



**AGENDA**  
**Board of City Commissioners**  
**June 14, 2022 | 6:00 pm CT**  
**City Hall & GoToMeeting | Williston, North Dakota**

1. Roll Call of Commissioners and Pledge of Allegiance
2. Consent Agenda
  - A. Reading and Approval of Minutes
    - 1) Regular Meeting – May 24, 2022
  - B. Auditor and Finance
    - 1) Accounts, Claims and Bills – May 20-June 9, 2022
    - 2) Business Licenses
  - C. Development Services
    - 1) Contractor Licenses
  - D. Engineering
    - 1) Missouri Valley Communication d/b/a Nemont Telephone Cooperative Easement Request
    - 2) Highway 2 Buffer Landscape & Irrigation Improvements – Change Order 1
  - E. Authorization to Bid
3. Public Hearings
4. Bid Openings
  - A. 2022 Street Striping (Engineering)
  - B. 33<sup>rd</sup> Street West and 9<sup>th</sup> Avenue West Roadway Improvements (Engineering)
  - C. 2022 Street Light Boring (Street Lights)
5. Ordinances
  - A. Ordinance 1135 – Sale of Tobacco (Second Reading)
6. Petitions, Communications and Remonstrances
7. Report of Commissioners
  - A. President of the Board
  - B. Vice-President; Finance Commissioner
  - C. Street and Improvement, Sanitation, Cemetery and Public Works Commissioner
  - D. Fire, Police and Ambulance Commissioner
  - E. Water Works, Sewer, Airport, Building and Planning Commissioner
8. Report of Departments
  - A. Administration
  - B. Finance
  - C. Attorney
  - D. Public Works
  - E. Engineering
  - F. Fire Department
  - G. Police Department

- H. Development Services
  - 1) Planning Commission Selection Process
- I. Economic Development
  - 1) Flex PACE Application
    - A. Agee Enterprises, LLC
- J. Airport
- K. Convention and Visitor's Bureau
- 9. Appointments and Consultations with Officers
- 10. Unfinished Business
  - A. Daycare Funding Updates
- 11. New Business
- 12. Executive Session
- 13. Adjourn

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# Memo

**To:** Board of City Commissioners

**From:** Hercules Cummings, Finance Director

**Date:** June 14, 2022

**Re:** Consent Agenda

**2A1 Regular Meeting Minutes Dated:** May 24, 2022

**2B1 Accounts, Claims and Bills**

Accounts, claims and bills processed: May 20, 2022 – June 9, 2022

**2B2 Business Licenses**

- a. Mon-Dak Heating & Plumbing – New Waste Hauler
- b. Goebel Construction Inc – New Waste Hauler
- c. ABC Seamless – New Waste Hauler
- d. Street Eats LLC – New Mobile Food Vendor
- e. American Welding & Gas, Inc. – New Bulk Storage

**Recommendation: Approval of all consent agenda items**

**Attachments:**

a2A1

a2B1

a2B2a\_e



**DATE:** June 14<sup>th</sup>, 2022  
**TO:** City Commission  
**FROM:** Mark Schneider, Director Development Services  
**RE:** Consent Agenda – Development Services

**2C1 Contractor Licenses**

**Master Mechanical**

- a) Charles Ogle- C & B Heating & Cooling

**Fuel & Gas Installer**

- a) Charles Ogle- C & B Heating & Cooling

**I recommend approval for the contractor licenses listed.**



**DATE:** June 14, 2022  
**TO:** City Commission  
**FROM:** David Juma, City Engineer  
**RE:** Consent Agenda - Engineering

**2D.1 Missouri Valley Communication d/b/a Nemont Telephone Cooperative Easement Request**

Nemont is upgrading communications systems in the Riverside Drive area near the Williston Police Subdivision. To complete this work properly, Nemont has requested a utility easement. The City Engineering department has reviewed their request and recommends to approve and sign the easement as presented.

A copy of the easement request and map is included in your Commissioners Packet.

**RECOMMENDATION:**

**That the City Commission by their consent authorize Mayor Klug to sign the Nemont Telephone Cooperative easement request as presented.**

**Attachment:**

2D.1a Nemont Telephone Cooperative Easement Request



**DATE:** June 14, 2022  
**TO:** City Commission  
**FROM:** David Juma, City Engineer  
**RE:** Agenda Item 2D2 - Engineering

**2D2 P324 – HWY 2 Buffer Landscape & Irrigation Improvements Project Change Order #1**

The City Engineering Department, through its consultant Alliance Engineering, has negotiated a change order reduction with the contractor selected to perform the improvements as part of the P324 – HWY 2 Buffer Landscape & Irrigation Improvements Project in the amount of (\$14,360.00). The contract price for this project is \$273,394. The change order reduces this amount to \$259,034, a reduction of 5.25%. Zero days were added to the contract as part of this change order.

The cost reductions in change order number 1 are as follows:

1. Minimum tree caliper was reduced from 2" to 1.5". This is consistent with City standards.
2. The City will supply the mulch bedding from its stockpile at the landfill, supplemented with the daily trimmings performed by the City Forester. Contractor will haul with their own forces.

These proposed changes were reviewed and approved by Planning and Zoning and the City's consultant for the Williston Square, Cardon Global via Bob Gregory. Public Works has approved the use of the mulch material.

A copy of change order #1 for this project is included in the Commissioner's Information Packet.

**RECOMMENDATION:**

**The City Commission accept change order #1 for the P324 – HWY 2 Buffer Landscape & Irrigation Improvements Project for a net reduction to the contract amount of \$14,360.00 as presented.**

**Attachment:**

a2D2 P324 – HWY 2 Buffer Landscape & Irrigation Improvements Project Change Order #1



**DATE:** June 14, 2022  
**TO:** City Commission  
**FROM:** David Juma, City Engineer  
**RE:** Bid Awards Agenda, Item 4A - Engineering

**4A Award of 2022 Striping Project**

This work supplementary to the 2022 Seal Coat project. It includes restriping the areas that will be seal coated as a part of that project, as well as a few areas of need identified by the City's Street Department. The estimated cost of Engineering Department's portion of the proposed striping improvements is \$30,000. Engineering's 2022 Capital Improvements Budget includes \$500,000 for this project and the associated patching and seal coat projects; of which \$133,817 remains unallocated. The Public Work's portion of the project is estimated to be \$80,000.

This project was set up with the flexibility to adjust the scope of work to accommodate budget constraints. Due to Public Work's remaining budget, they have decided to not perform their portion of the project, which leaves general conditions/mobilization and Section I of the project to be continued by the City Engineering Department. This portion of the bid totals \$27,834.00.

On June 1, 2022, the City Engineering Department opened bids for the 2022 Striping project with the following results:

<u>Bidder</u>	<u>Base Bid</u>
Traffic Safety Services	\$114,128.50

The Engineer's estimate for Engineering's portion of this project was \$30,000.00

A copy of the Bid Summary and Tabulation of Bids for this project is included in the Commissioner's Information Packet.

**RECOMMENDATION:**

**The City Commission accept the bid received from Traffic Safety Services and award them a contract for the 2022 Striping Project to include General Conditions/Mobilization and Section I in the amount of \$27,834.00.**

**Attachment:**

4A.1 Bid Summary and Tabulation of Bids – 2022 Striping Project



**4B 33<sup>rd</sup> Street W and 9<sup>th</sup> Avenue W Roadway Improvements**

On June 6, 2022, the City Engineering Department opened bids for the 33<sup>rd</sup> Street W and 9<sup>th</sup> Ave W Roadway Improvements with the following results:

<b>Bidder</b>	<b>Base Bid</b>	<b>Alt. 1</b>	<b>Alt. 2</b>	<b>Alt. 3</b>	<b>Total</b>
Knife River	\$10,996,908.63	\$1,118,029.27	\$79,549.20	\$15,123.00	\$12,209,610.10
BEK Consulting	\$10,253,854.56	\$1,126,360.51	\$121,480.50	\$23,613.75	\$11,525,309.32

The Engineer's estimate for the project are as follows:

Base bid, construct 33<sup>rd</sup> St. & 9<sup>th</sup> Ave. Improvements = \$8,504,803.30

Alternate 1, construct 31<sup>st</sup> St. & 8<sup>th</sup> Ave. Improvements = \$1,268,428.85

Alternate 2, add 4" perforated behind curb drainpipe on 33<sup>rd</sup> & 9<sup>th</sup> = \$101,636.56

Alternate 3, add 4" perforated behind curb drainpipe on 31<sup>st</sup> & 8<sup>th</sup> = \$19,605.40

The 2022 Capital Improvement Projects budget contains \$6,523,750 for the base bid portion of this project. Additional funding will be added to the 2023 budget if approved.

The City Engineering Department and Alliance Consulting added measures to help reduce the project costs including extending the contract with an October 2023 completion date, removing the interim 2022 completion date, and accepting alternative products to accommodate market shortages. With the current materials and labor shortages, the City Engineering Department and its consultant, Alliance Consulting, recommend accepting the bids for the base bid and alternate 1 if the City Commission wants to construct the 33<sup>rd</sup> Street and 9<sup>th</sup> Avenue improvements Project. At this time, we do not think that pricing will be lower if we put the project back out to bid at a later date.

A copy of the Bid Summary and Tabulation of Bids for this project is included in the Commissioner's Information Packet.

**RECOMMENDATION:**

**The City Commission accept the bid received from BEK Consulting and award them a contract for the 33<sup>rd</sup> Street W and 9<sup>th</sup> Avenue W Improvements Project for the base bid and alternate 1 in the amount of \$11,380,215.07 as presented.**

**Attachment:**

- 4B.1 Bid Summary and Tabulation of Bids – 33<sup>rd</sup> Street W and 9<sup>th</sup> Ave W Roadway Improvements





**DATE:** June 14, 2022  
**TO:** City Commission  
**FROM:** Kenny Bergstrom, Director of Public Works  
**RE:** Bid Openings

**4C 2022 Street Light Boring Project (Street Light Department)**

Public Works opened bids on Wednesday, June 1, for the following project:

<b>2022 Street Light Boring Project (Street Light)</b>	<b>Budget: \$ 150,000</b>
<b>Prairie Winds Services</b>	<b>\$ 240,748.73</b>
<b>Denny's Electric</b>	<b>\$ 277,530.00</b>
<b>Edling Electric</b>	<b>\$ 296,691.00</b>

We received a total of three bids. We are recommending award of the 2022 Street Light Boring Project, General Conditions and Sections I and VI, to Prairie Winds Services of Williston in the amount of \$100,154.69.

**Attachments**



**DATE:** May 24, 2022  
**TO:** City Commission  
**FROM:** Taylor Olson, City Attorney  
**RE:** Tobacco Ordinance

Summary of agenda subject:

Good evening Commissioners and Department Heads:

I have proposed an ordinance for your consideration this evening after meetings with various entities, including the Williston Police Department, the Upper Missouri Health District, and Williston Municipal Court.

In 2020, a federal law was passed changing the minimum age to purchase tobacco to 21 years of age. As the state law had not changed, the City Attorney's office made the decision to not amend our city ordinance until the state of ND had done so, so as not to create issues with enacting ordinances with harsher provisions in cities than in the state of ND.

During the 2021 legislative session, the state of ND passed statutory amendments to NDCC 12.1-31-03 et al to effectuate this change. The City of Williston has reviewed the changes and drafted an ordinance to mirror the changes.

One issue left to each city's discretion, was the minimum age for an employee of a business engaging in the sale of tobacco. The City Attorney's office sent a letter to each licensed facility in the City of Williston asking for input. We received one response. The business owner indicated they wished to have an exception for employees selling tobacco. The ordinance is drafted to reflect that request and allow individuals 18-20 to sell tobacco but not possess or consume.

I have included a few items as the ordinance and its amendments are lengthy. I have included Senate Bill 2156 and a document I created wherein the language removed is crossed out and the language added to the ordinance is in red. The ordinance drafted presented is a clean copy.

Please let me know if I can answer any questions for you.

**I recommend a motion is made as follows:**

- 1) Motion to pass the ordinance as written.**

Thank you for your consideration.

/s/Taylor D. Olson

Taylor D. Olson  
City Attorney

**ORDINANCE NO. 1135**

**AN ORDINANCE OF THE CITY OF WILLISTON AMENDING CHAPTER 9, ARTICLE XIII, SECTIONS 9-114 THROUGH 9-117 OF THE WILLISTON CODE OF ORDINANCES REGARDING THE SALE OF TOBACCO.**

WHEREAS, the City of Williston enacted the current version of this Ordinance in 2017, and

WHEREAS, the purpose of this ordinance is to regulate the sale of tobacco and the subsequent penalties for the illegal sale of tobacco and tobacco products,

WHEREAS, it is the desire of the City of Williston to amend the ordinance to codify the changes to the state and federal statutes regarding the sale of tobacco and tobacco products.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF CITY COMMISSIONERS OF THE CITY OF WILLISTON, NORTH DAKOTA.

Article XIII and Chapter 9, Sections 9-114 and 9-117 be amended, in part, as follows:

**9-114 Definitions.**

...

(d) COMPLIANCE CHECKS - Means the system the city uses to investigate and ensure that those licensed to sell tobacco products are following and complying with the requirements of this article. Compliance checks may involve the use of persons under the age of 21 as authorized by this article. Compliance checks may also be conducted by other units of government for the purpose of enforcing Federal, State and local laws and regulations relating to tobacco products.

...

**9-115 License Required.**

...

(d) Prohibited acts.

(1) a. It is an infraction for any person to sell or furnish to an individual under twenty-one years of age, or procure for an individual under twenty-one years of age, cigarettes, cigarette papers, cigars, snuff, tobacco in any other form in which it may be utilized for smoking or chewing, electronic smoking devices, or alternative nicotine products. As used in this subsection, "sell" includes dispensing from a vending machine under the control of the purchaser.

b. It is an infraction for any person to display or offer for sale cigarettes, cigarette papers, cigars, snuff, tobacco in any other form in which it may be utilized for smoking or chewing, electronic smoking devices, or alternative nicotine products through a self-service display. This subsection does not apply to a:

1. Vending machine or other coin-operated machine that is permitted under N.D.C.C. § 12.1-31-03.1; or

2. Self-service display that is located in a tobacco specialty store.

(2) It is a noncriminal offense for an individual under twenty-one years of age to purchase, possess, smoke, or use cigarettes, cigars, cigarette papers, snuff, tobacco in any other form in which it may be utilized for smoking or chewing, electronic smoking devices, or alternative nicotine products. However, an individual under twenty-one years of age may purchase and possess tobacco, electronic smoking devices, or alternative nicotine products as part of a compliance survey program when acting with the permission of the individual's parent or guardian and while acting under the supervision of any law enforcement authority. A state agency, city, county, board of health, tobacco, electronic smoking devices, or alternative nicotine products retailer; or association of tobacco, electronic smoking devices, or alternative nicotine products retailers may also conduct compliance surveys, after coordination with the appropriate local law enforcement authority.

(3) Subsections 1, 2, and 3 do not apply to an individual between 18 years and twenty-one years of age who possesses cigarettes, cigarette papers, cigars, snuff, tobacco in any other form in which it may be used for smoking or chewing, electronic smoking devices, or alternative nicotine products when required in the performance of the individual's duties as an employee.

(4) It is a noncriminal offense for an individual under twenty-one years of age to present or offer to another individual a purported proof of age which is false, fraudulent, or not actually the individual's own proof of age, for the purpose of attempting to purchase or possess cigarettes, cigars, cigarette papers, snuff, tobacco in any other form in which it may be utilized for smoking or chewing, electronic smoking devices, or alternative nicotine products.

(5) An individual 14 years of age or older found to have violated Subsection c or d of this Section 9-115(d)(3) shall be fined \$25.

a. Any individual who has been cited for a violation of Subsections a-d of Section 9-115(d)(3) may appear before a court of competent jurisdiction and pay the fee by the time scheduled for a hearing or, if bond has been posted, said individual may forfeit the bond by not appearing at the scheduled time. An individual appearing at the time scheduled in the citation may make a statement in explanation of that individual's action and the judge, in his or her discretion, may waive, reduce, or suspend the fee or bond, or both. If the individual cited follows the procedures of this subsection, said individual is deemed to have admitted the violation and has waived the right to a hearing on the issue of commission of the violation. The bond required to secure appearance before the court must be identical to the fee. This section does not allow a citing officer to receive the fee or bond.

b. If an individual cited for a violation of Subsections a-d of Section 9-115(d)(3) does not choose to follow the procedures provided under Subsection f,1 of Section 9-115(d)(3), that individual may request a hearing on the issue of the commission of the violation cited. The hearing must be held at the time scheduled in the citation, or at some future time not to exceed 90 days from the date of the citation, which shall be set at the time scheduled in the citation. At the time of a request for a hearing on the issue on commission of the violation, the individual cited shall deposit with the court an appearance bond equal to the fee for the violation cited.

c. The failure to post bond or to pay an assessed fee is punishable as a contempt of court, except an individual under twenty-one years of age may not be imprisoned for the contempt.

(6) The prosecution must prove the commission of a cited violation under Subsections a-d of this Section 9-115(d)(3) by a preponderance of the evidence.

(7) A law enforcement officer who cites a minor for a violation of this Section 9-115(d) shall mail a notice of the violation to the parent or legal guardian of the minor within 10 days of the citation.

(8) A person adjudged guilty of contempt for failure to pay a fee or fine may be sentenced by the court to a sanction or order designed to ensure compliance with the payment of the fee or fine, or to an alternative sentence or sanction, including community service.

(9) Sale of tobacco product through vending machines restricted.

a. It is an infraction for any person to sell or furnish cigarettes, cigarette papers, cigars, snuff, tobacco in any other form in which it may be utilized for smoking or chewing, electronic smoking devices, or alternative nicotine products through a vending machine, except as provided in Section 9-115(b).

b. Subsection 9(a) of Section 9-115(d) does not apply to:

1. A vending machine that is located in an area in which individuals under twenty-one years of age are not permitted access; or

2. A vending machine that dispenses cigarettes, cigarette papers, cigars, snuff, tobacco in any other form in which it may be utilized for smoking or chewing, electronic smoking devices, or alternative nicotine products through the operation of a device that requires a salesperson to control the dispensation of such product.

c. It is an infraction for any person to sell or furnish cigarettes, cigarette papers, cigars, snuff, tobacco in any other form in which it may be utilized for smoking or chewing, electronic smoking devices, or alternative nicotine products through any vending machine, if those products are placed together with any non-tobacco product, other than matches, in the vending machine.

d. As used in this section, “electronic smoking devices” and “alternative nicotine products” have the same meaning as in section 9-115(d).

(10) No person operating a business where tobacco products are sold or offered for sale shall sell, permit to be sold, offer for sale, or display for sale any tobacco product in any manner, unless such tobacco products are stored for sale behind a counter in an area that is accessible only to the employees of such business.

(11) No person shall sell any e-cigarette substance unless such substance is sold in a container that satisfies the child-resistant effectiveness standards set forth in Section 1700.15 of title 16, Code of Federal Regulations, as determined through testing in accordance with the method described in Section 1700.20 of title 16, Code of Federal Regulations, as such sections may be amended. This restriction does not include a sealed, pre-filled, and disposable container of e-cigarette substance in which such container is inserted directly into an e-cigarette, if the e-cigarette substance is inaccessible through customary or reasonably foreseeable handling or use, including reasonably foreseeable ingestion or other contact by children.

(12) No minor shall attempt to disguise his or her true age by the use of a false form of identification, whether the identification is that of another person or one on which the age of the person has been modified or tampered with to represent an age older than the actual age of the person.

(13) All licensees under this chapter are liable for the actions of their employees regarding the sale of tobacco products on the licensed premises, and the sale of an item by an employee shall be considered a sale by the licensee.

(14) Compliance checks and inspection. All licensed premises shall be open to inspection by the City Police or other authorized City official during regular business hours. At least once per year, or as practicable as possible, the City will conduct compliance checks by engaging, with the written consent of their parents or guardians, minors over the age of 15 years but less than 18 years to enter the licensed premises to attempt to purchase tobacco products. Minors used for the purpose of compliance checks will be supervised by City designated law enforcement officers or other designated City personnel. Minors used for compliance checks will not be guilty of unlawful possession of tobacco products when those items are obtained as a part of the compliance check. No minor used in compliance checks shall attempt to use a false identification misrepresenting the minor's age, and all minors lawfully engaged in a compliance check shall truthfully answer all questions about the minor's age asked by the licensee or his or her employee and shall produce any identification, if any exists, for which he or she is asked. Nothing in this Subsection (12) of Section 9-115 prohibits compliance checks authorized by State or Federal laws for educational, research, information, or training purposes, or as required for the enforcement of a particular State or Federal law.

(15) Exceptions and defenses.

a. Nothing in this article prevents the providing of tobacco products to an individual under twenty-one years of age ~~a minor~~ as part of a lawfully recognized religious, spiritual, or cultural ceremony.

b. It is an affirmative defense to the violation of this article for a person to have reasonably relied on proof of age as described by State law.

c. The provisions and prohibitions in 9-115 do not apply to individuals under twenty-one years of age when acting as part of a compliance survey program while under the supervision of any law enforcement authority and with the permission of the individual's parent or guardian.

(16) Severability. If any section or provision of this article is held invalid, such invalidity does not affect other sections or provisions which can be given force and effect without the invalidated section or provision.

...

### **§ 9-117 Violations and penalties.**

#### **(a) Violations by Seller**

(1) Nothing in this section prohibits the City from seeking prosecution as an infraction, as defined under N.D.C.C. § 12.1-32-01(7), for any alleged violation of this ordinance, except for violations of subsections 2, 14, and 15 of Section 9-115.

a. Notice. A person violating this article, and issued a citation under 9-115 above, may be issued, either personally or by mail, a citation that sets forth the alleged violation and that informs the alleged violator of his or her right to a hearing on the matter. The citation shall provide notice that a hearing must be requested pursuant to the rules of Williston Municipal Court and that hearing rights shall be terminated if a hearing is not promptly requested. The citation will provide information on how and where a hearing may be requested, including a contact address and phone number.

b. Hearings. Upon issuance of a citation, a person accused of violating this article may request in writing a hearing on the matter. Hearing requests must be made pursuant to the rules of Williston Municipal Court. The Williston Municipal Judge, who presides over the Williston Municipal Court, shall serve as the hearing officer. Each violation, and every day in which a violation occurs or continues, shall constitute a separate offense.

#### **(b) Administrative violations and suspension of authority to sell tobacco products.**

(1) The authority granted under this article shall be affected or suspended by the City for violation of Section 9-115, or for a violation of any other provisions of this article, or any City ordinance or State law regulating the sale of tobacco products, as follows:

a. First offense: Mandatory \$100 administrative fee assessed to the tobacco sale license holder under whom the sale took place, and warning



that authority to sell shall be suspended if a subsequent offense occurs within 12 months. Furthermore, the manager and/or supervisor shall undergo mandatory training at licensee's expense, regarding sales to minors which training shall be specified by the City.

b. Second offense within 12 months: Mandatory one day suspension of authority to sell, mandatory \$150 administrative fee, and mandatory training at licensee's expense of all employees handling tobacco products.

c. Third offense within 12 months: Minimum seven day suspension of authority to sell and mandatory \$250 administrative fee.

d. Fourth offense within 12 months: Minimum thirty-day suspension of authority to sell and mandatory \$250 administrative fee.

e. If the city commission, or its authorized designees, make a good cause factual finding that the violation constitutes egregious conduct or behavior, then the commission, or its authorized designees, may impose a penalty outside of the progressive suspension policy in 9-117(b)(1)(a)-(d), which may include, but is not limited to, the revocation of a license to sell tobacco products and a fine not to exceed \$1,000.00.

(2) The above penalties shall be automatically imposed by the City Finance Director or the Licensing Committee upon receiving a copy of the judgment of conviction for sales to a minor. The licensee has the right to appeal such penalty to the City Commission.

(3) For purpose of these administrative penalties for sales to minors, the business where a vending machine is located in an area other than one restricted to persons 21 and older, shall be considered the seller/licensee. Where a vending machine is located in an area restricted to persons 21 and older, administrative penalties shall not apply.

The portions of the ordinance not included in the amendment shall remain in full force and effect. This amended portions of the ordinance shall be in full force and effect upon its final passage, approval, and publication.

Commissioner \_\_\_\_\_ moved the adoption of the foregoing Ordinance. The Motion was seconded by Commissioner \_\_\_\_\_. On roll call vote of the Commissioners vote "AYE":

\_\_\_\_\_, and the following Commissioners vote "NAY":  
\_\_\_\_\_. Absent and not voting:  
\_\_\_\_\_.

WHEREUPON, the Motion was passed and the Ordinance declared adopted this \_\_\_\_\_  
day of \_\_\_\_\_, 2022.

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**Howard Klug**, President  
Board of City Commissioners

ATTEST:

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**Hercules Cummings**, Director of Finance

First Reading: May 24, 2022  
Second Reading: June 14, 2022

Published:

Adopted the \_\_\_\_\_ day of \_\_\_\_\_, 2022.

## **9-114 Definitions.**

Except as may otherwise be provided or clearly implied by context, all terms shall be given their commonly accepted definitions. For the purpose of this article, the following definitions apply unless the context clearly indicates or requires a different meaning.

(a) ALTERNATIVE NICOTINE PRODUCT - Means any noncombustible product containing nicotine that is intended for human consumption, whether chewed, absorbed, dissolved, or ingested by any other means. The term does not include any cigarette, cigar, snuff, tobacco in any other form in which it may be utilized for smoking or chewing, any electronic smoking device, or any product regulated as a drug or device by the United States Food and Drug Administration under Chapter V of the Federal Food, Drug, and Cosmetic Act.

(b) APPLICANT - Means any person seeking the authority to sell tobacco products in the City by (1) applying for a new City Tobacco License; or (2) applying for a renewal of an existing City Tobacco License.

(c) CITY TOBACCO LICENSE - Means a license to sell tobacco products issued by the City Commission pursuant to Section 9-115 of this article or a State tobacco license that has been deemed to be a valid City Tobacco License pursuant to Section 9-115 of this article.

(d) COMPLIANCE CHECKS - Means the system the city uses to investigate and ensure that those licensed to sell tobacco products are following and complying with the requirements of this article. Compliance checks may involve the use of **persons under the age of 21** ~~minors~~ as authorized by this article. Compliance checks may also be conducted by other units of government for the purpose of enforcing Federal, State and local laws and regulations relating to tobacco products.

(e) E-CIGARETTE - Means any device that can be used to deliver aerosolized or vaporized nicotine to the person inhaling from the device, including an e-cigarette, e-cigar, e-pipe, vape pen, or e-hookah. "E-cigarette" includes any component, part, or accessory of such a device, whether or not sold separately, and includes any e-cigarette substance. "E-cigarette" does not include any universal use battery or battery charger when sold separately. In addition, "e-cigarette" does not include drugs, devices, or combination products authorized for sale by the U.S. Food and Drug Administration, as those terms are defined in the Federal Food, Drug and Cosmetic Act.

(f) E-CIGARETTE SUBSTANCE - Means any liquid, gel, or other substance that is sold, marketed or intended for use in an e-cigarette, whether or not such substance contains nicotine.

(g) LICENSEE - Means any person with a valid City Tobacco License issued by the City pursuant to the terms of this article.

(h) MINOR - Means any individual who has not yet reached the age of 18 years.

(i) PERSON - Means any individual, licensee, association, partnership, company, corporation or any other legal or commercial entity and successor, representative, agent, agency, or instrumentality thereof.

(j) SALE - Means any transfer of goods for money, trade, barter, or other consideration.

(k) SELF-SERVICE DISPLAY - Means a display that contains cigarettes, cigarette papers, cigars, snuff, tobacco in any other form which it may be utilized for smoking or chewing, electronic smoking devices, or alternative nicotine products, and is located in an area that is openly accessible to the retailer's customers, and from which customers can readily access those products without the assistance of a salesperson. A display case that holds those products behind locked doors does not constitute a self-service display.

(l) STATE TOBACCO LICENSE - Means a tobacco product dealer's license issued by the North Dakota Attorney General pursuant to Chapter 57-36 of the North Dakota Century Code.

(m) TOBACCO PRODUCTS - Means any product that is made from or derived from tobacco and is intended for human consumption or is likely to be consumed, whether smoked, heated, chewed, absorbed, dissolved, inhaled, or ingested by any other means, including a cigarette, cigar, pipe tobacco, chewing tobacco, snuff, snus, or an e-cigarette. "Tobacco product" includes any component or accessory used in the consumption of a tobacco product, such as filters, rolling papers, pipes, or liquids used in electronic smoking devices. "Tobacco product" does not include drugs, devices, or combination products authorized for sale by the U.S. Food and Drug Administration, as those terms are defined in the Federal Food, Drug and Cosmetic Act.

(n) TOBACCO SPECIALTY STORE - Means a retail store that:

(1) Derives at least 75% of its revenue from the sale of cigarettes, cigarette papers, cigars, snuff, tobacco in any other form in which it may be utilized for smoking or chewing, electronic smoking devices, or alternative nicotine products; and

(2) Does not permit minors to enter the premises unless accompanied by a parent or legal guardian.

(o) VENDING MACHINE - Means a machine, appliance, or other mechanical device operated by currency, token, debit card, credit card, or other means of payment that is designed or used for vending purposes, including machines or devices that use remote control locking mechanisms.

### **§ 9-115 License required.**

[Ord. No. 1059, 3-16-2017]

(a) License.

(1) License required. No person shall directly or indirectly, or by means of any device, keep for retail sale, sell at retail, or otherwise dispense any tobacco products within the City of Williston, without a valid City Tobacco License. Any person required to have a current and valid State tobacco license must file a copy of such valid State tobacco license, along with an application for licensure, to the City of Williston Auditor's Office and request approval by the City Commission. The City reserves the right to suspend or revoke any person's privilege to sell tobacco products within the City pursuant to the terms of this article, whether or not such person has a valid State tobacco license.

(2) Application. For persons who are not required to obtain a State tobacco license, an application for a City Tobacco License to sell tobacco products must be made on a form provided by the City. The application must contain the full name of the applicant, the applicant's business addresses and telephone numbers, the name of the business for which the City Tobacco License is sought, and any additional information the City deems necessary. Upon receipt of a completed application, the City Auditor will forward the application to the City Commission for action in a timely manner, pending review and approval by any additional necessary departments (e.g. Police, Building, Fire). If the City Auditor determines that an application is incomplete, he or she will return the application to the applicant with notice of the information necessary to make the application complete.

(3) Action. The City Commission may either approve or deny the City Tobacco License application, or it may delay action for a reasonable period of time, as necessary to complete any investigation of the application or the applicant it deems necessary. If the City Commission approves the City Tobacco License application, the City Auditor will issue the City Tobacco License to the applicant. If the City Commission denies the license application, a Notice of the Denial will be issued to the applicant, along with notice of the applicant's right to appeal the City Commission's decision.

(4) Term. All City Tobacco Licenses issued under this section expire on December 31st following the date of issuance.

(5) Revocation or suspension. Any City Tobacco License issued under this section may be revoked or suspended as provided in Section 9-117.

(6) Transfers. All City Tobacco Licenses issued under this section shall be valid only on the premises for which the City Tobacco License was issued and only for the person to whom the City Tobacco License was issued. No transfer of any City Tobacco License to another location or person shall be valid unless approved at a regular meeting of the City Commission.

(7) Movable place of business. No City Tobacco License shall be issued to a movable place of business. Only fixed location businesses shall be eligible to be licensed under this section.

(8) Delinquent taxes/special assessments. No City Tobacco License or renewal of license shall be granted to applicants whose business premises have delinquent taxes or special assessments.

(9) Display. All City Tobacco Licenses and State tobacco licenses must be posted and displayed at all times in plain view of the general public on the licensed premises.

(10) Renewals. The renewal of a City Tobacco License issued under this section will be handled in the same manner as the original application. If a person has a valid State tobacco license, a copy of such license renewal application must be filed with the City Auditor's office by August 31st. Renewals of City Tobacco Licenses will take place annually as determined by the City Auditor's office and made known by City resolution.

(11) Ability to sell tobacco products in the City is a privilege and not a right. The issuance of a City Tobacco License under this section is a privilege and not an absolute right of the applicant and does not entitle the holder to an automatic renewal of the City Tobacco License. In addition, the ability to sell tobacco products in the City upon the filing of a valid State tobacco license is contingent upon compliance with the terms of this article.

(b) Fees. No City Tobacco License will be issued under this section until the appropriate license fee has been paid in full. The fee for a City Tobacco License under this article will be established from time to time by resolution of the City Commission.

(c) Basis for denial of license.

(1) Grounds for denying the issuance or renewal of a City Tobacco License under this article, or prohibiting the sale of tobacco products in the City upon the filing of a valid State tobacco license, include, but are not limited to, the following:

a. The applicant is under the age of 18 years.

b. The applicant has been convicted within the past 12 months of any violation of a Federal, State, or local law, ordinance provision, or other regulation relating to tobacco products.

- c. The applicant has had a City Tobacco License revoked within the preceding 12 months of the date of application.
- d. The applicant provides false or misleading information on the City Tobacco License application.
- e. The applicant is prohibited by Federal, State, or other local law, ordinance, or other regulation from holding a license to sell tobacco products.

(2) Except as may otherwise be provided by law, the existence of any particular ground for denial does not mean that the City must deny a City Tobacco License application.

(3) If a City Tobacco License is mistakenly issued or renewed to a person who was ineligible to obtain a City Tobacco License, it shall be revoked immediately upon the discovery that the person was ineligible for the City Tobacco License under this article. In the event that a City Tobacco License is revoked under this article, the licensee may request in writing a hearing on the matter.

(d) Prohibited acts.

(1) a. It is an infraction for any person to sell or furnish to **an individual under twenty-one years of age** ~~a minor~~, or procure for **an individual under twenty-one years of age** ~~a minor~~, cigarettes, cigarette papers, cigars, snuff, tobacco in any other form in which it may be utilized for smoking or chewing, electronic smoking devices, or alternative nicotine products. As used in this subsection, "sell" includes dispensing from a vending machine under the control of the purchaser.

b. It is an infraction for any person to display or offer for sale cigarettes, cigarette papers, cigars, snuff, tobacco in any other form in which it may be utilized for smoking or chewing, electronic smoking devices, or alternative nicotine products through a self-service display. This subsection does not apply to a:

1. Vending machine or other coin-operated machine that is permitted under N.D.C.C. § 12.1-31-03.1; or
2. Self-service display that is located in a tobacco specialty store.

(2) It is a noncriminal offense for **an individual under twenty-one years of age** ~~a minor~~ to purchase, possess, smoke, or use cigarettes, cigars, cigarette papers, snuff, tobacco in any other form in which it may be utilized for smoking or chewing, electronic smoking devices, or alternative nicotine products. However, ~~a minor~~ **an individual under twenty-one years of age** may purchase and possess tobacco, electronic smoking devices, or alternative nicotine products as part of a compliance survey program when acting with the permission of the individual's parent or guardian and while acting under the supervision of any law enforcement authority. A state agency, city, county, board of health, tobacco, electronic smoking devices, or alternative nicotine products retailer; or association of tobacco, electronic smoking devices, or alternative nicotine products retailers may also conduct compliance surveys, after coordination with the appropriate local law enforcement authority.

(3) Subsections 1, 2, and 3 do not apply to an individual between 18 years and twenty-one years of age who possesses cigarettes, cigarette papers, cigars, snuff, tobacco in any other form in which it may be used for smoking or chewing, electronic smoking devices, or alternative nicotine products when required in the performance of the individual's duties as an employee.

(4) It is a noncriminal offense for ~~a minor~~ **an individual under twenty-one years of age** to present or offer to another individual a purported proof of age which is false, fraudulent, or not actually the ~~minor~~ **individual's** own proof of age, for the purpose of attempting to purchase or possess cigarettes, cigars, cigarette papers, snuff, tobacco in any other form in which it may be utilized for smoking or chewing, electronic smoking devices, or alternative nicotine products.

(5)**e.** **An individual** ~~minor~~ 14 years of age or older found to have violated Subsection c or d of this Section 9-115(d)(3) shall be fined \$25.

**a1.** Any individual who has been cited for a violation of Subsections ~~e, or d~~ **a-d** of Section 9-115(d)(3) may appear before a court of competent jurisdiction and pay the fee by the time scheduled for a hearing or, if bond has been posted, said individual may forfeit the bond by not appearing at the scheduled time. An individual appearing at the time scheduled in the citation may make a statement in explanation of that individual's action and the judge, in his or her discretion, may waive, reduce, or suspend the fee or bond, or both. If the individual cited follows the procedures of this subsection, said individual is deemed to have admitted the violation and has waived the right to a hearing on the issue of commission of the violation. The bond required to secure appearance before the court must be identical to the fee. This section does not allow a citing officer to receive the fee or bond.

**b2.** If an individual cited for a violation of Subsections ~~e or d~~ **a-d** of Section 9-115(d)(3) does not choose to follow the procedures provided under Subsection ~~f, 1~~ **1** of Section 9-115(d)(3), that individual may request a hearing on the issue of the commission of the violation cited. The hearing must be held at the time scheduled in the citation, or at some future time not to exceed 90 days from the date of the citation, which shall be set at the time scheduled in the citation. At the time of a request for a hearing on the issue on commission of the violation, the individual cited shall deposit with the court an appearance bond equal to the fee for the violation cited.

**c3.** The failure to post bond or to pay an assessed fee is punishable as a contempt of court, except **an individual under twenty-one years of age** ~~minor~~ may not be imprisoned for the contempt.

(6)**f.** The prosecution must prove the commission of a cited violation under Subsections ~~a-d e or d~~ **a-d** of this Section 9-115(d)(3) by a preponderance of the evidence.



(7)g. A law enforcement officer who cites a minor for a violation of this Section 9-115(d) shall mail a notice of the violation to the parent or legal guardian of the minor within 10 days of the citation.

(8)h. A person adjudged guilty of contempt for failure to pay a fee or fine may be sentenced by the court to a sanction or order designed to ensure compliance with the payment of the fee or fine, or to an alternative sentence or sanction, including community service.

(94) Sale of tobacco product through vending machines restricted.

a. It is an infraction for any person to sell or furnish cigarettes, cigarette papers, cigars, snuff, tobacco in any other form in which it may be utilized for smoking or chewing, electronic smoking devices, or alternative nicotine products through a vending machine, except as provided in Section 9-115(d)(3)b.

b. Subsection 9(a) of this Section 9-115(d) does not apply to:

1. A vending machine that is located in an area in which minors individuals under twenty-one years of age are not permitted access; or

2. A vending machine that dispenses cigarettes, cigarette papers, cigars, snuff, tobacco in any other form in which it may be utilized for smoking or chewing, electronic smoking devices, or alternative nicotine products through the operation of a device that requires a salesperson to control the dispensation of such product.

c. It is an infraction for any person to sell or furnish cigarettes, cigarette papers, cigars, snuff, tobacco in any other form in which it may be utilized for smoking or chewing, electronic smoking devices, or alternative nicotine products through any vending machine, if those products are placed together with any non-tobacco product, other than matches, in the vending machine.

d. As used in this section, "electronic smoking devices" and "alternative nicotine products" have the same meaning as in section 9-115(d).

(105) No person operating a business where tobacco products are sold or offered for sale shall sell, permit to be sold, offer for sale, or display for sale any tobacco product in any manner, unless such tobacco products are stored for sale behind a counter in an area that is accessible only to the employees of such business.

(116) No person shall sell any e-cigarette substance unless such substance is sold in a container that satisfies the child-resistant effectiveness standards set forth in Section 1700.15 of title 16, Code of Federal Regulations, as determined through testing in accordance with the method described in Section 1700.20 of title 16, Code of Federal Regulations, as such sections may be amended. This restriction does not include a sealed, pre-filled, and disposable container of e-cigarette substance in which such container is inserted directly into an e-

cigarette, if the e-cigarette substance is inaccessible through customary or reasonably foreseeable handling or use, including reasonably foreseeable ingestion or other contact by children.

~~(9) No minor shall purchase or attempt to purchase or otherwise obtain any tobacco product. It is a violation of this chapter for any person to purchase or otherwise obtain any tobacco product on behalf of a minor. It is also a violation of this chapter for any person to coerce or attempt to coerce a minor to illegally purchase or otherwise obtain or use any tobacco product. This Subsection (9) of Section 9-115(d) does not apply to minors lawfully involved in a compliance check.~~

~~(1210)~~ No minor shall attempt to disguise his or her true age by the use of a false form of identification, whether the identification is that of another person or one on which the age of the person has been modified or tampered with to represent an age older than the actual age of the person.

~~(1314)~~ All licensees under this chapter are liable for the actions of their employees regarding the sale of tobacco products on the licensed premises, and the sale of an item by an employee shall be considered a sale by the licensee.

~~(1412)~~ Compliance checks and inspection. All licensed premises shall be open to inspection by the City Police or other authorized City official during regular business hours. At least once per year, or as practicable as possible, the City will conduct compliance checks by engaging, with the written consent of their parents or guardians, minors over the age of 15 years but less than 18 years to enter the licensed premises to attempt to purchase tobacco products. Minors used for the purpose of compliance checks will be supervised by City designated law enforcement officers or other designated City personnel. Minors used for compliance checks will not be guilty of unlawful possession of tobacco products when those items are obtained as a part of the compliance check. No minor used in compliance checks shall attempt to use a false identification misrepresenting the minor's age, and all minors lawfully engaged in a compliance check shall truthfully answer all questions about the minor's age asked by the licensee or his or her employee and shall produce any identification, if any exists, for which he or she is asked. Nothing in this Subsection (12) of Section 9-115 prohibits compliance checks authorized by State or Federal laws for educational, research, information, or training purposes, or as required for the enforcement of a particular State or Federal law.

~~(1513)~~ Exceptions and defenses.

a. Nothing in this article prevents the providing of tobacco products to **an individual under twenty-one years of age** ~~a minor~~ as part of a lawfully recognized religious, spiritual, or cultural ceremony.

b. It is an affirmative defense to the violation of this article for a person to have reasonably relied on proof of age as described by State law.

**c. The provisions and prohibitions in 9-115 do not apply to individuals under twenty-one years of age when acting as part of a compliance**

survey program while under the supervision of any law enforcement authority and with the permission of the individual's parent or guardian.

(1644) Severability. If any section or provision of this article is held invalid, such invalidity does not affect other sections or provisions which can be given force and effect without the invalidated section or provision.

## § 9-116 (Reserved)

## § 9-117 Violations and penalties.

[Ord. No. 1059, 3-16-2017]

(a) **Violations by Seller** ~~Nothing in this section prohibits the City from seeking prosecution as an infraction, as defined under N.D.C.C. § 12.1-32-01(7), for any alleged violation of this ordinance, except for violations of subsections 2, 14, and 15 7, 9 and 12 of Section 9-115.~~

(1) **Violations.** Nothing in this section prohibits the City from seeking prosecution as an infraction, as defined under N.D.C.C. § 12.1-32-01(7), for any alleged violation of this ordinance, except for violations of subsections 2, 14, and 15 of Section 9-115.

a. Notice. A person violating this article, **and issued a citation under 9-115 above**, may be issued, either personally or by mail, a citation that sets forth the alleged violation and that informs the alleged violator of his or her right to a hearing on the matter. The citation shall provide notice that a hearing must be requested pursuant to the rules of Williston Municipal Court and that hearing rights shall be terminated if a hearing is not promptly requested. The citation will provide information on how and where a hearing may be requested, including a contact address and phone number.

b. Hearings. Upon issuance of a citation, a person accused of violating this article may request in writing a hearing on the matter. Hearing requests must be made pursuant to the rules of Williston Municipal Court. The Williston Municipal Judge, who presides over the Williston Municipal Court, shall serve as the hearing officer. Each violation, and every day in which a violation occurs or continues, shall constitute a separate offense.

(b) Administrative **violations and** suspension of authority to sell tobacco products.

(1) The authority granted under this article shall be affected or suspended by the City for violation of Section 9-115, or for a violation of any other provisions of this article, or any City ordinance or State law regulating the sale of tobacco products, as follows:

a. First offense: Mandatory \$100 administrative fee assessed to the tobacco sale license holder under whom the sale took place, and warning that authority to sell shall be suspended if a subsequent offense occurs

within 12 months. Furthermore, the manager and/or supervisor shall undergo mandatory training at licensee's expense, regarding sales to minors which training shall be specified by the City.

b. Second offense within 12 months: Mandatory one day suspension of authority to sell, mandatory \$150 administrative fee, and mandatory training at licensee's expense of all employees handling tobacco products.

c. Third offense within 12 months: Minimum seven day suspension of authority to sell and mandatory \$250 administrative fee.

d. Fourth offense within 12 months: Minimum thirty-day suspension of authority to sell and mandatory \$250 administrative fee.

e. If the city commission, or its authorized designees, make a good cause factual finding that the violation constitutes egregious conduct or behavior, then the commission, or its authorized designees, may impose a penalty outside of the progressive suspension policy in 9-117(b)(1)(a)-(d), which may include, but is not limited to, the revocation of a license to sell tobacco products and a fine not to exceed \$1,000.00.

(2) The above penalties shall be automatically imposed by the **City Finance Director or the Licensing Committee** ~~City Auditor~~ upon receiving a copy of the judgment of conviction for sales to a minor. The licensee has the right to appeal such penalty to the City Commission.

(3) For purpose of these administrative penalties for sales to minors, the business where a vending machine is located in an area other than one restricted to persons 21 and older, shall be considered the seller/licensee. Where a vending machine is located in an area restricted to persons 21 and older, administrative penalties shall not apply.



**DATE:** June 14, 2022

**TO:** City Commission

**FROM:** Development Services Department

**RE:** 8.H.1.: Request to create a Process and a Selection Committee for Appointment of a Planning and Zoning Commissioner

The Planning and Zoning Commissioner currently has 7 members, 5 members from the City Limits and 2 from the ETJ. One of the City members is resigning as they are moving out of state.

Staff was directed to propose an application process for a new commissioner. Please find the proposed process and application attached. This process would closely follow what Williams County does to appoint new Planning and Zoning Commissioners and other board appointments. In addition, this is how Williams County appoints residents of the ETJ to the City Planning and Zoning Commission.

Staff would advertise for the 5 year term via newspaper public notice and social media. At the end of the application period, a selection committee would review applications and interview qualified candidates. Once the applicants are narrowed, a final recommendation will be given to the Mayor for final consideration. Per current City Code 15-20, a final confirmation or rejection of the applicant will be approved by the Mayor and the City Commission for majority vote approval.

Staff would recommend that the Selection Committee be made up of: President of the Board of City Commissioners, Commissioner who holds the Planning and Zoning Commission portfolio, Planning and Zoning Commission Chair, Planning and Zoning Commission Vice Chair, Development Services Director, and City Planner.

**Recommendation:** to approve the attached Selection Process and appoint a standing selection committee of the President of the Board of City Commissioners, Commissioner who holds the Planning and Zoning Commission portfolio, Planning and Zoning Commission Chair, Planning and Zoning Commission Vice Chair, Development Services Director, and City Planner.

**Attachments:**

1. Selection Process Document
2. Proposed Planning and Zoning Commissioner Application



**DATE:** June 14, 2022

**TO:** City Commission

**FROM:** Shawn Wenko, Executive Director, Williston Economic Development Office

**RE:** Report of Departments – STAR Fund

**8I1 Flex PACE Applications**

**AGEE Enterprises LLC:** Request for amendment to Flex PACE Buydown for AGEE Enterprises LLC (Genesis) to return previously allocated Flex PACE Funds of \$58,000 and move to use in-kind infrastructure improvement funds of \$108,000 as the Bank of North Dakota match for the Flex PACE program.

**The STAR Fund Board recommends the above amendment to the Flex PACE grant for AGEE Enterprises LLC be approved by the Williston City Commission.**

**Attachments**

STAR Fund Minutes