

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. 5203

**AN ORDINANCE REPEALING AND RE-ENACTING
ARTICLES 17-02, 17-04 AND 17-05 AND
ENACTING ARTICLES 17-06 THROUGH 17-16
OF CHAPTER 17 OF THE FARGO MUNICIPAL CODE
RELATING TO SEWERS AND SEWERAGE**

WHEREAS, the electorate of the city of Fargo has adopted a home rule charter in accordance with Chapter 40-05 .1 of the North Dakota Century Code; and

WHEREAS, Section 40-05.1-06 of the North Dakota Century Code provides that the city shall have the right to implement home rule powers by ordinance; and

WHEREAS, Section 40-05.1-05 of the North Dakota Century Code provides that said home rule charter and any ordinances made pursuant thereto shall supersede state laws in conflict therewith and shall be liberally construed for such purpose; and

WHEREAS, the Board of City Commissioners deems it necessary and appropriate to implement such authority by the adoption of this ordinance;

NOW, THEREFORE,

Be It Ordained by the Board of City Commissioners of the city of Fargo:

Section 1. Repeal.

Articles 17-02, 17-04 and 17-05 of Chapter 17 of the Fargo Municipal Code relating to Sewers and Sewerage, as the same were amended from time to time, are hereby repealed in their entirety.

Section 2. Re-enactment.

Article 17-02 of Chapter 17 of the Fargo Municipal Code is hereby re-enacted to read as follows:

ARTICLE 17-02

CONTROL AND REGULATION OF SEWERAGE SYSTEM

17-0201 Purpose and Policy.-- This ordinance sets forth uniform requirements for users of the Publicly Owned Treatment Works (POTW) for the city of Fargo, ND and enables the city of Fargo to comply with all applicable State and Federal laws, including the Clean Water Act (33 USC §1251 *et seq.*) and the General Pretreatment Regulations (40 C.F.R. Part 403). The objectives of this ordinance are:

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- A. To prevent the introduction of pollutants into the POTW that will interfere with the operation of the POTW;
- B. To prevent the introduction of pollutants into the POTW which will pass through the POTW, inadequately treated, into receiving waters or otherwise be incompatible with the POTW;
- C. To ensure that the quality of the wastewater treatment plant sludge is maintained at a level which allows its use and disposal in compliance with applicable statutes and regulations;
- D. To protect POTW personnel who may be affected by wastewater and sludge in the course of their employment and to protect the general public; and
- E. To improve the opportunity to recycle and reclaim wastewater and sludge from the POTW.

This article shall apply to all users of the POTW. This article authorizes the issuance of wastewater discharge permits; authorizes monitoring, compliance, and enforcement activities; establishes administrative review procedures; requires user reporting; and provides for the setting of fees for the equitable distribution of costs resulting from the program established herein.

17-0202 Administration-- Except as otherwise provided herein, the Director shall administer, implement, and enforce the provisions of this ordinance. Any powers granted to or duties imposed upon the Director may be delegated by the Director to other city of Fargo personnel.

17-0203 Definitions-- The following words, terms and phrases are hereby defined and shall be interpreted as such throughout this chapter. Terms not herein defined shall have the meaning customarily assigned to them:

1. Act or "the Act". The Federal Water Pollution Control Act, also known as the Clean Water Act, as amended. 33 U.S.C. 1251 *et seq.*
2. Approval Authority. State of North Dakota Department of Health
3. Authorized Representative of the User.
 - a. If the user is a corporation or limited liability company (LLC):
 - i. The president, general manager of an LLC, secretary, treasurer, or a vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation or LLC; or
 - ii. The manager of one or more manufacturing, production, or operation facilities, provided, the manager is authorized to make management decisions which govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment

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recommendations and initiating and directing other comprehensive measures to assure long-term environmental compliance with environmental laws and regulations; can ensure that the necessary systems are established or actions taken to gather complete and accurate information for control mechanism requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

- b. If the user is (a) a partnership including a limited partnership, limited liability partnership or limited liability limited partnership or (b) a sole proprietorship: a general partner or proprietor, respectively;
 - c. If the user is a federal, state, or local governmental facility: a director or highest official appointed or designated to oversee the operation and performance of the activities of the government facility, or his/her designee.
 - d. The individuals described in paragraphs a through c above may designate another authorized representative if the authorization is in writing, the authorization specifies the individual or position responsible for the overall operation of the facility from which the discharge originates or having overall responsibility for environmental matters for the company, and the written authorization is submitted to the city of Fargo.
- 4. Best Management Practices (BMPs). Shall mean the schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to implement the prohibitions listed in §403.5(a)(1) and (b) of the Act and in section 17-0403. BMP also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw materials storage.
 - 5. Biochemical Oxygen Demand (BOD). The quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedures for five (5) days at 20 degrees Celsius, usually expressed as a concentration [milligrams per liter (mg/l)].
 - 6. Building drain. That part of the lowest horizontal piping of a drainage system which receives the discharge from soil, waste, and other drainage pipes inside the walls of the building and conveys it to the building sewer.
 - 7. Building sewer (also house connection or service sewer). The extension from the building drain to the public sewer or other place of disposal.
 - 8. Categorical Pretreatment Standard or Categorical Standard. Any regulation containing pollutant discharge limits promulgated by the U.S. EPA in accordance with Sections 307(b) and (c) of the Act (33 U.S.C. §1317) which applies to a specific category of users and which appears in 40 C.F.R. Chapter 1, Subchapter N, Parts 405 – 471, as the same may be amended from time to time.
 - 9. Categorical User. An industrial user regulated by one of the EPA's Categorical Pretreatment Standards.
 - 10. City. The city of Fargo, a municipal corporation of the state of North Dakota.

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11. Color. The optical density at the visual wave length of maximum absorption, relative to distilled water. One hundred percent (100%) transmittance is equivalent to zero (0.0) optical density.
12. Combined Sewer. A sewer intended to receive both wastewater and storm or surface water.
13. Composite Sample. The sample resulting from the combination of individual wastewater samples taken at selected intervals based on an increment of either flow or time.
14. Control Authority. The city of Fargo
15. Cooling Water/Non-Contact Cooling Water. Water used for cooling which does not come into direct contact with any raw material, intermediate product, waste product, or finished product. Cooling water may be generated from any use, such as air conditioning, heat exchangers, cooling or refrigeration to which the only pollutant added is heat.
16. Director. The director of wastewater utilities of the city of Fargo, or the authorized deputy, agent or representative of said director.
17. Domestic User (Residential User). A “domestic user” is a user that is not regulated under federal categorical pretreatment standards but that applies to the city of Fargo for a new building permit or occupies an existing building and plans to commence discharge of wastewater to the city of Fargo collection system after the effective date of this ordinance. A “new source”, as defined above, is regulated under federal categorical pretreatment standards and, therefore, a new source is not a domestic user as described in this definition.
18. Easement. An acquired legal right for the specific use of real property owned by others.
19. Environmental Protection Agency (EPA). The U.S. Environmental Protection Agency or, where appropriate, the Director of Region 8 Office of Water, or duly authorized official of said agency.
20. Floating Oil. Oil, fat, or grease in a physical state such that it will separate by gravity from wastewater by treatment in an approved pretreatment facility. A wastewater shall be considered free of floatable oil if it is properly pre-treated and the wastewater does not interfere with the wastewater facilities.
21. Grab Sample. A sample which is taken from a waste stream on a one-time basis without regard to the flow in the waste stream and without consideration of time.
22. Indirect Discharge or Discharge. The introduction of pollutants into the POTW from any non-domestic source regulated under Section 307(b), (c), or (d) of the Act. The discharge into the POTW is normally by means of pipes, conduits, pumping stations, force mains, constructed drainage ditches, surface water intercepting ditches, and all constructed devices and appliances appurtenant thereto.
23. Industrial cost recovery period. A period of 30 years starting at the time of receipt of federal grant money used for the purpose of constructing wastewater facilities during which the grant allocable to the treatment of waste from industrial users is recovered from the industrial users of such facilities.

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24. Industrial User. Shall mean any nondomestic source regulated under section 307(b),(c) or (d) of the Clean Water Act that introduces pollutants into the city's wastewater treatment works.
25. Interference. A discharge which alone or in conjunction with a discharge or discharges from other sources, either: (1) inhibits or disrupts the POTW, its treatment processes or operations; (2) inhibits or disrupts its sludge processes, use or disposal; or (3) is a cause of a violation of the city of Fargo's NPDES permit or of the prevention of sewage sludge use or disposal in compliance with any of the following statutory/regulatory provisions or permits issued thereunder (or more stringent State or local regulations): Section 405 of the Act; the Solid Waste Disposal Act (SWDA), including Title II commonly referred to as the Resource Conservation and Recovery Act (RCRA); any State regulations contained in any State sludge management plan prepared pursuant to Subtitle D of the SWDA; the Clean Air Act; the Toxic Substances Control Act.
26. Letter of intent. Notification from an industrial user to the city of Fargo of that user's intent to utilize a publicly owned treatment facility for a given period of time.
27. Maximum Allowable Discharge Limit. The maximum concentration (or loading) of a pollutant allowed to be discharged at any time, determined from the analysis of any discrete or composited sample collected, independent of the industrial flow rate and the duration of the sampling event.
28. May. "May" is permissive. (See "Shall").
29. National Pretreatment Standard, Pretreatment Standard, or Standard. Shall mean any regulation containing pollutant discharge limits promulgated by the EPA in accordance with Section 307(b) and (c) of the Act, which applies to Industrial Users. This term includes prohibitive discharge limits established pursuant to Section 403.5 of the Act.
30. Natural outlet. Any outlet, including storm sewers and combined sewer overflows, into a watercourse, pond, ditch, lake or other body of surface or ground water.
31. New Source.
- a. Any building, structure, facility, or installation from which there is (or may be) a discharge of pollutants, the construction of which commenced after the publication of proposed categorical pretreatment standards under Section 307. 8 of the Act which will be applicable to such source if such standards are thereafter promulgated in accordance with that section, provided that:
 - i. The building, structure, facility, or installation is constructed at a site at which no other source is located; or
 - ii. The building, structure, facility, or installation totally replaces the process or production equipment that causes the discharge of pollutants at an existing source; or
 - iii. The production or wastewater generating processes of the building, structure, facility, or installation are substantially independent of an existing source at the same site. In determining whether these are substantially independent,

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- factors such as the extent to which the new facility is integrated with the existing plant, and the extent to which the new facility is engaged in the same general type of activity as the existing source, should be considered.
- b. Construction on a site at which an existing source is located results in a modification rather than a new source if the construction does not create a new building, structure, facility, or installation meeting the criteria of Section a.(ii) or (iii) above but otherwise alters, replaces, or adds to existing process or production equipment.
 - c. Construction of a new source as defined under this definition has commenced if the owner or operator has:
 - i. Begun, or caused to begin as part of a continuous on-site construction program:
 - 1. Any placement, assembly, or installation of facilities or equipment; or
 - 2. Significant site preparation work including clearing, excavation, or removal of existing buildings, structures, or facilities which is necessary for the placement, assembly, or installation of new source facilities or equipment; or
 - ii. Entered into a binding contractual obligation for the purchase of facilities or equipment which are intended to be used in its operation within a reasonable time. Options to purchase or contracts which can be terminated or modified without substantial loss, and contracts for feasibility, engineering, and design studies do not constitute a contractual obligation under this definition.
32. Pass Through. A discharge which exits the POTW into waters of the United States in quantities or concentrations which, alone or in conjunction with a discharge or discharges from other sources, is a cause of a violation of any requirement of the city's NPDES permit (including an increase in the magnitude or duration of the violation).
33. Permittee: A person or user issued a wastewater discharge permit.
34. Person. Any individual, partnership, including limited partnership, limited liability partnership or limited liability limited partnership, co-partnership, firm, company, corporation, limited liability company, association, joint stock company, trust, estate, governmental entity, or any other legal entity; or their legal representatives, agents, or assigns. This definition includes all federal, state, or local governmental entities.
35. pH. A measure of the acidity or alkalinity of a substance, expressed in standard units.
36. Pollutant. Any dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, medical wastes, chemical wastes, biological materials, radioactive materials, heat, wrecked or discharged equipment, rock, sand, cellar dirt, agricultural and industrial wastes, and the characteristics of the wastewater [i.e., pH, temperature, TSS, turbidity, color, BOD, Chemical Oxygen Demand (COD), toxicity, or odor].

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37. Pretreatment. The reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater prior to (or in lieu of) introducing such pollutants into the POTW, whether obtained by physical, chemical, or biological processes; by process changes; or by other means (except by diluting the concentration of the pollutants unless allowed by an applicable pretreatment standard).
38. Pretreatment Requirement. Any substantive or procedural requirement related to pretreatment imposed on a user, other than a pretreatment standard.
39. Pretreatment Standards or Standards. Prohibited discharge standards, categorical pretreatment standards, and local limits and/or BMPs established by the city of Fargo/POTW.
40. Prohibited Discharge Standards or Prohibited Discharges. Absolute prohibitions against the discharge of certain substances, which appear in section 17-0403.
41. Publicly Owned Treatment Works (POTW). A “treatment works,” as defined by Section 212 of the Act (33 U.S.C. §1292) which is owned by the city. This definition includes any devices or systems used in the collection, storage, treatment, recycling, and reclamation of sewage or industrial wastes of a liquid nature and any conveyances which convey wastewater to a POTW as defined in Section 502(4) of the Act, which has jurisdiction over the indirect discharges to and the discharges from such a treatment works. The term also means the municipality as defined in section 502(4) of the Act, which has jurisdiction over the Indirect Discharges to and the discharges from such a treatment works.
42. Septic Tank Waste. Any sewage from holding tanks such as vessels, chemical toilets, campers, trailers, and septic tanks.
43. Sewage. Human excrement and gray water (household showers, dishwashing operations, etc.).
44. Sewer. Any pipe, conduit ditch, or other device used to collect and transport sewage from the generating source.
45. Sewer use charge. A monthly charge to all users of the wastewater facilities which is based on sewage volume, strength and/or flow.
46. Shall, May, May Not. “Shall” is mandatory, “may” is permissive, and “may not” is prohibitive.
47. Significant Industrial User (SIU).
 - a. A user subject to categorical pretreatment standards; or
 - b. A user that:
 - i. Discharges an average of 25,000 gallons per day (GPD) or more process wastewater to the POTW (excluding sanitary, non-contact cooling, and boiler blowdown wastewater); or
 - ii. Contributes a process waste stream which makes up five (5) percent or more of the average dry weather hydraulic or organic capacity of the POTW treatment plant; or

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- iii. Is designated as such by the city on the basis that it has a reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement; unless,
- iv. Upon a finding that a user meeting any of the above three criteria has no reasonable potential for adversely affecting the POTW's operation or for violating an applicable pretreatment standard or requirement, Fargo may at any time, on its own initiative or in response to a petition received from a user [and in accordance with procedures in 40 C.F.R. § 403.8(f)(6)] determine that such user should not be considered a significant industrial user.

48. Significant Noncompliance (403.8(f)(2)(vii)).

IU violations that meet one or more of the following criteria:

- a. Chronic violations of wastewater discharge limits, defined here as those in which 66 percent or more of all the measurements for each pollutant parameter taken during a 6-month period exceed (by any magnitude) a numeric pretreatment standard or requirement, including instantaneous limits, as defined by 40 C.F.R. § 403.3(l).
- b. Technical Review Criteria (TRC) violations, defined here as those in which 33 percent or more of all the measurements for each pollutant parameter taken during a 6-month period equal or exceed the product of the numeric pretreatment standard or requirement including instantaneous limits, as defined by 40 C.F.R. § 403.3 (l) multiplied by the applicable TRC (TRC = 1.4 for BOD, TSS, fats, oil and grease and 1.2 for all other pollutants except pH).
- c. Any other violation of a pretreatment standard or requirement as defined by 40 C.F.R. § 403.3 (l) (daily maximum, long-term average, instantaneous limit, or narrative standard) that the POTW determines has caused, alone or in combination with other dischargers, interference or pass through (including endangering the health of POTW personnel or the general public).
- d. Any discharge of a pollutant that has caused imminent endangerment to human health, welfare, or to the environment or has resulted in the POTW's exercise of its emergency authority under paragraph (f)(1)(vi)(B) of 40 C.F.R. § 403.8 to halt or prevent such a discharge.
- e. Failure to meet, within 90 days after the schedule date, a compliance schedule milestone contained in a local control mechanism or enforcement order for starting construction, completing construction, or attaining final compliance.
- f. Failure to provide, within 30 days after the due date, required reports such as baseline monitoring reports, 90-day compliance reports, periodic self-monitoring reports, and reports on compliance with compliance schedules

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- g. Failure to accurately report noncompliance
 - h. Any other violation or group of violations, which can include a violation of best management practices, that the POTW determines will adversely affect the operation or implementation of the local pretreatment program.
49. Slug Load. Any discharge at a flow rate or concentration which could cause a violation of the discharge standards in sections 17-0403 through 17-0406 or any discharge of a non-routine, episodic nature, including but not limited to, an accidental spill or a non-customary batch discharge.
50. Solid Waste Disposal Act (SWDA). Federal law located at 43 U.S.C. §6901 et seq.
51. Standard Industrial Classification (SIC) Code. A classification pursuant to the Standard Industrial Classification Manual issued by the United States Office of Management and Budget.
52. Storm Water. Any flow occurring during or following any form of natural precipitation, and resulting from such precipitation, including snowmelt.
53. Superintendent. The person designated by the city to supervise the operation of the POTW, and who is charged with certain duties and responsibilities by this ordinance, or a duly authorized representative.
54. Total Suspended Solids. The total suspended matter that floats on the surface of, or is suspended in, water, wastewater, or other liquid, and which is removable by laboratory filtering.
55. Toxic Pollutant. One of 126 pollutants, or combination of those pollutants, listed as toxic in regulations promulgated by the EPA under the provision of Section 307 (33 U.S.C. §1317) of the Act.
56. Treatment Plant Effluent. The discharge from the POTW into waters of the United States.
57. Wastewater. Liquid and water-carried industrial wastes and sewage from residential dwellings, commercial buildings, industrial and manufacturing facilities, and institutions, whether treated or untreated, which are contributed to the POTW.
58. Wastewater Discharge Permit (Industrial Wastewater Discharge Permit, Discharge Permit). An authorization or equivalent control document issued by the city to users discharging wastewater to the POTW. The permit may contain appropriate pretreatment standards and requirements as set forth in this ordinance.
59. Wastewater Treatment Plant or Treatment Plant. The portion of the POTW which is designed to provide treatment of municipal sewage and industrial waste.

17-0204 Abbreviations.-- The following abbreviations shall have the designated meanings:

- ASPP - Accidental Spill Prevention Plan
- BOD - Biochemical Oxygen Demand
- C.F.R. § - Code of Federal Regulations

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- COD - Chemical Oxygen Demand
- EPA - U.S. Environmental Protection Agency
- GPD - gallons per day
- IWA - Industrial Waste Acceptance
- l - Liter
- IU – Industrial User
- LEL - Lower Explosive Limit
- mg - milligrams
- mg/l - milligrams per liter
- NPDES - National Pollutant Discharge Elimination System
- O&M - Operation and Maintenance
- POTW - Publicly Owned Treatment Works
- RCRA - Resource Conservation and Recovery Act
- SIC - Standard Industrial Classifications
- SIU – Significant Industrial User
- SWDA - Solid Waste Disposal Act (43 U.S.C. 6901, et seq.)
- TSS - Total Suspended Solids
- USC - United States Code

Section 3. Re-enactment.

Article 17-04 of Chapter 17 of the Fargo Municipal Code is hereby re-enacted to read as follows:

ARTICLE 17-04

GENERAL REQUIREMENTS

17-0401 Sanitary sewers, building sewers and connections.--

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

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application is filed. The amount of such fee shall be established by resolution of the board of city commissioners in accordance with §22-0114.

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

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connection and testing shall be made under the supervision of the director or his representative.

- K. All excavations for building sewer installation shall be adequately guarded with barricades and lights so as to protect the public from hazard. Streets, sidewalks, parkways, and other public property disturbed in the course of the work shall be restored in a manner satisfactory to the city.

Source: 2187 (1985).

17-0402 Prohibited connections to sewer system - - Inspection and surcharge authority. - - Waiver Provisions.--

- A. Section 22-0432 prohibits surface or ground water drains, including roof drains and foundation drain tiles, from being connected to the sanitary sewer. Said ordinance requires that surface or ground water drains shall be connected directly to the city storm sewer or discharged into a sump and thereafter pumped into the city storm sewer system or onto a yard in such a manner so as to drain into the city storm sewer system. The following subsections further expand on such prohibited connections and provide for inspections, surcharges, waivers and penalties.
- B. All dwellings, buildings and structures constructed after September 21, 1971, which require, because of infiltration of water into basements, crawl spaces and the like, a foundation drainage system shall have a permanently installed discharge line which, shall not at any time, discharge water into the sanitary sewer system except as hereinafter provided in 17-0402(F). A permanent installation shall be one in which the direction of flow cannot be altered and provides for year-round discharge to either the outside of the dwelling, building or structure, or is connected directly to the city storm sewer, or discharges to the curb and gutter.
- C. Prior to June 1, 2001, all dwellings, buildings or structures constructed after September 21, 1971, having surface or ground water drains, including sump pumps, now connected and/or discharging into the sanitary sewer system shall disconnect and/or remove the same. Any disconnects or openings in the sanitary sewer shall be closed or repaired in an effective, workmanlike manner, as approved by the city engineer.
- D. Authorized city personnel, or its designated representatives bearing proper credentials and identification, shall be permitted to enter all properties constructed after September 21, 1971, for the purposes of inspection and observation to identify prohibited discharges to the sanitary sewer system. Any person may furnish a certificate from a licensed plumber certifying that their property is in compliance with §22-0432 and this section, in lieu of having the city inspect their property. Any person refusing to allow their property to be inspected (or failing to furnish a plumber's certificate in lieu thereof) within fourteen (14) days of the date city employees or their designated representatives are denied admittance to the property, shall immediately become subject to the surcharge penalty as required

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- under §17-0402(E). Any person found to have violated this provision shall make the necessary changes to eliminate the discharge of surface or ground water into the sanitary sewer system and furnish proof of the changes to the city within ninety (90) days. Each prohibited connection identified may be re-inspected by the city, its designated representative or a licensed plumber, to confirm compliance.
- E. A monthly surcharge penalty, established by resolution of the board of city commissioners, shall be imposed and added to the regular sewer billing on and after June 1, 2001, to property owners who are not in compliance with this section. The surcharge shall be added every month through December 2001 until the property is in compliance. The surcharge shall continue to be levied monthly, every year on properties not complying with this section. It is provided, however, that the surcharge shall not be charged unless and until a property has been inspected and found to be not in compliance, or if the property owner refuses to allow an inspection and fails to provide a plumber's certificate in lieu thereof as set forth in this section.
- F. The Superintendent shall have the authority to grant exemptions from strict compliance with this section.
- Exemptions may be granted in the form of seasonal waivers which would allow the property owner to temporarily discharge directly into the sanitary sewer system between the date of October 1 and March 31. The holder of a seasonal waiver shall allow a city employee or designated representative to certify that, prior to April 1 of each subsequent year, their discharge water connection has been removed from the sanitary sewer. Failure to provide such certification shall place the seasonal waiver holder in violation and subject to the surcharge penalty as required under §17-0402(E). Seasonal waiver requests shall be submitted on the official form provided by the city engineer for utilities.
- Exemptions may be granted in the form of non-seasonal waivers for a particular property owner who can demonstrate undue hardship because of unique or extenuating circumstances, including physical or handicap limitations. A non-seasonal waiver would allow the property owner to discharge directly into the sanitary sewer system without seasonal restrictions. The non-seasonal waiver request shall be submitted to the Superintendent in writing and, at a minimum, identify the property for which the waiver is being requested, the name of the property owner/applicant, and a detailed description of the circumstances justifying the request.
- G. Any person granted a seasonal waiver shall be charged an additional monthly fee on their utility bill to cover the cost of compliance inspections and the cost for treating the extra discharge water during the waiver period. The seasonal waiver amount shall be set by resolution of the board of city commissioners.
- Any person granted a non-seasonal waiver shall be charged an additional monthly fee on their utility bill to cover the cost for treating the extra discharge water on a year-round basis. The non-seasonal waiver amount shall be set by resolution of the

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board of city commissioners.

- H. If a seasonal waiver is granted, the owner of the property may place a pipe connecting the sump pump to the sanitary sewer, which must have a shut-off valve. city staff or its designated representative, on or around April 1 of each year, will inspect the system to verify that the valve is closed so no prohibited water is discharged into the sanitary sewer. By applying for the waiver, the owner has granted permission to the city staff or its representatives to inspect the connection at any time between April 1 and October 31 to verify compliance with this section. Such inspections must be made between 8:00 a.m. and 5:00 p.m., Monday through Friday, and only when a resident of the premises is on site. Failure to allow such an inspection or to allow city staff or its designated representatives entry for verification of compliance shall result in automatic revocation of the seasonal waiver and imposition of the surcharge penalty pursuant to §17-0402(E).
- I. If any new structure is found to have been constructed wherein the sump pump connection for the structure has been unlawfully connected to the sanitary sewer system, or that there is another connection or device or lack of a plug which allows surface run-off or ground water to enter into the sanitary sewer system, either permanently or temporarily, the city may deny the issuance of a certificate of occupancy for said new structure.

Source: 4150 (2001), _____ (2019).

17-0403 Prohibited Discharge Standards.--

- A. General Prohibitions: No user shall introduce or cause to be introduced into the POTW any pollutant or wastewater which causes pass through or interference. These general prohibitions apply to all users of the POTW whether or not they are subject to categorical pretreatment standards or any other federal, state, or local pretreatment standards or requirements.
- B. Specific Prohibitions: No user shall introduce or cause to be introduced into the POTW the following pollutants, substances, or wastewater:
 - 1. Oils and Grease.
 - i. Oil and grease concentrations or amounts from industrial facilities violating pretreatment standards.
 - ii. Wastewater from industrial facilities containing floatable fats, wax, grease or oils in amounts which would cause interference or pass through the treatment process.
 - iii. Petroleum oil, non-biodegradable cutting oil, or products of mineral oil origin in amounts which would cause interference or pass through.

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2. Pollutants which create a fire or explosive hazard in the POTW, including, but not limited to, waste streams with a closed-cup flash point of less than 140 F (60 C) using the test methods specified in 40 C.F.R. § 261.21;
3. Wastewater having a pH less than 5.0 S.U. or more than 12.5 S.U., or otherwise causing corrosive structural damage to the POTW or equipment.
4. Solid or viscous wastes. Solid or viscous wastes which will interfere with the proper operation of the wastewater treatment system. Prohibited materials include, but are not limited to, grease, un-comminuted garbage, animal guts or tissues, paunch manure, bones, hair, hides or fleshings, entrails, whole blood, feathers, ashes, cinders, sand, spent lime, stone or marble dust, metal, glass, straw, shavings, grass clippings, rags, spent grains, spent hops, waste paper, wood, plastic, tar, asphalt residues, residues from refining or processing of fuel or lubricating oil, and similar substances.
5. Pollutants, including oxygen-demanding pollutants (BOD, etc.), released in a discharge at a flow rate and/or pollutant concentration which, either independently or by interaction with other pollutants, will cause interference with the POTW;
6. Wastewater having a temperature which will inhibit biological activity in the treatment plant resulting in interference, but in no case wastewater which causes the temperature at the introduction into the treatment plant to exceed 104° F (40° C) unless the Approval Authority, upon the request of the POTW, approves alternate temperature limits;
7. Petroleum oil, non-bio-degradable cutting oil, or products of mineral oil origin, in amounts that will cause interference or pass through;
8. Pollutants which result in the presence of toxic gases, vapors, or fumes within the POTW in a quantity that may cause acute worker health and safety problems;
9. Trucked or hauled pollutants, except a discharge points designated by the city.

17-0404 Federal Categorical Pretreatment Standards.-- The federal categorical pretreatment standards as amended and promulgated by EPA pursuant to the Act and as found at 40 C.F.R. Chapter I, Subchapter N, Parts 405 – 471, are hereby adopted by reference.

17-0405 State Requirements.-- The state requirements as set forth in North Dakota Administrative Code (N.D.Admin.C.) §33-16-01.1 and limitations on discharges to the POTW shall be met by all users which are subject to such standards in any instance in which they are more stringent than federal requirements and limitations or those in this ordinance or in other applicable ordinances.

17-0406 Local Limits.-- The Superintendent is authorized to establish Local Limits pursuant to 40 C.F.R. § 403.5(c). No person shall discharge wastewater containing pollutant levels in excess of the following daily maximum allowable discharge limits:

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| <u>Pollutant</u> | <u>Daily Maximum Concentration</u> |
|------------------|------------------------------------|
| Arsenic (As) | 2.8 mg/l |
| Cadmium (Cd) | 0.11 mg/l |
| Chromium (III) | 5.86 mg/l |
| Chromium (VI) | 0.65 mg/l |
| Chromium (Total) | 5.57 mg/l |
| Copper (Cu) | 2.82 mg/l |
| Lead (Pb) | 1.60 mg/l |
| Mercury (Hg) | 0.001 mg/l |
| Nickel (Ni) | 5.60 mg/l |
| pH | 5 to 12.5 S.U. |
| Selenium (Se) | 0.26 mg/l |
| Silver (Ag) | 0.43 mg/l |
| Zinc (Zn) | 18.17 mg/l |

The above limits apply at the point where the wastewater is discharged to the POTW (end of pipe). All concentrations for metallic substances are for “total” metal unless indicated otherwise. Where a user is subject to a categorical pretreatment standard and a local limit for a given pollutant, the more stringent limit or applicable pretreatment standard shall apply.

Total SIU BOD mass loading or Maximum Allowable Industrial Loadings (MAIL) at the wastewater treatment plant headworks shall not exceed 7,353 pounds per day. Total SIU TSS mass loading or MAIL at the wastewater treatment plant headworks shall not exceed 4,825 pounds per day. The city may, at its discretion, implement local limits through allocation of the BOD and TSS MAILs to significant industrial Users.

Under no circumstances shall the industrial user achieve compliance with the above limitations or categorical pretreatment standards by diluting its industrial waste with tap water, unpolluted water, sanitary sewage, or any other liquid diluent.

The POTW may develop Best Management Practices (BMPs) to implement provisions of this Chapter. Such BMPs shall be considered local limits and Pretreatment Standards for the purposes of this part and section 307(d) of the Act.

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The POTW may develop site-specific limits in addition to Local Limits.

The following limits shall apply to wastewater that are discharged from the groundwater cleanup of petroleum and gasoline underground storage tanks or other remediation wastewaters containing these pollutants or where these pollutants are appropriate surrogates. It shall be unlawful user to discharge to cause to be discharged any waste or wastewater that exceeds the following limits, as applicable:

| Pollutant ^(a) ^(b) | Daily Maximum Limit (mg/L) |
|---|-------------------------------|
| Benzene | 0.050 |
| BTEX ^(c) | 0.750 |

(a) These limits are based on the installation of air stripping technology as described in the EPA document: “Model NPDES Permit for Discharges Resulting from the Cleanup of Gasoline Released from Underground Storage Tanks, June 1989.”

(b) All pollutants shown in the table are total.

(c) BTEX shall be measured as the sum of Benzene, Ethylbenzene, Toluene, and Xylene

17-0407 City’s Right of Revision.-- The city reserves the right to establish, by ordinance or in wastewater discharge permits, more stringent standards or requirements on discharges to the POTW.

17-0408 Special Agreement.-- The city may enter into special agreements with users setting out special terms under which they may discharge to the POTW so long as such special agreement does not waive compliance with a categorical pretreatment standard. However, users may request of the superintendent a net/gross adjustment to a categorical standard in accordance with 40 C.F.R. §403.15. They may also request a variance from the categorical pretreatment standard from the Approval Authority in accordance with 40 C.F.R. §403.13.

17-0409 Dilution.-- No user shall increase the use of process water, or in any way attempt to dilute a discharge, as a partial or complete substitute for adequate treatment to achieve compliance with an applicable pretreatment standard or requirement unless expressly authorized by an applicable pretreatment standard or requirement. The Superintendent may impose mass limitations on users which he believes may be using dilution to meet applicable pretreatment standards or requirements or in other cases when the imposition of mass limitations is appropriate.

17-0410 Pretreatment Facilities.-- Users shall provide necessary wastewater treatment as required to comply with this ordinance and shall achieve compliance with all applicable pretreatment standards and requirements set out in this ordinance within the time limitations specified by the EPA, the state, or the Superintendent, whichever is more stringent. Any facilities required to pretreat wastewater to a level

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acceptable to the city of Fargo shall be provided, operated, and maintained at the user's expense. Detailed plans showing the pretreatment facilities and operating procedures shall be submitted to the city for review and must be approved by the Superintendent before construction of the facility. The review of such plans and operating procedures will in no way relieve the user from the responsibility of modifying the facility as necessary to produce an acceptable discharge to the city under the provisions of this ordinance.

17-0411 Deadline for Compliance with Applicable Pretreatment Requirements.-- Compliance by existing sources covered by a modification of Categorical Pretreatment Standards shall be achieved within three years of the date the standard is effective unless a shorter compliance time is specified in the appropriate standard. The city shall establish a final compliance deadline date for any existing user not covered by Categorical Pretreatment Standards or for any categorical user when the local limits for said user are more restrictive than the federal Categorical Pretreatment Standards.

New source and domestic users are required to comply with applicable pretreatment standards within the shortest feasible time, not to exceed 90 days from the beginning of discharge. New Sources and domestic users shall install, have in operating condition, and shall start up all pollution control equipment required to meet applicable pretreatment standards before beginning to discharge.

Any wastewater discharge permit issued to a categorical user shall not contain a compliance date beyond any deadline date established in EPA's Categorical Pretreatment Standards. Any other existing user or a categorical user that must comply with a more stringent local limit which is in non-compliance with any local limits shall be provided with a compliance schedule placed in an industrial wastewater permit to insure compliance within the shortest time feasible.

17-0412 Additional Pretreatment.--

A. Whenever deemed necessary, the Superintendent may require users to restrict their discharge during peak flow periods, designate that certain wastewater be discharged only into specific sewers, relocate and/or consolidate points of discharge, separate sewage waste streams from industrial waste streams, and such other conditions as may be necessary to protect the POTW and determine the user's compliance with the requirements of this ordinance.

B. Grease, oil, and sand interceptors shall be provided when, in the opinion of the Superintendent, they are necessary for the proper handling of wastewater containing excessive amounts of grease and oil, or sand, except that such interceptors shall not be required for residential users. All interception units shall be of type and capacity approved by the Superintendent and shall be so located to be easily accessible for cleaning and inspection. Such interceptors shall be inspected, cleaned, and repaired regularly, as needed, by the user at its expense.

C. Users with the potential to discharge flammable substances may be required to install and maintain an approved combustible gas detection meter.

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17-0413 Accidental Spill Prevention Plans.--The Superintendent may require any user to develop and implement an accidental spill prevention plan (ASPP) or slug control plan. Where deemed necessary by the city, facilities to prevent accidental discharge or slug discharges of pollutants shall be provided and maintained at the user's cost and expense. An accidental spill prevention plan or slug control plan showing facilities and operating procedures to provide this protection shall be submitted to the city for review and approval before implementation. The city shall determine which user is required to develop a plan and require said plan to be submitted within 180 days after notification by the city. Each user shall implement its ASPP as submitted or as modified after such plan has been reviewed and approved by the city. Review and approval of such plans and operating procedures by the city of Fargo shall not relieve the user from the responsibility to modify its facility as necessary to meet the requirements of this ordinance.

A. Any user required to develop and implement an accidental spill prevention plan shall submit a plan which addresses, at a minimum, the following:

1. Description of discharge practices, including non-routine batch discharges;
2. Description of stored chemicals;
3. Procedures for immediately notifying the POTW of any accidental or slug discharges. Such notification must also be given for any discharge which would violate any of the standards in sections 17-0403 through 17-0406; and

Procedures to prevent adverse impact from any accidental or slug discharge. Such procedures include, but are not limited to, inspection and maintenance of storage areas, handling and transfer of materials, loading and unloading operations, control of plant site runoff, worker training building of containment structures or equipment, measures for containing toxic organic chemicals (including solvents), and/or measures and equipment for emergency response.

- B. Users shall notify the city Wastewater Treatment Facility immediately after the occurrence of a slug or accidental discharge of substances regulated by this chapter. The notification shall include location of discharge, date and time thereof, type of waste, concentration and volume, and corrective actions. Any affected user shall be liable for any expense, loss, or damage to the POTW, in addition to the amount of any fines imposed on the city on account thereof under state or federal law.
- C. Within five (5) days following an accidental discharge, the user shall submit to the Superintendent a detailed written report describing the cause of the discharge and the measures to be taken by the user to prevent similar future occurrences. Such notification shall not relieve the user of any expense, loss, damage, or other liability which may be incurred as a result of damage to the POTW, fish kills, or any other damage to person or property nor shall such notification

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relieve the user of any fines, civil penalties, or other liability which may be imposed by this chapter or other applicable law.

- D. Signs shall be permanently posted in conspicuous places on the user's premises advising employees whom to call in the event of a slug or accidental discharge. Employers shall instruct all employees who may cause or discover such a discharge with respect to emergency notification procedures.

17-0414 Septic Tank Waste.--

- A. Septic tank waste may be introduced into the POTW only at a designated receiving structure within the treatment plant area, and at such times as are established by the Superintendent. Such wastes shall not violate this section or any other requirements established or adopted by the city. Wastewater discharge permits for individual vehicles to use such facilities may be issued by the Superintendent.
- B. Septic tank waste haulers may only discharge loads at locations specifically designated by the Superintendent. No load may be discharged without prior consent of the Superintendent. The Superintendent may collect samples of each hauled load to ensure compliance with applicable pretreatment standards. The Superintendent may require the hauler to provide a waste analysis of any load prior to discharge.
- C. Septic tank waste haulers must provide a waste-tracking manifest form for every load. This form shall include, at a minimum, the name and address of the waste hauler, permit number, truck identification, sources of waste, and volume and characteristics of waste.
- D. Fees for dumping hauled wastes will be established as part of the user fee system as authorized in article 17-16 of this chapter.

Section 4. Re-enactment.

Article 17-05 of Chapter 17 of the Fargo Municipal Code is hereby re-enacted to read as follows:

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ARTICLE 17-05

WASTEWATER DISCHARGE PERMIT REQUIREMENTS

17-0501 Permit required.-- No significant industrial user shall discharge wastewater into the POTW without first obtaining a wastewater discharge permit from the Superintendent; the permit must be enforceable and contain all the elements as required by 40 C.F.R. § 403.8(f)(1)(iii)(B). Any violation of the terms and conditions of a wastewater discharge permit shall be deemed a violation of this ordinance and subjects the wastewater discharge permittee to the penalties or sanctions set forth in this article. Obtaining a wastewater discharge permit does not relieve a permittee of its obligation to comply with all federal and state pretreatment standards or requirements or with any other requirements of federal, state, and local law. The Superintendent may require other users, including liquid waste haulers, to obtain wastewater discharge permits (as necessary) to carry out the purposes of this ordinance.

17-0502 Wastewater Discharge Permitting.--Any SIU that was discharging wastewater into the POTW prior to the effective date of this ordinance and that wishes to continue such discharges in the future shall, within 60 days after notification by the Superintendent submit a permit application to the city in accordance with section 17-0505.

17-0503 Wastewater Discharge Permitting: New Source.-- At least 90 days prior to the anticipated start-up, any new source, which is a source that becomes a user subsequent to the proposal of an applicable categorical pretreatment standard that is later promulgated, and any domestic user considered by the city of Fargo to fit the definition of SIU shall apply for a wastewater discharge permit and will be required to submit to the city of Fargo at least the information listed in section 17-0505(A)-(E). A new source or domestic user may not discharge without first receiving approval from the city of Fargo. New sources and domestic users shall also be required to include in their application information on the method of pretreatment they intend to use to meet applicable pretreatment standards. New Sources and domestic users shall give estimates of the information requested in section 17-0505(D) and (E).

17-0504 Wastewater Discharge Permitting: Extra jurisdictional Users.-- Any existing user who is located beyond the city of Fargo limits and who is required to obtain a wastewater discharge permit shall submit a wastewater discharge permit application as outlined in section 17-0502. New Source and domestic users who are located beyond the city of Fargo limits and who are required to obtain a wastewater discharge permit shall comply with section 17-0503.

17-0505 Wastewater Discharge Permit Application Contents.-- The Superintendent shall approve a form to be used as a permit application for a wastewater discharge permit. Categorical users submitting the following information must have complied with 40 C.F.R. §403.12(b) prior to submitting said application. All users required to obtain a wastewater discharge permit must submit, at a minimum, the following information.

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- A. Identifying information. The user shall submit the name and address of the facility including the name of the operator and owners.
- B. Permits. The user shall submit a list of all environmental control permits held by or for the facility;
- C. Description of operations. The user shall submit a brief description of the nature, average rate of production, and standard industrial classification of the operation(s) carried out by such Industrial User, including a list of all raw materials and chemicals used or stored at the facility which are or could accidentally or intentionally be discharged to the POTW; number or processes, and rate of production; type and amount of raw materials processed (average and maximum per day) and the time and duration of discharges. This description should also include a schematic process diagram which indicates points of discharge to the POTW from the regulated or manufacturing processes; site plans; floor plans; mechanical and plumbing plans; and details to show all sewers, sewer connections, inspection manholes, sampling chambers and appurtenances by size, location and elevation.
- D. Flow Measurement.
 - 1. Categorical User: The user shall submit information showing the intended measured average daily and maximum daily flow, in gallons per day, to the POTW from each of the following:
 - i. Regulated or manufacturing process streams; and
 - ii. Other streams as necessary to allow use of the combined waste stream formula [40 C.F.R. §403.6(e)].
 - 2. Non-Categorical User The user shall submit information showing the intended measured average daily and maximum daily flow, in gallons per day, to the POTW from each of the following:
 - i. total process flow,
 - ii. wastewater treatment plant flow,
 - iii. total plant flow or
 - iv. individual manufacturing process flow as required by the Superintendent.

The city may allow verifiable estimates of said flows where justified by cost or feasibility considerations proposed by the applicant to the satisfaction of the city.

- E. Measurements of pollutants.
 - 1. Categorical User:
 - i. The user shall identify the applicable pretreatment standards for each regulated or manufacturing process.
 - ii. In addition, the user shall submit the results of sampling and analysis identifying the nature and concentration (or mass, where required by Categorical

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Pretreatment Standard or as required by the city or regulated pollutants (including standards contained in sections 17-0403 through 17-0406 as appropriate) in the discharge from each regulated or manufacturing process. Both daily maximum and average concentration (or mass, where required) shall be reported. The sample shall be representative of daily operations and shall conform to sampling and analytical procedures outlined in article 17-07.

- iii. The user shall take a minimum of one representative sample to compile that data necessary to comply with the requirements of this subsection.
- iv. Where an alternate concentration or mass limit has been calculated in accordance with 40 C.F.R. §403.6(e) for a categorical user, this adjusted or alternate limit along with supporting data shall be submitted as part of the application.

2. Non-Categorical User:

- i. The user shall identify the applicable pretreatment standards for its wastewater discharge.
- ii. In addition, the user shall submit the results of sampling and analysis identifying the nature and concentration in the discharge (or mass where required by the city) of regulated pollutants contained in sections 17-0403 through 17-0406, as appropriate. Both daily maximum and average concentration (or mass, where required) shall be reported. The sample shall be representative of daily operations and shall conform to sampling and analytical procedures outlined in article 17-07.
- iii. The user shall take a minimum of one representative sample to compile the data necessary to comply with the requirements of this subsection.
- iv. Where the Superintendent has developed alternate concentration or mass limits because of dilution, this adjusted or alternate limit along with supporting data shall be submitted as part of the application.

F. Certification. The user shall submit a statement, worded as specified in section 17-0506, which has been reviewed by an authorized representative of the user, and certified by a qualified professional, indicating whether the applicable pretreatment standards are being met on a consistent basis, and, if not, whether additional operation and maintenance and/or additional pretreatment is required for the user to meet the applicable pretreatment standards and Requirements.

G. Compliance Schedule. If additional pretreatment and/or operation and maintenance will be required to meet the applicable pretreatment standards, the user shall submit the shortest schedule by which the user will provide such additional pretreatment and/or operation and maintenance. The user's schedule shall conform with the requirements of section 17-0604. The completion

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date in this schedule shall not be later than the compliance date established pursuant to section 17-0411.

1. Where the user's categorical Pretreatment Standard has been modified by a removal allowance (40 C.F.R. §403.7), the combined waste stream formula (40 C.F.R. §403.6(e)), and/or a Fundamentally Different Factors variance (40 C.F.R. §403.13) at the time the user submits the report required by this subsection, the information required by subsections (F) and (G), hereof, shall pertain to the modified limits.
2. If the categorical Pretreatment Standard is modified by a removal allowance (40 C.F.R. §403.7), the combined waste stream formula (40 C.F.R. §403.13) after the user submits the report required by subsections (F) and (G), hereof, then a report containing modified information shall be submitted by the user within 60 days after the new limit is approved.

H. The user shall submit any other information as may be deemed necessary by the Superintendent to evaluate the wastewater discharge permit application.

Incomplete or inaccurate applications will not be processed and will be returned to the user for revision.

17-0506 Signatory and Certification Requirement.-- All wastewater discharge permit applications and user reports must be signed and certified by the authorized representative of the user, as defined in this chapter, containing the following certification statement:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

17-0507 Wastewater Discharge Permit Decisions.--The Superintendent will evaluate the data furnished by the user and may require additional information. Within 30 days of receipt of a complete wastewater discharge permit application, the Superintendent will determine whether or not to issue a wastewater discharge permit. Upon a determination to issue, the permit shall be issued within 30 days of full evaluation and acceptance of the data furnished. The Superintendent may deny any application for a wastewater discharge permit. Failure of the Superintendent to take such action within said 30 days shall be deemed to be a denial of the permit.

17-0508 Wastewater Discharge Permit Contents.--The Superintendent is authorized to include such conditions on a wastewater discharge permit as are reasonably deemed necessary by the Superintendent to prevent pass through or interference, protect the quality of the water body receiving the treatment plant's

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effluent, protect worker health and safety, facilitate sludge management and disposal, and protect against damage to the POTW.

- A. All Wastewater discharge permits are subject to the following conditions and the Superintendent shall ensure that the permit expressly states the following:
1. A statement that indicates wastewater discharge permit duration, which in no event shall exceed five (5) years;
 2. A statement that the wastewater discharge permit is non-transferable without prior notification to and approval from the city, and provisions for furnishing the new owner or operator with a copy of the existing wastewater discharge permit;
 3. Applicable pretreatment standards and requirements, including any special state requirements;
 4. Self-monitoring, sampling, reporting, notification, submittal of technical reports, compliance schedules, and record-keeping requirements. These requirements shall include an identification of pollutants to be monitored, sampling location, sampling frequency, and sample type based on federal, state, and local law.
 5. Requirement for immediate notification to the city where self-monitoring results indicate non-compliance;
 6. Requirement to report a bypass or upset of a pretreatment facility;
 7. Requirement to report immediately to the city all discharges, including slug loadings, that could cause problems to the POTW;
 8. Requirement for the SIU who reports non-compliance to repeat the sampling and analysis and submit results to the city within 30 days after becoming aware of the violation.
 9. A statement of applicable civil, criminal, and administrative penalties for violation of pretreatment standards and requirements, and any applicable compliance schedule.
 10. Requirements to control slug discharges, if determined by the POTW to be necessary.
- B. Wastewater discharge permits may contain, but need not be limited to, the following conditions:
1. Limits on the average and/or maximum rate of discharge, time of discharge, and/or requirements for flow regulation and equalization;
 2. Requirements for the installation of pretreatment technology, pollution control, or construction of appropriate containment devices, designed to reduce, eliminate, or prevent the introduction of pollutants into the treatment works;
 3. Requirements for the development and implementation of spill control plans or other special conditions including management practices necessary to adequately prevent accidental, unanticipated, or routine discharges;

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4. Development and implementation of waste minimization plans to reduce the amount of pollutants discharged to the POTW;
5. The unit charge or schedule of user charges and fees for the management of the wastewater discharged to the POTW;
6. Requirements for installation and maintenance of inspection and sampling facilities and equipment;
7. A statement that compliance with the wastewater discharge permit does not relieve the permittee of responsibility for compliance with all applicable Federal and State pretreatment standards, including those which become effective during the term of the wastewater discharge permit;
8. Any special agreements the Superintendent chooses to continue or develop between the city and user;
9. Other conditions as deemed appropriate by the Superintendent to ensure compliance with this article, and state and federal laws, rules, and regulations.

17-0509 Wastewater Discharge Permit Appeals.-- Any person, including the user, may petition the city to appeal the denial of, or to reconsider the terms of, a wastewater discharge permit or may appeal the terms of the permit required by the Superintendent in issuing the permit by filing a written notice of appeal with the Superintendent within 180 days of its denial or issuance.

- A. Failure to submit a timely petition for review shall be deemed to be a waiver of the right to appeal.
- B. In its written petition and notice to appeal, the appealing party must indicate the wastewater discharge permit provisions objected to, the reasons for this objection, and the alternative condition, if any, it seeks to place in the wastewater discharge permit or, if it is an appeal of a denial of the permit, the reasons for challenging the denial.
- C. The denial of the wastewater discharge permit shall not be stayed pending the appeal.
- D. The appeal shall be heard and considered by the Director. The Director may schedule a hearing at which time the appellant and the city may appear and present evidence, information and arguments in support of, or opposing, the appeal or reconsideration. Unless the Director extends the time within which the city will consider the appeal or reconsideration, if the city fails to act within 30 days, a request for reconsideration shall be deemed to be denied. Decisions not to reconsider a wastewater discharge permit, not to issue a wastewater discharge permit, or not to modify a wastewater discharge permit shall be considered final action for purposes of judicial review.
- E. The decision of the Director on appeal, including the denial of an appeal or reconsideration that has resulted from a failure to act within said 30 days, shall be subject to further appeal to the board of city commissioners of the city, by the appellant filing a written notice of appeal with the Director within fifteen (15) days of such denial.

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17-0510 Wastewater Discharge Permit Duration.-- Wastewater discharge permits shall be issued for a specified time period, not to exceed five (5) years. A wastewater discharge permit may be issued for a period less than five (5) year, at the discretion of the Superintendent. Each wastewater discharge permit will indicate a specific date upon which it will expire, although the failure of the permit to so indicate shall not invalidate the permit.

17-0511 Wastewater Discharge Permit Modification.-- The Superintendent may modify the wastewater discharge permit for good cause including, but not limited to, the following:

- A. To incorporate any new or revised federal, state, or local pretreatment standards or requirements;
- B. To address significant alterations or additions to the user's operation, processes, or wastewater volume or character since the time of wastewater discharge permit issuance;
- C. A change in the POTW that requires either a temporary or permanent reduction or elimination of the authorized discharge;
- D. Information indicating that the permitted discharge poses a threat to the city's POTW, personnel, or receiving waters;
- E. Violation of any terms or conditions of the wastewater discharge permit;
- F. Misrepresentations or failure to fully disclose all relevant facts in the wastewater discharge permit application or in any required report;
- G. Revision of or a grant of variance from categorical pretreatment standards pursuant to 40 C.F.R. §403.13;
- H. To correct typographical or other errors in the wastewater discharge permit; or
- I. To reflect a transfer of the facility ownership and/or operation to a new owner/operator.

17-0512 Wastewater Discharge Permit Transfer.-- Wastewater discharge permits may be reassigned or transferred to a new owner and/or operator only if the permittee gives at least thirty (30) days advance notice to the Superintendent and the Superintendent approves the wastewater discharge permit transfer. The notice to the Superintendent must include a written certification by the new owner and/or operator which:

- A. States that the new owner and/or operator has no immediate intent to change the facility's operations and processes;
- B. Identifies the specific date on which the transfer is to occur; and
- C. Assumes full responsibility for complying with the existing wastewater discharge permit beginning on the date of the transfer.

Failure to provide advance notice of a transfer renders the wastewater discharge permit voidable as of the date of facility transfer.

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17-0513 Wastewater Discharge Permit Revocation.-- Wastewater discharge permits may be revoked for, but not limited to, the following reasons:

- A. Failure to notify the city of significant changes to the wastewater prior to said change.
- B. Failure to provide prior notification to the city of changed conditions;
- C. Misrepresentation or failure to full disclose all relevant facts in the wastewater discharge permit application;
- D. Falsifying self-monitoring reports;
- E. Tampering with monitoring equipment;
- F. Refusing to allow the city timely access to the facility premises and records;
- G. Failure to meet discharge limitations;
- H. Failure to pay fines;
- I. Failure to pay sewer charges;
- J. Failure to meet compliance schedules;
- K. Failure to complete a wastewater survey or the wastewater discharge permit application;
- L. Failure to provide advance notice of the transfer of permitted facility; or
- M. If the city has to invoke its emergency provision as cited in article 17-11.
- N. Violation of any pretreatment standard or requirement, or any terms of the wastewater discharge permit or this ordinance.

Wastewater discharge permits shall be voidable upon cessation of operations or transfer of business ownership. All wastewater discharge permits issued to a particular user are void upon the issuance of a new wastewater discharge permit to that user.

17-0514 Wastewater Discharge Permit Reissuance.-- A user who is required to have a wastewater discharge permit shall apply for wastewater discharge permit reissuance by submitting a complete wastewater discharge permit application, in accordance with section 17-0505, a minimum of [thirty (30)] days prior to the expiration of the user's existing wastewater discharge permit. A user whose existing wastewater discharge permit has expired and who has submitted its re-application in the time period specified herein shall be deemed to have an effective wastewater discharge permit until the city issues or denies the new wastewater discharge permit. A user whose existing wastewater discharge permit has expired and who failed to submit its re-application in the time period specified herein will be deemed to be discharging without a wastewater discharge permit.

Section 5. Re-enactment.

Article 17-06 of Chapter 17 of the Fargo Municipal Code is hereby enacted to read as follows:

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ARTICLE 17-06

REPORTING REQUIREMENTS

17-0601 Baseline Monitoring Reports.--

- A. Within either one hundred and eighty (180) days after the effective date of a categorical pretreatment standard or the final administrative decision on a category determination under 40 C.F.R. §403.6(a)(4) (whichever is later) existing categorical users currently discharging to or scheduled to discharge to the POTW, shall be required to submit to the city a report which contains the information listed in subsection B, below. At least ninety (90) days prior to commencement of their discharge, new sources, and sources that become categorical users subsequent to the promulgation of an applicable categorical standard, shall be required to submit to the city a report which contains the information listed in subsection B, below. A new source shall also be required to report the method of retreatment it intends to use to meet applicable categorical standards. A new source shall also give estimates of its anticipated flow and quantity off pollutants discharged.
- B. Users described above shall submit the following information:
1. Identifying Information. The name and address of the facility, including the name of the operator and owner.
 2. Environmental Permits. A list of any environmental control permits held by or for the facility.
 3. Description of Operations. A brief description of the nature, average rate of production, and standard industrial classifications of the operation(s) carried out by such user. This description should include a schematic process diagram which indicates points of discharge to the POTW from the regulated processes.
 4. Flow Measurement. Information showing the measured average daily and maximum daily flow, in gallons per day, to the POTW from regulated process streams and other streams, as necessary, to allow use of the combined waste stream formula set out in 40 C.F.R. §403.6(e).
 5. Measurement of Pollutants.
 - i. The categorical pretreatment standards applicable to each regulated process.
 - ii. The results of sampling and analysis identifying the nature and concentration (and/or mass, where required by the standard or by the city) of regulated pollutants in the discharge from each regulated process. Instantaneous, daily maximum, and long term average concentrations (or mass, where required) shall be reported. The sample shall be representative of daily operations and shall be analyzed in accordance with procedures set out in article 17-07.
 - iii. Sampling must be performed in accordance with procedures set out in article 17-07.

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6. Certification. A statement, reviewed by the user's authorized representative and certified by a qualified professional, indicating whether pretreatment standards are being met on a consistent basis, and, if not, whether additional operation and maintenance (O&M) and/or additional pretreatment, is required to meet the pretreatment standards and requirements.
7. Compliance Schedule. If additional pretreatment and/or O&M will be required to meet the pretreatment standards, the shortest schedule by which the user will provide such additional pretreatment and/or O&M. The completion date in the schedule shall not be later than the compliance date established for the applicable pretreatment standard. A compliance schedule pursuant to this section must meet the requirements set out in section 17-0604.
8. Signature and Certification. All baseline monitoring reports must be signed and certified in accordance with section 17-0506.

17-0602 Compliance Reporting.--

- A. Within ninety (90) days following the date for final compliance of an existing Significant Industrial User (SIU) with applicable pretreatment standards and requirements set forth in this article, in federal categorical standards, or in a wastewater discharge permit, or, in the case of a new source or a domestic user considered by the city to fit the definition of SIU, within 90 days following commencement of the introduction of wastewater into the POTW, the affected user shall submit to the city a report containing the information outlined in subsections (D)-(F) of section 17-0505.
- B. For users subject to equivalent mass or concentration limits established by the city in accordance with procedures established in 40 C.F.R. §403.6(c), this report shall contain a reasonable measure of the user's long term production rate. For all other users subject to categorical pretreatment standards expressed in terms of allowable pollutant discharge per unit of production (or other measure of operation), this report shall include the user's actual production during the appropriate sampling period.

17-0603 Periodic Compliance Report.--

- A. Any user that is required to have an industrial waste discharge permit and performs self-monitoring shall comply with all applicable requirements under 40 C.F.R. §403.12 and submit to the city on or before June 1 and December 1 of each year, unless required on other dates or more frequently by the city, a report indicating the nature of the effluent over the previous reporting period. The frequency of monitoring shall be as prescribed within the industrial waste discharge permit. At a minimum, users shall sample their discharge at least twice per year.
- B. The report shall include a record of the concentrations (and mass if specified in the wastewater discharge permit) of the pollutants listed in the wastewater discharge permit that

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- were measured and a record of all flow measurements (average and maximum) taken at the designated sampling locations and shall also include any additional information required by this ordinance or the wastewater discharge permit. Production data shall be reported if required by the wastewater discharge permit. Both daily maximum and average concentration (or mass, where required) shall be reported. If a user sampled and analyzed more frequently than what was required by the city or by this ordinance, using methodologies in 40 C.F.R. Part 136, it must submit all results of sampling and analysis of the discharge during the reporting period.
- C. Any user subject to equivalent mass or concentration limits established by the city or by unit production limits specified in the applicable categorical standards shall report production data as outlined in section 17-0602(B).
 - D. If the city calculated limits to factor out dilution flows or non-regulated flows, the user will be responsible for providing flows from the regulated process flows, dilution flows and non-regulated flows.
 - E. Flows shall be reported on the basis of actual measurement, provided, however, that the city may accept reports of average and maximum flows estimated by verifiable techniques if the city determines that an actual measurement is not feasible.
 - F. Discharges sampled shall be representative of the user's daily operations and samples shall be taken in accordance with the requirements specified in article 17-07.
 - G. The city may require reporting by users that are not required to have an industrial wastewater discharge permit if information or data is needed to establish a sewer charge, determine the treatability of the effluent, or determine any other factor which is related to the operation and maintenance of the sewer system.
 - H. The city may require self-monitoring by the user or, if requested by the user, may agree to perform the periodic compliance monitoring needed to prepare the periodic compliance report required under this section. If the city agrees to perform such periodic compliance monitoring, it may charge the user for such monitoring, based upon the costs incurred by the city for the sampling and analyses. Any such charges shall be added to the normal sewer charge and shall be payable as part of the sewer bills. The city is under no obligation to perform periodic compliance monitoring for a user.

17-0604 Compliance schedules for meeting applicable pretreatment standards.--

- A. The schedule shall contain increments of progress in the form of dates for the commencement and completion of major events leading to the construction and operation of additional pretreatment required for the user to meet the applicable pretreatment standards (e.g., hiring an engineer, completing preliminary plans, completing final plans, executing contract for major components, commencing construction, completing construction, etc.).
- B. No increment referred to in subsection (A) of this section shall exceed nine (9) months.

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- C. Not later than fourteen (14) days following each date in the schedule and the final date for compliance, the user shall submit a progress report to the city including, at a minimum, whether or not it complied with the increment of progress to be met on such date and, if not, the date on which it expects to comply with this increment of progress, the reason for delay, and the steps being taken by the user to return the construction to the schedule established. In no event shall more than 9 months elapse between such progress reports.

17-0605 Notification of Significant Production Changes.-- Any user operating under a wastewater discharge permit incorporating equivalent mass or concentration limits shall notify the city within two (2) business days after the user has a reasonable basis to know that the production level will significantly change within the next calendar month. Any user not providing a notice of such anticipated change will be required to comply with the existing limits contained in its wastewater discharge permit.

17-0606 Hazardous Waste Notification.-- Any user that is discharging more than 15 kilograms of hazardous wastes as defined in 40 C.F.R. §261 (listed or characteristic wastes) in a calendar month or any facility discharging any amount of acutely hazardous wastes as specified in 40 C.F.R. §§261.30(d) and 261.33(e) is required to provide a one-time notification in writing to the city, to the EPA Region 8 Hazardous Waste Director, and to the state of North Dakota. Any existing user exempt from this notification shall comply with the requirements contained herein within 30 days of becoming aware of a discharge of 15 kilograms of hazardous wastes in a calendar month or any discharge of acutely hazardous wastes to the city sewer system.

Such notification shall include:

- A. The name of the hazardous waste as set forth in 40 C.F.R. Part 261.
- B. The EPA Hazardous waste number; and
- C. The type of discharge (continuous, batch, or other).
- D. If an industrial user discharges more than 100 kilograms of such waste per calendar month to the sewer system, the notification shall also contain the following information to the extent it is known or readily available to the industrial user:
 - 1. An identification of the hazardous constituents contained in the wastes,
 - 2. An estimation of the mass and concentration of such constituents in the waste streams discharged during that calendar month, and;
 - 3. An estimation of the mass of constituents in the waste streams expected to be discharged during the following 12 months.

These notification requirements do not apply to pollutants already reported under the self-monitoring requirements.

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Whenever the EPA publishes final rules identifying additional hazardous wastes or new characteristics of hazardous waste, a user shall notify the city of the discharge of such a substance with 90 days of the effective date of such regulations.

In the case of any notification made under this paragraph, an industrial user shall certify that it has a program in place to reduce the volume and toxicity of hazardous wastes generated to the degree it has determined to be economically practical.

17-0607 Notice of potential problems, including accidental spills, bypasses, and slug loads.-- Any user shall give verbal notice of an unanticipated bypass, accidental spill, and/or slug load that exceeds applicable Pretreatment Standards to the Control Authority within 24 hours from the time the becomes aware of the issue. The notification shall include the concentration and volume and corrective action. Steps being taken to reduce any adverse impact should also be noted during the notification. A written submission shall also be provided within 5 days of the time the user becomes aware of the accidental spill, bypass, or slug load. Any user who discharges a slug load of pollutants shall be liable for any expense, loss, or damage to the POTW, in addition to the amount of any fines imposed on the city under state or federal law.

17-0608 Non-Compliance Reporting.-- If sampling performed by a user indicates a violation, the user shall notify the Control Authority within 24 hours of becoming aware of the violation. Within five (5) days following such discharge, the User shall submit a detailed written report describing the cause(s) of the discharge and the measures to be taken by the User to prevent similar future occurrences. Such notification shall not relieve the User of any expense, loss damage, or other liability which might be incurred as a result of damage to the POTW, natural resources, or any other damage to person or property; nor shall such notification relieve the User of any fines, penalties, or other liability which may be imposed pursuant to this ordinance. The user shall also repeat the sampling and submit the results of the repeat analysis to the Control Authority within 30 days after becoming aware of the violation [Where the Control Authority has performed the sampling and analysis in lieu of the Industrial User, the Control Authority must perform the repeat sampling and analysis unless it notifies the User of the violation and requires the User to perform the repeat analysis]. Resampling is not required if:

- A. The Control Authority performs sampling at the site of the Industrial User at a frequency of at least once per month, or
- B. The Control Authority performs sampling at the User between the time when the initial sampling was conducted and the time when the User or the Control Authority receives the results of this sampling.

17-0609 Notification of changed discharge.-- All users shall promptly notify the Control Authority in advance of any substantial change in the volume or character of pollutants in their discharge, including significant manufacturing process changes, pretreatment modifications, and the listed or characteristic hazardous wastes for which the user has submitted initial notification under 40 C.F.R. §403.12(p).

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17-0610 Reports from un-permitted Users.-- All users not required to obtain a wastewater discharge permit shall provide appropriate reports to the city as the Superintendent may require.

17-0611 Record Keeping.-- Users subject to the reporting requirements of this article shall retain and make available for inspection and copying all records of information obtained pursuant to any monitoring activities required by this ordinance and any additional records of information obtained pursuant to monitoring activities undertaken by the user independent of such requirements. Records shall include the date, exact place, method, and time of sampling and the name of the person(s) taking the samples; the dates analysis were performed; who performed the analyses; the analytical techniques or methods used; and the results of such analyses including documentation associated with Best Management Practices. These records shall remain available for a period of at least three (3) years. This period shall be automatically extended for the duration of any litigation concerning the user or POTW, or where the User has been specifically notified of a longer retention period by the Superintendent.

Section 6. Enactment.

Article 17-07 of Chapter 17 of the Fargo Municipal Code is hereby enacted to read as follows:

ARTICLE 17-07

SAMPLING AND ANALYTICAL REQUIREMENTS

17-0701 Sampling Requirements for Users.--

- A. Grab samples must be used for pH, cyanide, total phenols, oil and grease, sulfide, and volatile organic compounds. For all other pollutant, 24-hour composite samples must be obtained through flow-proportional composite sampling techniques, unless time-proportional composite sampling or grab sampling is authorized by the Control Authority, the samples must be representative of the discharge and the decision to allow the alternative sampling must be documented in the Industrial User file for the Industrial User manifested by the city. Using protocols (including appropriate preservation) specified in 40 C.F.R. Part 136 and appropriate EPA guidance, multiple grab samples collected during the 24-hour period may be composited in the laboratory. Composite samples for other parameters unaffected by compositing procedures as documented in approved EPA methodologies may be authorized by the Control Authority, as appropriate.
- B. For sampling required in support of baseline monitoring and 90-day compliance reports, a minimum of four (4) grab samples must be used for pH, cyanide, total phenols, oil and grease, sulfide and volatile organic compounds for facilities for which historical sampling data does not exist; for facilities for which historical sampling data are available, the Control Authority may authorize a lower minimum. For the reports required by 40 C.F.R. §403.12 (e) and (h), the

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Control Authority shall require the number of grab samples necessary to assess and assure compliance by Industrial Users with applicable Pretreatment Standards and Requirements.

- C. Samples shall be taken immediately downstream from facilities if such exist, immediately downstream from the regulated or manufacturing process if no pretreatment exists, or at a location determined by the city and specified in the user's wastewater discharge permit. For categorical users, if other wastewaters are mixed with the regulated wastewater prior to pretreatment, the user shall measure the flows and concentrations necessary to allow use of the combined waste stream formula of 40 C.F.R. §403.6(e) in order to evaluate compliance with the applicable Categorical Pretreatment Standards. For other SIU for which the city has adjusted its local limits to factor out dilution flows, the user shall measure the flows and concentrations necessary to evaluate compliance with the adjusted pretreatment standard(s).
- D. All sample results shall indicate the time, date and place of sampling, and the methods of analysis and shall certify that the waste stream sampled is representative of normal work cycles and expected pollutant discharges from the user. If a user sampled and analyzed the waste stream more frequently than what was required in its wastewater discharge permit, using methodologies in 40 C.F.R. Part 136, it must submit all results of sampling and analysis of the discharge as part of its self-monitoring report.

17-0702 Analytical Requirements.-- All pollutant analyses, including sampling techniques, shall be performed in accordance with the techniques prescribed in 40 C.F.R. Part 136, unless otherwise specified in an applicable categorical pretreatment standard. If 40 C.F.R. Part 136 does not contain sampling or analytical techniques for the pollutant in question, sampling and analyses must be performed in accordance with procedures approved by the EPA.

17-0703 City Monitoring of User's Wastewater.-- The city will follow the same procedures as outlined in sections 17-0701 and 17-0702.

Section 7. Enactment.

Article 17-08 of Chapter 17 of the Fargo Municipal Code is hereby enacted to read as follows:

ARTICLE 17-08

COMPLIANCE MONITORING

17-0801 Inspection and Sampling.-- The city shall have the right to enter the facilities of any user to ascertain whether the purpose of this ordinance and any wastewater discharge permit or order issued hereunder is being met and whether the user is complying with all requirements thereof. Users shall allow the Superintendent ready access to all areas of the premises for the purposes of inspection, sampling, records examination and copying, and the performance of any additional duties.

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- A. Where a user has security measures in force which require proper identification and clearance before entry into its premises, the User shall make necessary arrangements with its security guards so that, upon presentation of suitable identification, the Superintendent will be permitted enter without delay for the purposes of performing specific responsibilities.
- B. The Superintendent shall have the right to set up on the User's property, or require installation of, such devices as are necessary to conduct sampling and/or metering of the user's operations.
- C. Any temporary or permanent obstruction to safe and easy access to the facility to be inspected and/or sampled shall be promptly removed by the user at the written or verbal request of the Superintendent and shall not be replaced. The costs of clearing such access shall be borne by the user.
- D. Unreasonable delays in allowing the Superintendent access to the user's premises shall be a violation of this ordinance.

17-0802 Monitoring Facilities.-- Each user shall provide and operate at its own expense a monitoring facility to allow inspection, sampling, and flow measurements of each sewer discharge to the city. Each monitoring facility shall be situated on the user's premises, except where such a location would be impractical or cause undue hardship on the user, the city may concur with the facility being constructed in the public street or sidewalk area, provided that the facility is located so that it will not be obstructed by landscaping or parked vehicles. The Superintendent, whenever applicable, may require the construction and maintenance of sampling facilities at other locations (for example, at the end of a manufacturing line or a wastewater treatment system).

There shall be ample room in or near such sampling facility to allow accurate sampling and preparation of samples for analysis. The facility, including the sampling and measuring equipment, shall be maintained at all times in a safe and proper operating condition at the expense of the user.

The Superintendent may require the user to install monitoring equipment as necessary at the User's expense. All monitoring facilities shall be constructed and maintained in accordance with all applicable local construction standards and specifications. All devices used to measure wastewater flow and quality shall be calibrated to ensure their accuracy.

17-0803 Search Warrants.-- If the Superintendent has been refused access to a building, structure or property, or any part thereof and is able to demonstrate probable cause to believe that there may be a violation of this ordinance, or that there is a need to inspect as part of a routine inspection program of the city designed to verify compliance with this ordinance or any wastewater discharge permit or order issued hereunder, or to protect the overall public health, safety and welfare of the community, the city may seek an administrative search warrant pursuant to N.D.C.C. Chapter 29-29.1, or may seek any other search warrant as authorized by law.

17-0804 Vandalism.-- No person shall willfully or negligently break, damage, destroy, uncover, deface, tamper with, or prevent access to any structure, appurtenance or equipment, or other part of the POTW.

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Any person found in violation of this requirement shall be subject to the sanctions set out in this ordinance.

Section 8. Enactment.

Article 17-09 of Chapter 17 of the Fargo Municipal Code is hereby enacted to read as follows:

ARTICLE 17-09

CONFIDENTIAL INFORMATION

17-0901 Confidential Information.-- Information and data on a user obtained from reports, surveys, wastewater discharge permit applications, wastewater discharge permits, and monitoring programs, and from city inspection and sampling activities is held and maintained subject to North Dakota Open Record Law, including N.D.C.C. §44-04-17.1 *et seq.*, and specifically N.D.C.C. §44-04-18.4. City Wastewater constituents, characteristics and other “effluent data” as defined by 40 C.F.R. §2.302 will not be recognized as confidential information and will be available to the public without restriction.

Section 9. Enactment.

Article 17-10 of Chapter 17 of the Fargo Municipal Code is hereby enacted to read as follows:

ARTICLE 17-10

PUBLICATION OF USERS IN SIGNIFICANT NON-COMPLIANCE

17-1001 Publication of Significant Non-Compliant Users.-- The city shall publish annually, in one or more newspaper(s) of general circulation providing meaningful public notice within the jurisdiction(s) served by the POTW, a list of the users which, during the previous twelve (12) months, were in significant non-compliance with applicable pretreatment standards and requirements. For the purposes of this provision, an industrial user is in significant noncompliance if its violation meets one or more of the following criteria:

- A. Chronic violations of wastewater discharge limits, defined here as those in which sixty-six percent (66%) or more of wastewater measurements taken for each pollutant parameter during a six (6) month period exceed (by any magnitude) a numeric Pretreatment Standard or Requirement, including instantaneous limits, as defined by 40 C.F.R. §403.3(l);
- B. Technical Review Criteria (TRC) violations, defined here as those in which thirty-three percent (33%) or more of wastewater measurements taken for each pollutant parameter during a six (6) month period equals or exceeds the product of the numeric Pretreatment Standard or

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Requirement, including instantaneous limits, as defined by 40 C.F.R. §403.3(l) multiplied by the TRC [TRC=1.4 for BOD, TSS, fats, oils and grease, and TRC = 1.2 for all other pollutants except pH];

- C. Any other discharge violation of a Pretreatment Standard or Requirement as defined by 40 C.F.R. §403.3(l) (daily maximum, longer-term average, instantaneous limit, or narrative Standard) that the POTW determines has caused, alone or in combination with other discharges, Interference or Pass Through (including endangering the health of POTW personnel or the general public);
- D. Any discharge of pollutants that has caused imminent endangerment to the public or to the environment, or has resulted in the city's exercise of its emergency authority to halt or prevent such a discharge;
- E. Failure to meet, within ninety (90) days of the scheduled date, a compliance schedule milestone contained in a wastewater discharge permit or enforcement order for starting construction, completing construction, or attaining final compliance;
- F. Failure to provide within thirty (30) days after the due date, any required reports, including baseline monitoring reports, reports on compliance with categorical pretreatment standard deadlines, periodic self-monitoring reports, and reports on compliance with compliance schedules;
- G. Failure to accurately report non-compliance; or
- H. Any other violation or group of violations, which may include a violation of Best Management Practices, which the POTW determines will adversely affect the operation or implementation of the local Pretreatment Program.

Section 10. Enactment.

Article 17-11 of Chapter 17 of the Fargo Municipal Code is hereby enacted to read as follows:

ARTICLE 17-11

ADMINISTRATIVE ENFORCEMENT REMEDIES

17-1101 Definitions.-- The following definitions apply to this chapter:

- A. "Notice of violation (NOV)" shall mean a notice of violation is a written notice of the violation of an ordinance in this chapter which identifies the nature of the violation, the section or ordinance allegedly violated and the time of occurrence of the violation, if known.
- B. "Administrative compliance order (ACO)" shall mean an administrative compliance order is an order issued by the director which identifies the nature of the violation, the section or ordinance allegedly violated, the time of occurrence of the violation, if known, the corrective steps

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necessary and the nature of subsequent penalties and enforcement actions should the situation not be corrected and ordering that the alleged violator come into compliance with the section or ordinance within which compliance must occur.

- C. "Order to show cause" shall mean an order issued by the director issued when there is reason to believe that the violation identified in the administrative compliance order has not ceased or been corrected as required, and directing the alleged violator to appear before the director to show cause why service should not be terminated.
- D. "Restitution" shall mean restitution is the amount determined by the director to be payable to the city by a violator of this chapter necessary to reimburse the city for damage caused to the sewage system as a result of such violation.

17-1102 Responsibility for enforcement.-- The director is authorized to enforce this chapter.

17-1103 Types of violations.-- All of the following represent violations of this article and of law and will be subject to the remedies and penalties provided in this article, the city code and state law.

- A. Discharge of sewage without required permit or approval. It is a violation of this section to discharge sewage into the sewerage system of the city without obtaining all the permits, approvals, certificates and other forms of authorization required by this article.
- B. Discharge of sewage inconsistent with permit. It is a violation of this section to discharge sewage into the sewerage system of the city in any way inconsistent with the terms and conditions of any permit, approval, certificate or other form of authorization required in order to engage in such activity.
- C. Discharge of sewage inconsistent with conditions. It is a violation of this section to violate, by act or omission, any term, condition, or qualification imposed by a decision-making body upon a required permit, certificate, or other form of authorization.
- D. Sewerage discharge equipment and structures inconsistent with this section. It is a violation of this section to erect, construct, reconstruct, remodel, alter, maintain, move, or use any equipment, building or structure or to use any equipment, building or structure in violation or contravention of this section.
- E. Continuing violations. It is a violation of this section to continue any of the violations specified in this section. Each day that a violation continues shall be considered a separate offense.

17-1104 Remedies and enforcement powers.-- The city shall have the following remedies and enforcement powers:

- A. Withhold permits. The city may deny or withhold all permits, certificates or other forms of authorization as to any applicant for a permit, or to refuse the discharge into the sewerage system

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as to any land or structure or improvements thereon upon which there is an uncorrected violation of this chapter or of a condition or qualification of a permit, certificate, approval or other authorization previously granted by a decision-making body. Instead of withholding or denying an authorization, the city may grant such authorization subject to the condition that the violation be corrected. This enforcement provision applies regardless of whether the current owner or applicant is responsible for the violation in question. The city may deny or withhold all permits, certificates or other forms of authorization on any land or structure or improvements owned by a person who owns, developed or otherwise caused an uncorrected violation of a provision of this article or of a condition or qualification of a permit, certificate, approval or other authorization previously granted by a decision-making body. This provision applies regardless of whether the property for which the permit or other approval is sought is the property in violation.

- B. Revoke permits. A permit may be revoked when the director determines that:
1. There is departure from the plans, specifications, or conditions as required under terms of the permit;
 2. The plans, specifications, or conditions were obtained by false representation or was issued by mistake; or
 3. Any of the provisions of this chapter are being violated.
- C. Revoke plan or other approval. When a violation of this article involves a failure to comply with approved plans or conditions to which the approval of such plans was made subject, the superintendent, may, upon notice to the applicant and other known parties in interest (including an holders of building or other permits affected) and after a public hearing, revoke the plan or other approval or condition its continuance on strict compliance, the provision of security or such other conditions as the superintendent may reasonably impose.
- D. Sewer service shut off. In a situation deemed by the director to be an emergency, the director may order the shut off of sewer service subject to the user's right to a hearing before the director as set forth in this article. In non-emergency situations, subject to the user's right to a hearing prior to such shut-off, as set forth in this article, the superintendent may order the sewer service of a violator to be shut off.
- E. Injunctive relief. The city may seek an injunction or other equitable relief in court to stop any violation of this chapter or of a permit, certificate or other form of authorization granted hereunder.
- F. Abatement. The city may seek a court order in the nature of mandamus, abatement, injunction or other action or proceeding to abate or remove a violation or to otherwise restore the premises in question to the condition in which they existed prior to the violation

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- G. Restitution. The city may seek an order requiring restitution as a condition to be met by a person before the person's permit is restored, before the person is allowed to lawfully discharge into the sewer system, or before other action may be taken by the person as determined by an appropriate order.
- H. Penalties. The penalty for a violation of this ordinance shall be governed by the penalty provisions of Fargo Municipal Code 1-0305, and the city may also seek such criminal or civil penalties provided by North Dakota law or city ordinance.
- I. Other remedies. The city shall have such other remedies as are and as may be from time to time provided by North Dakota law and municipal codes for the violation of this chapter or related provisions.
- J. Remedies cumulative. The remedies and enforcement powers established in this article are cumulative.

17-1105 Enforcement procedures.-- The following enforcement procedures shall apply to violations of this chapter:

- A. Non-emergency matters. In the case of violations of this chapter that do not constitute an emergency, the superintendent may:
 - 1. Issue a notice of violation; or
 - 2. Issue an administrative compliance order;which shall be issued to the property owner and to any other person who is alleged to be in violation of this article or of the terms of any permit or condition granted and to any applicant for any relevant permit.
- B. Emergency matters. In the case of violations of this chapter that do constitute an emergency situation, the city shall use all remedies, penalties and enforcement powers available under this chapter without prior notice, including shutting off sewer service, but the director must send notice simultaneously with beginning enforcement action to the property owner, to any other person who is party to the agreement and to applicants for any relevant permit and must advise persons affected by the sewer service shut off that a hearing will be held within seven days from the date sewer service was shut off. At the hearing, the director will determine whether there were appropriate grounds for the sewer service to be shut off, and whether the shut off of sewer service should continue.
- C. Administrative compliance orders procedure. Persons receiving an administrative compliance order or an administrative compliance order with fine shall have ten (10) days, or such longer period as the director allows, to correct the violation. If the violation is not

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corrected within the required time-frame, the director may use all penalties, remedies and enforcement powers available under this article.

- D. Order to Show Cause Hearing. In the event the director has issued an administrative compliance order, if the violation is not corrected by timely compliance, the director may order any person who causes or allows an unauthorized discharge to show cause before the director why sewer service should not be shut off. A notice shall be served on the offending party, specifying the time and place of a hearing to be held by the director regarding the violation, and directing the offending party to show cause before said board why an order should not be made directing the shut off of service. The notice of the hearing shall be served personally or by registered or by certified mail, return receipt requested, at least 10 days before the hearing. Such notice shall be deemed served if a copy thereof is (a) delivered to the offending party personally or to the offending party's registered agent; (b) sent by certified mail addressed to the offending party or to the offending party's registered agent at the last known address with a return-receipt requested; or (c) delivered in any other manner as permitted under local law. If the certified mailing is returned showing that the item was not delivered, a copy thereof shall be posted in a conspicuous place in or about the property affected by such notice. Service by mail shall be deemed made or accomplished when it is deposited for delivery with the U.S. Postal Service.

17-1106 Emergency Suspensions.-- The Superintendent may immediately suspend a user's discharge (after informal notice to the user) whenever such suspension is necessary to stop an actual or threatened discharge which reasonably appears to present or cause an imminent or substantial endangerment to the health or welfare of persons. The Superintendent may also immediately suspend a user's discharge (after notice and opportunity to respond) that threatens to interfere with the operation of the POTW or which presents or may present an endangerment to the environment.

- A. Any user notified of a suspension of its discharge shall immediately stop or eliminate its contribution. In the event of a user's failure to immediately comply voluntarily with the suspension order, the Superintendent shall take such steps as deemed necessary, including immediate severance of the sewer connection, to prevent or minimize damage to the POTW, its receiving stream, or endangerment to any individuals. The superintendent shall allow the user to recommence its discharge when the user has demonstrated to the satisfaction of the city that the period of endangerment has passed, unless the termination proceedings in section 17-1107 are initiated against the user.
- B. A user that is responsible, in whole or in part, for any discharge presenting imminent endangerment shall submit a detailed written statement, describing the causes of the harmful contribution and the measures taken to prevent any future occurrence, to the Superintendent prior to the date of any show cause or termination hearing under this chapter.

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Nothing in this section shall be interpreted as requiring a hearing prior to any emergency suspension under this chapter.

17-1107 Termination of Discharge (Non-Emergency).-- In addition to the provisions in section 17-0513, any user that violates the following conditions is subject to discharge termination:

- A. Violation of wastewater discharge permit conditions;
- B. Failure to accurately report the wastewater constituents and characteristics of its discharge;
- C. Failure to report significant changes in operation or wastewater volume, constituents and characteristics prior to discharge;
- D. Refusal of reasonable access to the user's premises for the purpose of inspection, monitoring or sampling; or
- E. Violation of the pretreatment standards in article 17-04.

Such user will be notified of the proposed termination of its discharge and be offered an opportunity to show cause under section 17-1105 why the proposed action should not be taken. Exercise of this option by the city shall not be a bar to, or a prerequisite for, taking any other action against the user.

17-1108 Other Powers.-- In addition to the enforcement powers specified in this chapter, the city may exercise any and all enforcement powers granted to them by North Dakota law.

17-1109 Continuation.-- Nothing in this chapter shall prohibit the continuation of previous enforcement actions, undertaken by the city pursuant to previous and valid ordinances and laws.

Section 11. Enactment.

Article 17-12 of Chapter 17 of the Fargo Municipal Code is hereby enacted to read as follows:

ARTICLE 17-12

JUDICIAL ENFORCEMENT REMEDIES

17-1201 Injunctive Relief.-- When the Superintendent finds that a user has violated or continues to violate any provision of this ordinance, a wastewater discharge permit, or order issued hereunder, or any other pretreatment standard or requirement, the Superintendent may petition the state district court or federal district court, as applicable, for the issuance of a temporary or permanent injunction, as appropriate, which restrains or compels the specific performance of the wastewater discharge permit, order, or other requirement imposed by this ordinance on activities of the user. The city may also seek such other action as is appropriate for legal and/or equitable relief, including a requirement for the user to

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conduct environmental remediation. A petition for injunctive relief shall not be a bar against, or a prerequisite for, taking any other action against a user.

17-1202 Criminal Prosecution.--

- A. A user which has willfully or negligently violated any provision of this ordinance, a wastewater discharge permit, or order issued hereunder, or any other pretreatment standard or requirement shall, upon conviction, be guilty of a Class B misdemeanor, punishable by a fine of not more than \$1500, imprisonment for not more than thirty (30) days, or both said imprisonment and fine.
- B. A user which has willfully or negligently introduced any substance into the POTW which causes personal injury or property damage shall, upon conviction, be guilty of a Class B misdemeanor, punishable by a fine of not more than \$1500, imprisonment for not more than thirty (30) days, or both said imprisonment and fine. This penalty shall be in addition to any other cause of action for personal injury or property damage available under State law.
- C. A user which knowingly made any false statements, representations, or certifications in any application, record, report, plan, or other documentation filed, or required to be maintained, pursuant to this ordinance, wastewater discharge permit, or order issued hereunder, or who falsified, tampered with, or knowingly rendered inaccurate any monitoring device or method required under this ordinance shall, upon conviction, be guilty of a Class B misdemeanor, punishable by a fine of not more than \$1500, imprisonment for not more than thirty (30) days, or both said imprisonment and fine.

17-1203 Remedies Non-exclusive.-- The provisions in articles 17-10 through 17-13 of this ordinance are not exclusive remedies. The city reserves the right to take any, all, or any combination of these actions against a non-compliant user. Enforcement in response to pretreatment violations will generally be in accordance with the city's enforcement response plan. However, the city reserves the right to take other action against any user when the circumstances warrant. Further, the city is empowered to take more than one enforcement action against any non-compliant user. These actions may be taken concurrently.

Section 12. Enactment.

Article 17-13 of Chapter 17 of the Fargo Municipal Code is hereby enacted to read as follows:

ARTICLE 17-13

SUPPLEMENTAL ENFORCEMENT ACTION

17-1301 Performance Bonds.-- The Superintendent may decline to issue or reissue a wastewater discharge permit to any user which has failed to comply with any provision of this ordinance, a previous wastewater discharge permit or order issued hereunder, or any other pretreatment standard or requirement

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unless such user first files a satisfactory bond, payable to the city, in a sum not to exceed a value determined by the Superintendent to be necessary to achieve consistent compliance.

17-1302 Liability Insurance.-- The Superintendent may decline to issue or reissue a wastewater discharge permit to any user which has failed to comply with any provision of this ordinance, a previous wastewater discharge permit or order issued hereunder, or any other pretreatment standard or requirement, unless the user first submits proof that it has obtained financial assurances sufficient to restore or repair damage to the POTW caused by its discharge.

17-1303 Water Supply Severance.-- Whenever a user has violated or continues to violate any provision of this ordinance, a wastewater discharge permit or order issued hereunder, or any other pretreatment standard or requirement, water service to the user may be severed. Service will only recommence, at the user's expense, after it has satisfactorily demonstrated its ability to comply.

17-1304 Public Nuisances.-- A violation of any provision of this article, a wastewater discharge permit, or order issued hereunder, or any other pretreatment standard or requirement, is hereby declared a public nuisance and city may be abated, enjoined or repressed in the same manner as any other public nuisance, including restraining order or injunction issued by a court of competent jurisdiction.

17-1305 Contractor Listing.-- Users which have not achieved compliance with applicable pretreatment standards and requirements are not eligible to receive a contractual award for the sale of goods or services to the city. Existing contracts for the sale of goods or services to the city held by a user found to be in significant non-compliance with the pretreatment standards or requirements may be terminated at the discretion of the city.

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Section 13. Enactment.

Article 17-14 of Chapter 17 of the Fargo Municipal Code is hereby enacted to read as follows:

ARTICLE 17-14

AFFIRMATIVE DEFENSES TO DISCHARGE VIOLATIONS

17-1401 Upset.--

- A. For the purposes of this chapter, “upset” means an exceptional incident in which there is unintentional and temporary non-compliance with applicable pretreatment standards because of factors beyond the reasonable control of the user. An upset does not include non-compliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.
- B. An upset shall constitute an affirmative defense to an action brought for non-compliance with applicable pretreatment standards if the requirements of subsection C hereof are met.
- C. A user who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:
 - 1. An upset occurred and the user can identify the cause(s) of the upset;
 - 2. The facility was at the time being operated in a prudent and workman-like manner and in compliance with applicable operation and maintenance procedures; and
 - 3. The user has submitted the following information to the POTW and treatment plant operator within twenty four (24) hours of becoming aware of the upset [if this information is provided orally, a written submission must be provided within five(5) days]:
 - i. A description of the indirect discharge and cause of non-compliance;
 - ii. The period of non-compliance, including exact dates and times or, if not corrected, the anticipated time the non-compliance is expected to continue; and
 - iii. Steps being taken and/or planned to reduce, eliminate, and prevent recurrence of the non-compliance.
- D. In any enforcement proceeding, the user seeking to establish the occurrence of an upset shall have the burden of proof.
- E. Users will have the opportunity for a judicial determination on any claim of upset only in an enforcement action brought for non-compliance with applicable pretreatment standards.

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- F. Users shall control production of all discharges to the extent necessary to maintain compliance with applicable pretreatment standards upon reduction, loss, or failure of their treatment facility until the facility is restored or an alternative method of treatment is provided. This requirement applies in the situation where, among other things, the primary source of power of the treatment facility is reduced, lost, or fails.

17-1402 Prohibited Discharge Standards.-- A user shall have an affirmative defense to an enforcement action brought against it for non-compliance with the prohibitions in section 17-0403(A) and (B) if it can prove that it did not know, or have reason to know, that its discharge, alone or in conjunction with discharges from other sources, would cause pass through or interference and that either: (a) a local limit exists for each pollutant discharged and the user was in compliance with each limit directly prior to, and during, the pass through or interference; or (b) no local limit exists, but the discharge did not change substantially in nature or constituents from the user's prior discharge when the city was regularly in compliance with its NPDES permit, and in the case of interference, was in compliance with applicable sludge use or disposal requirements.

17-1403 Bypass.--

- A. For the purposes of this chapter,

1. "Bypass" means the intentional diversion of waste streams from any portion of a user's treatment facility.
2. "Severe property damage" means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

- B. A user may allow any bypass to occur which does not cause applicable pretreatment standards or requirements to be violated, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provision of subsections (C) and (D) hereof.

- C. Notice to Bypass

1. If a user knows in advance of the need for a bypass, it shall submit prior notice to the POTW at least ten (10) days before the date of the bypass, if possible.
2. A user shall submit oral notice to the city of an unanticipated bypass that exceeds applicable pretreatment standards within twenty-four (24) hours from the time it becomes aware of the bypass. A written submission shall also be provided within five (5) days of the time the user becomes aware of the bypass. The written submission shall contain a description of the bypass and its cause; the duration of the bypass, including exact dates

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and times, and, if the bypass has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent recurrence of the bypass. The POTW may waive the written report on a case by case basis if the oral report has been received within twenty-four (24) hours.

D. Bypass Conditions

1. Bypass is prohibited, and the POTW may take an enforcement action against a user for a bypass, unless the user demonstrates:
 - i. Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;
 - ii. There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and
 - iii. The user submitted notices as required under subsection (C) hereof.
2. The POTW may approve an anticipated bypass, after considering its adverse effects, if the POTW determines that it will meet the three conditions listed in subparagraph (a) of this subsection.

Section 14. Enactment.

Article 17-15 of Chapter 17 of the Fargo Municipal Code is hereby enacted to read as follows:

ARTICLE 17-15

WASTEWATER TREATMENT RATES

17-1501 Sewerage rates and rules.-- The city reserves the right to change the rates for the use and availability of sewerage service from time to time, by resolution, and at all times to make such sewerage service restrictions, rules, and regulations as, in the judgment of the board of city commissioners may be necessary; provided, that the schedules of such rates and charges shall be such as will provide the amounts required, over and above the current expenses of operation and maintenance for depreciation, replacement, and improvement of said utility which will keep the same in a state of efficiency corresponding to the progress of such sewerage utilities generally, including payment of principal and interest and creation and maintenance of reserves securing such payments on any bond issued to finance

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or refinance improvements thereto, in accordance with the resolutions and ordinances authorizing such bonds. Sewerage rates, surcharges, discounts, penalties, service, or advance charges shall be those established by the board of city commissioners by resolution:

- A. Payment of the user's wastewater service charge and penalties—The city shall submit statements on a quarterly or more frequent basis to the user. The city shall add a penalty of 10% if the payment is not received by the city within 15 days. Should any user fail to pay the user wastewater service charge and penalty within three months of the due date, the city may stop the wastewater service to the property.
- B. Wastes prohibited from being discharged to the wastewater treatment system—The discharge of wastes containing materials in such quantities as to be detrimental to the wastewater treatment process is hereby prohibited. The discharge of wastes which cause or are likely to cause maintenance problems such as to hinder flow, block pipes and/or pumps is hereby prohibited.

17-1502 Industrial waste surcharge.--

- A. There shall be collected from any permitted user within the city an additional charge over and above the base sewage rates provided for commercial users based upon the extent to which the sewage or waste so discharged has a biochemical oxygen demand (BOD) concentration greater than two hundred seventy-five (275) mg/l, total suspended solids (TSS) greater than two hundred seventy-five (275) mg/l or other pollutants in such concentration as to require special attention to treatment as determined by resolution of the board of city commissioners.
- B. Any sums so charged in addition to the base sewage charges shall be termed "surcharge" and shall be ascertained as hereinafter described.
 - 1. Sampling and testing of the permittees' wastewater shall be conducted at periodic intervals as specified in the industrial waste permit or agreed upon by the city and permittee for the purpose of computation of the monthly surcharge and penalty fee, if any.
 - 2. The surcharge to the permitted user shall be based upon the following:
 - i. $S = (RB(BOD-275) + RS(TSS-275) + RP(P)) * 8.34 * VW$
 - ii. For the purposes of this ordinance the following terms apply:
 - (a.) RB = surcharge rate in \$/lb for BOD
 - (b.) BOD = Concentration of BOD in user's wastewater, mg/l
 - (c.) RS = surcharge rate in \$/lb for TSS

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(d.) TSS = Concentration of TSS in user's discharge, mg/l

(e.) RP = surcharge rate in \$/lb for other specified pollutant

(f.) P = Concentration of other pollutant(s) in user's discharge, mg/l

(g.) VW= Volume of wastewater discharged for the billing period, million gallons

iii. If the surcharge amount for any pollutant in the above formula becomes less than zero (0) it shall not be used to offset or reduce the surcharge amount to be collected for other pollutants listed in the surcharge formula.

3. Wastewater surcharges shall be in addition to and shall be collected with the wastewater base rate charges and all regulations which apply to the collection of these wastewater base rate charges shall also apply to wastewater surcharges.

4. The rates to be applied in the surcharge formula for treatment of pollutants in addition to the wastewater rentals are established as follows:

i. For BOD: The BOD rate (RB) = is amount set by resolution of the board of city commissioners.

ii. For TSS: The TSS rate (RS) = is amount set by resolution of the board of city commissioners.

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

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

17-1505 Maximum Loadings.-- The Board of city commissioners, by resolution, may establish the maximum load of BOD and TSS, or other pollutant, for each permittee.

17-1506 Transitional provision.-- The requirement of the maximum loadings set by the board of city commissioners, as provided by section 17-1505, shall take effect no earlier than July 1, 2007.

17-1507 Industrial waste permit fee.-- An annual fee of one hundred dollars (\$100.00) shall be charged for each industrial waste permit. The initial fee shall be submitted at the time of application for such permit and subsequent renewal fees shall be submitted with a written application for renewal of the permit prior to December 31 of each year.

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17-1508 Notification of rates and charges.-- The charges for wastewater service (user charges) shall be stated separately from the water, refuse collection or other amounts shown on the periodic water bills issued to each user. Each user will be notified annually, or at more frequent intervals, as to the current rates for wastewater service, surcharges for high strength wastes, and any other charges made for collection and treatment of wastewater in the city.

17-1509 When due.-- Wastewater charges shall be collected with the water charges of the city by the city water department, and shall become due and delinquent upon the same dates as the water bills upon which the same are charged, and for failure to pay the said wastewater charges the authorized city representative shall have the same authority to shut off water and said authorized city representative shall refuse to turn on or reconnect the same as is now provided in the case of default in the payment of water bills. Whenever the authorized city representative shall have shut off water service as provided herein for failure of the owner or occupant to pay the wastewater charges, such service shall not be reinstated until all past due bills for wastewater service are paid in full.

17-1510 Exemptions.--

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

17-1511 Out of city sewer connections.--

- A. No wastewater services shall be connected to the systems of the city to serve property lying outside the corporate limits of the city.
- B. Exceptions:
 - 1. Political subdivision. Wastewater service may be extended to any village, city, township, county, state, or federal governmental agency with the approval of the board of city commissioners.
 - 2. Existing connections. Any sewer connection serving property outside the corporate limits of the city, on the effective date of this article, shall be continued.
 - 3. Institutions of learning and public charity. Wastewater service may be extended to schools, academics, colleges, institutions of learning, institutions of public charity,

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hospitals, churches and religious organizations with the approval of the board of city commissioners.

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

Section 15. Enactment.

Article 17-16 of Chapter 17 of the Fargo Municipal Code is hereby enacted to read as follows:

ARTICLE 17-16

MISCELLANEOUS PROVISIONS

17-1601 Pretreatment Charges and Fees.--The city may adopt reasonable fees for reimbursement of costs of setting up and operating the city's Pretreatment Program which may include:

- A. Fees for wastewater discharge permit applications including the cost of processing such application;
- B. Fees for monitoring, inspection, and surveillance procedures including the cost of collection and analyzing a user's discharge, and reviewing monitoring reports submitted by users;

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- C. Fees for reviewing and responding to accidental discharge procedures and construction'
- D. Fees for filing appeals; and
- E. Other fees as the city may deem necessary to carry out the requirements contained herein. These fees relate solely to the matters covered by this ordinance and are separate from all other fees, fines, and penalties chargeable by the city.

17-1602 Severability.-- If any provision of this ordinance is invalidated by any court of competent jurisdiction, the remaining provisions shall not be affected and shall continue in full force and effect.

17-1603 Conflicts.-- All other ordinances and parts of other ordinances inconsistent or conflicting with any part of this ordinance are hereby repealed to the extent of the inconsistency or conflict.

17-1604 Days.-- A day under this chapter should be a calendar day unless context suggests otherwise.

17-1605 Savings Clause. – To the extent that any portion of Chapter 17 of the Fargo Municipal Code has been repealed and re-enacted with a different or revised section or article number, particularly with respect to a repeal and re-enactment occurring with the year 2019 passage of Ordinance No.

_____[codifier to insert ordinance number upon enactment hereof] of the city of Fargo, and to the extent said re-enacted section or portion thereof addresses the same subject matter as existed under the prior version of said law; and to the extent such prior city ordinance was referenced in an agreement with the state, an agency thereof, or another political subdivision or other party, public or private, the re-enacted version of the ordinance or section shall be deemed to be an amendment of the prior version, regardless of the change in numbering or title of the re-enacted law.

Section 16. Penalty Clause.

A person who willfully violates this ordinance is guilty of a Class B misdemeanor. Every person, firm or corporation violating an ordinance which is punishable as a Class B misdemeanor shall be punished by a fine not to exceed \$1,500, or by imprisonment not to exceed 30 days, or by both such fine and imprisonment, in the discretion of the court; the court to have power to suspend said sentence and to revoke the suspension thereof. In addition to such fine and/or imprisonment, the court, in its discretion, may assess a fee in an amount not to exceed \$25.00 as provided in N.D.C.C. §27-01-10.

Section 17. Effective date. This ordinance shall be in full force and effect from and after its passage, approval and publication.

/s/
Timothy J. Mahoney, Mayor

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Attest:

/s/
Steven Sprague, City Auditor

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|-----------------|---------|
| First Reading: | 4-8-19 |
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