

CHAPTER TWO

ORDINANCES

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ARTICLE 1 - Procedure

2.0101 Enacting Clause for Ordinances

The enacting clause for every ordinance adopted by the City of Harvey shall be "Be it ordained by the City Council of the City of Harvey." 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)

2.0102 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. (Source: North Dakota Century Code Section 40-11-02)

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

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No vote of the governing body shall be reconsidered or rescinded at a special meeting unless at such special meeting there is present as large a number of members as were present when such vote was taken.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

2.0105 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)

2.0106 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)

2.0107 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.

2.0108 Enactment and Revision of Ordinances

The provisions of Section 40-11-09 of the North Dakota Century Code and all subsequent amendments shall be and 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.

2.0109 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 shall be and 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.

2.0110 Violation of Ordinance - Citations, When Warrant of Arrest to Issue, or Summons

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

In all actions for the violation of an ordinance, any duly authorized City Police Officer may issue an appropriate traffic citation when said City Police Officer has witnessed the violation of an ordinance, but a warrant for the arrest of the offender may be issued upon the discretion of the City Attorney, and a sworn complaint that an ordinance has been violated and the City Attorney has determined that there are reasonable grounds to believe the person charged is guilty of such violation. Any person arrested under a warrant shall be taken into custody, and or allowed to post bail, pursuant to the terms of the Warrant of Arrest, and then, the person arrested shall appear without unnecessary delay before the proper official to be tried for the alleged offense. If, in the discretion of the City Attorney, only a Summons is necessary for the appearance of the person charged to appear in Court, a Summons may be issued by the City Attorney and/or the Municipal Judge. If a person charged has been served a summons, and then, fails to appear pursuant to the terms of the summons, then, a Warrant of Arrest may be issued for the person charged with the violation of the ordinance.

2.0111 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 shall be and 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.

2.0112 Costs of Prosecution

In every case of conviction of a violation of any ordinance, or any part thereof, or conviction for a violation of a state statute committed within the City of Harvey, the cost of prosecution shall be assessed against the person convicted as part of the punishment. Every Offense committed in the City of Harvey and brought in City Municipal Court shall have a mandatory minimum court cost of \$100.00. The City shall also be allowed to request a prosecution fee of \$100 per offense committed in the City of Harvey and brought in City Municipal Court if there are applicable fees for going to Court. (Source HB1088)

2.0113 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.

2.0114 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.

2.0115 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. All fines, penalties and forfeitures collected for violations of State Statutes committed in the City of Harvey, and that are statutorily allowed to be brought in Municipal Court, and are brought in Municipal Court, shall be paid into the City's treasury each month.

2.0116 Deferring or Suspending Sentence

The municipal judge may, upon the conviction of any person of any offense against any of the ordinances of the City, then and there impose a sentence of imprisonment as may be regulated by such ordinances, or defer imposition of sentence or suspend the sentence imposed on such person for a period of not to exceed ninety (90) days from the date of such conviction. The municipal judge may, during such period, allow the defendant to go upon his own recognizance, or upon such bail as may be regulated by law or the ordinances of the City, or may suspend or defer such sentence upon such terms and conditions as the judge may prescribe. The municipal judge may, at or before the expiration of such period, have the defendant brought before him and commit such defendant or cause such sentence of imprisonment to be then and there imposed.