

Bottineau Municipal Code Revised

Chapter Two

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ARTICLE 1 - Procedure

2.0101 Enacting Clause for Ordinances

The enacting clause for every ordinance adopted by the City of Bottineau shall be "Be it ordained by the City Council (or Board of City Commissioners) of the City of Bottineau." Such caption, however, may be omitted where the ordinances are published in book form or are revised and digested.

2.0102 Procedure in Passing Ordinances

All ordinances shall be read twice and 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, and in the creation of any liability against the city, and in expending and in appropriating money.

2.0103 Yea and Nay Vote on Passage - When Required

The yea and nay shall be taken and entered on the journal of the governing body's proceedings upon the passage of all ordinances and 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.

2.0104 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No vote of the governing body shall be reconsidered or rescinded at a special meeting unless at such special meeting there is present as large a number of members as were present when such vote was taken.

2.0105 Severability

If any phrase, clause, sentence, paragraph or section of such code or this ordinance shall be declared unconstitutional or otherwise invalid by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality or invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections of such code or this ordinance.

2.0106 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.

2.0107 Violations - Penalty

1. Whenever in such code or in any ordinance of the city any act is prohibited or is made or is declared to be unlawful or an offense or whenever in this code or any ordinance the doing of any act is required or the failure to do any act is declared to be unlawful, where no specific penalty is provided therefore, any person upon conviction for the violation of such provision of such code or any ordinance shall be punished by a fine not exceeding one thousand dollars (\$1,000.00) or by imprisonment not to exceed thirty (30) days or by both such fine and imprisonment, for each such offense.

2. Each day any violation of any provision of such code or any ordinance shall continue and shall constitute a separate offense. In the construction and interpretation of this section the revocation

of license or permit shall not be considered as a recovery or penalty so as to bar any other penalty being enforced.

3. In each case of a conviction of a violation of any of the provisions of this code or other ordinances of the city or any part thereof, where a fine is imposed, all costs of prosecution shall be added to such fine as a part of the punishment.

2.0108 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.

2.0109 Definitions and Construction

In the construction of this code and of all ordinances, the following rules shall be observed, unless such construction would be inconsistent with the manifest intent of the City Council:

1. Boulevard: "Boulevard" means that strip of land abutting on either side of the streets of the city lying between the outside edge of the sidewalks and the curb along such streets.

2. City: The words "the City" or "this City" shall be construed as if followed by the words "of Bottineau".

3. Code: The words "the code" or "this code" shall mean "Bottineau Municipal Code Revised.

4. Computation of time: The time in which any act provided by law is to be done is computed by excluding the first day including the last, unless the last is a holiday, and then it is also excluded.

5. Council: "Council" shall be construed as though the words "of the City of Bottineau" followed it.

6. County: "County" or the "the county" means Bottineau county, in the state of North Dakota.

7. Daytime, nighttime: "Daytime" is the period between sunrise and sunset. "Nighttime" is the period of time between sunset and sunrise.

8. Gender: Words used importing masculine gender include the feminine.

9. In the city: The words "in the city" mean and include all territory over which the city now has, or shall hereafter acquire, jurisdiction for the exercise of its police powers or other regulatory powers.

10. Joint authority: All words giving a joint authority to three or more persons or officers shall be construed as giving such authority to a majority of such persons.

11. Month: "Month" means a calendar month.

12. Number: The singular number includes the plural, and the plural the singular.

13. Oath: "Oath" shall include "affirmation."

14. Officers, department, etc.: Officers, departments, boards, commissions and employees referred to shall mean officers, departments, boards and commissions and employees of the City of Bottineau, unless the context clearly indicates otherwise.

15. Owner: The word "owner," applied to a building or land, shall include any part owner, joint owner, tenant in common, tenant in co-partnership, or joint tenant of the whole or a part of such building or land.

16. Person: The word "person," except when used by way of contrast, shall include not only a human being, but a body politic or corporate.

17. Personal property: "Personal property" includes money, goods, chattels, things in action and evidences of debt.

18. Preceding, following: The words "preceding" and "following" mean next before and next after, respectively.

19. Property: "Property" includes property, real and personal.

20. Real property: "Real property" is coextensive with land, tenements and hereditaments.

21. Several: The word "several," in relation to number, means two or more.

22. Shall, may: "Shall" is mandatory and "may" is permissive.

23. Sidewalk: "Sidewalk" means that portion of a street between the curb lines, or the lateral lines of a roadway and the adjacent property lines, intended for the use of pedestrians.

24. Signature or subscription: "Signature or subscription" includes a "mark" when the person cannot write, his name being written near it and written by a person who writes his own name as a witness.

25. State: The words "state" or "the state" shall mean the state of North Dakota.

26. Street: "Street" means the entire width between property lines of every way or place of whatsoever nature when any part thereof is open to the use of the public as a matter of right of way for purposes of vehicular traffic.

27. Usual and customary: The words "usual" and "customary" shall mean "according to usage."

28. Written and printed: "Writing" and "written" include "typewritten" and "typewriting" and "printing" and "printed," except in the case of signatures and when the words are used by way of contrast to "typewriting" and "printing." Writing may be made in any manner, except that when a person entitled to require the execution of a writing demands that it be made with ink, it must be so made.

29. Year: "Year" means a calendar year, except where otherwise provided.

2.0110 Effect of Repeal

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.

2.0111 Exclusions

The repeal provided for in Section 2.0110 of this Code shall not affect any offense or act committed or done or any penalty or forfeiture incurred or any contract or right established or accruing before January 1, 1967 to _____, nor shall such repeal affect any ordinance or resolution promising or guaranteeing the payment of money for the city or authorizing the issue of any bonds of the city or any evidence of the city's indebtedness or any contract or obligation assumed by the city; nor shall such repeal affect the administrative ordinances or resolutions of the City Council not in conflict or inconsistent with the provisions of this code; nor shall it affect the annual tax levy; nor shall it affect any right or franchise conferred by ordinance or resolution of the city on any person or corporation; nor shall it affect any ordinance relating to the salaries of the officers or employees of the city; nor shall it affect any ordinance annexing or disannexing territory to or from the city; nor shall it affect any description of the city limits or additions thereto; or shall it affect any ordinance naming, opening, accepting or vacating streets or alleys in the city; nor shall it affect any ordinance relating to zoning; nor shall it affect any ordinance relating to the subdivision of land; nor shall it affect any ordinance or resolution creating and establishing the boundaries of wards and precincts; nor shall it affect ordinances changing and establishing names of streets; nor shall it affect any ordinance or resolution establishing or designating preliminary street grades; nor shall it affect any ordinance or resolution designating the width of streets, avenue or sidewalks; nor shall it affect any ordinance or resolution establishing improvement districts.

2.0112 Enactment and Revision of Ordinances

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, shall 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.

2.0113 Action for Violation of Ordinance in Corporate Name - Previous Prosecution, Recovery or Acquittal - No Defense

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.

2.0114 Summons to Issue on Violation of Ordinance - When Warrant of Arrest to Issue

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.

2.0115 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.

2.0116 Disposition of Bail

The municipal judge may file with the police chief a schedule in writing by the municipal judge indicating the amount for bail fixed by such municipal judge for the release of persons arrested or charged, with any violation of the provisions of this code or other ordinance and based on the offense charged, which schedule shall be applicable for the bail to be furnished in his absence from the municipal court, and any person who pays or delivers such bail to the chief of police or any other person in charge of the police department at the time, shall be immediately released from custody; provided, that the municipal judge may in all cases where he is present in municipal court fix bail in such amounts or upon such conditions to the bail schedule provided and applicable in his absence from municipal court.

2.0117 Commitment of Guilty Person for Non-payment of Fines or Costs

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 of the North Dakota Century Code. 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.

2.0118 Costs of Prosecution

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

2.0119 Judgment of Conviction

In all trials for offenses under the ordinances of the city, if the defendant is found guilty, the municipal judge shall render judgment accordingly. It shall 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, he 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.

2.0120 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.

2.0121 Sentencing Alternatives - Suspension of Sentence or Imposition of Sentence

Subject to Section 40-05-06 of the North Dakota Century Code, a municipal judge may use the sentencing alternatives provided by Section 12.1-32-02 and may suspend any sentence the judge imposes or defer the imposition of any sentence during the good behavior of any person adjudged to have committed an offense, or for other reasonable cause, under subsection 3 or 4 of Section 12.1-32-02, except that a municipal judge may not suspend a sentence or the imposition of sentence for driving a motor vehicle in violation of an operator's license suspension, revocation, or restriction or for a violation of Section 39-08-01 or equivalent ordinance if that suspension of sentence or suspension of the imposition of sentence is prohibited under Section 39-06-17 or 39-06-42 or Chapter 39-08.