

TITLE 11
UTILITIES

Table of Contents

CHAPTER 11-01. GENERAL PROVISIONS 3

11-01-01. Definitions..... 3

11-01-02. Scope of Title..... 3

11-01-03. Issuance of Regulations 3

11-01-04. Water Service Application..... 3

11-01-05. Right of Entry..... 3

11-01-06. Service Termination..... 4

11-01-07. City Liability 5

11-01-08. Permit Application..... 5

11-01-09. Unassessed Property 6

11-01-10. Assumed Use 6

11-01-11. Unauthorized Use Prohibited 6

11-01-12. Equipment Damage or Trespass 6

11-01-13. Emergency Service Interruption or Restriction..... 6

11-01-14. Resale of Service Prohibited..... 6

11-01-15. Service Connection 6

11-01-16. System Maintenance 7

11-01-17. Construction Materials 7

11-01-18. Water Service Location..... 7

11-01-19. Private Fire Protection Services..... 7

CHAPTER 11-02. UTILITY RATES AND CHARGES..... 8

11-02-01. Installation and Control of Water Meters 8

11-02-02. Payment Provisions 10

11-02-03. Written Notice of Discontinuance 11

CHAPTER 11-03. WATER AND SEWER UTILITIES 11

11-03-01. Utility Creation 11

11-03-02. Utility Scope 11

11-03-03. Service Rates and Use of Funds 11

11-03-04. Financing of Capital Improvements..... 12

11-03-05. Separate Accounts Required 13

11-03-06. Bond and Warrant Covenants..... 18

CHAPTER 11-04. MUNICIPAL LIGHTING 20

11-04-01. Creation of City of Bismarck Street Lighting and Traffic
Signal System..... 20

11-04-02. Control of System 21

11-04-03. Rates and Changes To Be Established 21

11-04-04. Rates and Charges To Be Billed and Collected 21

11-04-05. System To Be Self-Supporting..... 21

11-04-06. Creation of City of Bismarck Street Lighting and Traffic Signal System Fund.....	22
11-04-07. Installation of Street Lights and Traffic Signals.	22

CHAPTER 11-01. GENERAL PROVISIONS

11-01-01. Definitions.

1. "Utility" means water, sanitary sewer, storm sewer and/or any other utility service furnished by the city to consumers.

2. Where a term is used in this title, the meaning of that term as defined in Title 11.2, if that term is so defined, is hereby adopted by reference and incorporated herein.

(Ord. 6607, 03-03-25)

11-01-02. Scope of Title. All pertinent provisions of this Title are a part of the terms and conditions whereby the city furnishes utility service to a person; or whereby the city permits utility connections, or performs work of any kind in connection with the furnishing of utility services pursuant to the rules and regulations of the Board of City Commissioners.

11-01-03. Issuance of Regulations. The Board of City Commissioners has the authority to establish the standards and specifications necessary for the installation, construction and maintenance of any utility service system owned and operated by the city within or without the city and under the management of the board. The rules, regulations, standards, specifications or ordinances must be filed in the office of the city administrator. Violation of the rules, regulations, standards, specifications or ordinances is an offense.

(Ord. 4814, 01-14-97)

11-01-04. Water Service Application. Application to have water turned on must be made in writing to the water department by the owner of the property, and contain an agreement by the applicant to abide by and accept all of the City's ordinances and policies relating to water service as conditions governing the use of the city water supply. A reasonable deposit as established by the board of city commissioners by resolution must be paid with the application, if the applicant has not previously received utility services from the city or has not established a history of prompt payment for utility services. Upon termination of the service, the deposit shall be applied to any unpaid charges and the remainder, if any, refunded.

(Ord. 4814, 01-14-97)

11-01-05. Right of Entry. All authorized city employees or authorized contractor employees have access at a reasonable time to all premises supplied with the utility service by the city for the purpose of examination in order to protect the utility service and to read the meter for billing purposes.

11-01-06. Service Termination.

1. The City has the right to disconnect or refuse to connect or reconnect any water utility service for the following reasons:

- a. Failure to meet the applicable provisions of law.
- b. Violation of the rules and regulations pertaining to utility service.
- c. Nonpayment of bills.
- d. Willful or negligent waste of service due to improper or imperfect pipes, fixtures, appliances or otherwise.
- e. Damaging or tampering with any meter, seal or other equipment controlling or regulating the supply of utility service.
- f. Theft or diversion and/or use of service without payment.
- g. Vacancy of premises.
- h. Failure of consumer or the owner of the property to permit entry for the reading of the city meter, or to pay an estimated billing when the city has been unable to obtain entry of the premises to read the water meter.
- i. Failure of the consumer or the owner to allow access for installation, maintenance or replacement of the meter or associated reading equipment.

2. The City shall provide prior notice in writing by regular mail to the address shown on billing records at least five days in advance to the owner before disconnecting any water service. The notice shall include a statement that upon demand made in writing and filed with the director of public works the owner has the right to an informal hearing before the director of public works or his designate before water service is shut off if the owner believes that the city does not have sufficient grounds to shut off service. Upon demand made in writing, the director of public works shall schedule

an informal hearing as soon as is practicable, at which time the owner shall have the opportunity to present evidence. Following the hearing, the director of public works may order that service be terminated or make such other reasonable order as necessary or appropriate.

3. Sewer utility service may be disconnected, or the city may refuse to reconnect sewer service, upon the same grounds and in the same manner as water service by discontinuing the water service. If the owner or consumer is subject to the requirements of Title 11.2, the requirements of that title shall prevail if inconsistent with this section.

4. Whenever utility service is disconnected pursuant to this section, a reasonable reconnect fee shall be paid by the owner or successor in interest before reconnection.

(Ord. 4814, 01-14-97; Ord. 6081, 09-09-14; Ord. 6607, 03-03-24)

11-01-07. City Liability. The city is not liable for damage sustained by a customer of city utility service due to backflow of the sewerage system, failure to supply, interruption of service or any cause outside the direct control of the city.

11-01-08. Permit Application.

1. A person may not uncover, repair, make connections with or opening into, use, alter or disturb any utility or connections thereto without first obtaining a written permit from the city engineer.

2. Any person desiring utility service furnished by the city shall apply to the city engineer. The application shall contain the applicant's name, address, and the uses for which utility service is desired. A permit fee, to be established by the board, must be paid at the time the application is filed. In applications for larger private areas such as mobile home parks, schools, commercial or industrial developments, multiple building developments, and other large installations, the applicant shall furnish plans and specifications showing the proposed construction and location of utility lines and services which must be approved in advance by the city engineer. The applicant shall further agree as a condition of obtaining service that in the larger installations, the applicant shall pay the cost of the approval and inspection on a time and material basis, in addition to the permit fee.

1. Approval of the application for utility service by the city engineer constitutes permission for the service.

11-01-09. Unassessed Property. A permit may not be issued to make a connection to water or sewer lines of the city until the costs of all water and sewer improvements have been paid or assessed to the property.

11-01-10. Assumed Use. All premises connected to any utility service of the city are assumed to be using the utility service and the owner or occupant shall be charged therefor so long as the premises remain connected with the utility service.

11-01-11. Unauthorized Use Prohibited. Any person having a permit from the city for the use of any utility service offered by the city who uses the utility service for a purpose other than stated in the permit or who makes unauthorized changes in the service is guilty of an offense.

11-01-12. Equipment Damage or Trespass. It is unlawful for a person to open or close a water hydrant, water valve or tamper with a utility service furnished by the city without first obtaining permission from the city engineer or to damage or trespass upon any equipment or premises belonging to the city connected with any utility service.

11-01-13. Emergency Service Interruption or Restriction. The city reserves the right to cut off or restrict utility service without notice in case of emergencies. When an interruption in service is necessary for the maintenance and improvement of the utility system, affected customers will be notified as circumstances permit.

11-01-14. Resale of Service Prohibited. It is unlawful to resell a utility service obtained from the city except by arrangement with the Board of City Commissioners.

11-01-15. Service Connection.

1. Connections to any utility furnished by the city may be made only under the supervision of the city engineer. Connections for sewer service shall be made in accordance with Title 11.2.

2. Only employees of the city or authorized contractors are authorized to connect, turn on, turn off or disconnect any water utility service offered by the city, or remove, replace or repair equipment connected to any utility service.

3. Every building, structure or consumer in the city must have a separate utility service connection. Sewer connections shall comply with Title 11.2.

4. Any person who makes a connection to a utility system without the prior knowledge and consent of the city is guilty of an offense.

5. Water service may not be constructed from a main to a building or premises having a greater capacity than fifty percent of the main, and in no case larger than six inches in diameter, nor less than three-fourths inch in diameter, water sprinkling systems excepted. In dwellings or buildings containing two dwelling units or more, the water service line must be at least one inch in diameter. The fire and inspections chief has the authority to require water meters and service lines of a specified size or dimension within these limitations, based on water pressure in the area and number of fixtures.

(Ord. 6081, 09-09-14; Ord. 6607, 03-03-25)

11-01-16. System Maintenance. The consumer of any utility service furnished by the city shall maintain and keep in good repair all connections, appliances and other apparatus installed and used in connection with the utility service. All connections, appliances and other apparatus installed and used in connection with sewer service must comply with Title 11.2.

(Ord. 6607, 03-03-25)

11-01-17. Construction Materials. Services may be constructed only of material allowed by the latest edition of the North Dakota State Plumbing Code. Materials used for sewer service must also comply with Title 11.1. Construction methods shall comply with Title 10 and the latest edition of the North Dakota State Plumbing Code.

(Ord. 6607, 03-03-25)

11-01-18. Water Service Location. All water services must be a minimum depth of seven and one-half feet below finished grade with a stop fitted with a box set at a location specified by the city engineer. Curb stops must be the stop and waste type unless otherwise specified by the city engineer. Curb stops must be equipped with extension boxes not less than two inches in diameter, with Mueller boxes, or their approved equal adjusted to grade.

11-01-19. Private Fire Protection Services. The following additional provisions govern private fire protection services:

1. Private fire protection water service is defined as the water piping, valves, hydrants, connections and other appurtenances which convey water from the water utility to hydrants, buildings or structures so that the water may be used to provide fire protection either inside or outside the building.

2. Private fire protection services may be constructed without meters.

3. Private fire protection services may be caused to discharge only in case of fire or for inspection and not to supply water for domestic or other water purposes, except as approved by the city engineer.

4. Private fire protection services must be controlled by a gate valve placed in the street as near the utility as practicable. Valves must be a standard type and have a substantial valve box fitted with a cover with the directions for opening or closing plainly marked upon it.

5. Only a member of the fire department in the discharge of his or her duties as fireman or authorized water department employees shall operate a private fire hydrant without first obtaining a permit from the water department. Hydrants may be opened only with a hydrant wrench, which may be obtained from the water department.

6. Private hydrants used for construction purposes or for flushing sewers and streets must have a reducing coupling attached to the nozzle of the hydrants with an independent throttling valve for regulating the supply.

(Ord. 6081, 09-09-14)

CHAPTER 11-02. UTILITY RATES AND CHARGES

11-02-01. Installation and Control of Water Meters.

1. The city shall furnish and install meters for the measurement of water utility services furnished by the city.

a. Any person, business, corporation or other entity desiring water service from the City of Bismarck shall have a water meter furnished and installed by the City of Bismarck. Meter locations shall be set firmly and in a workmanlike manner and shall be located in a convenient and readily accessible

location for reading and inspection. No tap or withdrawal of water shall be permitted ahead of the city meter.

b. The consumer or owner shall not tamper with, alter or make any addition to any water meter. Water meters shall only be repaired, installed or removed by authorized city employees or authorized contractor's employees. The consumer shall not make any alteration or addition to the meter location that interferes with the reading or inspection of the meter.

c. All water meters shall be sealed with a seal affixed by the City of Bismarck and such seals shall not be removed.

d. Any water meter two inches in size or over shall have a bypass and shall have a suitable valve on either side of the meter and a valve on the bypass. Each bypass shall be sealed with a seal affixed by the City of Bismarck and such seals shall not be removed.

e. Any costs associated with a new water meter or its installation shall be the responsibility and liability of the property owner unless otherwise specified by the city. Any costs associated with the testing or repair of a water meter shall be the responsibility and liability of the city unless otherwise specified by the city.

f. In the event that the owner of the property or the consumer shall deny the authorized employees of the city or authorized city contractors access to the water meter for installation, reading, maintenance, replacement or inspection purposes, the city may, upon 24 hours notice, elect to discontinue the water utility service until such time as the requested access is allowed.

g. All service pipes, curb boxes, corporation stops, shut off boxes and any other fixtures off of the main are the property of the owner and must be kept in repair at the owner's expense. All such fixtures shall be under the control and supervision of the City of Bismarck.

2. The rates and charges for the consumption of utility services furnished by the city and the charges and fees for connections shall be determined by the Board of City Commissioners

from time to time by resolution and be filed in the office of the city auditor. The City shall not vary its rates and charges based upon the time of usage. Sewer service charges shall be established in accordance with Title 11.1. If the city is unable to gain access to the premises furnished utility services to read its meter, and the owner or consumer has not arranged for or provided a reading of the meter, the utility charge may be estimated by the city, and payment is due at the same time as if the city had been able to make a meter reading.

(Ord. 4312, 2-20-90; Ord. 4830, 04-08-97; Ord. 5722, 05-26-09; Ord. 6081, 09-09-14)

11-02-02. Payment Provisions.

1. All bills for utility services furnished by the city are due and payable prior to midnight of the fifteenth day following the date of the bill, except that if the due date falls on a Sunday or a legal holiday observed by the city, then the bill shall be due and payable by midnight of the following business day, except that upon termination of service all unpaid charges are due and payable immediately.

2. In the event bills for utility services are not paid when due, the city has the right to disconnect and discontinue all utility services furnished by the city, following reasonable prior notice to the consumer or owner in accordance with section 11-01-06.

3. In the event that utility service is disconnected for nonpayment, the consumer has the right to be reconnected upon the payment of the amount due. In addition, a reconnection fee reflecting actual cost of labor plus overhead, equipment and materials expended in making the reconnection is assessable.

4. The owner of premises where any utility service is furnished is liable for the payment of all rates and charges for those premises, irrespective of whether the owner is the user of the utility services.

5. When the bill for utility services, including any administrative fee or late fees, are delinquent, the outstanding charges shall constitute liens upon the lots. The property at which the utility services were provided can be charged and assessed. An assessment list showing the costs against each lot or tracts to be assessed shall be prepared as are other special assessment lists and shall be approved by the Board of City Commissioners. All procedures under state law for certification, appeal, payment and collection of special assessments shall apply.

Reference: N.D.C.C. 40-05-01; 40-05-01.1; (Ord. 6447, 02-09-21)

11-02-03. Written Notice of Discontinuance. Consumers wishing to discontinue the use of any utility service must give written notice to the city. Failure to do so renders them liable for the payment of all bills until the notice is given.

CHAPTER 11-03. WATER AND SEWER UTILITIES

11-03-01. Utility Creation. The waterworks and sewerage facilities owned by the city on May 21, 1953, when Ordinance No. 1124 was adopted, or thereafter acquired, is a public utility of the city, held and operated as a single undertaking known as the "water and sewer utility". The properties of the utility include all plants, systems, works, instrumentalities, equipment, materials, supplies, lands, easements, rights in land, water rights, contract rights, franchises, dams, reservoirs, sewage disposal plants, intercepting sewer, trunk connections, sewer and water mains, filtration works, pumping stations, and parts and appurtenances of the foregoing which are used or useful in connection with the obtaining of a water supply and the conservation, treatment and disposal of water for public and private uses and/or used or useful in connection with the collection, treatment and disposal of sewage, waste and storm waters.

11-03-02. Utility Scope. The properties of the utility and all future improvements, extensions and enlargements, together with all cash and other assets in the city's water and sewer utility fund and all moneys derived from the services, facilities, products and by-products of the utility, are dedicated to insuring the public health, safety and welfare by furnishing available water and sewerage service to the city and its inhabitants and industries. The utility is under the management and control of the Board of City Commissioners and is to be operated and maintained in such manner as to provide its service with maximum efficiency and at the minimum cost which is comparable with the plan and operation.

11-03-03. Service Rates and Use of Funds. The utility is to be operated and maintained, and the rates for its services, facilities, products and by-products set so that the utility is self-supporting and self-perpetuating. The rates imposed and collected must be at the level necessary to pay the costs of operation and maintenance and to establish and maintain reasonable operating reserves to produce net revenues which are sufficient to pay the principal and interest due on all obligations the city incurred for the improvement of the utility which are payable from net revenues, and to establish and maintain adequate reserves for the security of the obligations; to produce surplus net revenues sufficient to provide

reasonable allowances for depreciation and replacement of the utility plus a reasonable return on the city's capital investment. The surplus net revenues, when actually on hand, and not required as a reserve for depreciation and replacement, may be appropriated by the board to pay or contribute to the cost of any other city functions, subject to the limitations prescribed by law.

The foregoing is not to be construed to preclude the city from defraying any or all of the expenses of any improvement, enlargement or extension of the water and sewer utility by levying special assessments or taxes or issuing general obligation bonds to the extent that it is authorized by law and is deemed fair and equitable by the Board of City Commissioners.

11-03-04. Financing of Capital Improvements. It is the policy of the city, subject to modifications deemed by the Board of City Commissioners to be required by the circumstances in individual cases, that the cost of capital improvements, enlargements and extensions of the utility be paid in the following manner:

1. The total cost of water mains eight inches or smaller in diameter or sanitary sewer mains eight inches or smaller in diameter installed adjacent to residential properties, and water mains twelve inches or smaller or sanitary sewer mains ten inches or smaller in diameter installed adjacent to commercial properties, must be charged against the properties benefiting from the improvements. The amount charged against a property may be prepaid where required by the City or assessed against the property. Water and sanitary sewer mains of the dimensions above described are referred to as "lateral" mains, and other larger mains are referred to as "trunk" mains.

2. Where a trunk main is installed, the city engineer shall determine the cost of construction of a lateral main and the cost of the lateral main will be charged against the properties benefiting from the improvement.

3. The cost of any main in excess of a lateral main shall be referred to as a trunkline charge and assessed or charged against abutting properties and properties served or capable of being served.

4. The portion of the cost of any improvement, extension or addition to the utility not paid by special assessments or prepayment shall be paid from the revenues of the utility.

5. Where, due to any error or omission or to special circumstances, a special assessment is not levied against property benefited by an improvement at the time of the construction, the city reserves the right to levy a supplemental special assessment upon the property or to impose and collect a special charge for the connection of the property with the utility system in an amount required to pay its just share of the assessable cost of the improvement.

6. The cost of storm sewers shall be assessed against the properties within the area determined to be benefited. An assessment shall be proportionate to and shall not exceed the benefit determined for each property.

(Ord. 4827, 03-11-97)

11-03-05. Separate Accounts Required.

1. All moneys received by the city from the services, facilities, products and by-products furnished by the utility, except collections of special assessments and taxes appropriated to improvement district funds and moneys borrowed for capital improvements, and money, receipts and returns received from investments of the earnings, must be paid into the treasury of the city and kept in a special fund which is permanently maintained on the books of the city, separate and distinct from other funds, and designated as the water and sewer utility fund, in the records of which fund all receipts and disbursements of money on account of or in connection with the utility is entered and reflected. The moneys on hand shall constitute public municipal funds and be deposited like other city funds. Separate accounts within the water and sewer utility fund shall be permanently maintained to segregate the revenues required to meet the several expenses and obligations of the utility, as provided below, and the revenues shall be administered and accounted for as follows:

a. Operation and maintenance account. There is to be credited at least once in each calendar month to the operation and maintenance account of the fund, as a first lien and charge on the gross revenues of the utility, the sum needed, over and above any credit balance then held, to pay all claims due which by accepted accounting practices constitute normal, reasonable and current expenses of operation and maintenance of the utility, and to pay the expenses estimated to accrue for a period

of approximately one month, and to maintain a reasonable service for contingencies. Moneys in the account may be used only to pay expenses of the foregoing type, and not for repairs or replacements or for capital improvements properly chargeable to replacement and depreciation reserves or surplus funds.

b. Revenue bond account. The net revenues of the utility is the aggregate of all sums on hand in the water and sewer utility fund in excess of the current requirements defined in subdivision a of this section. The entirety of net revenues shall be credited each month to the revenue bond account of the water and sewer fund until there is credited so much of the net revenues as is necessary to maintain a reserve in an amount at least equal to the sum of the principal and interest payments due within each next succeeding twelve-month period upon all revenue bonds of the city issued and payable from the accounts. After the reserve is created, there shall continue to be credited out of the net revenues to the revenue bond account each month, over and above sums required to maintain the reserve, an amount not less than one-twelfth of the sum of the principal and interest to become due on all such revenue bonds within the next succeeding twelve months. Moneys in the account may be used only for the payment of principal and interest as it becomes due on the revenue bonds, and the reserve shall be used only when other moneys in the account are insufficient. All revenue bonds issued and payable from the account, subject to the limitations upon the issuance contained herein, constitute a first lien and charge on the net revenues of the utility without preference or priority of one bond over any other; provided that if at any time the moneys in the revenue bond account are insufficient to make all payments of principal and interest due on the revenue bonds, and cannot be made sufficient by transfer of moneys from the other accounts described below, the moneys available shall first pay interest then accrued on all bonds and any excess moneys available to pay matured principal of the bonds in order of their maturity dates, provided that moneys available for payment of bonds maturing on the same date must be prorated equally among the bonds.

c. Improvement warrant account. There shall be maintained in the fund an improvement warrant account to segregate net revenues required for the payment of the cost of

improvements hereafter instituted, for which the revenues have been pledged in accordance with sections 40-22-15 and 40-22-16 of the North Dakota Century Code. There must be transferred from the account as required, to the fund of each improvement district for which the pledge has been made, sums sufficient, together with tax and assessment collections held in the funds, to pay when due the principal and interest on all improvement warrants drawn upon the funds for the financing of the improvements. Moneys sufficient for the requirements of the improvement district funds shall be credited and paid into the improvement warrant account out of the net revenues remaining after provision for the current requirements of the revenue bond account, and the lien and charge on the net revenues in favor of improvement warrants for the payment of which the pledges have been made is subordinate only to the lien and charge on the net revenues in favor of revenue bonds payable from the revenue bond account. In the event that moneys in the improvement warrant account are insufficient for the making of all transfers required to be made to the several improvement district funds to which the pledges have been made, and cannot be made sufficient by the transfer of funds from the remaining accounts described below, the available moneys must be apportioned first to the several improvement district funds in sums sufficient to pay interest then accrued on all warrants drawn on the district funds, and any remainder applied to matured principal of the warrants in order of the maturity dates. Among warrants maturing on the same date, the available moneys shall be applied to the warrants of the several issues in proportion to the matured principal amount for the payment of which taxes and assessments in the respective improvement funds are insufficient.

d. Replacement and depreciation account. There shall be maintained a replacement and depreciation account into which shall be credited and paid as received, except as otherwise stated below, all net revenues in excess of the current requirements of the other accounts. In the account there is to be maintained the balance the board determines constitutes an adequate reserve for depreciation and replacement of the utility. The reserve may be used to redeem prior to maturity obligations payable from the net revenues as and when prepayable according to their terms, or to replace worn out or obsolete properties of the utility, or to make extensions, enlargements or improvements. Any moneys in the

account determined to be surplus to the immediate requirements may be invested or transferred to other city funds at the discretion of the board, in the manner and subject to the limitations set forth in section 40-33-12 of the North Dakota Century Code.

e. Moneys on hand. The moneys on hand in any of the accounts of the water and sewer utility fund are available and can be used to restore a deficiency in the funds on hand in any of the preceding accounts, in the order listed above, for the fulfillment of the requirements of those accounts.

f. Additional accounts. The city also reserves the right to create additional accounts within the water and sewer utility fund to segregate any surplus net revenues which may be pledged and appropriated to the payment of obligations issued to finance improvements, enlargements or extensions of the utility, other than the obligations payable from the revenue bond account and the improvement warrant account, pursuant to the authority for the issuance reserved in subsection 1. The moneys on hand in any account are to be available for and used to the extent necessary to meet the current requirements of the foregoing accounts except the replacement and depreciation account.

2. In borrowing money for capital improvements, extensions or additions to the utility, the following must be observed:

a. For the purpose of this section, whenever the net revenues of the utility appropriated to the improvement warrant account are pledged to pay a portion of the cost of any improvement to be financed by improvement warrants, the warrants and the interest accruing thereon is deemed to be payable from the net revenues in the same proportion as that part of the cost payable from the net revenues bears to the principal amount of the warrants; and the portion of the cost payable from net revenues is deemed equal to the principal amount of the warrants less the principal amount of the taxes and assessments agreed to be levied for the payment thereof.

b. Except as provided in subdivisions c and d, no obligations may be issued and made payable from the revenue bond account or the improvement warrant account unless the net revenues of the utility, as defined in subsection 3,

subdivision c, received during the next preceding fiscal year, are in an aggregate amount at least equal to one hundred twenty-five percent of the average annual principal and interest payments due on all bonds payable from the revenue bond account which are then outstanding or then to be issued, plus the percentage of the average of the annual principal and interest payments due on each issue of improvement warrants then outstanding or then to be issued are payable from the net revenues. The averages shall be computed on the basis of the principal and interest payments due in the fiscal years of the then remaining term of all the revenue bonds and improvement warrants outstanding. For the purpose of the computation, whenever rates for water and sewerage service have been changed in the course of any fiscal year, the net revenues for the year is deemed to be that which would have been received if the amended rates had been in effect during the entirety of the year, based upon the actual quantities of service furnished to each class of customers and the actual expenses of the utility during the year, provided that the net revenues computed be deemed to exceed one hundred twenty-five percent of the net revenues actually received during the year.

c. Refunding revenue bonds may be issued to prepay and refund bonds payable from the revenue bond account when they become prepayable according to their terms, provided that the refunding revenue bonds are subject to the requirements set forth in subdivision b, as applied to the past net revenues and future principal and interest requirements as of the date of the issuance of the refunding revenue bonds. However, the city reserves the right to issue refunding revenue bonds, when permitted by law, for the purpose of refunding and extending the maturities of any bonds payable from the revenue bond account which have matured and for the payment of which the moneys in the revenue bond account are insufficient, and cannot be made sufficient by transfer of moneys from other accounts. The refunding revenue bonds are payable from the revenue bond account on a parity as to interest with all then outstanding bonds payable therefrom, but the maturities of the refunding revenue bonds must be subsequent to the maturities of all the outstanding bonds. Nothing requires the holder of a revenue bond to accept a refunding revenue bond in exchange.

d. The city reserves the right to issue refunding improvement warrants as provided in Chapter 40-27 of the

North Dakota Century Code. The lien and charge of the refunding warrants on the net revenues appropriated to the improvement warrant account are the same as that in favor of the improvement warrants refunded; provided that for the purpose of the computations directed to be made in this section, the maturities and the rate or rates of interest payable on the refunding warrants must be substituted for the maturities and interest rates of the improvement warrants refunded.

e. Nothing herein affects the obligation of the city, under the laws of the state to levy ad valorem taxes upon all taxable property within its corporate limits for the purpose of paying a deficiency in the fund of an improvement district, at the time of the maturity of the last warrant drawn, or at an earlier time as may be directed by law. It is the policy of the city that the amounts of any deficiency tax levies so made must be restored to the general funds of the city out of any surplus net revenues thereafter received, over and above the requirements of the accounts of the water and sewer utility fund as stated in subsection 1.

f. Except as authorized, no obligation of any kind may be issued and made payable from the net revenues unless the lien is expressly made subordinate and junior to the lien and charge on the net revenues in favor of all revenue bonds and improvement warrants payable from the revenue bond account and the improvement warrant account.

11-03-06. Bond and Warrant Covenants. The city covenants and agrees with the original purchaser and each holder of each bond or warrant issued and payable from the revenue bond account or the improvement warrant account, as follows:

1. It will complete all improvements financed by the issuance of the obligations with 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 or encumbrances on the utility or on the revenues other than the liens and charges of the revenues expressly authorized in this chapter.

2. As long as obligations payable from the accounts are outstanding, it will own and operate the utility as a municipal utility, free from all competition as to the services provided in good and efficient operating condition.

3. It will maintain a schedule of rates, charges and rentals for all services, facilities, commodities and benefits furnished by the utility and will impose and collect the same in amounts at least sufficient to make the minimum payments into the respective accounts of the water and sewer utility fund specified in subsection 1, and will revise the schedules as needed to perform this covenant.

4. Under each schedule, the city is obligated to pay from its other funds to the water and sewer 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.

5. It will at all times maintain books of account adequate to show all receipts and disbursements of the city respecting the utility, and application of the receipts to the purposes of the several accounts described in subsection 1. The books of account are open to inspection by the holder of any obligation payable from the revenue bond account or the improvement warrant account at a reasonable time, and the city will furnish a certified transcript of any information which a bond or warrant holder may request, upon payment of a reasonable fee.

6. The annual financial statement of the city required by the provisions of Section 40-16-05 of the North Dakota Century Code will include a statement of the financial condition and the receipts and disbursements of the water and sewer utility fund and its accounts during each fiscal year, and the city will furnish a copy of the statement to the original purchaser of each issue of bonds or warrants upon request.

7. Upon written demand by the holder of twenty percent or more of the bonds or warrants of any issue payable from the revenue bond account or improvement warrant account and then outstanding, it will have an audit of the books of account of the utility done by a certified public accountant satisfactory to the holder of the obligations, the cost to be paid as an operating expense of the utility, and will furnish a copy of the report of the audit to the party designated in the demand.

8. It will keep the properties of the utility insured in reasonable amounts against loss or damage by fire, tornado and other risks for which similar properties are customarily insured by prudent owners, and will carry adequate public liability insurance,

insuring against any claim of personal injury or property damage which is or may become a charge against the revenues of the utility, and will have all persons handling funds of the utility bonded in suitable amounts for the protection of the city and the holders of obligations of the utility. The insurance and bonds must be carried with the state fire and tornado fund or other reputable and responsible insurers selected by the Board of City Commissioners. The expense of all insurance and bonds is an operating cost of the utility, and the city will use the proceeds of any insurance and bonds to restore the loss or damage compensated.

9. The Board of City Commissioners and each of its officers will punctually perform all duties pertaining to the utility and its revenues and the obligations issued hereunder which are imposed or the ordinances and resolutions of the city, including this chapter. All provisions of the constitution and laws and of the ordinances and resolutions which provide security for the holders of bonds issued hereunder are part of the city's contract with the holders of the obligations; provided that nothing precludes the city from modifying the policies set forth in section 11-03-04 with reference to improvements constructed and financed after the effective date of the modification.

10. The holders of twenty percent or more in principal amount of each issue of bonds or warrants payable from the revenue bond account or the improvement warrant account and at the time outstanding are privileged and empowered to institute and maintain, on behalf of the holders of all outstanding obligations of the same issue, any suit or proceeding at law or in equity for the protection and 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 the obligations are then in default as to principal and interest, and each and all of the rights and remedies specified and mentioned in Sections 40-35-15 to 40-35-19, inclusive, of the North Dakota Century Code are available to the holders of the obligations.

CHAPTER 11-04. MUNICIPAL LIGHTING

11-04-01. Creation of City of Bismarck Street Lighting and Traffic Signal System. Pursuant to the provisions of Chapter 40-35, N.D.C.C., all lands, easements, rights in land, facilities, poles, wires, cables, conduits and other electrical fixtures and equipment necessary or proper for the maintenance and operation thereof heretofore or hereafter acquired by

purchase, lease or otherwise and set aside by the Board of City Commissioners of the City of Bismarck for a municipal street lighting and traffic signal system are hereby declared to be and shall henceforth constitute, be held, operated, maintained, improved, enlarged and administered as a single system to be known as "City of Bismarck Street Lighting and Traffic Signal System".

11-04-02. Control of System. All properties and other assets set aside or held by the Board of City Commissioners for such undertaking and all moneys to be derived from operation of said undertaking shall at all times be under the management and control of said Board and shall be operated under such rules, regulations, terms and conditions as said Board may from time to time establish.

11-04-03. Rates and Changes To Be Established. In order to provide funds to defray the costs of construction, operation, maintenance, and repair of the street light and traffic signal system the Board of City Commissioners shall from time to time determine, establish, maintain and change, by resolution, a schedule of rates, charges and fees for all the services, facilities and benefits furnished by the system. The Board of City Commissioners may impose and collect the fees, charges or rates monthly at the time and in the manner that the Board may provide.

11-04-04. Rates and Charges To Be Billed and Collected. The rates and charges shall be billed and collected in the same manner and time as are bills for other utility services as provided by city ordinance 11-02-02(1), and the rates and charges shall be charged against both the owner of property deemed to be benefited by service of the system and his lessee or agent and shall be a personal liability on the part of each and both and may be collected from either.

11-04-05. System To Be Self-Supporting. Said System shall be so operated and maintained, and the rates and charges for use of its facilities shall be such as to make the system self-supporting and self-perpetuating and adequate to pay all costs of operation and maintenance of the system and to establish and maintain reasonable operating reserves, and to pay all obligations of the city incurred in establishing, improving and extending the system provided, however, nothing herein shall be deemed or construed to preclude the city from defraying any part of the expense of the operation or of any improvement or extension of the system by the levy of special assessments or taxes or the issue of general obligation bonds, whenever and to the extent that such action is authorized in the manner provided by law and is deemed fair and equitable by the Board of City Commissioners.

11-04-06. Creation of City of Bismarck Street Lighting and Traffic Signal System Fund. All moneys received by the City in respect of the service and facilities furnished and made available by the system shall be paid into the treasury of the city and kept in a special revenue fund which shall be permanently maintained on the books of the city, separate and distinct from all other funds, and designated as the "City of Bismarck Street Lighting and Traffic Signal System Fund", in the records of which fund all receipts and disbursements of money on account of or in connection with the system shall be deposited, administered and accounted for and their safe-keeping secured like other city funds.
(Ord. 4244, 2-28-89)

11-04-07. Installation of Street Lights and Traffic Signals. The Board of City Commissioners shall from time to time designate where street lights and traffic signals shall be installed and the manner and procedures to be followed in making such installations. The City Engineer shall be responsible for the regulation, control, maintenance and use of such program.
(Ord. 4218, 8-02-88)