

TITLE 7
FISCAL PROCEDURES

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CHAPTER 7-01. PURCHASE AND SALE OF PROPERTY AND SERVICES

7-01-01. Statement of Policy. It is the intent of this chapter to provide for a uniform method for procuring supplies, materials, equipment, and contractual services necessary to carry on activities of the city and to sell or otherwise transfer needed supplies, equipment and other property.

It is the policy of the city to procure supplies, materials, equipment and contractual services in an efficient manner and to assure that the highest quality is obtained at the best price available. When practicable and in the best interests of the city, competitive bids shall be solicited in order to reduce prices.

It is the policy of the city to comply with all laws, rules, regulations and orders with respect to local preference, non-discrimination, wages and hours and all other applicable laws, rules, regulations and orders.

All suppliers, contractors and service providers doing business with the City must certify that they are in compliance with all federal, state and local laws, regulations and orders including but not limited to those regarding non-discrimination, wages and hours, workers compensation and immigration. Failure of compliance may result in the cancellation of any City contract and exclusion from consideration for future contracts.
(Ord. 5553, 10-10-06)

7-01-02. Definitions. For the purposes of this chapter, unless the context or subject matter otherwise requires:

1. "Contractual services" means services provided by entities other than the City of Bismarck, other governmental bodies or public utilities.

2. "Emergency" means a situation in which, due to unforeseen circumstances, immediate action or action which cannot or should not be delayed, pending solicitation of bids and purchase of needed supplies or services by competitive bids, is called for.

3. "Non-competitive type or kind" means supplies or services which are by their nature unique and not subject to competition, including professional services, management

services, contracts with the manufacturer or seller or service agent for repair of equipment, services or supplies of a specialized nature that are available from only one supplier or a limited number of suppliers who are not in competition with each other, other supplies or services for which the local market is not competitive, or supplies or services for which, in order to obtain the best quality at the lowest price, purchase in the open market is called for.

4. "Supplies" means all supplies, materials and equipment.

7-01-03. Competitive Bidding Required.

1. All purchases of and contracts for supplies and contractual services, and all sales of property that has become obsolete or unusable must, except as otherwise provided herein, be based on competitive bids. Unless otherwise directed by the commission, or otherwise provided by law, all bids must be advertised in the local newspaper once each week for two consecutive weeks with the bid opening at least 10 days after the last advertisement.

2. All supplies and contractual services, except as otherwise provided herein, when the estimated cost exceeds \$15,000.00, must be purchased at public sale from the lowest and best bid meeting or exceeding specifications pursuant to Section 44-08-01.1, N.D.C.C. and subject to Section 44-08-01, N.D.C.C.

3. All sales or dispositions of obsolete or unusable property, when the estimated value exceeds \$1,000.00, may be sold only at public sale except as provided by Section 7-01-05. Sales of property of an estimated value of \$1,000.00 or less may be made by private sale.

4. Purchases of supplies and contractual services, when the estimated cost is \$5,000.00 or less, may be made in the open market without competitive bidding, unless otherwise required by law. Purchases of supplies and contractual services, when the estimated cost is more than \$5,000.00 but less than \$15,000.00, may be made in the open market without competitive bids, provided that documentation is submitted showing that prices or informal quotes were solicited from a minimum of three suppliers or, if fewer than three suppliers are available, then from all available suppliers, unless otherwise required by law.

5. Any supplies, materials, equipment, or contractual services previously competitively bid by the State or one of its agencies, for which the State or agency

has made provision for participation by political subdivisions, may be purchased through the State or agency's bid letting upon approval by the City Commission.

Reference: NDCC Sec. 44-08-01; 44-08-01.1; 40-11-04.

(Ord. 4403 & 4404, 10-22-91; Ord. 4422, 03-24-92; Ord. 4592, 03-29-94)

7-01-04. Exceptions.

1. Notwithstanding Section 7-01-03, purchases of supplies or services of a non-competitive type or kind, or purchases from other governmental bodies, or purchases made when, in the opinion of the Board of City Commissioners or its executive officer, an emergency requires immediate purchase of supplies or contractual services, may be made in the open market without competitive bidding.

2. Whenever a purchase or contract for services, with an estimated cost in excess of \$10,000.00, is made without competitive bids, a written report must be filed with the bill or contract stating the reason why competitive bids were not called for and listing all suppliers contacted and quotes or estimates obtained.

7-01-05. Conveyance Sale, Lease or Disposal of Real or Personal Property.

1. Personal property valued at less than \$1,000.00 that has been determined obsolete and is no longer used by the city may be sold at private sale. The department head of the department selling the obsolete property shall make a record of the sale containing a description of the obsolete property, the reason it is no longer used, the date of sale, the purchase price, and the party to whom the obsolete property was sold. Purchases of obsolete property owned by the city may not be made by city employees except at public sale. Such sales must be reported to the Board of City Commissioners.

Real or personal property valued at more than \$1,000.00 belonging to the municipality may be conveyed, sold or disposed of only as approved by a majority vote of all members of the governing body. Instruments effecting such conveyance, sale, lease, or disposal are valid only when duly executed by the president of the Board of City Commissioners and attested by the city auditor. The governing body by duly adopted resolution shall determine whether property with an estimated value of less than \$5,000.00 shall be sold at public or at private sale. Property valued over \$5,000.00 may be sold only at public sale, or as provided under section 7-01-07. When a public sale is required or authorized a notice containing a description of the property to be sold and designating the

place where and the day and hour when the sale will be held must be published in the official newspaper once each week for two consecutive weeks with the last publication being at least ten days in advance of the date set for the sale. The notice shall specify whether the bids are to be received at auction or as sealed bids as determined by the governing body of the municipality. The property advertised must be sold to the highest bidder if the bid is deemed sufficient by a majority of the governing body, unless all bids are rejected.

2. When specific statutory provisions contained in the North Dakota Century Code provide for a procedure governing the conveyance, sale, lease or disposal of real property, those procedures shall apply unless modified by this section. Said statutory procedures include, but are not limited to:

a. Lease of airports or landing fields, or portions thereof under authority granted in Chapter 2-02, N.D.C.C. Leases must be in compliance with regulations and directives of appropriate federal agencies.

b. Conveyance of right-of-way for any state highway as provided in section 24-01-46, N.D.C.C.

c. Leasing of oil and gas lands as provided in Chapter 38-09, N.D.C.C.,

d. Conveyance of property to a municipal parking authority as provided in section 40-61-05, N.D.C.C.

e. Lease of public buildings or portions thereof as provided in Chapter 48-08, N.D.C.C., except that the City shall have the authority to enter into such leases for a period or term as set by the City Commission.

f. Granting of concessions for cafes, restaurants, and confectionaries on public buildings and grounds as provided in Chapter 48-09, N.D.C.C. except that the concession may be for a term as set by the City Commission.

g. Granting of rights-of-way for a railway, telephone line, electric light system, or a gas or oil pipeline system as provided in section 49-09-16, N.D.C.C.

h. Transfer of property pursuant to a joint

powers agreement in accordance with chapter 54-40, N.D.C.C.

Reference: NDCC Sec. 40-11-04; (Ord. 4157, 6-23-87; Ord. 4414, 02-25-92; Ord. 4469, 09-29-92; Ord. 4592, 03-29-94; Ord. 5173, 05-14-02)

7-01-06. Bidding Procedure. Whenever bids are called for, bids and the bidding procedure must be in accordance with applicable requirements of state and federal law.

Bid notices shall comply in all respects with applicable state statutes and shall include, at a minimum, a general description of the property or services to be purchased or sold, where bid documents may be obtained, the time and place for opening bids, the deadline for receipt of bids, if different from the time for opening of bids, and whether a bid bond is required.

The city shall reserve the right to reject any and all bids, and to waive irregularities. However, bids which do not comply with mandatory requirements imposed by law or late bids must be rejected.

References: NDCC Sections 44-08-01, 44-08-01.1; NDCC Ch. 48-08, 48-09, 40-22.

7-01-07. Transfer of Real Property By Nonexclusive Listing Agreements. As an alternative to the procedure established under section 7-01-05, the board of city commissioners may engage licensed real estate brokers to attempt to sell the described property by way of nonexclusive listing agreements that describe the real property of the city which is to be sold; provide a maximum rate of fee, compensation or commission; and provide that the city reserves the right to reject any and all offers determined to be insufficient. As a further alternative to the procedure established under section 7-1-05, the city may create and maintain a list of all city real property that is for sale. The real property list must be on file and available in the office of City Administration. Any city owned real property contained on the real property list for at least 90 days may be sold by negotiated sale approved by the board of city commissioners.

(Ord. 4157, 6-23-87; Ord. 5496, 04-25-06)

CHAPTER 7-02. SALARY AND PAYROLL

7-02-01. Salaries of Elected and Appointed Officials. The salaries of city officials and appointive officers, except as otherwise provided by law, are in such sums and amounts as may be fixed from time to time by resolution of the board of city commissioners, except that salaries of the members of the board must be established by ordinance.

7-02-02. Salaries of Members of the Board of City Commissioners. The salary of the president of the board of city

commissioners is \$700.00 per month and the salaries of the other members of the board are \$400.00 per month, effective January 1, 1989.

(Ord. 4215, 7-19-88)

7-02-03. Salaries of Members of Boards or Commissions. Members of boards or commissions appointed by the board of city commissioners may be compensated at a rate established by resolution of the board of city commissioners. In the absence of a resolution establishing rate of compensation, members shall serve without compensation, except that they shall be reimbursed for actual expenses incurred relating to their duties as determined by the board of city commissioners.

7-02-04. Departmental Payrolls. The payroll of each department of this city, when certified to by the personnel director, and the salary of officers fixed by the Board of City Commissioners, may be paid monthly or bimonthly as the Board of City Commissioners may declare by resolution; and the president and auditor are hereby authorized to draw warrants for the same when they become due and payable.

CHAPTER 7-03. SALES TAX

7-03-01. Definitions. Where a term is used in this chapter, the meaning of that term as defined in Chapters 57-39.2 and 57-40.2, N.D.C.C., if that term is so defined, and as those chapters may be amended from time to time, is hereby adopted by reference and incorporated herein.

7-03-02. Sales Tax Imposed. Except as otherwise expressly provided in this chapter, there is imposed a tax of one percent upon the gross receipts of retailers from all sales at retail including the leasing or renting of tangible personal property as provided in this section, within the corporate limits of the city, of the following to consumers or users:

1. Tangible personal property, consisting of goods, wares, or merchandise.
2. The furnishing or service of communication services, or steam other than steam used for processing agricultural products.
3. Tickets or admissions to places of amusement or entertainment or athletic events, including amounts charged for participation in an amusement, entertainment, or athletic activity.
4. Magazines and other periodicals.

5. The leasing or renting of a hotel or motel room or tourist court accommodations.

6. The leasing or renting of tangible personal property the transfer of title to which has not been subjected to a retail sales tax under this chapter.

7-03-03. Sales Tax on Alcoholic Beverages and Tobacco Products. Notwithstanding any other provision of law, the sales taxes imposed by this chapter apply to the gross receipts of retailers from all sales at retail of alcoholic beverages as defined in section 5-01-01, whether mixed or unmixed at the time of sale or thereafter, and whether sold for consumption on the premises or through off-sale outlets for consumption off the premises, and cigarettes, cigars, and other tobacco products, provided that gross receipts from the sale thereof shall mean and include any other taxes imposed on such merchandise or its use or on the retail or other sale thereof. Notwithstanding any other provision of law, there is imposed a tax of one percent on the gross receipts of retailers from all sales at retail of alcoholic beverages, which is in lieu of and not in addition to any other tax imposed by this chapter.

7-03-04. Sales Tax on Sales Through Vending Machines. Gross receipts from the sale of tangible personal property costing sixteen cents or more sold through a coin-operated vending machine shall be subject to the sales tax imposed by this chapter, and gross receipts from the sale of tangible personal property costing fifteen cents or less sold through a coin-operated vending machine shall be specifically exempted from the provisions of this chapter.

7-03-05. Sales Tax on Carpet and Drapes. Notwithstanding any other provisions of this chapter, when a contractor or subcontractor who is a retailer and who furnishes and installs into or attaches to real property in this state drapes, hardware for hanging drapes, or carpet for floor covering, the contractor or subcontractor shall be deemed to have made a retail sale of such item.

7-03-06. Use Tax Imposed.

1. Except as otherwise expressly provided in this chapter, an excise tax is imposed on the storage, use, or consumption in this city of tangible personal property purchased at retail for storage, use, or consumption in this city, at the rate of one percent of the purchase price of such property. Except as limited by this chapter, an excise tax is imposed on the storage, use, or consumption in this city of tangible personal property not originally purchased for storage, use, or consumption in this city at the rate of one percent of the fair market value of such

property at the time it was brought into this city.

2. An excise tax is imposed on the storage, use, or consumption in this city of mobile homes used for residential or business purposes, except as provided in subsection 19 of section 57-40.2-04, N.D.C.C., and of farm machinery and irrigation equipment used exclusively for agricultural purposes purchased at retail for storage, use, or consumption in this state at the rate of one percent of the purchase price thereof. Except as limited by section 57-40.2-11, N.D.C.C., and except as provided in subsection 35 of section 57-39.2-04, N.D.C.C., an excise tax is imposed on the storage, use, or consumption in this state of mobile homes used for residential or business purposes and of farm machinery and irrigation equipment used exclusively for agricultural purposes not originally purchased for storage, use, or consumption in this state at the rate of one percent of the fair market value of such mobile homes used for residential or business purposes and of such farm machinery and irrigation equipment used exclusively for agricultural purposes at the time it was brought into this city.

7-03-07. Use Tax on Alcoholic Beverages and Tobacco Products. Notwithstanding any other provision of law, the use taxes imposed by this chapter apply to the storage, use, or consumption in this city of alcoholic beverages as defined in section 5-01-01, N.D.C.C., whether mixed or unmixed at the time of sale or thereafter, and whether sold for consumption on the premises or through off-sale outlets for consumption off the premises, and cigarettes, cigars, and other tobacco products, provided that gross receipts from the sale thereof shall mean and include any other taxes imposed on such merchandise or its use or on the retail or other sale thereof. Notwithstanding any other provision of law, there is imposed a tax of one percent on the storage, use, or consumption in this city of alcoholic beverages, which is in lieu of and not in addition to any other tax imposed by this chapter.

7-03-08. Use Tax on Contractors.

1. Where a contractor or subcontractor uses tangible personal property in the performance of his contract, or to fulfill contract or subcontract obligations, whether the title to such property be in the contractor, subcontractor, contractee, subcontractee, or any other person, or whether the titleholder of such property would be subject to pay the sales or use tax, such contractor or subcontractor shall pay a use tax at the rate prescribed by this chapter measured by the purchase price or fair market value of such property, whichever is greater, unless such property has

been previously subjected to a sales tax or use tax by this city and the tax due thereof has been paid.

2. The provisions of this chapter pertaining to the administration of the tax imposed by this chapter, not in conflict with the provisions of this section, shall govern the administration of the tax levied by this section.

3. The tax imposed by this section shall not apply to medical equipment purchased as tangible personal property by a hospital and subsequently installed by a contractor into such hospital.

4. The tax imposed on contractors shall not apply to property used to fulfill contract or subcontract obligations entered into prior to April 1, 1986.

7-03-09. Exemptions. There are specifically exempted from the provisions of this chapter and from the computation of the amount of tax imposed by it the following:

1. All of those sales exempted from the imposition and computation of the state sales tax or use tax pursuant to sections 57-39.2-04, 57-39.2-04.1, 57-40.2-04, and 57-40.2-04.1, N.D.C.C. Sales to contractors that are exempt pursuant to subsection 15 of section 57-39.2-04, N.D.C.C., shall be exempt from any city sales tax, but contractors shall be subject to the city use tax on those items used within the city that would be taxed pursuant to section 57-40.2-03.3, N.D.C.C., on which the city sales tax has not previously been paid.

2. All other transactions or storage, use or consumption exempted from imposition of the state sales tax or use tax pursuant to state law.

3. Sales of natural gas.

4. Gross receipts from coin-operated amusement devices.

7-03-10. Credit or Refund for Taxes Paid on Worthless Accounts and Repossessions. Taxes paid under this chapter on gross receipts represented by accounts found to be worthless and actually charged off for income tax purposes may be credited upon subsequent payment of the tax in the manner provided in section 57-30.2-05, N.D.C.C.

7-03-11. Credit to Relief Agency and Local Organizations. Relief agencies which have applied to the North Dakota State Tax Commissioner for refund of amounts of tax imposed under Chapter 57-39.2 of the North Dakota Century Code and which have been

awarded refunds as provided in section 57-39.2-06, N.D.C.C., shall also be entitled to refund of amounts of municipal sales tax imposed under this chapter.

7-03-12. Sales Tax to be Added to Purchase Price and Be a Debt. Retailers shall add the tax imposed under this chapter, or the average equivalent thereof, to the sales price or charge, and when added, such tax shall constitute a part of such price or charge, shall be a debt from the consumer or user to the retailer until paid, and shall be recoverable at law in the same manner as other debts. In adding such tax to the price or charge, retailers shall adopt a Schedule of Sales and Use Tax Rates approved by the commissioner incorporating the state tax and the additional city tax.

The commissioner is authorized to establish separate tax tables integrating the tax imposed by this chapter with those special taxes or additional taxes imposed by the city or state on sales at retail.

(Ord. 4123, Sec. 1, 12-30-86)

7-03-13. Maximum Tax Imposed. No tax in excess of Twenty-five Dollars shall be imposed upon any single transaction involving one or more item.

7-03-14. Unlawful Act. No retailer shall advertise or hold out or state to the public or to any consumer, directly or indirectly, that the tax or any part thereof imposed by this chapter shall be assumed or absorbed by the retailer or that it will not be considered as an element in the price to the consumer or, if added, that it or any part thereof will be refunded.

7-03-15. City Auditor Empowered to Contract With Sales Tax Commissioner. The city auditor is hereby authorized and directed to contract with the North Dakota State Tax Commissioner for the administration and collection of taxes established herein. The city auditor shall have those powers granted the commissioner and shall, in the absence of a valid contract with the commissioner or failure of the commissioner to perform any duties delegated to him, perform those duties and act in the place of the commissioner.

7-03-16. Records Required. Every retailer required to make a report and pay any tax under this chapter shall preserve such records of the gross proceeds of the sale as are required pursuant to N.D.C.C. 57-39.2-10.

7-03-17. Return of Gross Receipts.

1. Returns shall be filed with the North Dakota Tax Commissioner in the same manner and at the same time as

retailers file their returns of gross receipts for state sales and use taxes. On or before the last day of the month following the close of the first month or the first quarterly period, and on or before the last day of the month following each subsequent month or each subsequent quarterly period of three months, the retailers shall make out a return for the preceding month or quarterly period in such form and manner as may be prescribed by the commissioner, showing the gross receipts of the retailer, the amount of the tax for the period covered by such return, and such further information as the commissioner may require to enable him to correctly compute and collect the tax herein levied. The Commissioner, upon request by any retailer and a proper showing of the necessity therefor, may grant unto such retailer an extension of time not to exceed thirty days for making such return. If such extension is granted to any such retailer, the time in which he is required to make payment shall be extended for the same period but interest shall be charged upon the amount of the deferred payment at the rate of eight percent per annum from the date the tax would have been due if the extension had not been granted to the date the tax is paid.

2. Returns shall be signed by the retailer or his duly authorized agent and shall contain a written declaration that they are made and subscribed under the penalties of this chapter and Chapter 57-39.2, N.D.C.C.

7-03-18. Payment of Tax - Bond - Creation of Lien.

1. The tax levied under this chapter shall be due and payable in monthly or quarterly installments on or before the last day of the month next succeeding each calendar month or quarterly period. Payments shall be remitted in the manner provided by section 57-39.12, N.D.C.C.

2. Every retailer, at the time of making the return required hereunder, shall compute and pay to the Commissioner, the tax due for the preceding period.

3. When there is a sale of any business by any retailer or when any business is discontinued by a retailer, the tax shall become due immediately prior to the sale or discontinuance of such business and if not paid within fifteen days thereafter it shall become delinquent and subject to the penalties provided hereunder.

4. The Commissioner may require sufficient surety as provided by section 57-39.2-12(3), N.D.C.C.

5. Remittances on account of tax due under this chapter

shall not be deemed or considered payment thereof unless or until the Commissioner shall have collected or received the amount due for such tax in cash or equivalent credit.

7-03-19. Lien of Tax Collection - Action Authorized. Whenever any taxpayer liable to pay a tax or penalty imposed refuses or neglects to pay the same, the amount, including any interest, penalty, or addition to such tax, together with the costs that may accrue in addition thereto, shall establish and create a lien in the manner provided for in section 57-39.2-13, N.D.C.C. The collection of the lien and any action thereof shall be subject to and in accordance with the provisions of section 57-39.2-13, N.D.C.C., except, however, that the city attorney is additionally empowered to bring an action at law or in equity and be provided such powers as set forth therein.

7-03-20. Deduction to Reimburse Retailer for Administrative Expenses.

1. A retailer who pays the tax due hereunder within the time limitations prescribed may deduct and retain three percent of the tax due.

2. The aggregate of deductions allowed by this section may not exceed Eighty-Three Dollars and Thirty-Three Cents per month or Two Hundred Fifty Dollars per quarterly period for each business location required to remit sales tax hereunder.

3. The deduction allowed retailers by this section is to reimburse retailers for expenses incurred in keeping records, preparing and filing returns, remitting the tax, and supplying information to the auditor and commissioner upon request.

7-03-21. Authorization for Direct Payment of Sales Tax. Permits authorizing and directing payments to the North Dakota State Tax Commissioner of any sales tax imposed on any purchase, use, storage, or consumption of tangible personal property or services issued by the North Dakota State Tax Commissioner shall apply equally to the municipal sales tax imposed herein.

7-03-22. Failure to File Return - Incorrect Return. If a return required by this chapter is not filed, or if a return when filed is incorrect or insufficient, the North Dakota State Tax Commissioner shall determine the amount of tax due from such information as he may be able to obtain, and, if necessary, may estimate the tax on the basis of external indices, such as number of employees of the person concerned, rentals paid by him, his stock on hand, and other factors. The Commissioner shall give notice of such determination to the person liable for the tax. If the determination of tax due relates to an incorrect

or insufficient return filed by a taxpayer, notice of such determination shall be given not later than three years after the last day on which the return was due or three years after the return was filed, whichever period expires later; if it is determined upon audit that the tax due was twenty-five percent or more above the amount reported on the return, notice of determination of tax due shall be given not later than six years after the last day on which the return was due or six years after the return was filed, whichever is later. Notice of determination of tax due for any reporting period for which a taxpayer failed to file a return shall be given not later than six years after the due date of the return; where fraudulent information is given in a return or where the failure to file a return is due to the fraudulent intent or willful attempt of the taxpayer in any manner to evade the tax, the time limitation herein provided for giving notice of the determination of tax due shall not apply. Such determination of tax due shall fix the tax finally and irrevocably unless the person against whom it is assessed, within fifteen days after the giving of notice of such determination, shall apply to the North Dakota State Tax Commissioner pursuant to Chapter 28-32 for a hearing or unless the North Dakota State Tax Commissioner of his own motion shall reduce the same. At such hearing evidence may be offered to support such determination or to prove that it is incorrect. After such hearing the North Dakota State Tax Commissioner shall give notice of his determination to the person liable for the tax pursuant to the provisions of North Dakota Century Code Chapter 28-32.

7-03-23. Appeals. An appeal may be taken to the North Dakota Tax Commissioner and a hearing conducted pursuant to procedures and rules adopted under Chapter 28-32, N.D.C.C. An appeal from a determination of the commissioner may be taken by the taxpayer to the District Court in the manner provided for by section 57-39.2-16, N.D.C.C., provided, however, that notice of such an appeal and specifications of error upon which the appeal is taken are served upon the Commissioner in addition to those requirements set forth in section 57-39.2-16, N.D.C.C.

7-03-24. Service of Notice. Any notice required or permitted hereunder shall be served pursuant to the provisions of section 57-39.2-17, N.D.C.C.

7-03-25. Penalties.

1. If any person fails to file a return or corrected return or to pay any tax within the time required by this chapter or, if upon audit, is found to owe additional tax, such person shall be subject to a penalty as established in Section 57-39.2-18(1), N.D.C.C. Such penalty may be imposed by any court of competent jurisdiction.

2. The certificate of the North Dakota State Tax Commissioner to the effect that a tax has not been paid, that a return has not been filed, or that information has not been supplied pursuant to the provisions of this chapter, shall be prima facie evidence thereof.

3. Any person failing to comply with any of the provisions of this chapter or failing to remit within the time herein provided the tax due on any sale or purchase of tangible personal property subject to said sales tax shall, in addition to penalties imposed hereinabove, be subject to a fine, upon conviction in the Municipal Court, not to exceed Five Hundred Dollars.

7-03-26. Corporate Officer Liability. Officers of any corporation required to remit taxes as enforced by this chapter shall be personally liable for the failure of any such corporation to file required returns or remit required payments. The dissolution of a corporation shall not discharge an officer's liability for a prior failure of the corporation to make a return or remit the tax due. The sum due for such a liability may be assessed and collected pursuant to the provisions of this chapter for the assessment and collection of other liabilities.

7-03-27. General Powers. The City Auditor and the North Dakota State Tax Commissioner shall have those powers as specified in section 57-39.2-21, N.D.C.C.

7-03-28. Correction of Errors. If it shall appear that, as a result of a mistake, an amount of tax, penalty, or interest has been paid which was not due under the provisions of this chapter, then such amount shall be credited against any tax due, or to become due, under this chapter in the manner provided in section 57-39.2-24, N.D.C.C.

7-03-29. Payment of Refund. Wherever by any provisions of this chapter a refund is authorized, the refund shall be made pursuant to the provisions of section 57-39.2-25, N.D.C.C.

7-03-30. Disposition of Excess Tax Collections. Whenever a retailer has collected a sales tax from a customer in excess of the amount prescribed or due under this chapter, and if the retailer does not refund the excessive tax collected to the customer, the amount so collected by the retailer shall be paid by the retailer to the North Dakota State Tax Commissioner, in a quarterly period in which the excessive collection occurred. If the excessive collection is subsequently refunded by the retailer to the customer, the retailer may deduct, as a credit against his sales tax liability on the next return that he is required to file, the amount of sales tax properly refunded to the customer. In the event such deduction exceeds the amount of

sales tax due the City by the retailer in the next regular return, such excess shall be allowed as a credit against future sales tax due from the retailer. If the credit, or any part of it, cannot be utilized by the retailer because of a discontinuance of a business or for other valid reasons, the amount thereof may be refunded to the retailer.

7-03-31. Dedication of Tax Proceeds.

1. All revenues raised and collected under this chapter, less administrative expenses, shall be dedicated only to capital improvements, as approved by a 60% majority vote of the electorate, debt retirement, utility capital improvements, utility rate reduction, economic development, snow removal, road and street improvements, existing facility rehabilitation and repair, up to \$750,000 through 2005 for Lewis and Clark promotions and improvements, Sales Tax Revenue Bond Issue 2002 and minimum of 25 mills of annual property tax reduction. The requirement of a vote for dedication of city sales tax to capital improvements shall not apply to payments on Sales Tax Revenue Bond Issue 2002 for School, Community Bowl, Recreational Trail, North East Fire Station and 911 Center, Community Pavilion Feasibility Study, Disaster Siren System, and Transit Improvements, and Sales Tax Revenue Bond 2002 Administrative Bond and Election Costs. Uses of sales tax revenue included in Sales Tax Revenue Bond Issue 2002 which involve other political subdivisions shall be accomplished through joint powers agreements pursuant to NDCC Chapter 54-40.3. All revenues shall be maintained in a fund, to be known as the sales tax fund, separate and apart from all other funds, except as provided by this section.

(Ord. 5071, 09-12-00; Ord. 5164, 04-09-02)

2. The Board of City Commissioners shall determine the amount by which property tax levies will be reduced each year prior to adoption of the city's budget. An amount equivalent to the estimated property tax revenue lost due to the property tax reduction may thereafter be transferred from the sales tax fund to the general fund.

3. Additional funds may be transferred to appropriate funds as directed by the board.

4. Remaining revenues and any income therefrom shall accumulate in the sales tax fund until expended by the board as permitted by this section.

(Ord. 4565, 11-23-93; Ord. 4645, 11-08-94; Ord. 4795, 10-08-96)

7-03-32. Effective Date. This ordinance shall take effect following final passage, adoption and publication. The tax shall be implemented and take effect on April 1, 1986.

7-03-33. Termination. The ordinance imposing the sales and use tax shall remain in effect unless repealed or amended pursuant to law.
(Ord. 4561, 10-26-93)

CHAPTER 7-04. INSURANCE RESERVE FUND AND RISK MANAGEMENT

7-04-01. Insurance Fund.

1. Creation. There is hereby created an Insurance Reserve Fund, to be kept separate and apart from all other funds.

2. Permissible Uses. This fund may be used only for the payment of claims against the city which have been settled or compromised, judgments rendered against the city for injuries arising out of risks established by NDCC Chapter 32-12.1, or costs incurred in the defense of claims, including liability insurance premiums.

(Ord. 5733, 07-14-09)

7-04-02. Risk Management.

1. The city attorney, or his/her agent, shall be primarily responsible for overall risk management for the city. For the purposes of this chapter, "city attorney" shall include the assistant city attorney.

a. The city attorney shall coordinate with and advise the city officers and department on contractual matters giving rise to possible liability on the part of the city. The city attorney shall advise and recommend appropriate contractual clauses providing for indemnity, hold harmless, and insurance.

b. The city attorney may negotiate with insurance brokers for any type of liability insurance and may recommend that the city engage the services of such brokers.

c. The city attorney is responsible for the administration of all insurance policies, funded liability self-insurance programs, and related services as are consistent with good risk management policy and the needs of the city. In purchasing liability insurance policies, the city attorney shall obtain the approval of the city commission.

d. In addition to individualized safety programs developed by city departments, the city attorney shall advise all city departments regarding risk management and reduction of risk and exposure to

loss, so as to reduce hazards to the public that may exist in city facilities and operations. The city attorney shall also be responsible for answering all liability insurance or funded self-insurance coverage questions. The city attorney shall evaluate current and future city departmental liability insurance coverage programs and make recommendations in the best interests of the city. The city attorney and the department heads are responsible for risk identification, control, and reduction. The city attorney shall make recommendations to all city departments, divisions and agencies regarding the safety of the public using city facilities or services.

e. The city attorney shall, subject to city commission approval, contract for such outside counsel or assistance as is necessary to prosecute or defend claims on behalf of the city.

3. Duties of the city attorney relating to claims.

a. The city attorney has the power to employ the services of such claims specialists, adjusters, or other parties as are necessary to process claims in an equitable and expeditious manner.

b. The city attorney shall maintain complete histories of all claims and claims litigation, insured or funded self-insurance, loss histories, and investigations of claims and incident reports for five years after the claim is closed. The city attorney shall insure that complete files are maintained of all claims entered against the city sufficient to document at least a five-year claims history.

4. Reports. The city attorney, as a part of the city's annual independent audit, shall report to the city commission the total number of all claims filed against the city and the number and amounts of all claims paid by the city during the preceding calendar year.

(Ord. 4305, 11-21-89; Ord. 5733, 07-14-09)

7-04-03. City Attorney's Office.

1. The city attorney is the legal advisor of the city.

2. Duties.

a. The city attorney is primarily responsible for the defense of all claims or lawsuits against the city, or against city officials or employees acting

within the scope of their official city duties, except if insurance or service contracts provide for defense. The city attorney may, with the consent of the city commission, contract with outside counsel for legal services when appropriate, such as in the defense or prosecution of complex claims or lawsuits.

b. The city attorney shall direct any recommendations for settlement of claims or lawsuits with no outside insurance coverage to the city commission. In recommending settlement of claims or lawsuits, the city attorney shall consult with the department, division or other city agency named as a party or most involved with the claim or lawsuit.

c. The city attorney shall review contract clauses involving indemnity, hold harmless, or insurance matters.

(Ord. 5733, 07-14-09)

7-04-04. Duties of City Departments and Officials.

1. Cooperation. All city departments, divisions or other city agencies and officials shall cooperate fully with the city attorney in all matters including investigation involving disposition of claims and the settlement and defense of claims or lawsuits. All departments, divisions, and other city agencies and officials shall provide such information as requested and otherwise assist the city attorney in the defense of claims or lawsuits. Such assistance may include, but is not limited to, providing testimony and exhibits for use in litigation.

2. Negotiations or statements. Except as specifically directed by the city attorney or the city commission, no city official or employee, acting individually or collectively, may engage in the following acts:

a. Negotiate or otherwise affect the settlement of a claim or claims lawsuit against the city.

b. Make any admission of liability or any statement that could be construed as an admission of liability, involving a claim or lawsuit against the city.

3. Policies. The city attorney shall inform city employees of their responsibilities in relation to good risk management policy.

4. Reporting Accidents. City employees shall immediately report any accident involving city property or

any accident involving an employee's personal vehicle while acting on behalf of the city to their supervisor. City departments, divisions, officials and other city agencies shall immediately report the circumstances of any accident involving a city employee acting on behalf of the city or city property to the city attorney.

(Ord. 5733, 07-14-09)

7-04-05. Procedure for Handling Claims.

1. Place for Filing. The place for filing claims against the city is the office of the city attorney.

2. Period and Requisites. All claims against the city shall be filed within the period specified by law. The requisites of the claim shall comply with applicable law.

3. The city attorney has the power to employ the services of such claims specialists, adjusters, or other parties as are necessary to process claims in an equitable and expeditious manner.

4. Disposition.

a. For all claims of \$3,000.00 or less not covered by insurance, the city attorney is the final payment authority and shall make final disposition by either granting or denying such claim.

b. For all claims greater than \$3,000.00, the city attorney has the authority to deny the claim, or, if the claim is of a type that is covered by insurance, to make a recommendation to the city's insurer concerning disposition. If the city attorney determines that such a claim should be paid and no other insurance coverage applies, then he/she shall recommend payment of the claim to the city commission. Payment of an individual claim in excess of \$3,000.00 may not be made by the city without the approval of the city commission.

c. Claims that are covered by the city's Policy on Damages Resulting From Backups in the Public Sanitary Sewer System or Policy on Repair of Residential Service Lines shall be adjusted in consultation between the city attorney and the director of public works utility operations pursuant to those policies.

(Ord. 5733, 07-14-09)

7-04-06. Procedure for Handling Lawsuits.

1. Service on Officer or Employee. Any city official

or employee who is served with a summons and/or complaint against the city or against any of its officials or employees acting in their official capacities shall immediately deliver such process to the city attorney. The city attorney is authorized to admit service of process on behalf of the city.

2. The city attorney shall defend, or provide for the defense, of all self-insured claims lawsuits against the city's officials or employees acting within the scope of their official duties.

3. Final authority for settlement of self-insured lawsuits is as follows:

a. The city attorney may authorize settlements for \$3,000.00 or less for damages not covered by insurance.

b. The city commission, acting with the advice of the city attorney, may authorize settlements of greater than \$3,000.00 for all damages not covered by insurance.

(Ord. 5733, 07-14-09)

7-04-07. Defense of City Officers and Employees.

1. The city shall indemnify and hold harmless city officers and employees from personal liability for acts committed by such officers and employees within the scope of their official city duties consistent with NDCC Section 32-12.1-04.

2. For any particular claim or lawsuit, the city attorney shall determine any and all questions relating to scope of employment and employment status.

3. If a city officer or employee is sued for an act or alleged act falling within the scope of the officer's or employee's official duties, the city attorney is responsible for the defense of that person in accordance with Section 7-04-03.

4. This section does not apply if a lawsuit is covered by insurance or if a lawsuit arises out of a city officer's or employee's use of a personal vehicle.

5. Possible Conflicts. If a possible conflict exists between the city and the city official or employee, acting within the scope of official city duties, and if both are named as parties in the same claims lawsuit, the city attorney may decline to represent that person. In such cases the city is responsible for payment of reasonable

attorney's fees and costs incurred in the defense of the city official or employee.

(Ord. 5733, 07-14-09)

7-04-08. Recovery of Losses.

1. Actions for Recovery. The city attorney is responsible for bringing all actions, including claims and lawsuits, for recovery of losses to the city arising out of the acts of others. Such losses may include property damages or losses which impact on the city as a result of personal injuries to city officers or employees. In addition, the city attorney may join the city as a party with a third party in a lawsuit involving recovery of loss to the city.

2. Allocation of Recoveries. Any moneys recovered (excluding costs of recovery) by the city attorney on account of losses to the city shall be paid to the budget unit or department which has expended funds and/or materials as a result of the loss. Any moneys in excess of those so expended shall be transferred to the insurance fund.

(Ord. 5733, 07-14-09)

CHAPTER 7-05. LODGING AND RESTAURANT TAX

7-05-01. City Lodging Tax Imposed - Disposition. There is imposed a tax in the amount of two percent upon the gross receipts of retailers on the leasing or renting of hotel, motel or tourist court accommodations within the city for periods of less than thirty consecutive calendar days or one month. The tax imposed by this section shall be in addition to the state sales tax on rental accommodations and the city sales tax provided in Chapter 7-03. All proceeds collected under this section must be deposited in the city visitors' promotion fund and spent only as provided by Chapter 40-57.3 of the North Dakota Century Code.

(Ord. 4144, 4-28-87)

7-05-02. Additional Lodging and Restaurant Tax. In addition to the tax imposed under section 7-05-01, there is imposed a tax of one percent upon the gross receipts of retailers on the leasing or renting of hotel, motel, or tourist court accommodations within the city for periods of less than thirty consecutive calendar days or one month and upon the gross receipts of a restaurant from any sales of prepared food or beverages, not including alcoholic beverages for consumption off the premises where purchased, are subject to state sales taxes. For purposes of this section, "restaurant" means any place where food is prepared and intended for individual portion service for consumption on or off the premises and "prepared" includes heating prepackaged food. Accommodations, food and beverages are all, each, or in any combination subject to the tax under this Title 7

section, if all items in any category which are taxable under state law are taxable, except as otherwise provided by Chapter 40-57.3 of the North Dakota Century Code. The tax imposed under this section is in addition to state sales taxes on rental accommodations and restaurant sales and the tax imposed under Chapter 7-03. All proceeds must be deposited in the visitors' promotion capital construction fund and spent only as provided in Chapter 40-57.3 of the North Dakota Century Code.

(Ord. 4144, 4-28-87)

7-05-03. City Motor Vehicle Rental Tax - Imposition - Amount - Disposition -Definitions. There is imposed a tax in the amount of one percent upon the gross receipts of retailers on the rental of any motor vehicle for fewer than thirty days if that motor vehicle is either delivered to a renter at an airport or delivered to a renter who was picked up by the retailer at an airport. The tax imposed under this section is in addition to state sales taxes on the rental of motor vehicles for fewer than thirty days. All proceeds collected under this section shall be deposited in the city visitors' promotion fund and spent only as provided by NDCC Chapter 40-57.3. For purposes of this section, "motor vehicle" means a motorized passenger vehicle designed to be operated on highways and "retailer" means a company for which the primary business is the renting of motor vehicles for periods of fewer than thirty days.

(Ord. 5472, 12-13-05)

CHAPTER 7-06. TAXATION AND BUDGET

7-06-01. Taxation; Determination of Levy.

1. The Board of City Commissioners may adopt a budget without regard to the dedication of mill levies to specific purposes. However, unless approved by a vote of the city electors, taxes from all sources imposed by the Board of City Commissioners shall not exceed the total of levies authorized by the state constitution and state statutes for cities, less the levy not actually needed to fund the Old Age and Survivors Insurance System pursuant to Subsection 52-09-08(c) of the North Dakota Century Code.

2. If the Board of City Commissioners determines that the revenue which may be raised by levies specified in Article 3 of the Home Rule Charter for the City of Bismarck, together with all other available funds, will be insufficient to provide for the requirements of the city, the Board may propose an ordinance in accordance with section 1 of Article 6 of the Home Rule Charter for the City of Bismarck to authorize a specified mill levy tax in excess of the limitation for a designated or indefinite period of time.

3. In the event the President of the United States or the Governor of the State of North Dakota declares the City of Bismarck a disaster area because of a natural or man-made disaster, the Board of City Commissioners may, pursuant to Article 3 of the Home Rule Charter for the City of Bismarck, adopt tax ordinances without an advisory vote. Any tax ordinance adopted pursuant to this subsection shall be submitted to the electorate at the next city-wide election. The ordinance shall remain in effect if it is approved by a majority of votes cast on the issue.

(Source: Home Rule Charter for the City of Bismarck, Article 6, Section 2)
(Ord. 4518, 06-08-93)

7-06-02. Fiscal year. The Fiscal year of the city shall begin on the first day of January and end the last day of December.
(Ord. 4518, 06-08-93)

7-06-03. Submission of Budget. On or before July 1, each elected or appointed official heading a department, office, or agency shall submit to the auditor, or other designated official, a budget for the next fiscal year. Concurrently with the submission of the budget, each elected or appointed official heading a department shall submit a five-year capital program. Prior to the public hearing required by Section 7-06-05, a report of department budget proposals shall be presented to the city commission.
(Ord. 4518, 06-08-93; Ord. 4536, 08-03-93)

7-06-04. Budget Preparation and Form. The City Auditor, or other designated official, shall organize, and the Board of City Commissioners shall approve, a budget which defines in fiscal terms and in terms of work programs an outline of the proposed financial policies of the city for the next fiscal year. The budget must provide a complete financial plan of all city funds and activities for the next fiscal year. Concurrently with the budget, the City Commission shall adopt a city-wide five year capital program. The City Commission shall establish a policy that specifies the contents of the budget and the budgeting procedure.
(Ord. 4518, 06-08-93)

7-06-05. Board of City Commissioners Action on Budget. The commissioners shall publish once in the official newspaper of the city a notice stating:

1. A general summary of the proposed budget.
2. The times and places where copies of the budget are available for inspection by the public, and

3. The time and place, not less than two weeks after such publication, for a public hearing on the budget.

After the public hearing, the Board of City Commissioners may adopt the budget with or without amendments. No amendment may decrease expenditures required for debt service. Except as provided in Section 6(b), the budget may not authorize expenditures which are greater than total estimated revenue plus reserves.

The commissioners shall adopt the budget for the next fiscal year on or before the 1st day of October of the fiscal year currently ending.

(Ord. 4518, 06-08-93)

7-06-06. Revenue Certification. To implement the adopted budget, the Board of City Commissioners shall, not later than the 10th day of October, file a tax levy certification authorizing the tax dollar levy.

(Ord. 4518, 06-08-93)

7-06-07. Amendments After Adoption.

1. Supplemental appropriations. If during the fiscal year the City Auditor, or other official designated by ordinance, certifies that there are available for appropriation revenues in excess of those estimated in the budget, the commissioners by ordinance may make supplemental appropriations for the year up to the amount of such excess.

2. Emergency Appropriations. To meet a public need affecting life, health, property or the public peace, the commissioners may, by emergency ordinance, approve an emergency appropriation. To the extent that there are no available unappropriated revenues or a sufficient fund balance to meet such appropriations, the commissioners may by such emergency ordinance authorize the issuance of emergency notes, which may be renewed from time to time, but the emergency notes and renewals of any fiscal year shall be paid not later than the last day of the fiscal year next succeeding that in which the emergency appropriation was made.

3. Reduction of appropriations. If at any time during the fiscal year it appears probable to the City Auditor, or other official designated by ordinance, that the revenues or fund balance available will be insufficient to finance the expenditures for which appropriations have been authorized, the City Auditor, or other official designated by ordinance, shall report to the commissioners without delay, indicating the estimated amount of the

deficit, any remedial action taken by the City Auditor, or other official designated by ordinance, and recommendations as to any other steps to be taken. The commissioners shall then take such further action as they deem necessary to prevent or reduce any deficit and for that purpose may by ordinance reduce one or more appropriations.

4. Amendment procedure. At any time during the fiscal year the commissioners may amend the budget ordinance using the procedure for ordinance amendment set out in Article 4, Home Rule Charter for the City of Bismarck.

5. Transfers. Upon the approval of the City Commission, all or part of any unencumbered appropriation balance may be transferred between departments. Upon the approval of the department head, all or part of any unencumbered appropriation balances may be transferred within a department.

6. Effective Date. The supplemental and emergency appropriations and reduction or transfer of appropriations authorized by this section may be made effective immediately upon adoption.

(Ord. 4518, 06-08-93)

7-06-08. Lapse of Appropriations. Every appropriation, except an appropriation for a capital expenditure, shall lapse at the close of the fiscal year to the extent that it has not been expended or encumbered. An appropriation for a capital expenditure shall continue in force for two years after the fiscal year in which the appropriation was established unless the original budget ordinance establishes a different lapse period for the capital appropriation, the Board of City Commissioners extends the lapse period in a subsequent budget ordinance, or the Board approves a motion to return the unexpended funds to the general fund or other appropriate special fund, except for the library fund which shall be subject to NDCC Chapter 40-38 and the Job Development Authority which shall be subject to NDCC Chapter 40-57.4.

(Chap Source: Home Rule Charter for the City of Bismarck, Art. 3, Art. 6, Art. 12)

(Ord. 4518, 06-08-93)

7-06-09. Pension and Health Insurance Funds. No appropriation may be made from the City Employee Pension Plan or the Police Pension Plan funds, actuarial or reserve, or from the City Health Insurance Fund.

(Chapter Source: Home Rule Charter for the City of Bismarck, Article 3, Article 6, Article 12)

(Ord. 4518, 06-08-93)

7-06-10. Commercial Property Tax Exemptions, Lapse of Exemption. Subject to the NDCC Section 40-57.1-06, any entity

granted a property tax exemption pursuant to NDCC Chapter 40-57.1 must begin construction or operation within two years of the Board of City Commissioners' approval of the application for the exemption. If construction or operation has not begun within two years of the approval of the application for property tax exemption, the exemption shall lapse and the entity must reapply.

(Ord. 4653, 11-22-94)

7-06-11. Investment of Surplus Funds. The City may invest monies in the general fund, or balances in any special or temporary fund, in any investment allowed by NDCC Section 21-06-07 or by the purchase of shares of a fund or participation in a joint investment pool which fund or pool is made up entirely of investments only as allowed by NDCC Section 21-06-07.

(Ord. 4957, 12-08-98)

7-06-12. Approval of Payments.

1. The City Administrator, Director of Finance, Comptroller and the Investment/Finance Officer are each authorized to approve the payment of expenses authorized by previously approved written contracts, liability claim settlements of up to \$3500, land or easement acquisitions up to \$3500, payroll and benefit expenses and utility expenses without the Board of City Commissioners' prior authorization of the individual payments so long as no such payment exceeds the funds included for these expenses in an approved budget adopted by the Board of City Commissioners. All such payments shall be reported to the Board of City Commissioners at its next meeting.

(Ord. 5087, 12-19-00)

CHAPTER 7-07. ECONOMIC DEVELOPMENT

7-07-01. Powers.

1. The City shall use its financial and other resources to encourage and assist in economic development in the area. To fulfill that objective, the City may exercise the following powers:

(a) Execute contracts or other instruments necessary to provide economic development.

(b) Hire consultants or other professional personnel skilled in promoting and developing economic development.

(c) To acquire by gift, trade, or purchase, and to hold, improve, and dispose of real or personal property.

(d) To invest any economic development funds held by the City in the furtherance of economic development.

(e) To cooperate with political subdivisions in exercising any of the powers granted by this section.

(f) To loan, grant or convey funds or other real or personal property held by the authority for any purpose necessary or convenient for economic development.

(g) To use economic development funds to guarantee loans, make interest buy down payments or make other financial commitments to promote economic development.

(h) To exercise any other powers or authorities granted to cities, including powers granted to Home Rule Cities, to carry out economic development.

2. In addition to the economic development conducted by the City, the governing body may utilize the services of a Job Development Authority formed pursuant to NDCC Chapter 40-57.4 and may also contract with and utilize the services of an industry development organization for the performance of economic development functions.

(Ord. 4646, 11-08-94)

7-07-02. Job Development Authority - Vision Fund.

1. A Job Development Authority appointed by the City Commission pursuant to NDCC Chapter 40-57.4 shall be called Vision Fund and shall have all of the powers and authorities contained in that chapter except:

a. The Board of City Commissioners shall make the final decision as to whether or not a project should be funded.

b. The Vision Fund may consider applications from outside the corporate limits of the City of Bismarck pursuant to a charter approved by the Board of City Commissioners.

c. The Board of City Commissioners may authorize City staff to aid the Vision Fund as directed by the Board of City Commissioners.

d. The Vision Fund may utilize consultants or other professionals to aid it in investigating any matter before it.

e. Any misrepresentation by an applicant to the Vision Fund or the City will be considered material and may result in the denial of or the discontinuance of funding, and the applicant must repay any monies already received together with interest at the statutory rate.

2. Appeal. Any applicant may appeal a negative recommendation of the Vision Fund to the Board of City Commissioners. A written Notice of Appeal must be filed in the Office of City Administration within 15 days of the determination by the Vision Fund. An appeal to the Board of City Commissioners shall be limited in scope to the record of the application proceedings before the Vision Fund Committee. No testimony or additional evidence shall be received. After reviewing the record, the Board of City Commissioners can either affirm the decision of the Vision Fund Committee denying the application or send the application back to the Vision Fund Committee for further investigation and review. An appeal to the Board of City Commissioners from the decision of the Vision Fund shall be final.

(Ord. 4680, 04-25-95)

CHAPTER 7-07.1. NORTHERN PLAINS COMMERCE CENTER

7-07.1-01. Creation - Purpose. There is hereby created a freight handling, transportation and storage facility owned and operated by the City to be known as the Northern Plains Commerce Center (NPCC). The purpose of the NPCC is to enhance economic development opportunities by increasing the volume of commerce within the City, to aid in the retention and growth of existing businesses, to attract new businesses and commerce to the area and to maintain the economic stability and prosperity of the area by providing maximum opportunities for employment and improvement of the standard of living.

7-07.1-02. Powers.

1. The City shall use its financial and other resources to develop, build, operate and improve the NPCC. To fulfill that objective, the City may exercise the following powers:

- (a) Execute contracts and other instruments.
- (b) Sue and be sued.

(c) Plan, acquire, develop, construct, improve, maintain, equip, operate and regulate freight handling, transportation, storage or other facilities related to the handling of freight.

(d) Acquire by lease, purchase, gift or other lawful means and to hold in its name for its use and control both real and personal property and easements and rights of way within or without the limits of the NPCC and to construct roads, rail or aeronautical facilities necessary and convenient to the development and operation of the NPCC.

(e) To convey, sell, dispose of or lease real or personal property.

(f) To employ or procure the services of engineers, attorneys, technical experts, managers or other staff to assist, advise and act for the NPCC and to employ staff necessary to operate the NPCC.

(g) To apply for, accept, receive, disburse, and expend federal, state, local and other moneys, public or private, made available by grant or loan.

(h) To cooperate and contract with the state or any other governmental entity to obtain infrastructure and services.

(i) To enter into agreements with public or private entities for the development of the NPCC. To allow the development of privately owned facilities within the NPCC.

(j) To obtain local, state, and federal permits necessary to offer services or develop resources and infrastructures authorized by this chapter.

(k) To adopt, amend, or repeal any ordinances or regulations as are necessary for the operation of the NPCC.

(l) To exercise any other powers or granted to cities, including powers granted to home rule cities, to carry out the purpose of this chapter. To utilize its economic development authorities to further the purposes of this chapter.

(m) To utilize any lawfully appropriated funds of the City to carry out the purpose of this chapter.

(n) To carry out the purposes of this chapter by

the exercise of the power of eminent domain, pursuant to NDCC Chapter 32-15.

7-07.1-03. Authority of City Commission. The NPCC shall be under the supervision and control of the Board of City Commissioners and subject to such rules and regulations as the Board shall from time to time direct. All rates and charges for operations by the City at the NPCC shall be set by the Board. All accounting methods and standards and staffing levels for the portions of the NPCC operated by the City shall be set by the Board.
(Ord. 5377, 01-11-05)

CHAPTER 7-08. RENAISSANCE ZONE

7-08-01. Local Zone Authority.

1. A Local Zone Authority appointed by the City Commission pursuant to NDCC Chapter 40-63 shall be called the Bismarck Renaissance Zone Authority and shall have all of the powers and authorities contained in that chapter except:

a. The Board of City Commissioners shall make the final decision as to whether or not a project or application should be approved.

b. The Board of City Commissioners may authorize City staff to aid the Bismarck Renaissance Zone Authority as directed by the Board of City Commissioners.

c. The Bismarck Renaissance Zone Authority may utilize consultants or other professionals to aid it in investigating any matter before it.

d. Any misrepresentation by an applicant to the Bismarck Renaissance Zone Authority or the City will be considered material and may result in the denial of an application or the discontinuance of a granted exemption, and the applicant must repay any monies already received together with interest at the statutory rate.

2. Appeal. Any applicant may appeal a negative recommendation of the Bismarck Renaissance Zone Authority to the Board of City Commissioners. A written Notice of Appeal must be filed in the Office of City Administration within 15 days of the determination by the Bismarck Renaissance Zone Authority. An appeal to the Board of City Commissioners shall be limited in scope to the record of the application proceedings before the Bismarck Renaissance

Zone Authority. No testimony or additional evidence shall be received. After reviewing the record, the Board of City Commissioners can either affirm the decision of the Bismarck Renaissance Zone Authority denying the application or send the application back to the Bismarck Renaissance Zone Authority for further investigation and review. An appeal to the Board of City Commissioners from the decision of the Bismarck Renaissance Zone Authority shall be final.

7-08-02. Urban Renewal. The Board of City Commissioners may establish CORE Incentive programs within the urban renewal area as part of a workable program to further the goals and objectives of an urban renewal plan adopted by the City. The Bismarck Renaissance Zone Authority shall act as an urban renewal agency as defined by NDCC Section 40-58-16 for the purpose of holding public hearings as required by NDCC Section 40-58-06. The Bismarck Renaissance Zone Authority may consider renewal plans submitted to it pursuant to the North Dakota Century Code or applications for CORE Incentive programs established by the Board of City Commissioners and forward its recommendations to the Board of City Commissioners. All decisions of the Bismarck Renaissance Zone Authority acting as an urban renewal agency must be approved by the Board of City Commissioners and are subject to the appeal provisions of Section 7-08-01(2). Development or renewal plans relating to predominately commercial or industrial properties or amendments thereto need not be submitted to the City Planning and Zoning Commission unless the proposed plan or amendment is inconsistent with the City's comprehensive plan.

(Ord. 5159, 02-26-02; Ord. 5751, 12-08-09)