

CHAPTER 20

CONSTRUCTION AND EFFECT OF ORDINANCES

20.01 **RULES OF CONSTRUCTION.**

(1) In the construction of this Code of general ordinances, the following rules shall be observed unless such construction would be inconsistent with the manifest intent of the ordinances.

(a) The term WI Stats. Wherever used in this code shall mean the WI Stats. for the latest year as revised and the term WI Administrative Code wherever used in this Code shall mean the latest date as revised. Any future amendments, revisions, or modifications of the statutes or administrative code incorporated herein are intended to be made part of this Code.

(b) Gender: Singular and Plural. Every word in the Code and in any ordinance importing the masculine gender may extend and be applied to females as well as males, and every word importing the singular number only may extend and be applied to several persons or things as well as to one person or thing; provided that these rules of construction shall not be applied to any provisions which shall contain any express language excluding such construction or when the subject matter or context of such provisions may be repugnant thereto.

(c) Person. The word "person" extends and applies to natural persons, firms, corporations, associations, partnerships or other bodies politic and all entities of any kind capable of being sued unless plainly inapplicable.

(d) Acts by Agents. When provision requires an act to be done which may by law as well be done by an agent as by the principal, such requirement shall be construed to include all such acts when done by an authorized agent.

20.02 **CONFLICT AND SEPARABILITY.**

(1) **CONFLICT OF PROVISIONS.** If the provisions of the different Chapters of this Code conflict with or contravene each other, the provisions of each Chapter shall prevail as to all matters and questions arising out of the subject matter of such Chapter.

(2) **SEPARABILITY OF CODE PROVISIONS.** If any section, subsection, sentence, clause or phrase of this Code is for any reason held to be invalid or unconstitutional by reason of any decision of any court of competent jurisdiction, such decision shall not affect the validity of any other section, subsection, sentence, clause or phrase or portion thereof. The Mayor and City Council of the City hereby declare that they would have passed this Code and each section, subsection, sentence, clause, phrase or portion

thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases or portions thereof may be declared invalid or unconstitutional.

20.03 CLERK TO FILE DOCUMENTS INCORPORATED BY REFERENCE.

Whenever in this Code any standard, code, rule, regulation or other written or printed matter is adopted by reference, it shall be deemed incorporated in this Code as if fully set forth herein and the City Clerk is hereby directed and required to file, deposit and keep in his office a copy of the Code, standard, rule, regulation or other written or printed matter as adopted. Materials so filed, deposited and kept shall be public records open for examination with proper care by any person during the City Clerk's office hours, subject to such orders or regulations which the City Clerk may prescribe for their preservation.

20.04 PENALTY PROVISIONS.

(1) **GENERAL PENALTY.** Except where a penalty is provided elsewhere in this Code, any person who shall violate any provision of this Code shall upon conviction of such violation be subject to a penalty, which shall be as follows:

(a) **First Offense - Penalty.** Any person who shall violate any provision of this Code, subject to a penalty shall, upon conviction thereof, forfeit not less than Ten Dollars (\$10.00) nor more than Two Hundred Fifty Dollars (\$250.00) together with the costs of prosecution. Any person who defaults in the payment of such forfeiture or costs shall be imprisoned in the County Jail until said forfeiture and costs are paid, but not exceeding ninety (90) days.

(b) **Second Offense - Penalty.** Any person found guilty of violating any ordinance or part of an ordinance of this Code who shall previously have been convicted of a violation of the same ordinance shall upon conviction thereof, forfeit not less than One Hundred Dollars (\$100.00) nor more than Two Hundred Fifty Dollars (\$250.00) for each such offense, together with costs of prosecution. Any person who defaults in the payment of such forfeiture or costs shall be imprisoned in the County Jail until said forfeiture and costs are paid, but not exceeding six (6) months.

(2) **CONTINUED VIOLATIONS.** Each violation and each day a violation continues or occurs shall constitute a separate offense. Nothing in this code shall preclude the City from maintaining any appropriate action to prevent or remove a violation of any provision of this code.

(3) **OTHER REMEDIES.**

(a) The City shall have any and all other remedies afforded by the Wisconsin Statutes in addition to the forfeitures and costs or prosecution above.

(b) Execution against defendants' property. Whenever any person fails to pay a forfeiture and costs of prosecution upon the order of any court violation of any

ordinance of the City, the court may, in lieu of ordering imprisonment of the defendant, or after the defendant has been released from custody, issue an execution against the property of the defendant for said forfeiture and costs.

(4) RESTITUTION. Any violation of a provision of this Code similar to conduct prohibited by State Statute resulting in damage to property or physical injury to a person shall require restitution to be made upon conviction thereof.

(5) STATUTORY EQUIVALENT ORDINANCES. Notwithstanding other provisions of this Code of Ordinances, when a violation of these Wisconsin Statutes, the City official charging under these ordinances may use the Wisconsin Judicial Conference uniform deposit schedule forfeiture amount, including all court costs and assessments, listed for the violation.

(6) OTHER SANCTIONS. Nothing herein shall preclude or affect the power of the sentencing court to exercise additional authorities privileges of the defendant, order the defendant to submit to assessment and rehabilitation programs or to attend traffic safety school in addition to payment of a monetary penalty in lieu of imprisonment.(Rep. & Recr. #333)

20.05 **REPEAL OF GENERAL ORDINANCES.** All ordinances heretofore adopted by the City Council of the City are hereby repealed, except all ordinances or parts of ordinances relating to the following subjects and not conflicting with any of the provisions of this Code:

The issuance of corporate bonds and notes of the City of whatever name or description.

The establishment of grades, curb lines and widths of sidewalks in the public streets and alleys.

The fixing of salaries of public officials and employees.

Rights, licenses or franchises or the creation of any contract with the City.

The lighting of streets and alleys.

The annexation of territory to the City.

The naming and changing of names of streets, alleys, public grounds and parks.

The letting of contracts without bids.

The establishment of wards, ward boundaries and election precincts.

Tax and special assessment levies.

Release of persons, firms or corporations from liability.

Construction of any public works.

Water, sewer and electric rates, rules and regulations and sewer and water main construction.

Budget ordinances, resolutions and actions.

The Zoning Ordinance which is reenacted with all amendments thereto.

The Airport Zoning Ordinance which is reenacted.

20.06 **EFFECT OF REPEALS.** The repeal or amendment of any section or provisions of this Code or of any other ordinance or resolution of the Common Council shall not:

(1) By implication be deemed to revive any ordinance not in force or existing at the time at which such repeal or amendment takes effect.

(2) Affect any vested right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed or amended, unless the privilege of repealing such obligation or privilege has been reserved by the City.

(3) Affect any offense committed or penalty or forfeiture incurred, previous to the time when any ordinance shall be repealed or amended, except that when any forfeiture or penalty shall have been mitigated by the provisions of any ordinance, such provisions shall apply to and control any judgment to be pronounced after such ordinance takes effect for any offense committed before that time.

(4) Affect any prosecution for any offense, or the levy of any penalty or forfeiture pending at the time when any ordinance aforesaid shall be repealed or amended, but the right of action shall continue and the offender shall be subject to the penalty as provided in such ordinances, and such prosecution shall proceed, in all respects, as if such ordinance or ordinances had not been repealed, except that all such proceedings had after the time this Code shall take effect, shall be conducted according to the provisions of this Code.

20.07 **TITLE: EFFECTIVE DATE: CITATION.** These ordinances shall be known as the "Municipal Code of the City of New Holstein" and shall take effect from and after passage and publication as provided in section 66.035, WI Stats. All references thereto shall be cited by section number (example: section 13.06, Municipal Code of the City of New Holstein).

20.08 **ENFORCEMENT OF ORDINANCES.**

(1) The City of New Holstein hereby elects to use the citation method of enforcement of ordinances. All City law enforcement officers, City personnel and other personnel charged with the responsibility of enforcing the provision of this Code of Ordinances are hereby authorized pursuant to Section 66.119 (1)(a), Wisconsin Statutes, to issue citations for violations of this Code or Ordinances, including ordinances for which a statutory counterpart exists.

(2) INFORMATION CONTAINED CITATION. The citation shall contain the following:

- (a) The name and address of the alleged violator.
- (b) Factual allegations describing the alleged violation.
- (c) The time and place of the offense.
- (d) The section of the ordinance violated.
- (e) A designation of the offense in such manner as can readily be understood by a person making a reasonable effort to do so.
- (f) The time at which the alleged violator may appear in court.
- (g) A statement which in essence informs the alleged violator:
 - (1) That a cash deposit based on the schedule of deposits established by this ordinance may be made which shall be delivered or mailed to the New Holstein Municipal Court prior to the time of the scheduled court appearance.
 - (2) That if a deposit is made, no appearance in court is necessary unless he is subsequently summoned.
 - (3) That if a cash deposit is made and the alleged violator does not appear in court, he will be deemed to have entered a plea of no contest, or, if the court does not accept the plea of no contest, a summons will be issued commanding him to appear in court to answer the complaint.
 - (4) That if no cash deposit is made and the alleged violator does not appear may be commenced to collect the forfeiture.
- (h) A direction that if the alleged violator elects to make cash deposit, the statement which accompanies the citation shall be signed to indicate that the statement required

under Subsection (a) above has been read. Such statement shall be sent or brought with the cash deposit.

(i) Such other information as the City deems necessary.

(3) FORM OF CITATION. The form of the citation to be used shall be the Wisconsin Uniform Citation, or any form that is substantially similar thereto.

(4) SCHEDULE OF DEPOSITS.

(a) The cash deposit for violation of an ordinance that adopts a Wisconsin Statute shall be equal to the cash deposit established by the Wisconsin Judicial Conference uniform deposit schedule for violation of that Statute, plus all court cost and assessments.

(b) The cash deposit for all other ordinance violations shall be equal to forty percent (40%) of the maximum forfeiture for that violation, plus all court costs and assessments.

(5) ISSUANCE OF CITATION.

(a) LAW ENFORCEMENT OFFICER. Any law enforcement officer may issue citations authorized under this Chapter, including any law enforcement agencies or officers that are under contract with the City to provide law enforcement services.

(b) CITY OFFICIALS. The following city officials may issue citations with respect to those specified ordinances which are directly related to their official responsibilities:

(1) Any law enforcement officer.

(2) Fire Chief or Fire Inspector.

(3) School Crossing Guards.

(4) Building Inspector, Plumbing Inspector, Electrical Inspector, and HVAC Inspector

(5) Street and Weed Commissioner

(6) Public Works Director

(6) PROCEDURE. Section 66.119(3), Wisconsin Statutes, relating to violator's options and procedure on default, is hereby adopted and incorporated herein by reference.

(7) NON-EXCLUSIVITY.

(a) OTHER ORDINANCE. Adoption of this Ordinance does not precludes the City Council from adopting any other ordinance or providing for the enforcement of any other law or ordinance relating to the same or other matter.

(b) OTHER REMEDIES. The issuance of a citation hereunder shall not preclude the City or any authorized officer from proceeding under any other ordinance, regulation, or order.(Cr. #334)(Rep. and Recr. #342)

20.09 PARTIES TO A VIOLATION

Whoever is concerned in the commission of a violation of any provision of this code may be charged with and convicted of the violation although the person did not directly commit it and although the person who directly committed it has not been convicted of the violation. A person is concerned in the commission of the violation if the person directly commits the violation, intentionally aids or abets the commission of it, is a party to a conspiracy with another to commit it, or advises, hires, counsels, or otherwise procures another to commit it. (Cr. #590)