

CITY COUNCIL PROCEEDINGS  
PUBLISHED SUBJECT TO THE GOVERNING BODY'S REVIEW AND REVISION

A regular meeting of the Beach City Council was called to order by President Jeanne Larson on October 7, 2019 at 7:00 p.m. Present when the meeting was called to order was City Council Andy Zachmann, Bev Wolff, Mark Benes, City Auditor Kimberly Gaugler, Engineer Jasper Klein, guests Tom Wilhelmi and Brandon Gerving.

The Pledge of Allegiance was recited.

Roll call was taken. Mayor Gerving, Tim Marman and Wade Walworth were absent.

President Larson called for additions to the agenda. Benes request adding Open Records and Open Meeting Laws. Larson approved adding to the agenda.

**Minutes**

Minutes of the meeting on September 16, 2019 were presented. Benes moved to approve the minutes, second by Wolff. Motion carried unanimously.

**Vouchers**

Benes moved to approve the following vouchers, second by Zachmann. Motion carried unanimously.

20736 Advanced Pump & Equipment 1,687.52

20737 Bank of ND 29,945.53

20738 Beach Food Center 53.00

20739 Beach Park Board 2,659.20

20740 Beach Pharmacy 7.58

20741 Bismarck Tribune 29.00

20742 Boss Office Products 189.70

20743 CNH 97.42

20744 Coral Creek Landfill 3,040.00

20745 Core & Main 2,942.65

20746 Dakota Dust-Tex 165.10

20747 Ebeltoft Sickler Lawyers 330.00

20748 Farmers Union/NAPA 3,225.01

20749 G & G Garbage 2,700.00

20750 GV County 8,957.47

20751 Great Plains Fire 1,210.40

20752 Jandt Plumbing 8,961.28

20753 Jeanne Larson 175.49

20754 Jill Schatz 96.26

20755 John Deere Credit 2147.83

20756 JSG Agency 216.00

20757 Kimberly Gaugler 8.98

20758 Marman Co. 100.00

20759 Marman Plumbing 11,900.00

20760 Midstate Communications 375.18  
20761 MDU 6,137.38  
20762 ND Dept. of Commerce 500.00  
20763 NDLC 1,285.00  
20764 ND Surplus Property 225.00  
20765 Normont Equip. 10,447.50  
20766 Northern Improvement 6,522.22  
20767 One Call Concepts 76.80  
20768 Polar Trucking & Ex. 13,202.50  
20769 Prairie Fire Pottery 142.00  
20770 Prairie Lumber Co. 162.47  
20771 Randall Dietz 936.14  
20772 Rohan's Hardware 186.09  
20773 Rough Rider Industries 4,380.20  
20774 SBM 132.28  
20775 Southwest District Health 120.00  
20776 Southwest Water 13,738.17  
20777 Stockwell Cleaning 275.00  
20778 Swanston Equipment 356.55  
20779 Thomas Littlecreek 99.14  
20780 Tony Wanner 30.00  
20781 Total Safety 525.00  
20782 Val's Sanitation 220.00  
20783 Valli Information Systems 25.00  
20784 Verizon Wireless 178.12  
20785 W L Construction Supply 3,099.98  
20786 Wild Vines Market 41.95  
-88793 -88788 & 20721-20723, -88786 -88773 & 20729-20734 Wages for September 27,951.60  
-88787 First State Bank 2,829.89  
20724 City of Beach 398.54  
20725 Unum Life Insurance 47.61  
20726 Blue Cross Blue Shield 5,511.72  
20727 Blue Cross Blue Shield 692.50  
20728 USPS 211.02  
-88772 First State Bank 3,380.90  
-88771 ND PERS 3,273.49  
20735 City of Beach 327.87  
-88770 ND State Tax Commissioner 641.89

### **Public Works Report**

Dietz was unable to attend the meeting. City Council reviewed Dietz written report. Benes moved to authorize Randy Dietz submit a Disclosure Statement to GV County for 911 parcel data, second by Zachmann. Motion carried unanimously.

Marman arrived at 7:15 p.m.

### **Auditor Report**

Gaugler reviewed her written report. Gaugler mentioned the City has been reimbursed \$50,000 by USDA for expenses incurred over the past year for the Business Retention and Expansion Survey Project. Benes moved to transfer \$50,000 from this project checking account to the City general checking account and then close the project checking account, second by Zachmann. Motion carried unanimously.

### **Engineer Report**

#### **2019 Sanitary Sewer Replacement Project**

Engineer Klein reported there are several punch list items remaining on the project. Contractor's Final Application for Payment will be available at the next meeting.

#### **Drinking Water State Revolving Fund**

Three project applications were submitted to the ND Department of Environmental Quality for financial assistance through the Drinking Water State Revolving Fund (DWSRF) Program. The three projects submitted are; Lead Line Replacement Project, South Side Water Tower Rehabilitation Project, and South Side Transmission Main Project.

### **Committee Reports**

**Complete Count Committee** – Larson stated a Census 2020 training session has been scheduled for the afternoon of November 7<sup>th</sup> at the Community Center.

**Strategic Planning Committee** – Larson reported a meeting has been set for October 16<sup>th</sup> at 7 p.m. in the Community Center. Larson recommended the following individuals be Chair/Co-Chair of the Area of Focus as identified in the Strategic Plan. Each Chair/Co-Chair will be responsible to recruit other individuals to work with them on their particular Area of Focus.

Strategic Area of Focus 1. Community Enhancement - Lynn Swanson & Levi Hall

Strategic Area of Focus 2. Business Growth - Mark Hardy

Strategic Area of Focus 3. Making Beach a Destination - Renae Smith

Strategic Area of Focus 4. Community Engagement & Revitalization - Dee Baertsch & Nick Hegel

Benes moved to approve names recommended by Larson as Strategic Planning Committee Area of Focus Chairs/Co-Chairs, second by Zachmann. Motion carried unanimously.

### **New Business**

Tom Wilhelmi, representing Beach Cable announced cable services will not be offered after December 31, 2019. Benes recommended having a signed agreement for termination of the franchise with Beach Cable and a written plan for removal of their infrastructure. Wilhelmi stated removal of their infrastructure would be complete within 6 months from the last day of service.

At 7:30 p.m., a Public Hearing was held for comment on a Request for Variance at 999 3<sup>rd</sup> Avenue NW. Wolff moved to open the Public Hearing, second by Zachmann. Motion carried unanimously. No public comment was given and no written comment received. Larson mentioned a 2' variance from side yard setback is necessary. Benes moved to close the Public Hearing, second by Wolff. Motion carried unanimously. Marman moved to approve the Request for Variance of 2', second by Benes. Motion carried unanimously.

Correspondence was read from ND DOT announcing applications are being accepted for NDSTREET projects for federal fiscal year 2023.

An Application for Raffle submitted by Beach Buccaneer Booster Club was reviewed. Benes moved to approve the application, second by Zachmann. Motion carried unanimously.

Correspondence was read from GV County Auditor Tamra Sperry regarding property turned back to GV County for delinquent taxes.

Correspondence was read from GV Soil Conservation District.

Thank you correspondence was read from Bowman County FFA.

Correspondence was read from Women in Ag Day Committee. Benes moved to donate \$100.00 to the event on November 2<sup>nd</sup>, second by Wolff. Motion carried unanimously.

Benes moved to approve the Second and Final Reading of Ordinance 386, second by Zachmann. Motion carried unanimously.

### **ORDINANCE NO. 386**

AN ORDINANCE AMENDING AND RE-ENACTING PARTICULAR SECTIONS OF CHAPTERS THREE AND FOUR OF THE CITY CODE OF THE CITY OF BEACH, NORTH DAKOTA AS HEREINAFTER SET FORTH

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BEACH, NORTH DAKOTA, AS FOLLOWS:

**Section 1: Section 3.0101 entitled “Supervision” is hereby amended and re-enacted as follows:**

3.0101 SUPERVISION: All construction, maintenance and repair of public streets, alleys, sidewalks and public ways shall be under the supervision of the city engineer or Public Works Superintendent ~~street officer~~ appointed by the city council. He or she shall be charged with the enforcement of all ordinance provisions relating to such public places (except traffic ordinances) and is hereby authorized to enforce such ordinances.

**Section 2: Section 3.0102 entitled “Construction and Repair-Permits” is hereby amended and re-enacted as follows:**

3.0102 CONSTRUCTION AND REPAIR--PERMITS: It shall be unlawful to construct, reconstruct, alter, create or repair, any public street, sidewalk, driveway, curbs, gutters, retaining walls, without having first secured a

permit thereof, unless said work is performed by the city contractor. Applications for such permits shall be made to the auditor and shall state the location of the intended construction, reconstruction, alteration or repair, the extent thereof, and the person or firm who is to do the actual construction work. No permit shall be issued except where the work will conform to the ordinances of the city or the requirements of the city engineer or Public Works Superintendent~~city officer~~.

**Section 3: Section 3.0103 entitled “Bond” is hereby amended and re-enacted as follows:**

3.0103 BOND: Each applicant shall file a bond in ~~an~~ the amount equal to the cost of the project, as estimated by the City Engineer and Public Works Superintendent, of ~~twenty-five~~ hundred DOLLARS (\$2,500.00) with surety to be approved by the city council ~~condition~~ to indemnify the city for any loss or damage resulting from the work undertaken or the manner of doing the same.

**Section 4: Section 3.0104 entitled “Specifications” is hereby amended and re-enacted as follows:**

3.0104 SPECIFICATIONS: All construction, maintenance and repair herein shall be made in conformity with the specifications laid down or approved from time to time by the governing body, city engineer, or Public Works Superintendent~~street officer~~.

**Section 5: Section 3.0105 entitled “DUTY OF THE OWNER TO MAINTAIN” is hereby amended and re-enacted as follows:**

3.0105 DUTY OF THE OWNER TO MAINTAIN: It shall be the duty of the owner of any property along which a sidewalk has been constructed to maintain the same in good repair and safe condition. Should any such owner fail to so maintain said sidewalks the city engineer or ~~street officer~~ Public Works Superintendent shall direct the owner ~~him~~ to make such repairs as may be necessary to restore such sidewalk to a safe condition. Should the owner ~~he~~ fail within a reasonable time, to follow the directions of the city engineer or ~~street officer~~ Public Works Superintendent, the city engineer or ~~street officer~~ Public Works Superintendent shall report the facts to the city council who shall then proceed as

provided in the laws of the State of North Dakota, to make such sidewalk safe.

**Section 6: Section 3.0106 entitled “Application for Permit” is hereby amended and re-enacted as follows:**

3.0106 APPLICATION FOR PERMIT: An applicant for a permit hereunder shall file with the city auditor an application showing:

(1) The name and address of the owner, or agent in charge, of the property abutting their proposed work area.

(2) The name and address of the party doing the work.

(3) The location of the work area.

(4) The attached plans or sufficient sketches showing details of the proposed alterations.

(5) Estimated cost of the alterations.

(6) Such other information as the city engineer, Public Works Superintendent~~street officer~~ or the city council shall find reasonably necessary to the determination of whether a permit should be issued hereunder.

**Section 7: Section 3.0107 entitled “Fees” is hereby amended and re-enacted as follows:**

3.0107 FEES: The fee of ten five and 00/100 DOLLARS (\$10.00) shall accompany an application for a permit.

**Section 8: Section 3.0108 entitled “Standards for Issuance of Permit” is hereby amended and re-enacted as follows:**

3.0108 STANDARDS FOR ISSUANCE OF PERMIT: The city auditor shall issue a permit hereunder when the city engineer or the Public Works Superintendent~~street officer~~ finds:

(1) That the work will be done according to the

standards and specifications of the city for public work of like character.

(2) That the operation will not unreasonably interfere with vehicle and pedestrian traffic, the demand and necessity of parking spaces, the means of ingress and egress to and from the property affected in adjacent properties.

(3) That the health, welfare and safety of the public will not be unreasonably impaired.

(4) That the bond required by 3.0103 has been duly filed and approved.

**Section 9: Section 3.0109 entitled "Sidewalks Built to Grade" is hereby amended and re-enacted as follows:**

3.0109 SIDEWALKS BUILT TO GRADE: All sidewalks shall be constructed in accordance with the elevation and grade thereof to be furnished by the city engineer, and shall be constructed under his direction and supervision or under the supervision of the Public Works Superintendent~~street officer~~.

**Section 10: Section 3.0112 entitled "City Contractors" is hereby amended and re-enacted as follows:**

3.0112 CITY CONTRACTOR: The city auditor shall receive bids for the construction or restoration of sidewalks, driveways, curb and gutter and paving repair as the city may find necessary to have done. Such bids shall be made upon blanks furnished by the city engineer or ~~street officer~~ Public Works Superintendent and shall conform to specifications filed with the city auditor by the city engineer or ~~street officer~~ Public Works Superintendent and approved by the city council.

All sidewalks, driveways, curb and gutter, and alley returns lying between the property line and the abutting street hereafter constructed within the city of Beach must conform to this chapter and the specifications filed with the city engineer and approved by the city council. When any contract for the construction of sidewalks, driveways, curb and gutter, relaying of block walks, and paving repairs is about to

be entered into by the city in accordance with the provisions of the laws of this state, the contractor to whom any such contract shall be awarded shall be required, before such contract is entered into, to give, in addition to the contract bond required by the laws of the state of North Dakota, an additional bond in an amount to be determined by the city council of the city of Beach with the condition that said contractor shall warrant the workmanship for a period of one year from the date of final estimate all sidewalks, driveways, curb and gutter, and paving repairs so constructed by such contractor under the terms of such contract, and that in case they shall within said time begin to crumble or to disintegrate or become cracked or broken to such an extent, that in the opinion of the city engineer or Public Works Superintendent ~~street officer~~, the same is not in a satisfactory compliance with the specifications for the construction thereof, then the city engineer or Public Works Superintendent ~~street officer~~ may direct that such sidewalks, driveways, curb and gutter or paving repairs be immediately repaired or relaid in whole or in part as he shall deem best, and the contractor shall immediately cause the same to be repaired or relaid; and in the case of a contractor's neglect, refusal or failure so to repair or to relay the same, the city, at any time within said two year period, or thereafter, may cause the same to be repaired or relaid, and the cost thereof, whether done by the city directly or through a contract, may be recovered against said contractor and the surety upon such bond.

**Section 11: Section 3.0202-1 entitled "Depositing or scattering rubbish, refuse, etc." is hereby amended and re-enacted as follows:**

3.0202-1 Depositing or scattering rubbish, refuse, etc. It shall be unlawful for any person in the city to throw or permit to be deposited or scattered upon any sidewalk, alley, street, bridge, public passageway or any vacant lot, public or private property in the city any waste or other material of any kind, including but not limited to wood, ashes, grass, rubber, cans, cartons, bottles, offal, paper, dung, earth or any other thing or substance whatever which may injure, disfigure or tend to render such street, etc., unclean or a nuisance. Any person in violation of this Section shall be fined in amount not to exceed one hundred dollars



~~(\$100.00).~~ \$25.00.

**Section 12:** Section 3.0202-8 entitled “Coasting, tobogganing, etc.” is hereby amended and re-enacted as follows:

3.0202-8 CoastingSledding, tobogganing, etc. No person shall use any portion of any street or sidewalk for sledding ~~coasting~~, tobogganing or similar sports.

**Section 13:** Section 3.0203 entitled “Openings” is hereby amended and re-enacted as follows:

3.0203 OPENINGS: It shall be unlawful to construct or maintain any opening or stairway in any public street or sidewalk or alley without a permit from the city council. All such lawfully maintained buildings shall be guarded by a suitable strong cover or railing to be approved by the Public Works Superintendent ~~street officer~~ or the city engineer or the official who supervises public improvements.

**Section 14:** Section 3.0204 entitled “Wires” is hereby amended and re-enacted as follows:

3.0204 WIRES: It shall be unlawful to erect any poles or wires or maintain any poles or wires over, upon, or under any public place, street, alley or public way without having first secured permission from the city council.

Any person or company which maintains poles and wires in the streets, alleys, or other public places, shall, in the absence of provisions in the franchise concerning the subject, keep such wires and poles free from and away from any trees and shrubs in such places as far as may be possible, and keep all such trees and shrubs near such wires and poles properly trimmed, subject to the supervision of the Public Works Superintendent ~~street officer~~ in public improvements, so that no injury shall be done either to the poles or wires or to the shrubs and trees by their contact.

**Section 15:** Section 3.0205 entitled “Leaving of Vehicles or Trailers” is hereby amended and re-enacted as follows:

3.0205 LEAVING OF VEHICLES OR TRAILERS: It shall be unlawful for any vehicle or trailer to be left on a

street for more than 48 hours, and failure to move the vehicle or trailer after 48 hours will be a violation of this section.

The Police Department is authorized to remove or cause to be removed any vehicle or trailer found to be in violation of this section, and may impound and retain the same until the expense of removal, storage, and impounding has been paid in full, together with the amount of any fine, costs, bail, or other claims of the City against the owner or any other person lawfully entitled to possession thereof. If the impounded vehicle or trailer is not reclaimed and redeemed by the true owner or the person lawfully entitled to possession thereof with a period of thirty (30) days after the impounding, any vehicle or trailer so impounded in the manner provided in Section 12.0505 of the Beach City Code, as may be amended from time to time.

In addition, unless in an area where angle parking is permitted, every vehicle stopped or parked upon a roadway must be so stopped or parked with the right-hand wheels of such vehicle parallel to and within twelve inches of the right-hand curb or as close as practicable to the right edge of the right-hand shoulder. Failure to abide by the provisions of this Section shall be violation of the Section and shall be punishable by a fine of One Hundred Dollars and No Cents (\$100.00).

**Section 16: Section 3.0207 entitled "Weight and Load Restrictions" is hereby amended and re-enacted as follows:**

3.0207 WEIGHT AND LOAD RESTRICTIONS: No person shall operate any vehicle at any time upon any street or part of a street, with a gross weight which exceeds a Five (5) ton per axle number 3 restriction as adopted by the State Highway Patrol Motor Carrier Division, except as follows:

A. Vehicles shall be permitted along those routes designated by the City Council as truck routes and indicated as such, which do not exceed in weight those limits as determined from time to time by the State of North Dakota for highways other than the Interstate System, except that designated truck route from

Interstate 94, along Highway 16 to 4th Street North, thence east along 4th Street North to Central Avenue, thence South along Central Avenue to Main Street, thence from Main Street East shall be those weight limits determined from time to time by the State of North Dakota for vehicles on the Interstate System.

B. Vehicles in excess of a Five (5) ton per axle ~~number 3~~ restriction may be operated upon streets other than those designated as truck routes for the purpose of delivering or picking up materials or merchandise, and then only by entering such street at the intersection nearest the destination of the vehicle and proceeding thereon no further than the nearest intersection thereafter.

C. That this section shall not apply to vehicles and equipment of the City's public works and fire department.

Failure to abide by the provisions of this Section shall be violation of the Section, and shall be punishable by a fine of One Hundred Dollars and No Cents (\$100.00).

The Police Department is authorized to remove or cause to be removed any vehicle found to be in violation of this Section, and may impound and retain the same until the expense of removal, storage, and impounding has been paid in full, together with the amount of any fine, costs, bail, or other claims of the City against the owner or any other person lawfully entitled to possession thereof within a period of thirty (30) days after the impounding, any vehicle so impounded may be sold and disposed of by the Police Department in the manner provided in Section 12.0505 of the Beach City Code, as may be amended from time to time.

For the purpose of this section, the word "street" shall mean any street, avenue, lane, alley, drive, or any other title that indicates a street.

**Section 17: Section 3.0209 entitled "Removal of Snow and Ice by the City" is hereby amended and re-enacted as follows:**

3.0209 REMOVAL OF SNOW AND ICE BY THE CITY: In the case the owner of any lot in the city refuses or

neglects to remove such ice from such sidewalk in front of or along a lot therein, the ice or snow therefrom within the time above stated or refuses to sprinkle ashes, salt or sand on the same within the time specified for removal in such a manner as to make such sidewalk safe for travel of pedestrians thereon, the same may be removed by or under the direction of the city engineer or Public Works Superintendent~~street officer~~ of the city, or ashes or sand or salt sprinkled thereon and the necessary expenses thereon shall be charged against the abutting property by special assessment thereof in the manner prescribed by law.

**Section 18: Section 3.0210 entitled “Street Cleaning-Snow Removal” is hereby amended and re-enacted as follows:**

3.0210 STREET CLEANING--SNOW REMOVAL: Whenever in the judgment of the city council or city engineer or Public Works Superintendent ~~street officer~~ of the city, it shall be necessary that streets, alleys or public ways in the city be cleared of snow or ice or be cleaned by the use of street sweepers or other methods of cleaning such streets, or for marking for traffic purposes, the ordinances of the city regulating the parking of automobiles, trucks and other motor vehicles may be suspended by resolution of the city council and it shall be unlawful for any automobile, truck, or other motor vehicle to be parked or left standing during the period of time during which said parking is prohibited by said resolution.

**Section 19: Section 3.0211 entitled “Notice” is hereby amended and re-enacted as follows:**

3.0211 NOTICE: Whenever it becomes necessary to remove snow or ice or to sweep and clean streets, or to mark streets for traffic purposes in the city there shall be designated by the city engineer or Public Works Superintendent ~~street officer~~ the area and streets to be cleared of snow or ice or cleaned as aforesaid in the time during which such snow and ice removal and street cleaning shall be done and the posting of such information in the area affected.

**Section 20: Section 3.0214 entitled “Permits-Fees” is hereby amended and re-enacted as follows:**

3.0214 PERMITS--FEES: A permit fee shall be charged by the Public Works Superintendent~~General Supervisor~~ for the issuance of an excavation permit which shall be in addition to all other fees for permits or charges relative to any proposed construction work. The excavation permit fee shall be in the amount of \$5025.

**Section 21:** Section 3.0214-1 entitled "Form and Display of Placard" is hereby repealed.

**Section 22:** Section 3.0214-2 entitled "Routing of traffic" is hereby amended and re-enacted as follows:

3.0214-2 Routing of traffic. Section 3.0214-2 is hereby repealed. The permittee shall take appropriate measures to assure that during the performance of the excavation work traffic conditions as nearly normal as practicable shall be maintained at all times so as to cause as little inconvenience as possible to the occupants of the abutting property and to the general public; provided, that the Public Works Superintendent~~General Supervisor~~ may permit the closing of streets to all traffic for a period of time prescribed by him or her, if in his or her opinion it is necessary. The permittee shall route and control traffic including its own vehicles as directed by the city police department. The following steps shall be taken before any highway may be closed or restricted to traffic:

(a) The permittee must receive the approval of the Public Works Superintendent~~General Supervisor~~ and the police department therefor;

(b) The permittee must notify the chief of the fire department of any street so closed;

(c) Upon completion of construction work, the permittee shall notify the Public Works Superintendent~~General Supervisor~~ and city police department before traffic is moved back to its normal flow so that any necessary adjustments may be made;

(d) Where flagmen are deemed necessary by the Public Works Superintendent~~General Supervisor~~ they shall be furnished by the permittee at its own expense. Through traffic shall be maintained without the aid of detours,

if possible; in instances in which this would not be feasible the Public Works Superintendent General Supervisor will designate detours. The city shall maintain roadway surfaces of existing highways designated as detours without expense to the permittee but in case there are no existing highways the permittee shall construct all detours at its expense and in conformity with the specifications of the Public Works Superintendent General Supervisor. The permittee will be responsible for any unnecessary damage caused to any highways by the operation of its equipment.

**Section 23: Section 3.0214-4 entitled “Encroachment of earth onto highways; traffic crossings” is hereby amended and re-enacted as follows:**

3.0214-4 Encroachment of earth onto highways; traffic crossings. The permittee shall erect and maintain suitable timber barriers to confine earth from trenches or other excavations in order to encroach upon highways as little as possible.

The permittee shall construct and maintain adequate and safe crossings over excavations and across highways under improvement to accommodate vehicular and pedestrian traffic at all street intersections. Vehicular crossings shall be constructed and maintained of plank, timbers and blocking of adequate size to accommodate vehicular traffic safely. Decking shall be not less than four inches thick and shall be securely fastened together with heavy wire and staples. Pedestrian crossings shall consist of planking three inches thick, twelve inches wide and of adequate length together with necessary blocking. The walk shall be not less than three feet in width and shall be provided with a railing as required by the Public Works Superintendent General Supervisor.

**Section 24: Section 3.0214-5 entitled “Removal and Protection of utilities” is hereby amended and re-enacted as follows:**

3.0214-5 Removal and protection of utilities. The permittee shall not interfere with any existing utility without the written consent of the Public Works Superintendent General Supervisor and the utility company or person owning the utility. If it becomes necessary to remove an existing utility this shall be done by its

owner. No utility owned by the city shall be moved to accommodate the permittee unless the cost of such work be borne by the permittee. The cost of moving privately owned utilities shall be similarly borne by the permittee unless he makes other arrangements with the person owning the utility. The permittee shall support and protect by timbers or otherwise all pipes, conduits, poles, wires or apparatus which may be in any way affected by the excavation work and do everything necessary to support, sustain and protect them under, over, along or across such work. In case any such pipes, conduits, poles, wires or apparatus should be damaged, they shall be repaired by the agency or person owning them and the expense of such repairs shall be charged to the permittee, and his bond shall be liable therefor. The permittee shall be responsible for any damage done to any public or private property by reason of the breaking of any water pipes, sewer, gas pipe, electric conduit or other utility and his bond shall be liable therefor. The permittee shall inform itself as to the existence and location of all underground utilities and protect them against damage.

**Section 25: Section 3.0214-6 entitled "Protection of adjoining property" is hereby amended and re-enacted as follows:**

3.0214-6 Protection of adjoining property. The permittee shall at all times and at his own expense preserve and protect from injury any adjoining property by providing proper foundations and taking other measures suitable for the purpose. Where in the protection of such property it is necessary to enter upon private property for the purpose of taking appropriate protective measures, the permittee shall obtain a license from the owner of such private property for such purposes; and if he cannot obtain a license from such owner; the Public Works Superintendent~~General Supervisor~~ may authorize him or her to enter the private premises solely for the purpose of making the property safe. The permittee shall, at its own expense shore up and protect all buildings, walls, fences or other property likely to be damaged during the progress of the excavation work and shall be responsible for all damage to public or private property or highways resulting from its failure property to protect and carry out such work. Whenever it may be necessary for the permittee to trench through any lawn area, the sod shall be carefully cut

and rolled and replaced after ditches have been backfilled as required in this article. All construction and maintenance work shall be done in a manner calculated to leave the lawn area clean of earth and debris and in a condition as nearly as possible to that which existed before such work began. The permittee shall not remove even temporarily any trees or shrubs which exist in parking strip areas or easements across private property without first having notified and obtained the consent of the property owner or in the case of public property the appropriate city department or city official having control of such property.

**Section 26: Section 3.0214-9 entitled “Maintenance and storage of excavated materials generally” is hereby amended and re-enacted as follows:**

3.0214-9 Maintenance and storage of excavated materials generally. All material excavated from trenches and piled adjacent to the trench or in any street shall be piled and maintained in such manner as not to endanger those working in the trench, pedestrians or users of the streets and so that as little inconvenience as possible is caused to those using streets and adjoining property. Where the confines of the area being excavated are too narrow to permit the piling of excavated materials beside the trench, such as might be the case in a narrow alley, the Public Works Superintendent~~General Supervisor~~ shall have the authority to require that the permittee haul the excavated material to a storage site and then re-haul it to the trench site at the time of back-filling. It shall be the permit's responsibility to secure the necessary permission and make all necessary arrangements for all required storage and disposal sites.

**Section 27: Section 3.0214-10 entitled “Repairing damage done to existing improvements” is hereby amended and re-enacted as follows:**

3.0214-10 Repairing damage done to existing improvements. All damage done to existing improvements during the progress of the excavation work shall be required by the permittee. Materials for such repair shall conform with the requirements of any applicable code or ordinance. If upon being ordered the permittee fails to furnish the necessary labor and materials for such repairs the Public Works Superintendent ~~General Supervisor~~ shall have the authority to cause such



necessary labor and materials to be furnished by the city and the cost shall be charged against the permittee and the permittee shall also be liable on his bond therefor.

**Section 28: Section 3.0214-11 entitled “Cleaning site and surrounding area” is hereby amended and re-enacted as follows:**

3.0214-11 Cleaning site and surrounding area. As the excavation work progresses all streets and private properties shall be thoroughly cleaned of all rubbish, excess earth, rock and other debris resulting from such work. All clean-up operations at the location of such excavation shall be accomplished at the expense of the permittee and shall be completed to the satisfaction of the Public Works Superintendent ~~General Supervisor~~. From time to time as may be ordered by the ~~General Supervisor~~ Public Works Superintendent and in any event immediately after completion of such work, the permittee shall at his own expense clean up and remove all refuse and unused materials of any kind resulting from such work, and upon failure to do so within twenty-four hours after having been notified to do so by the Public Works Superintendent ~~General Supervisor~~, such work may be done by the Public Works Superintendent ~~General Supervisor~~ and the cost thereof charged to the permittee, and the permittee shall also be liable for the cost thereof under the surety bond provided hereunder.

**Section 29: Section 3.0214-12 entitled “Protection and restoration of watercourses, sewers or drains; accommodation of surplus water, muck, silt, etc.” is hereby amended and re-enacted as follows:**

3.0214-12 Protection and restoration of watercourses, sewers or drains; accommodation of surplus water, muck, silt, etc. The permittee shall provide for the flow of all watercourses, sewers or drains intercepted during the excavation work and shall replace watercourses, etc., in as good condition as it found them or shall make such provisions for them as the Public Works Superintendent ~~General Supervisor~~ may direct. The permittee shall not obstruct the gutter of any street but shall use all proper measures to provide for the free passage of surface water.

The permittee shall make provision to take care of all surplus water, muck, silt, slickings or other run-

off pumped from excavations or resulting from sluicing or other operations and shall be responsible for any damage resulting from its failure to so provide.

**Section 30: Section 3.0214-13 entitled “Promulgation of standards.” is hereby amended and re-enacted as follows:**

3.0214-13 Promulgation of standards. Standards for breaking through pavement, tunnels, back-filling and restoration of surface shall be promulgated by the ~~General Supervisor's~~ Public Works Superintendent's office for inspection during business hours.

**Section 31: Section 3.0214-14 entitled “Restoration of surface” is hereby amended and re-enacted as follows:**

3.0214-14 Restoration of surface. If the permittee shall have failed to restore the surface of the street to its original and property condition upon the expiration of the time fixed by such permit or shall otherwise have failed to complete the excavation work covered by such permit, the ~~General Supervisor~~ Public Works Superintendent, if he or she deems it advisable, shall have the right to do all work and things necessary to restore the street and to complete the excavation work. The permittee shall be liable for the actual cost thereof and twenty-five percent of such cost in addition for general overhead and administrative expenses. The city shall have a cause of action for all fees, expenses and amounts paid out due it for such work and shall apply in payment of the amount due it any funds of the permittee deposited as herein provided and the city shall also enforce its rights under the permittee's surety bond provided pursuant to this article.

It shall be the duty of the permittee to guarantee and maintain the site of the excavation work in the same condition it was prior to the excavation for two years after restoring it to its original condition.

**Section 32: Section 3.0214-15 entitled “Protection and restoration of watercourses, sewers or drains; accommodation of surplus water, muck, silt, etc.” is hereby amended and re-enacted as follows:**

3.0214-15 Length, bracing and sheathing of pipe

trenches. Except by special permission from the Public Works Superintendent General Supervisor, no trench shall be excavated more than two hundred fifty feet in advance of pipe laying nor left unfilled more than five hundred feet where pipe has been laid. The length of the trench that may be opened at any one time shall not be greater than the length of pipe and the necessary accessories which are available at the site ready to be put in place. Trenches shall be braced and sheathed according to generally accepted safety standards for construction work as prescribed by the General Supervisor Public Works Superintendent. No timber bracing, lagging, sheathing or other lumber shall be left in any trench.

**Section 33: Section 3.0214-17 entitled "Emergency repairs generally" is hereby amended and re-enacted as follows:**

3.0214-17 Emergency repairs generally. In the event of any emergency in which a sewer, main, conduit or utility in or under any street breaks, bursts or otherwise is in such condition as to immediately endanger the property, life, health and safety of any individual, the person owning or controlling such sewer, main, conduit or utility, without first applying for and obtaining an excavation permit hereunder, shall immediately take proper emergency measures to cure or remedy the dangerous conditions for the protection of property, life, health and safety of individuals. However, such person owning or controlling such facility shall apply for an excavation permit not later than the end of the next succeeding day during which the Public Works Superintendent's General Supervisor's office is open for business and shall not proceed with permanent repairs without first obtaining an excavation permit hereunder.

**Section 34: Section 3.0214-18 entitled "Declaration of emergency work" is hereby amended and re-enacted as follows:**

3.0214-18 Declaration of emergency work. If in his or her judgment traffic conditions, the safety or convenience of the traveling public or the public interest require that the excavation work be performed as emergency work, the General Supervisor Public Works Superintendent shall have full power to order, at the time the permit is granted, that a crew of workers men and adequate facilities be employed by the permittee

twenty-four hours a day to the end that such excavation work may be completed as soon as possible.

**Section 35: Section 3.0214-19 entitled “Protection and restoration of watercourses, sewers or drains; accommodation of surplus water, muck, silt, etc.” is hereby amended and re-enacted as follows:**

3.0214-19 Avoidance of unnecessary inconveniences or annoyances; reduction of noise, dust, etc. Each permittee shall conduct and carry out the excavation work in such manner as to avoid unnecessary inconvenience and annoyance to the general public and occupants of neighboring property. The permittee shall take appropriate measures to reduce to the fullest extent practicable in the performance of the excavation work, noise, dust and unsightly debris. During the hours of 10:00 p.m. and 7:00 a.m., such permittee shall not use, except with the express written permission of the Public Works Superintendent General Supervisor or in case of an emergency as herein otherwise provided, any tool, appliance or equipment producing noise of sufficient volume to disturb the sleep or repose of occupants of the neighboring property.

**Section 36: Section 3.0214-20 entitled “Disturbing surface monuments or hubs” is hereby amended and re-enacted as follows:**

3.0214-20 Disturbing surface monuments or hubs. The permittee shall not disturb any surface monuments or hubs found on the line of excavation work until ordered to do so by the Public Works Superintendent General Supervisor.

**Section 37: Section 3.0214-21 entitled “Inspections; promulgation of regulations to carry out article” is hereby amended and re-enacted as follows:**

3.0214-21 Inspections; promulgation of regulations to carry out article. The Public Works Superintendent General Supervisor shall make such inspections as are reasonably necessary in the enforcement of this article.

The Public Works Superintendent General Supervisor shall have the authority to promulgate and cause to be enforced such rules and regulations as may be reasonably necessary to enforce and carry out the intent of this article.

**Section 38:** Section 3.0214-22 entitled “Protection and restoration of watercourses, sewers or drains; accommodation of surplus water, muck, silt, etc.” is hereby amended and re-enacted as follows:

3.0214-22 Maintenance of drawings of subsurface street installations. Users of subsurface street space shall maintain accurate drawings, plans and profiles showing the location and character of all underground structures including abandoned installations. Corrected maps shall be filed with the ~~General Supervisor~~Public Works Superintendent within sixty days after new installations, changes or replacements are made.

**Section 39:** Section 3.0214-25 entitled “Liability insurance required of permittee” is hereby amended and re-enacted as follows:

3.0214-25 Liability insurance required of permittee. A permittee, prior to the commencement of excavation work hereunder, shall furnish the ~~General Supervisor~~Public Works Superintendent satisfactory evidence in writing that the permittee has in force and will maintain in force during the performance of the excavation work and the period of the excavation permit public liability insurance of not less than ~~one hundred thousand~~ one million (\$1,000,000.00) dollars for any one person ~~and three hundred thousand~~ two million (\$2,000,000.00) dollars for any one accident and property damage insurance of not less than ~~fifty thousand~~ one million dollars (\$1,000,000.00) duly issued by an insurance company authorized to do business in this state.

**Section 40:** Section 3.0217 entitled “Excavations-Bond” is hereby amended and re-enacted as follows:

3.0217 EXCAVATIONS--BOND: Before an excavation permit as herein provided is issued, the applicant shall deposit with the city auditor a surety bond in the amount of ~~one twenty - five hundred~~ thousand DOLLARS (~~\$125,000.00~~) payable to the city. The required surety bond must be:

- A. With good and sufficient surety;
- B. By a surety company authorized to transact business in the state;

C. Satisfactory to the city attorney in form and substance;

D. Conditioned upon the permittee's compliance with this article and to secure and hold the city and its officers harmless against any and all claims, judgments or other costs arising from the excavation and other work covered by the excavation permit or for which the city, the city council or any city officer may be made liable by reason of any accident or injury to persons or property through the fault of the permittee either in not properly guarding the excavation or for any other entry resulting from the negligence of the permittee, permittee's payment of costs to restore the surface and any affected streets, curbs, or gutters, as incurred by the City or City Contractor retained pursuant to 3.0112, and further conditioned to fill up, restore and place in good and safe condition as near as may be to its original condition and to the satisfaction of the city engineer or Public Works Superintendent ~~street officer~~ all openings and excavations made in streets, and to maintain any street where excavation is made in as good a condition for the period of twelve (12) months after such work shall have been done, usual wear and tear expected, as it was in before such work shall have been done. In a settlement of the surface within such one (1) year period shall be deemed conclusive evidence of defective back-filling by the permittee. Nothing herein contained shall be construed to require the permittee to maintain any repairs to pavement made by the city if such repairs shall prove defective. Recovery of such bond for any injury or accident shall not exhaust the bond but it shall in its entirety cover any or all future accidents or injuries during the excavation work for which it is given. In the event of any suit or claim against the city by reason of the negligence or default of the permittee, upon the city's given written notice to the permittee of such suit or claim any final judgment against the city requiring it to pay for such damage shall be conclusive upon the permittee and his surety.

An annual bond may be given under this provision which shall remain in force one year conditioned as above, in the amount specified above and in other respects as specified above, but applicable as to all excavation work in streets by the principal and such

bond during the term of one year from such date.

**Section 41: Section 3.0219 entitled “Excavations-Restorations” is hereby amended and re-enacted as follows:**

3.0219 EXCAVATIONS--RESTORATION: Any person, firm or corporation making any excavation or tunnel in or under any public street, alley or other public place in the city shall allow the City, or the City Contractor appointed pursuant to 3.0112, to restore the surface to its original condition, and to repair and restore any involved sidewalks, streets, curbs, or gutters, in compliance with the ordinances of the City, and subject to the approval of the Public Works Superintendent. The cost of the restoration described herein shall be paid by the property owner. if there is no pavement there. Refills shall be properly tampered down, and any bracing in such tunnel or excavation shall be left in the ground.

Any opening in a paved or improved portion of the street shall be repaired and the surface relaid by the applicant, in compliance with the ordinances of the city and under the supervision of the city engineer or street officer.

**Section 42: Section 3.0302 entitled “Designation of Numbers by City” is hereby amended and re-enacted as follows:**

3.0302 DESIGNATION OF NUMBERS BY CITY: The city engineer or street officer 911 Coordinator shall designate the numbers of all buildings and the owner, occupant or agent of each building now or hereinafter shall post it with its proper number.

**Section 43: Section 3.0304 entitled “Failure, Refusal or Neglect of the Owner, and so on; to Comply with the Article” is hereby amended and re-enacted as follows:**

3.0304 FAILURE, REFUSAL OR NEGLECT OF THE OWNER, AND SO ON; TO COMPLY WITH THE ARTICLE: If the owner or other person in charge or custody of a building within the city fails, refuses or neglects to comply with the requirements of this article, the city engineer or Public Works Superintendent ~~street officer~~ shall cause proper numbers to be placed upon such building and the cost of so doing shall be collected from the owner or custodian of the building in a suit thereof by the city.

**Section 44: Section 3.0402 entitled “Unclaimed and Abandoned Property-Seizure of” is hereby amended and re-enacted as follows:**

3.0402 UNCLAIMED AND ABANDONED PROPERTY--SEIZURE OF: When ever any unclaimed or abandoned personal property is found upon the streets, alleys or other public ways of the city, the same shall be seized and possession thereof taken by any police officer, Public Works Superintendent~~street officer~~, or other officer of the city.

**Section 45: Section 3.0404 entitled “Unclaimed and Abandoned Property-Report of Sale” is hereby amended and re-enacted as follows:**

3.0404 UNCLAIMED AND ABANDONED PROPERTY--REPORT OF SALE: At the time specified in said notice the said property shall be sold by the chief of police of the city or by any person designated by him or her, at public auction, to the highest bidder for cash and within three (3) days after the date of said sale, the officer making the sale shall make a report thereof to the governing body, which report shall contain the description of the property sold, the time and place of sale, the name or names of the purchaser or purchasers and the amount received thereof, said report shall be made under oath and subscribed by the person making such sale and shall be filed with the city auditor within three (3) days after the date of such sale and such officer, with said report, shall pay to the city auditor the net proceeds of said sale.

**Section 46: 4.0408-4 entitled “Use and explosion of fireworks prohibited.” is hereby amended and re-enacted as follows:**

4.0408-4 Use and explosion of fireworks prohibited. It shall be unlawful for any person to explode fireworks within the city limits of the city of Beach, North Dakota, except between the hours of 9:00 o'clock a.m. to 11:00 o'clock p.m. from July 3rd to July 5<sup>th</sup>, and December 26<sup>th</sup> through January 1st of each year; provided, however, that the City Council may, in its sole discretion, allow for the use and explosion of fireworks within the city limits for such other special occasions and upon such other terms and conditions as the City Council may from time to time determine and establish. Any person in violation of this restriction shall be fined in an amount of at least \$25.00.

**Section 47: Repeal of Ordinances in Conflict. All Ordinances and parts of Ordinances in conflict herewith are hereby repealed.**



**Section 48: Severability.** In the event any section of this Ordinance is held invalid by court of competent jurisdiction, the invalidity shall extend only to the section affected, and other sections of this Ordinance shall continue in full force and effect.

**Section 49: Effective Date:** This Ordinance shall be in full force and effect from and after final passage.

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Henry Gerving, Mayor

ATTEST:

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Kimberly Gaugler, City Auditor

First Reading: September 16, 2019

Second Reading: October 7, 2019

Final Passage: October 7, 2019

(SEAL OF MUNICIPALITY)

Benes reminded City Council that emails are subject to Open Records and Open Meeting Laws unless otherwise authorized by a specific law.

No other business was brought forward. Larson adjourned the meeting. Meeting adjourned at 7:45 p.m.

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Jeanne Larson, President

ATTEST:

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Kimberly Gaugler, City Auditor