

APPENDIX

COMMENTS

Section
1.0104

In most cases, the fine or penalty for the violation of City ordinances, regulations, or resolutions shall not exceed one thousand five hundred dollars, and the imprisonment shall not exceed thirty days for one offense. For violation of ordinances regulating the operation or equipment of motor vehicles or regulating traffic, see North Dakota Century Code sections 39-06.1-05, 39-06.1-06, and 40-05-06.

In 1972, the United States Supreme Court expanded the Sixth Amendment right to counsel of Gideon V. Wainwright to all cases in which the defendant could be imprisoned if found guilty of the charge against. See, Argersinger v. Hamlin, 407 US 25. As a result of this decision, municipalities are now required to provide free legal counsel to all indigent violators of municipal ordinances, if the penalty that can be imposed for such violation is imprisonment.

1.0201

The public is entitled to have the City governing body meet at the times specified by statute or by legal ordinance so as to prevent the City governing body from doing business in any secret meetings. (See North Dakota Century Code sections 40-06-02 and 44-04-19 to 44-04-21)

2.0101

Rules of Construction

In the construction of this code and of all ordinances, it is the intention of the drafters that the following rules shall be observed unless such construction would be inconsistent with the manifest intent of the City governing body:

1. General Rule. All words and phrases shall be construed and understood according to the common and approved usage of the language, except technical words and phrases and such others as may have acquired a peculiar and appropriate meaning.
2. Gender – Singular and Plural. Every word in any code provision or ordinance using the masculine gender includes females as well as males; and every word using the singular number only including several persons or things as well as to one person or thing; and every word importing the plural includes the singular, except when a contrary intention plainly appears.
3. Tenses. The use of any verb in the present tense shall include the future when applicable.
4. Joint Authority. All words purporting to give a joint authority to three or more City officers or other persons shall be construed as giving such authority to a majority of such officers or other persons unless it shall be otherwise expressly declared in the law giving the authority.
5. Delegation of Authority. Whenever a provision requires the head of a department or other officer of the City to do some act or perform some duty, it shall be construed to authorize subordinates to do the required act or to perform the required duty unless the terms of the provision designate otherwise.

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

7. Overlapping Provisions. Where any provision of this Code imposes greater restrictions upon the subject matter than any general provisions imposed by this Code, the provision imposing the greater restriction or regulation shall be applicable.

For rules of interpretation as to ordinance construction, refer to North Dakota Century Code chapter 1-02.

- 3.0108 The requirements for sidewalks (length, width and distance) are provided for example only. Local requirements should be utilized when adopting or drafting this ordinance.
- 4.0401 Incorporation by reference of a national fire code is a valid exercise of municipal authority, as long as such incorporation is prospective. For more information about national fire codes, contact the state fire marshal.
- 8.0101 Business license fees established by municipalities are imposed as an incident of the municipal police power to protect the health, safety, morals and general welfare of the populace. (See North Dakota Century Code chapter 40-05) Such fees are not in and of themselves revenue-raising devices, but rather are regulatory devices to allow for the control of businesses and occupations which have potentially harmful or detrimental effects on the general public.
- 8.0103 and 8.0610 The granting or denying of a business license is a discretionary rather than a ministerial act and as such cannot be delegated by the City governing body.
- 9.0503 An ordinance altering state speed limits within a city does not become effective until such speed limits are properly posted as required by North Dakota Century Code section 39-09-03.