

CHAPTER TWO

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## CHAPTER TWO

### ORDINANCES AND RESOLUTIONS

#### **ARTICLE 1 – Definitions**

“ORDINANCE” means a legislative act that sets forth a rule of public conduct that is considered long-term, such as: zoning, annexations, abandonments, laws of the city, or similar actions. Ordinances will be recorded and maintained as a permanent record of the City in a separate set of books. Effective dates of Ordinances shall be as provided by law.

“RESOLUTION” means an action normally utilized to set forth opinion or policy of the City on a particular item of business. Resolutions shall be referenced by number and a brief title, and maintained as a permanent record of the City. Resolutions will be recorded and maintained as a permanent record of the City in a separate set of books. Effective dates of Resolutions shall be as provided by law. Resolutions usually become effective upon their adoption.

#### **ARTICLE 2 – Procedure - Ordinances**

##### **2.0201 Enacting Clause for Ordinances**

The enacting clause for every ordinance adopted by the City of New England shall be “Be it ordained by the City Council of the City of New England.” Such caption, however, may be omitted where the ordinances are published in book form or are revised and digested. (Source: Section 40-11-01 of the North Dakota Century Code)

## **2.0202 Procedure in Passing Ordinances**

All ordinances shall be read twice. The second reading and final passage shall not be had in less than one week after the first reading. After the first reading and before final passage, an ordinance may be amended. Except as otherwise specifically provided, a majority of all of the members of the governing body must concur in the passage of an ordinance in the creation of any liability against the City, and in expending or appropriating money. (Source: Section 40-11-02 of the North Dakota Century Code)

An ordinance or resolution adopted by the City Council is not enacted until the ordinance or resolution is approved by the mayor or passed over the mayor's veto. An ordinance or resolution passed by the governing body of a city must be deposited in the office of the city auditor for the approval of the mayor. If the mayor approves the ordinance or resolution, the mayor shall sign the ordinance or resolution. An ordinance or resolution not approved by the mayor must be returned by the mayor with the mayor's objections in writing to the next regular or special meeting of the council occurring not less than five days after the passage of the ordinance or resolution. The veto may extend to an entire ordinance or resolution or to any one or more items or appropriations contained in any ordinance or resolution making an appropriation. If a veto extends to only a part of an ordinance or resolution, the rest of the ordinance or resolution takes effect. If the mayor fails to return any ordinance or resolution with the mayor's objections within the time specified in this Section, the mayor is deemed to have approved the ordinance or resolution. Any veto of an ordinance or resolution may be overridden by the City Council, if two-thirds of its members pass a motion to override the veto. Upon such action, the ordinance or resolution is effective notwithstanding the veto. The vote to pass an ordinance or resolution over the mayor's veto must be taken by yeas and nays and entered in the minutes. (Source: Section 40-11-05 of the North Dakota Century Code)

## **2.0203 Yea and Nay Vote on Passage - When Required**

The yea and nay shall be taken and entered in the journal of the governing body's proceedings upon the passage of all ordinances, or upon all propositions creating any liability against the City, or providing for the expenditure or appropriation of money, and in all other cases at the request of any member.

Beginning with the 1996 biennial municipal elections, and every four years thereafter, all cities in North Dakota, regardless of their form of government, must put on the ballot the question of whether the minutes of its governing body shall be published in its official newspaper. If voters approve publication, the governing body shall, within seven days after each of its meetings, give its official newspaper for publication, the complete minutes or a complete summary showing the substantive actions taken at the meeting.

#### **2.0204 Reconsideration or Rescinding Vote**

No vote of the governing body shall be reconsidered or rescinded at a special meeting unless at such special meeting there is present as large a number of members as were present when such vote was taken. (Source: Section 40-06-04 of the North Dakota Century Code)

#### **2.0205 Publication of Ordinances**

The title and penalty clause of every ordinance imposing any penalty, fine, imprisonment, or forfeiture for violation of its provisions, after the final adoption of such ordinance, shall be published in one issue of the official paper of the municipality. (Source: Section 40-11-06 of the North Dakota Century Code)

If the city does a revision of their ordinances which is published in book form, the revised ordinances are valid and effective without publication in a newspaper or posting. (Source: Section 40-11-09 of the North Dakota Century Code)

#### **2.0206 Effective Date of Ordinances**

Ordinances finally approved by the governing body of a municipality and which require publication shall take effect and be in force from and after the publication thereof, unless otherwise expressly provided in the ordinance. Ordinances which do not require publication shall take effect and be in force from and after the final approval thereof unless otherwise expressly provided therein. (Source: Section 40-11-07 of the North Dakota Century Code)

#### **2.0207 Effect of Repeal**

All titles, chapters, Sections, or other provisions of this Code desired to be repealed shall be specifically repealed by Title number, Chapter number, Section number, or other number, as the case may be.

When any ordinance repealing a former ordinance, clause, or provision shall itself be repealed, such repeal shall not be construed to revive such former ordinance, clause, or provision, unless it shall be expressly so provided.

## **2.0208 Enactment and Revision of Ordinances**

The provisions of Section 40-11-09 of the North Dakota Century Code and all subsequent amendments are hereby incorporated by reference in this ordinance.

The executive officer of a municipality may appoint, by, and with the advice and consent of the governing body of the municipality, one or more competent persons to prepare and submit to the governing body for its adoption or rejection, an ordinance for the revision or amendment of existing ordinances, or for the enactment of new and additional ordinances for such municipality. The attorney for the municipality, if it has an attorney, may be appointed as one of the persons to prepare and submit such ordinance. The compensation of the reviser or revisers, including that of the attorney, shall be determined by the governing body, and shall be paid out of the municipal treasury. Such revision, including any additional ordinances and amendments to existing ordinances contained therein, may be passed as a single ordinance and may be published in pamphlet or book form, by and under the authority of the governing body of the municipality, and shall be valid and effective without publication in a newspaper or posting. (Source: Section 40-11-09 of the North Dakota Century Code

## **2.0209 General Penalty; Continuing Violations**

1. In this section, the term "violation of ordinance" means any of the following:
  - a. Doing an act that is prohibited, or made, or declared to be unlawful by rule or regulation authorized by ordinance.
  - b. Failure to perform an act that is required to be performed by rule or regulation authorized by ordinance;
2. In this Section, the term "violation of ordinance" does not include the failure of a city officer or city employee to perform an official duty, unless it is provided that failure to perform the duty is to be punished as provided in this Section.
3. All violations of ordinance other than non-criminal traffic violations are an offense. Offenses are divided into seven classes:
  - a. Class AA felony
  - b. Class A felony
  - c. Class B felony
  - d. Class C felony
  - e. Class A misdemeanor
  - f. Class B misdemeanor
  - g. Infraction

All criminal ordinances have been repealed and the District Court for the Southwest Judicial District exercises concurrent jurisdiction per agreement with the four-county joint judicial board. Effective July, 1991.

4. A person convicted of a violation of ordinance that is a Class B misdemeanor shall be punished by a fine not exceeding one thousand dollars (\$1,000) and imprisonment not to exceed 30 days, or by both such fine and imprisonment.
5. A person convicted of a violation of ordinance that is an infraction shall be punished by a fine not exceeding one thousand dollars (\$1,000), provided that any person convicted of an infraction who has, within one year prior to commission of the infraction for which convicted, been previously convicted of an offense classified as an infraction of state statutes or the ordinances of this or any other state municipality may be sentenced as though convicted of a Class B misdemeanor.
6. A person convicted of a violation of ordinance regulating the operation or equipment of motor vehicles or regulating traffic shall be punished as provided in state law.

7. With respect to violations of ordinance that are continuous with respect to time, each day or other stipulated time period that the violation continues is a separate offense.
8. As to other violations, each act is a separate offense.
9. Violations of ordinance that are continuous with respect to time may be abated by injunctive or other equitable relief. The imposition of a penalty does not prevent equitable relief.
10. This Section shall not be construed to prohibit the utilization of the sentencing alternatives, other than a fine or imprisonment, provide by Title 12.1 of the North Dakota Century Code
11. The imposition of a penalty shall not prevent the city from revoking or suspending any license, franchise, or permit.
12. When an organization, as defined in Section 12.1-03-04 of the North Dakota Century Code, is convicted of an offense, the court may, in addition to any other sentence imposed, require the organization to give notice of its conviction to the persons or class of persons ostensibly harmed by the offense by mail or by advertising in designated areas or by designated media or otherwise.
13. Unless otherwise specified, the primary law enforcement agents for the City are the members of the Hettinger County Sheriff's Department or their designees.  
(Source: Section 12.1-32-01 of the North Dakota Century Code)

**2.0210 Action for Violation of Ordinance in Corporate Name - Previous Prosecution, Recovery or Acquittal - No Defense**

The provisions of Section 40-11-10 of the North Dakota Century Code and all subsequent amendments are hereby incorporated by reference in this ordinance. Any action brought to recover any fine, to enforce any penalty, or to punish any violation of an ordinance of any municipality shall be brought in the corporate name of the municipality as plaintiff. A prosecution, recovery, or acquittal for the violation of any such ordinance may not constitute a defense to any other prosecution of the same person for any other violation of any such ordinance, notwithstanding that the different claims for relief existed at the time of the previous prosecution and, if united, would not have exceeded the jurisdiction of the court.

**2.0211 Summons to Issue on Violation of Ordinance - When Warrant of Arrest to Issue**

The provisions of Section 40-11-11 of the North Dakota Century Code and all subsequent amendments are hereby incorporated by reference in this ordinance. In all actions for the violation of an ordinance, the first process shall be a summons, but a warrant for the arrest of the offender shall be issued upon the sworn complaint of any person that an ordinance has been violated and that the person making the complaint has reasonable grounds to believe the person charged is guilty of such violation. Any person arrested under a warrant shall be taken without unnecessary delay before the proper officer to be tried for the alleged offense.

### **2.0212 Commitment of Guilty Person for Non-payment of Fines or Costs**

The provisions of Section 40-11-12 of the North Dakota Century Code and all subsequent amendments are hereby incorporated by reference in this ordinance. Any person upon whom any fine, or costs, or both, has been imposed for violation of a municipal ordinance may, after hearing, be committed upon order of the court to jail or other place provided by the municipality for the incarceration of offenders until the fine, or costs, or both, are fully paid or discharged by labor as provided in Section 40-18-12. The court may not commit a person under this Section when the sole reason for his nonpayment of fine or costs, or both, is his indigence. An order of commitment under this Section shall not be for a period in excess of thirty days. As used in this Section, "fine" does not include a fee established pursuant to Subsection 2 of Section 40-05-06 of the North Dakota Century Code.

### **2.0213 Costs of Prosecution**

In every case of conviction of a violation of any ordinance, or any part thereof, the cost of prosecution may be assessed against the person convicted as part of the punishment.

### **2.0214 Judgment of Conviction**

In all trials for offenses under the ordinances of the City, if the defendant is found guilty, the presiding judge of the judicial district in which the city is located shall render judgment accordingly. It may be a part of the judgment that the defendant stands committed until such judgment is complied with, and, at the discretion of the municipal court, the defendant may be required to work for the municipality at such labor as the defendant's strength and health will permit under the provisions of Section 40-18-12 of the North Dakota Century Code.

### **2.0215 Refusal to Work**

Any person refusing to perform manual labor in accordance with the sentence of the court shall be deemed in contempt of court and shall be punished accordingly. No credit shall be allowed such person on account such fines and costs for the date or days that such person refuses to perform manual labor, in accordance with the sentence of the court.

### **2.0216 Fines and Forfeitures for Violation of Ordinances Paid into Municipal Treasury**

All fines, penalties and forfeitures collected for offenses against the ordinances of the City shall be paid into the City's treasury each month.

## **2.0217 Sentencing Alternatives**

The provisions of Section 40-18-13 of the North Dakota Century Code and all subsequent amendments are hereby incorporated by reference in this ordinance. Subject to Section 40-05-06 of the North Dakota Century Code, the Municipal Judge may use the sentencing alternatives provided by Section 12.1-32-02 of the North Dakota Century Code.

## **ARTICLE 3 – Procedure – Resolutions - Reserved**

## **ARTICLE 4 - Municipal Court Cases Transferred To District Court**

### **2.0401 Municipal Court Cases Transferred To District Court**

1. The City agrees to transfer, and the State agrees to accept, all of the City's municipal ordinance cases.
2. The City shall provide the prosecuting attorney and appointed council for indigent defendants and pay the required transcript costs for all cases transferred under this section of the Contract.
3. The County or State, as appropriate, through the Clerk of District Court, shall provide for recording and management of all files and papers for cases transferred under this Section.
4. The City shall pay all witness expenses for all cases transferred under this Section.
5. The City shall pay all necessary transportation and detention expenses for defendants in cases transferred under this Section.
6. The state shall provide and pay for courtroom supplies and salaries and office-related expenses of the district judge and staff in the adjudication and disposition of cases transferred under this Section. The State will also pay all jury expenses.
7. All fees, fines, costs, forfeitures, and other monetary consideration collected from cases transferred under this Section, and any delinquent fines and costs will be collected by the Clerk of the District Court and distributed in the following manner:
  - a. The City will receive 20% of all amounts collected.
  - b. The County will receive 20% of all amounts collected.
  - c. The State will receive 60% of all amounts collected.
8. All amounts due the City and the County must be transmitted by the Clerk of the District Court on a quarterly basis. The Clerk of the District Court shall account to the City and the County for all monies collected and distributed.

Excluded from this provision are fee assessments for funding crime victims and witness programs.

## **APPENDIX**

Examples –Enacting Single Ordinance, Amending Ordinance

(enacting single ordinance)

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE RELATING TO \_\_\_\_\_ AND PROVIDING PENALTIES FOR THE VIOLATION THEREOF.

(amending ordinance)

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE AMEND ORDINANCE NO. \_\_\_\_\_ (OR SECTION NO. \_\_\_\_ OF THE REVISED ORDINANCES) OF \_\_\_\_\_ (CITY) \_\_\_\_\_, BY ADDING THERETO SECTION \_\_\_\_\_ RELATING TO

\_\_\_\_\_

OR

AN ORDINANCE TO AMEND AND RE-ENACT ORDINANCE NO. \_\_\_\_\_ (OR SECTION \_\_\_\_\_ OF THE REVISED ORDINANCES) OF \_\_\_\_\_ (CITY) \_\_\_\_\_ RELATING TO

\_\_\_\_\_.

\* \* \* \* \*