

### ORDINANCE NO. 203

Be it ordained by Council of the City of Max, McLean County, North Dakota, an Ordinance relating to **MUNICIPAL COURT**, and Penalties, fines, and awards for the violations thereof.

#### ARTICLE 1 GENERAL

- 1.0001 **A Municipal Court is established.** A municipal court is hereby established and shall be known and referred to as “the Municipal Court of the City of Max, McLean County, State of North Dakota.”
- 1.0002 **Jurisdiction.** The municipal court shall have exclusive jurisdiction of, and shall hear, try and determine, all offenses against the ordinances of the City if the relief being sought in court consists of the imposition of a fine or imprisonment or both. However, nothing in these ordinances shall be construed as an election by the City to forego any rights it might have to enforce its ordinances through actions brought in other courts of appropriate jurisdiction, such as, for example, by the bringing of an action for injunction in state district court. The municipal court’s jurisdiction shall include:
- (a.) The municipal judge may hear, try, and determine misdemeanors and infractions when jurisdiction has been conferred by the Constitution of North Dakota and N.D.C.C. Title 29 or other laws.
  - (b.) The municipal judge may adjudge and impose the punishment prescribed by law, upon conviction, in all cases within the municipal judge’s jurisdiction to hear, try, and determine.
  - (c.) The municipal court has no jurisdiction to hear, try, and determine an offense that would be a violation of N.D.C.C § 39-08-01 (operating or being in physical control of a motor of a motor vehicle while under the influence of alcohol or drugs) or equivalent ordinance if the judge is not a person licensed to practice law in this state.
  - (d.) An action for the violation of a city ordinance for which the right to a jury trial does not otherwise exist or in which the defendant has timely and appropriately waived a right to a jury trial in writing pursuant to rules of the North Dakota Supreme Court may be tried and determined by the municipal judge without the intervention of a jury. However, in the event of an adverse verdict in a municipal court trial, said defendant may appeal to district court as provided in N.D.C.C § 40-18-19 but waiver of jury trial in the municipal court proceeding also constitutes a waiver of jury trial in the district court.
  - (e.) A matter may be transferred to district court for trial only if the defendant exercises his/her right to a jury trial and requests, in writing, transfer of the case to district court within 28 days after arraignment. After a transfer to district court, if the defendant waives a jury trial, the matter must be remanded to the municipal court unless the defendant and the prosecuting attorney agree that jurisdiction for the matter should remain with the district court. If the defendant does not waive a jury trial, the district court shall retain jurisdiction for sentencing. The city shall provide a prosecuting attorney and, in the case of any indigent defendant, a defense attorney.
- 1.0003 **Appeal.** An appeal may be taken to the district court from a judgement of conviction or order deferring imposition of sentence in a municipal court in accordance with the North Dakota Rules of Criminal Procedure.

## ARTICLE II MUNICIPAL JUDGE

- 2.0001 **Municipal Judge.** The municipal judge shall hold office for a term of four years and shall hold office until a successor is elected and qualified. No person appointed to hold office serve as municipal judge unless such person shall be: a citizen of the United States; over 21 years and a resident of the State of North Dakota for one year. Unless otherwise required by ordinance or resolution of the city, the municipal judge need not be licensed to practice law in state, nor may the judge be required to be a resident of the city.
- 2.0002 **Duties of the Municipal Judge.** The municipal judge shall hear, try, and determine offenses against the ordinances of the city and perform all of the duties prescribed by the laws of the state and this Code.
- (a.) During all causes, proceedings and trials held in the municipal court, the municipal judge shall preserve order and dignity and to hear each matter with courtesy to all parties concerned.
  - (b.) When a fine is assessed for violation of the provisions of an ordinance of the city, it shall be within the discretion of the municipal judge assessing the fine to provide for the payment of the fine on an installment basis under such terms and conditions as the municipal judge may deem appropriate.
  - (c.) The municipal judge and alternate municipal judge shall comply with continuing judicial education requirements established by rule of the North Dakota Supreme Court. The City shall reimburse the municipal judge and/or alternate municipal judge for necessary expenses of travel and subsistence using the same procedures and in the same manner as other city officials are reimbursed.
  - (d.) At the end of each month, the municipal judge shall make and file with the City Auditor a written report under oath showing an account of all fees, costs, forfeitures, and any other monetary considerations collected by the municipal court during the preceding month and showing the actions in which, the fees were collected. The municipal court shall pay the amount of fees, fines, costs, forfeitures, and any other monetary considerations collected to the City Treasury at the end of each month. The judge's salary may not be paid until the judge has complied with the section.
  - (e.) Before holding court in any calendar year, the municipal court judge shall certify to the State Court Administrator that the municipal court meets the minimum standards in Administrative Rule 30, Section 3 and has made its best efforts, in cooperation with city government, to meet the minimum standards in Administrative Rule 30, Section 4. A municipal judge should not hold court during any year in which compliance with the certification requirement has not been met.
- 2.0003 **Alternative Municipal Judge.** A vacancy in the office of municipal judge because of death, resignation, or otherwise shall be filled by appointment by the mayor, subject to confirmation by the City Council. An appointee shall qualify and hold office until the next City election and a successor is elected and qualified. The Council may appoint an alternate municipal judge to serve when the municipal judge is unable to serve due to temporary absence, interest,

disqualification, or disability. The alternate judge shall be compensated at a rate set by the City Council and shall possess the qualifications of a municipal judge. Where the municipal judge is disqualified for any reason whatsoever from hearing a particular case, then pending in the municipal court, the case shall be heard by an alternate municipal judge who shall then preside over all cases pending before the municipal court at that session. An alternate municipal judge shall have all the qualifications required for election as municipal judge.

2.0004 **Compensation of municipal judge and alternate municipal judge.** The salary of the judge shall be as set forth in the City's annual budget and be paid in accordance with administrative policies relating to salary distribution.

(a.) The municipal judge must be paid a salary by the city and may not be paid in relation to fees or fines collected by the municipal court. The municipal judge's salary may not be reduced during the municipal judge's term of office.

(b.) In the event the City determines that it is to the best interests of the City that the municipal judge attend a school or conference, the regular salary of the municipal judge shall be paid to the municipal judge for the time covered by such absence.

### **ARTICLE III MUNICIPAL COURT CLERK.**

3.0001 The City Council may appoint any qualified person to serve as municipal court clerk or deputy clerk for municipal ordinance violations. The municipal court clerk and deputy clerk, if any, shall comply with any rules governing the qualifications of municipal court clerks and deputy clerks, the extent and assignment of authority by municipal judges, and the conduct of the office, including rules for training sessions and for continuing education that may be adopted by the North Dakota Supreme Court.

3.0002 The municipal judge is responsible for the supervision of the municipal court clerk or deputy clerk when the clerk or deputy clerk is performing judicial or administrative functions on behalf of the municipal court. The municipal judge may assign responsibilities to the municipal court clerk or deputy clerk, including the administration of the office of the municipal court and the supervision of other personnel of that office.

3.0003 The municipal court clerk shall assist the municipal judge with preparation of a monthly written report showing an account of all fees, costs, forfeitures, and any other monetary considerations collected by the municipal court during the preceding month and showing the actions in which, the fees were collected.

3.0004 The clerk of municipal court shall collect all fines, costs, and fees assessed by the municipal court and shall pay to the City Auditor the full amount of all fines, costs, and fees collected during the preceding month if not previously paid to the City Auditor.

3.0005 A municipal court clerk or deputy clerk is entitled to receive a salary as fixed by the City Council.

## ARTICLE IV LEGAL PRINCIPALS APPLICABLE TO ORDINANCES

- 4.0001 **Adoption of State Criminal Code.** Unless the context clearly indicates otherwise or as otherwise provided by these ordinances, those rules, principles and definitions provided by the North Dakota Century Code Title 12.1 shall apply to violations or offenses which are established in this Code of Ordinances.
- 4.0002 **Proof and Presumptions.** In those proceeding traditionally considered noncriminal in nature such as (but not limited to) a nuisance violation, the City need only establish each element of the offense by the preponderance of the evidence, otherwise proof shall be required beyond a reasonable doubt with respect to each element of the offense. However, imprisonment may not be imposed for an offense which is proved only by the preponderance of the evidence.
- 4.0003 **Culpability.** If an ordinance or regulation thereunder defining an offense does not specify any culpability, then no proof of culpability is required; the offense is a strict liability offense.
- 4.0004 **Definitions.**
- (a.) "Offense" means an act or omission to act which is prohibited by an ordinance enacted by the City of Max.

## ARTICLE V PROCEDURE

- 5.0001 **Conduct of municipal court generally.** The municipal judge shall be in attendance at municipal court for the transaction of business that may come before him and shall devote the time necessary to handle and dispose of the business coming before him/her. The conduct of the municipal court shall be governed by the laws of the state and by the provisions of this Code.
- 5.0002 **Application of North Dakota Rules of Criminal Procedure.** Except as provided by N.D.R.Crim.P. 1 (b), the North Dakota Rules of Criminal Procedure shall govern the practice and procedure in all criminal proceedings, including prosecutions for violations of municipal ordinances and prosecutions for contempt when punitive sanctions are sought in a non-summary proceeding.
- 5.0003 **Municipal court hours.** To be determined by municipal judge.
- 5.0004 **Change of judge.** Any party to a proceeding pending in municipal court may obtain a change of judge pursuant to N. D. C.C. § 29-15-21, except that either a district judge or a municipal judge may be appointed to act in place of the disqualified judge. The alternate municipal judge, if any, is automatically appointed to preside in the case.
- 5.0005 **Procedure when offense varies from complaint.** In all actions and proceedings before the municipal court, for violation of this Code or other ordinance of the City, or the enforcement and recovery of any penalty provided for violations thereof, when it shall appear from the evidence that another section of this Code or another ordinance of the City, other than that charged to have been violated, has been violated, the court shall have the power and authority to adjudge the defendant guilty of the other section of this Code or other ordinance of the City; provided, that upon demand of the defendant, a new complaint shall be made and filed charging the defendant with the other violation. The proceeding under the new complaint shall

be in the same manner and form as provided by law in cases otherwise instituted in the municipal court.

5.0006 **Sentencing.** Except as otherwise provided herein, the imposition of sentences and all matters relating thereto or in lieu thereof, including enforcement of the court's judgement or its disposition of the offender, shall be governed by applicable state law.

- (a.) Pursuant to N.D.C.C § 27-01-10, the municipal judge is authorized to assess a fee of twenty-five dollars (\$25.00) on every person adjudicated guilty of an offense for which the maximum penalty which may be imposed includes imprisonment.
- (b.) Subject to N.D.C.C § 40-05-06, the municipal judge may use the sentencing alternative provided by N.D.C.C § 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 N.D.C.C § 12.1-32-02 (3) or (4), except that a municipal judge may not suspend a sentence or the imposition of sentence for driving a motor vehicle of an operator's license suspension, revocation, or restriction or for a violation of N.D.C.C § 39-08-01 or equivalent ordinance if that suspension of sentence or suspension of the imposition of sentence is prohibited under N.D.C.C. § 39-06-17 or 39-06-42 or N.D.C.C Chapter 39-08.
- (c.) The municipal judge has the power to enforce obedience to the court's orders and judgments. The judge may fine or imprison for contempt committed in the judge's presence while holding court, as well as for contempt of process issued, and of orders made by the judge. When an act or omission constituting contempt in a municipal court is not committed in the presence of the municipal judge, an affidavit alleging the facts may be filed and a warrant of arrest thereupon may issue on which the person accused may be arrested and brought before the municipal judge immediately. The person must be given a reasonable opportunity to employ counsel and defend against the alleged contempt. After hearing the allegations and proofs, the municipal judge may discharge the person or adjudge the person guilty and may punish by fine or imprisonment or both. The fine in any case may not be more than \$1000.00 and the imprisonment may not be more than 30 days.

5.0007 **Civil collection of fines, costs, and fees in municipal court.**

- (a.) Every fine, award of costs, or imposition of fees imposed by the municipal court prior to March 1, 2016, shall be deemed to have given rise to a debt from the person against whom or against which it was assessed to the city.
- (b.) The City is authorized to collect the debts recognized herein, or created hereby, in the same manner in which any private person may collect or enforce debts owing to it, including the bringing of a civil suit thereon, or the employment of an agent (on a contingent fee basis or otherwise) to collect such debts.

Nothing herein, however, is intended to give rise to a double claim against, or double obligation on the part of, the person against whom or against which the fine, award of costs, or imposition of fees has been assessed by the municipal court, and any collection of monies on or with respect to a debt to the City which is recognized or created by this section shall be credited likewise and equally upon the original obligation imposed by the municipal court. The end of avoiding a double recovery, and in recognition of the inherent jurisdiction and powers of the municipal court, the municipal judge may



withdraw or exclude from the City's civil collection process such individual cases or categories of cases as the judge deems appropriate, and may exercise such individual cases or categories of cases as the judge deems appropriate, and may exercise unfettered, all discretion granted to him, by state law with respect to the remittance, forgiveness, compromise, or other treatment of the fine, award of costs, or imposition of a fee assessed by him in the first instance.

**REPEAL**

All ordinances adopted prior to this ordinance and which conflict with this ordinance are herewith repealed and replaced with Ordinance NO. 203.

**EFFECTIVE DATE**

This ordinance shall take effect after its passage, approval, and publication.

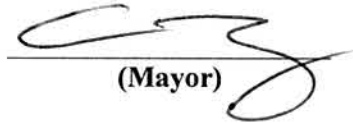
Date of 1<sup>st</sup> Reading: June 19, 2023

Date of 2<sup>nd</sup> Reading: June 29, 2023

**Attest:**

  
**(Auditor)**

**Approved:**

  
**(Mayor)**

(City Seal)

