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CHAPTER TWO

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ARTICLE 1 – General Provisions

2.0101 How Code Designated and Cited

The ordinances embraced in the following chapters and sections shall constitute and be designated as the “Code of Ordinances, City of Alexander, North Dakota”, and may be so cited. Such Code may also be cited as the “Alexander City Code.” State law references-Enactment of revision or amendment of existing ordinances, N.D.C.C. § 40-11-09; power of city to pass and enforce police ordinances, §40-05-02(9).

2.0102 Rules of Construction – Generally

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 board of city commissioners:

1. City – the words “the city” or “this city” shall be construed as if followed by the words “of Alexander”.
2. Code – the words “the code” or “this code” shall mean the “Code of Ordinances, City of Alexander, North Dakota”
3. Computation of Time – the time in which any act provided by law is to be done is computed by excluding the first day and including the last, unless the last is a holiday, and then it is also excluded.
4. County – the words “the county” or “this county” means McKenzie County, in the State of North Dakota.
5. Day – a day is the period of time between any midnight and the midnight following.
6. Daytime, nighttime – “Daytime” is the period between sunrise and sunset. “Nighttime” is the period of time between sunset and sunrise.
7. Delegation of authority – whenever a provision appears requiring an officer of the city to do some act of 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.
8. Gender – words used implying the masculine gender include the feminine.
9. In the city – the words “in the city” shall mean and include all territory over the city now has, or shall hereafter acquire, jurisdiction for the exercise of its police powers or other regulatory powers.
10. Month – the word “month” shall mean a calendar month.
11. N.D.C.C. – the abbreviation “N.D.C.C.” shall refer to the North Dakota Century Code, as now or hereafter amended.
12. Number – the singular number includes the plural, and the plural the singular.
13. Oath – “Oath” shall include “affirmation”.
14. Officers, departments, etc. – officers, departments, boards, commissions and employees referred to by title shall only mean officers, departments, boards, commissions and employees of the City of Alexander unless the context clearly indicates otherwise.
15. Or, And – “Or” may be read “and” and “and” may be read “or”, if the sense requires it.

16. Owner – the word “owner”, applied to a building or land, shall include any part owner, joint owner, tenant in common, tenant in partnership or joint tenant of the whole or part of such building or land.
17. 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 to individuals.
18. Personal Property – the words “personal property” shall include money, goods, chattels, things in action and evidences of debt.
19. Preceding, following – the words “preceding” and “following” mean next before and next after, respectively.
20. Property – the word “property” shall include real and personal property.
21. Real Property – the words “real property” shall include lands, tenements and hereditaments.
22. Reasonable time – in all cases where any section of this Code or other 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.
23. Several – the word “several”, in relation to number, shall mean two (2) or more.
24. Shall, May – “Shall” is mandatory, and “May” is permissive.
25. Sidewalk – the word “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.
26. Signature, subscription – the word “signature” or “subscription” shall include 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.
27. State – the words “the state” or “this state” shall mean the State of North Dakota.
28. Street – the word “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.
29. Tense – words used in the present or past tense include the future as well as the present and past.
30. Usual and Customary – the words “usual” and “customary” shall mean “according to usage”.
31. Week – the word “week” shall be construed to mean seven (7) 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 state to be for each day of the week or for more than one day in each week.
32. Written and Printed – the words “writing” and “written” shall include “typewriting” and “typewritten” 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.
33. Year – the word “year” shall mean a calendar year, except where otherwise provided (Code 1957, § 1.2).
34. State law references – General principles and definitions, N.D.C.C., Ch. 1-01; rules of interpretation, Ch. 1-02; jurisdiction of municipal governing body outside city, N.D.C.C. §40-06-01.
35. The rule of construction set forth in this chapter shall not be applied to any section of this code or other city ordinance which shall contain any express provision excluding such construction, or when the subject matter or context of such provisions or ordinances may be repugnant thereto.

2.0103 Reference to Code, Conflicts

In addition to the rules of construction specified in this chapter, the following rules shall be observed in the construction of these ordinances:

1. All references to chapters, articles or sections are to the chapters, articles, and sections of this Code unless otherwise specified.
2. If the provisions of different chapters of this Code conflict with or contravene each other, the provisions of each chapter shall prevail as to all matters and questions growing out of the subject matter of such chapter.
3. If conflicting provisions are found in different sections of the same chapter, the provisions of the section which is last in numerical order shall prevail unless such construction is inconsistent with the meaning of such chapter.

2.0104 Catchlines of Sections

The catchlines of several sections of this Code, printed in boldface type, are intended as mere catchwords to indicate the contents of the section and shall not be deemed or taken to be titles of such sections, nor as any part of the section, nor unless expressly so provided shall they be so deemed when any of such sections, including the catchlines, are amended or re-enacted.

2.0105 Provisions Considered as Continuations of Existing Ordinances

The provisions appearing in this Code, so far as they are substantially the same as those of ordinances existing at the same time of the adoption of this Code, shall be construed as a continuation thereof and not as new enactments.

2.0106 Repeal of Ordinances – Effect Upon Penalties

The repeal of any ordinance by the board of city commissioners 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 such ordinance, it shall have the effect of extinguishing any jail or prison sentence that may be, or that has been, imposed by reason of such ordinance, unless the repealing ordinance shall provide expressly that the penalties of imprisonment shall remain in force as to crimes committed in violation of such ordinance prior to its repeal. In other respects, such ordinance shall remain in force only for the purpose of the enforcement of such fine, penalty or forfeiture.

2.0107 Same – Effect Upon Ordinances Previously Repealed

Whenever any ordinance of the board of city commissioners which repealed a former ordinance is repealed, such former ordinance shall be revived by such repeal, unless there is express provision to the contrary.

2.0108 Severability of Parts of Code

Should any section, paragraph, sentence, clause, phrase or word of this Code be declared invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect any of the remaining words, phrases, clauses, sentences, paragraphs or sections of this Code, since the same would have been enacted by the board of city commissioners without the incorporation in this Code of any such invalid or unconstitutional word, phrase, clause, sentence, paragraph or section.

2.0109 Altering Code

It is unlawful for any person to change or amend by additions or deletions any part or portion of this Code, or to insert or delete pages, or portions thereof, or to alter or tamper with such Code in any manner whatsoever which will cause the law of the city to be misrepresented thereby.

2.0110 General Penalty; Continuing Violations

Whenever is this Code or in any ordinance of the city any act is prohibited or is made or 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 therefor, any person upon conviction for the violation of any such provision of this Code or any ordinance shall be punished by a fine not exceeding five hundred dollars (\$500) or by imprisonment not to exceed thirty (30) days, or by both such fine and imprisonment, for each such offense. Each day any violation of any provision of this Code or of any ordinance shall continue shall constitute a separate offense. In the construction and interpretation of this section, the revocation of a license or permit shall not be considered as a recovery or penalty so as to bar any other penalty from being enforced. Cross Reference—Municipal judge, Ch. 11. State law references—Maximum penalties imposed by city, N.D.C.C. §40-05-06; commitment of guilty person for nonpayment of fines or costs, N.D.C.C. §40-11-12; payment of fines and costs into municipal treasury, §40-11-13.

2.0111 Jurisdiction Over Persons and Property

The jurisdiction of the city extends to all persons, places and property within its boundaries and such extra-territorial jurisdiction as is granted to it under the provisions of the law of the state.

ARTICLE 2 – Procedure

2.0201 Enacting Clause for Ordinances

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

2.0202 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 or appropriating money. (Source: North Dakota Century Code section 40-11-02)

2.0203 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. (Source: North Dakota Century Code section 40-11-03)

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: North Dakota Century Code section 40-06-04)

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: North Dakota Century Code section 40-11-06)

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: North Dakota Century Code section 40-11-07)

2.0207 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.

2.0208 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, 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.

2.0209 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.

2.0210 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.

2.0211 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.

2.0212 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.

2.0213 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 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.

2.0214 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.

2.0215 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.

2.0216 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.