

**CHAPTER TWO
ORDINANCES**

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CHAPTER TWO ORDINANCES

ARTICLE 1 - PROCEDURE

2.0101 Enacting Clause for Ordinances

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

2.0102 Grammatical Interpretations

The following grammatical rules apply unless it is apparent from the context that a different construction is intended:

- (a) Gender. Each gender includes the masculine, feminine and neuter genders.
- (b) Singulars and plurals. The singular number includes the plural, and the plural includes the singular.
- (c) Tense. Words used in the present tense include the past and future tenses and vice versa, unless manifestly inapplicable.

2.0103 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 City Council 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. (North Dakota Century Code Section 40-11-02)

2.0104 Yea and Nay and Abstention Vote on Passage - When Required

The yea and nay shall be taken and entered on the journal of the City Council'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. (North Dakota Century Code Section 40-11-03) The member of the City Council, who passes his/her vote or remains silent when the roll call on the vote is taken, shall be deemed to have voted yea, and a record of yea shall be entered in the journal.

The phrase "abstention votes" is an oxymoron, an abstention being a refusal to vote. To abstain means to refrain from voting, and, as a consequence, there can be no such thing as an "abstention vote."

In the usual situation, where either a majority vote or a two-thirds vote is required, abstentions have absolutely no effect on the outcome of the vote since what is required is either a majority or two-thirds of the votes cast. On the other hand, if the vote required is a majority or two-thirds of the members present an abstention will have the same effect as a "no" vote. Even in such a case, however, an abstention is not a vote. (Robert's Rules of Order Newly Revised in Brief 10th Edition, p. 66)

A member of the City Council who, by reason of a stated conflict of interest, is excused from voting and shall not be considered a qualified member of the board during such vote. (North Dakota Century Code 44-04-22)

2.0105 Reconsideration or Rescinding Vote

No vote of the City Council 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. (North Dakota Century Code Section 40-06-04)

2.0106 Publication of Ordinances

The title and penalty clause of every ordinance imposing any penalty, fine, incarceration 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. (North Dakota Century Code Section 40-11-06)

2.0107 Effective Date of Ordinances

Ordinances finally approved by the City Council 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 and subject to Home Rule Charter. (North Dakota Century Code Section 40-11-07)

2.0108 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.

2.0109 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 Mayor may appoint, by and with the advice and consent of the City Council, one or more competent persons to prepare and submit to the City Council 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 city 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 City Council 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 City Council, and shall be valid and effective without publication in a newspaper or posting.

2.0110 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.

2.0111 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 shall be and 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 may be issued at the discretion of the District Court of Dickey County. Any person arrested under a warrant shall be taken without unnecessary delay before the proper officer to be tried for the alleged offense.

2.0112 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/her 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.

2.0113 Fines and Forfeitures

Fines and forfeitures for violation of ordinances paid into the treasury. All fines, penalties, and forfeitures collected for offenses against the ordinances of a city, including those fines, penalties, and forfeitures collected as a result of a judgment of a district court rendered pursuant to section 40-18-19, must be paid into the city's treasury at such time and in such manner as may be prescribed by ordinance. NDCC 40-11-13

(Refer to Section 1.402 regarding contracts with Dickey County for Court Services)