforcement board may hold a single hearing to consider evidence and render decisions on appeals from administrative citations or complaints, orders to show cause or other administrative proceedings involving one or more alleged violators stemming from the same occurrence or series of occurrences.

Source: 4484 (2005).

17-0505. Enforcement Procedures--The following enforcement procedures shall apply to violations of this article, in addition to the procedures set forth in Article 1-04 pertaining to administrative enforcement.

- A. Non-emergency matters. In the case of violations of this article that do not constitute an emergency, the director may:
 - 1. Issue a notice of violation;
 - 2. Issue an administrative compliance order; or,
 - 3. Issue an administrative compliance order with fine;

which shall be issued to the property owner and to any other person who is alleged to be in violation of this article or of the terms of any permit or condition granted and to any applicant for any relevant permit.

- B. Emergency matters. In the case of violations of this article that do constitute an emergency situation, the city shall use all remedies, penalties and enforcement powers available under this article without prior notice, including shutting off sewer service, but the director must send notice

simultaneously with beginning enforcement action to the property owner, to any other person who is party to the agreement and to applicants for any relevant permit and must advise persons affected by the sewer service shut off that a hearing will be held within seven days from the date sewer service was shut off. At the hearing, the administrative enforcement board will determine whether there were appropriate grounds for the sewer service to be shut off, and whether the shut off of sewer service should continue.

- c. Administrative compliance orders--Procedure. Persons receiving an administrative compliance order or an administrative compliance order with fine shall have 10 days, or such longer period as the director allows, to correct the violation. If the violation is not corrected within the required time-frame, the director and city attorney shall use all penalties, remedies and enforcement powers available under this article. Any notice or order issued by the director must be given in the manner required by the administrative enforcement ordinance, Article 1-04 of the Fargo Municipal Code.
- D. Administrative compliance order with fine/administrative complaint or citation—Procedure. An administrative citation, as defined in § 1-0406 Fargo Municipal Code, shall be deemed the same as administrative compliance order with fine under the statutes and regulations of the United States Environmental Protection Agency. The director shall include in the administrative complaint or citation the amount of civil fine to be paid by the person against whom the citation or complaint is issued. The authorized city employee or representative issuing the administrative citation need not issue an administrative compliance order before issuing an administrative complaint or citation.
- E. Order to Show Cause--Hearing. In the event the director has issued an administrative compliance order or an administrative compliance order with fine, if the violation is not corrected by timely compliance, the director may order any person who causes or allows an unauthorized discharge to show cause before the administrative enforcement board why sewer service should not be shut off. A notice shall be served on the offending party, specifying the time and place of a hearing to be held by the administrative enforcement board regarding the violation, and directing the offending party to show cause before said board why an order should not be made directing the shut off of service. The notice of the hearing shall be served personally or by registered or certified mail (return receipt requested) at least 10 days before the hearing in accordance with the provisions of Article 1-04. The hearing before the administrative enforcement board shall be held in the same manner, and under the same rules and procedures as provided in Article 1-04.

Source: 4484 (2005).

17-0506. Other powers--In addition to the enforcement powers specified in this article, the city may exercise any and all enforcement powers granted to them by North Dakota law.

Source: 4484 (2005).

17-0507. Continuation--Nothing in this article shall prohibit the continuation of previous enforcement actions, undertaken by the city pursuant to previous and valid ordinances and laws. Source: 4484 (2005).

17-0508. Power and authority of inspectors--

- A. Inspection of premises.--The director and other duly authorized employees of the city bearing proper credentials and identification shall be permitted to enter all properties for the purpose of inspection, observation, measurement, sampling and testing to determine compliance with the provisions of this chapter or any other permits issued thereunder. The director or his duly authorized representative shall have the authority to examine and copy any and all records required to be maintained by industrial users for the purpose of determining compliance with pretreatment standards and regulations. The director or his representatives shall have authority to inquire into any processes including metallurgical, chemical, oil, refining, ceramic, paper, or other industries beyond that point having bearing on the kind and source of discharge to the sewers or waterways or facilities for waste treatment. The director or his representatives shall randomly sample and analyze the effluent from industrial users and conduct surveillance activities in order to identify, independent of information supplied by the industrial users, occasional and continuing noncompliance with pretreatment standards. The director or his representatives shall inspect and sample the effluent from each significant industrial user at least once a year.
- B. Observance of safety rules.--While performing the necessary work on private properties referred to in this section, the director or duly authorized employees of the city shall observe all safety rules applicable to the premises established by the company, and the company shall be held harmless for injury or death to the city employees, and the city shall indemnify the company against loss or damage to its property by city employees and against liability claims and demands for personal injury or property damage asserted against the company and growing out of the gauging and sampling operation, except as such may be caused by negligence or failure of the company to maintain safe conditions as required in this article.
- C. Public access to information.--Any records, reports or information obtained under this article (1) shall, in the case of industrial user effluent data, be related to any applicable discharge limitation or prohibition, or permit condition, and (2) shall be available to the public except upon a showing satisfactory to the director by any person that such records, reports, or information, or particular part thereof, (other than effluent data) to which the director has access under this article, if made public would divulge methods or procedures entitled to protection as trade secrets of such person. Effluent data are considered nonconfidential. The director shall consider such record, report, or information, or particular portion thereof confidential in accordance with the purposes of this article, except

that such record, report, or information may be disclosed to officers, employees or authorized representatives of the state of North Dakota or the United States concerned with carrying out the provisions of the Clean Water Act or when relevant in any proceeding under this article or other applicable laws.

Source: 4484 (2005).