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CHAPTER 1-01. GENERAL PRINCIPLES AND DEFINITIONS

1-01-01. Code Designation and Citation. The ordinances embraced in the following titles, chapters and sections constitute and are designated the "Code of Ordinances, Bismarck, North Dakota," and may be so cited.

1-01-02. Rules of Interpretation. In the construction of this code the following rules shall apply unless it would be inconsistent with the intent of the city commission or the context of the provisions.

1-01-03. Words and Phrases. All words and phrases shall be construed and understood according to the common and approved usage of language; but technical

words and phrases and such others as may have acquired a peculiar and appropriate meaning in the law shall be construed and understood according to such peculiar and appropriate meaning.

1-01-04. Clerical and Typographical Errors. Clerical and typographical errors shall be disregarded when the meaning of the Board is clear.

1-01-05. Particular Controls General. Whenever a general provision in a chapter is in conflict with a special provision in the same or other chapter, the two shall be construed, if possible, so that effect may be given to both provisions, but if the conflict between the two provisions is irreconcilable the special provision shall prevail and be construed as an exception to the general provision, unless the general provision is enacted later and it is the manifest legislative intent that the general provision shall prevail.

1-01-06. Conflicting Provisions Found in the Same Chapter. Except as otherwise provided in section 1-01-05, whenever in a chapter several clauses are irreconcilable, the clause last in order of date or position shall prevail.

1-01-07. Multiple Amendments to the Same Provision, One Without Reference to the Other. If amendments to the same ordinance are enacted at the same or different time, one amendment without reference to the other, the amendments are to be harmonized, if possible, so that effect may be given to each. If the amendments are irreconcilable, the latest in date of enactment prevails.

1-01-08. Code Not Retroactive Unless so Declared. No part of this code is retroactive unless it is expressly declared to be so.

1-01-09. Severability. In the event that any clause, sentence, paragraph, chapter or other part of any title is adjudged by any court of competent or final jurisdiction to be invalid, the judgment shall not affect, impair, nor invalidate any other clause, sentence, paragraph, chapter, section, or part of the title, but is confined in its operation to the clause, sentence, paragraph, section, or part thereof directly involved in the controversy in which the judgment shall have been rendered.

1-01-10. Limitations - How Reckoned. When a limitation or period of time prescribed in any existing ordinance for acquiring a right or barring a remedy, or for any other purpose, has begun to run before this code goes into effect, and the same or any limitation of time is prescribed in this code, the time which already has run shall be deemed part of the time prescribed as such limitation by this code.

1-01-11. Time - How Computed. The time within which an act is to be done as provided in any ordinance or in any order issued pursuant to any ordinance, when expressed in days, is computed by excluding the first day and including the last, except that if the last day be Sunday or a legal holiday it is excluded; and when any such time is expressed in hours the whole of Sunday, from midnight to midnight, shall be excluded.

1-01-11.1. Actual Time Reference. For the purposes of any ordinance in which the actual time is a factor, the actual time shall be the time at the Centracom Series II Dispatch System located at the Bismarck/Burleigh Combined Communications Center.
(Ord. No. 4319, 3-27-90)

1-01-12. Office Held Under Provisions Repealed by This Code to be Retained - Exceptions. Unless a different intention plainly appears, a public officer who is in office when this code takes effect shall remain in office until the expiration of the term for which he or she was elected or appointed unless removed prior to the expiration of the term as provided by law.

1-01-13. Repeal Does Not Revive Act Previously Repealed. Whenever any act of the Board which repealed a former act is repealed, the former act shall not be revived by the appeal.

1-01-14. Effect Upon Former Laws - Repeals. No ordinance, law or rule is continued in force because it is consistent with the provisions of this code on the same subject, but in all cases provided for by this code all ordinances heretofore in force in the city, whether consistent or not with the provisions of this code, unless expressly continued in force by it, are all repealed and abrogated. This repeal or abrogation does not revive any former law heretofore repealed, nor does it affect any right already existing or accrued or any action or proceeding already taken, except as in this code provided.

1-01-15. Repeal - Effect. The repeal of any ordinance by the Board or by the people through an initiated ordinance shall not have the effect of releasing or extinguishing any penalty, fine, liability, or forfeiture incurred under such ordinance, but as to cases tried before, or subsequent to, the repeal of the ordinance it shall have the effect of extinguishing any jail or prison sentence that may be, or that has been, imposed by reason of said law, unless the repealing act shall provide expressly that the penalties of imprisonment shall remain in force as to crimes committed in violation of such law prior to its repeal. In other respects, such act shall remain in force only for the purpose of the enforcement of such fine, penalty or forfeiture.

1-01-16. Pending Actions or Proceedings Not Affected by Code. No action or proceeding commenced before this code takes effect, and no right accrued, is affected by its provisions, but the proceedings therein must conform to the requirements of this code as far as applicable.

1-01-17. Catchlines, Titles, Headings and Notes. The catchlines of the several sections of this Code printed in boldface type, titles, headings, chapter heads, section and subsection heads or titles, editor's notes, cross references and state law references, unless set out in the body of the section itself, contained in this Code, do not constitute any part of the law, and are intended merely to indicate, explain, supplement or clarify the contents of a section.

1-01-18. Majority Power. Words giving a joint authority to three or more public officers or other persons shall be construed as giving such authority to a majority of them, unless it appears otherwise in the act giving the authority.

1-01-19. Conflicts Adjusted. If the provisions of any chapter or title conflict with or contravene the provisions of any other chapter or title, the provisions of each chapter or title must prevail as to all matters in question arising thereunder out of the same subject matter.

1-01-20. Delegation of Authority. Whenever a provision appears requiring an officer of the city to do some act or make certain inspections, it is to be construed to authorize the officer to designate, delegate and authorize subordinates to perform the required act

or make the required inspection unless the terms of the provision or section designate otherwise.

1-01-21. Definitions. In this code unless the context otherwise requires:

1. Board. The words "Board", "Board of City Commissioners", "city commission" and "governing body" all mean the Board of City Commissioners of this city.
2. City. The words "the city" or "this city" mean "the City of Bismarck, North Dakota" and extend to its several officers, officials, agents and employees.
3. Code. The words "the Code" or "this Code" mean the "Code of Ordinances, Bismarck, North Dakota".
4. County. The words "the county" or "this county" mean the County of Burleigh in the State of North Dakota.
5. Gender. Words importing the masculine gender only may be extended to females.
6. Heretofore and Hereafter. Whenever the word "heretofore" occurs in any section of this Code or city ordinance it shall be construed to mean any time previous to the day when such section of this Code or city ordinance shall take effect; and whenever the word "hereafter" occurs it shall be construed to mean the time after the section of this Code or city ordinance containing such word shall take effect.
7. Land, Real Estate. The word "land" and phrases "real estate" and "real property" include land, tenements, hereditaments, and all rights thereto and interest therein, equitable as well as legal.
8. Month, Year. The word "month" means a calendar month and the word "year" means a calendar year.
9. Number. Words importing the singular number may be extended to several persons or things, and words importing the plural number may be applied to one person or thing.
10. Oath, Affirmation. The word "oath" includes affirmations in all cases where an affirmation may be substituted for an oath, and in like cases the word "swear" includes "affirm".
11. Officials, Boards, Commissions, Etc. Whenever reference is made to officials, boards and commissions by title only, i.e. "council", "clerk", "the president", etc., they shall be deemed to refer to the officials, boards and commissions of the City of Bismarck.
12. "Or" may be read "and", and "and" may be read "or" if the sense requires it.

13. Person. The word "person" shall include and be applied to corporations, associations, clubs, societies, firms, partnerships, municipalities, and bodies politic and corporate as well as individuals.
14. Personal Property. The words "personal property" includes money, goods, chattels, evidences of debt, and things in action.
15. Property. The word "property" includes real and personal property.
16. Reasonable Time. In all cases where any section of this Code or city ordinance shall require any act to be done in a reasonable time or reasonable notice to be given, such reasonable time or notice shall be deemed to mean such time only as may be necessary for the prompt performance of such duty, or compliance with such notice.
17. State. The words "the state" shall be construed to mean the State of North Dakota.
18. Tense. Words used in the present or past tense include the future as well as the present and past.
19. Week. The word "week" shall be construed to mean seven days; but publication in a newspaper of any notice or other matter indicated to be for a stated number of weeks shall be construed to mean one insertion in each week, unless specifically stated to be for each day of the week or for more than one day in each week.
20. Written, in Writing. The words "written" and "in writing" mean any mode of representing words and letters in general use, except that signatures, when required, must be made by the writing or mark of the person.

CHAPTER 1-02. PENALTIES

1-02-01. Penalty Not Exclusive. The imposition of a penalty under the provisions of this Code shall not prevent the city commission from revoking or suspending any license, franchise or permit wherever by this Code the power of revocation or suspension has been reserved to the city commission; nor shall such penalty in any manner operate to divest any employee of the city who may have been delegated the power to revoke or suspend any license, franchise or permit from so revoking or suspending the same.

1-02-02. Penalty and Fines.

1. Except as provided in subsections 2 and 3, the fine or penalty for the violation of any ordinance, resolution, or regulation shall not exceed \$1,500.00, and the imprisonment shall not exceed thirty days for one offense.
2. For every violation of an ordinance regulating the operation or equipment of motor vehicles or regulating traffic, except those ordinances listed in section 39-06.1-05, N.D.C.C., a fee may be established, by ordinance, which shall

not exceed the limits, for equivalent categories of violations, set forth in section 39-06.1-06, N.D.C.C.

3. For a violation of an ordinance enforcing the requirement of 40 CFR 403 relating to publicly owned treatment works or a violation of an ordinance prohibiting shoplifting, vandalism, criminal mischief, or malicious mischief, the penalty may not exceed a fine of \$1,500.00, imprisonment for thirty days, or both such fine and imprisonment.

This section shall not be construed to prohibit the utilization of the sentencing alternatives, other than a fine or imprisonment, provided by section 12.1-32-02, N.D.C.C., for the violation of a city ordinance, nor shall this section limit the use of deferred or suspended sentences pursuant to chapter 12-53, N.D.C.C.

References: NDCC 40-05-06; 39-06.1-06

(Ord. 4866, 09-09-97; Ord. 5977, 06-25-13); (Ord. 6090, 11-25-14)

1-02-03. Classification of Offenses. Offenses against the ordinances of this city are divided into these classes:

1. Offense, for which the penalty shall be as set forth in section 1-02-02.
2. Infraction, for which a maximum fine of \$1,000.00 may be imposed, 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 North Dakota municipality may be sentenced as though convicted of an offense. If the prosecution contends that the infraction is punishable as an offense, the complaint shall so specify unless the prosecution is unable within reasonable effort to learn of the prior conviction prior to execution of the complaint.
3. All violations of the provisions of the ordinances of this city other than non-criminal traffic offenses are offenses unless specifically labeled infractions or unless a different classification or punishment is specifically authorized.
4. Except as provided in this section or as the context may otherwise indicate the term "offense" refers to all violations of the ordinances of this city including infractions.

(Ord. 6090, 11-25-14)

1-02-04. Special Sanction for Organizations. When an organization as defined in N.D.C.C. Section 12.1-03-04 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.

Reference: NDCC 12.1-32-03