

## Chapter 1

### General Provisions

#### **Section 1-1 Title.**

This code shall be known as the 2005 REVISED ORDINANCES OF THE CITY OF MENNO, SOUTH DAKOTA. It may also be cited for legal purposes as ORDINANCE NO. 2005-01, CITY OF MENNO or CODE OF ORDINANCES, CITY OF MENNO. Any reference to the number of any Section contained herein shall be understood to refer to the position of the same under its appropriate Chapter heading, its Title or Article heading, if any, and to the penalty clause relating thereto, as well as to the Section itself, when reference is made in this ordinance by title in any legal document or ordinance of the city.

#### **Section 1-2 Catchlines of sections.**

The catchlines of the 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 reenacted.

#### **Section 1-3 Rules of construction and definitions.**

In the construction of this Code, the following rules shall be observed and the following definitions shall apply, unless such construction would be inconsistent with the manifest intent of the council. Terms that are not defined shall have their ordinary accepted meanings within the context with which they are used. Webster's Third New International Dictionary of the English Language, Unabridged, ©1981, shall be construed as providing ordinary accepted meanings.

***Generally*** - The provisions of this Code shall be liberally construed to effect the purposes expressed therein or implied from the expression thereof. In case of doubt or ambiguity in the meaning of such provisions, the general shall yield to the particular. Reference for interpretation and construction shall tend to further the accomplishment of the elimination of the particular mischiefs for which the provisions were enacted. Words shall be construed in their common and usual significance unless the contrary is clearly indicated.

### **CONSTRUCTION**

***City*** - The words "the city" or "this city" shall mean the City of Menno, in the County of Hutchinson, State of South Dakota

***City council*** - The city council of the City of Menno, Hutchinson County, South Dakota.

***Code*** - The term "Code" or "this Code" shall be taken to mean the Revised Ordinances of Menno in their entirety, including each and every section thereof. The entire Code is intended by the council to constitute an ordinance in revision of the ordinances of the city, within the meaning of SDCL 9-19-16 and 9-19-17.

***Computation of time*** - In computing any period of time mentioned in the provisions of this Code, the day of the act, event or default after which the designated period of time begins to run is not to be included, and the last day of the period so computed is to be included, unless it is a Sunday or a legal holiday, in which event the period runs until the end of the next day which is neither a Sunday nor a holiday.

**County** - The word “county” shall mean the County of Hutchinson, State of South Dakota.

**Duties performed by agents** - Wherever in this Code any act is required to be done by an officer in the line of his general duties, or by a department head or inspector, the same shall be construed to permit the doing of such act by the agent or subordinate of such person; provided that the agent or subordinate is duly authorized and duly qualified to perform such act. Such rule shall apply also to license holders, where such act is not otherwise required to be performed personally by such person, either by specific law or by the nature of such act.

**Gender** - Words used in the masculine gender include the female and neuter. Words used in the feminine gender include the masculine and neuter.

**Joint authority** - Words purporting to give authority to three or more officers or other persons shall be construed as giving such authority to a majority of such officers or other persons, unless it is otherwise declared.

**May, shall** - The word “may” is permissive; the word “shall” is mandatory.

**Month** - The word “month” shall mean a calendar month.

**Municipality** - The City of Menno, South Dakota, or any authorized person or board acting on its behalf.

**Number** - Any word importing the singular number shall include the plural and any word importing the plural number shall include the singular.

**Oath** - “Oath” includes affirmation.

**Officers, employees, etc.** - Whenever reference is made in this Code to a city officer, employee, department, board or commission by title only, this shall be construed as though followed by the words “of the City of Menno” and shall be taken to mean the officer, employee, department, board or commission of this city having the title mentioned or performing the duties indicated.

No provision of this Code designating the duties of any officer or employee shall be so construed as to make such officer or employee liable for any fine or penalty provided in this Code for a failure to perform such duty, unless the intention of the city council to impose such fine or penalty on such officer or employee is specifically and clearly expressed in the Section creating the duty.

**Ordinance** – A permanent legislative act of the governing body of the city within the limits of its powers. The words, “this ordinance,” shall be held and taken to mean the entire Ordinance in Revision, including each and every Section thereof.

**Person** - The word “person” shall extend and be applied to associations, companies, corporations, firms, organizations of any kind, partnerships and bodies politic and corporate as well as individuals.

**Resolution** - Any determination, decision, or direction of the city council of a special or temporary character for the purpose of initiating, effecting, or carrying out its administrative duties and functions under the laws and ordinances of the city.

**SDCL** - The letters “SDCL” shall mean the South Dakota Codified Laws and acts amendatory thereto.

**Shall, may** - The word “shall” is mandatory; the word “may” is permissive.

**Signature or subscription** - The word “signature” or “subscription” includes mark, when the person cannot write, his name being written near such mark, and written by a person who writes his own name as a witness.

**State** - The words “the state” or “this state” shall be construed to mean the State of South Dakota.

**Tense of verbs** - Words used in the present tense include the future as well as the present.

**Variations in punctuation; typographical errors; etc.** - No variation in punctuation, either formal or informal, consistent or not, shall affect the validity of this Code, nor shall obvious or apparent defects in spelling or typography be construed as to invalidate any portion hereof, so long as the purpose and intent of the section is clear.

**Writing and written** - The words “writing” and “written” includes typewriting and typewritten, printing and printed, except in the case of signatures, and where 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.

**Year** - The word “year” shall mean a calendar year.

## DEFINITIONS

**Abandoned motor vehicles** – Any motor vehicle left on a public street or highway for longer than thirty (30) days or on private property without the permission of the land owner or tenant.

**Alderman** - A person elected from such person’s ward of the city to serve on the city council, also referred to as councilman.

**Animal** - Any mammal, bird, reptile, amphibian or fish, except humans and cats. **(Added November 5, 2013)**

**Animal Control Officer** - Any person or persons duly appointed to the position by the City Council or an employee of any entity contracted for the animal control within the City. **(Added November 5, 2013)**

**Animal Shelter** - Facility designated for the care of animals impounded, whether maintained by the City or a contracted agency. **(Added November 5, 2013)**

**Approving authority** - The city council of Menno or its duly authorized board agent or representative.

**Area of special flood hazard** - The land in the floodplain within a community subject to a one (1%) percent or greater chance of flooding in any given year.

**Base flood** - The flood having a one (1%) percent chance of being equaled or exceeded in any given year.

**Biochemical Oxygen Demand (BOD)** - The quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure in five (5) days at twenty (20) degrees Centigrade, expressed in milligrams per liter.

**Building drain** - The part of the lowest horizontal piping of a drainage system that receives the discharge from soil, waste, and other drainage pipes inside the walls of the building and conveys it to the building sewer, beginning five (5) feet or one and one-half (1½) meters outside the inner face of the building wall.

**Building sewer** - The extension from the building drain to the public sewer or other place of disposal, also called house connection.

**Cable system** - See cable television system.

**Cable television system** - A system utilizing coaxial cable and certain electronic and other components that deliver to subscribing members of the public various communications services.

**Cable television reception service** - The simultaneous delivery by satellite cable provider to television receivers or any other suitable type of audio-video communications receivers of the signals of over-the-air television broadcast stations licensed by the FCC and authorized to be carried over said system and such additional closed-circuit channels at the option of the satellite cable provider.

**CATV** – See cable television system.

**City council** - The city council of the City of Menno, Hutchinson County, South Dakota. The city council shall consist of the mayor and two aldermen elected from each ward of the city.

**Combined sewer** - A sewer intended to receive both wastewater and storm or surface water.

**Council** - The words “council,” “common council” or “city council” shall mean the city council of the City of Menno, constituting the governing body of the city.

**Councilman or council member** - A person, male or female, elected from such person’s ward of the city to serve on the city council, also referred to as alderman.

**Defaulter** - A defaulter is an official who, while serving in an official capacity, misappropriates or fails to account for public funds.

**Development** - Any man made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation, or drilling operations located within the area of a special flood hazard.

**Deviating truck** – A truck which leaves and departs from a truck route while traveling within the city. **(Added September 4, 2007/Amended December 29, 2009)**

**Domestic waste** - Wastes discharged from the average residential user in the city, also referred to as sanitary waste.

**Driver’s License** – A document issued by a state or jurisdiction to an individual that authorizes the individual to drive a motor vehicle, as that term is defined in SDCL 32-12-1. **(Added November 10, 2010)**

**Easement** - An acquired legal right for the specific use of land owned by others.

**Engine compression brakes** - A device used primarily on trucks for the conversion of the engine from an internal combustion engine to an air compressor for the purpose of braking without the use of wheel brakes. Such devices are commonly referred to as “dynamic braking devices” or as “jake-brakes”.

**FCC** – Federal Communications Commission.

**Fireworks** - Pyrotechnics or fireworks containing phosphorus, sulfocyanide, mercury, chlorate of potash and sulfur or chlorate of potash and sugar, and the following named fireworks: firecrackers, flash crackers or salutes, blank cartridges, cherry bombs, sky rockets including all devices discharging balls of fire into the air, chasers, including all devices which dart or travel above the surface of the ground during discharge, Roman candles, snakes, boa constrictors and snake nests contain bichloride of mercury, all articles for pyrotechnic display which contain gun powder, articles commonly known as son-of-a-gun, devil-on-the-rock, cricket sticks and automatic torpedoes which contain arsenic, explosive known as devil-on-the-walk, or any other article of similar character which explodes through means of friction, or by fuse; and all other fireworks, except cap pistol paper caps containing not more than twenty-five hundredths grain explosive compound to each paper cap.

**Floatable oil** - Oil, fat, or grease in a physical state such that it will separate by gravity from wastewater by treatment in an approved pretreatment facility. Wastewater shall be considered free of floatable fat if it is properly pretreated and the wastewater does not interfere with the collection system.

**Flood or flooding** - A general and temporary condition of partial or complete inundation of normally dry land area from:

1. The overflow of inland or tidal waters; and/or
2. The unusual and rapid accumulation of runoff of surface waters from any source.

**Flood Insurance Rate Map (FIRM)** - An official map of a community, on which the Federal Emergency Management Agency has delineated areas of special flood hazards designated as Zone A.

**Flood Insurance Study** - The official report provided by the Federal Insurance Administration. The report contains flood profiles, as well as the Flood Insurance Rate-Floodway Map and the water surface elevation of the base flood.

**Floodway** - The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot.

**Garbage** - All refuse accumulation of animal, fruit or vegetable matter that attends the preparation, use, cooking, dealing in or storage of meat, fish, fowl, fruits or vegetables and containers originally used for foodstuffs. "Garbage" also includes tin cans, bottles, newspapers, magazines, cardboard boxes, and other paper products. Dead animals are not included in the term garbage.

**Golf Cart** - A four-wheeled vehicle originally and specifically designed and intended to transport one or more individuals and golf clubs for the purpose of playing the game of golf on a golf course. **(Added November 10, 2010)**

**Governing body** - See city council or council.

**Gross subscriber revenues** - Those revenues derived from the monthly service charges paid by subscribers for basic cable service and premium pay services such as HBO. Subscriber revenues shall not include revenues received as installation charges and fees for reconnections, inspection, repairs, or modifications of any installations.

**Industrial user** - Any non-governmental user of publicly owned treatment works that discharges more than twenty five thousand (25,000) gallons per day of sanitary wastes or a volume of processed waste or combined processed and sanitary wastes equivalent to twenty five thousand (25,000) gallons per day of

sanitary wastes. Sanitary wastes are the wastes discharged from the average residential user in the city. The strength of the average residential waste discharged in the city is defined as “Normal Strength Domestic Wastewater.” These concentrations shall be applied in determining equivalent volume of processed waste or combined discharges of sanitary and processed wastes; or

Any non-governmental user of a public owned treatment works that discharges wastewater to the treatment works, which contains toxic or poisonous solids, liquids, or gasses of sufficient quantities either singly or by interaction with other wastes, to injure or interfere with any sewage treatment process, constitute a hazard to humans or animals, create a public nuisance, or create any hazard in or have an adverse effect on the waters receiving any discharge from the treatment works.

**Industrial waste** - The wastewater from industrial processes, trade, or business as distinct from domestic or sanitary wastes.

**Junk motor vehicles** - Any motor vehicle that has been placed on the property of a recognized junk dealer for the purposes of salvage.

**Licensing authority** – The city council.

**Manufactured home** - A structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. This term includes park trailers, travel trailers, and other similar vehicles placed on a site for greater than one hundred eighty (180) consecutive days.

**Motor vehicle** - Automobiles, motor trucks, motorcycles, house trailers, trailer coaches, cabin trailers, and all vehicles propelled by power other than muscular power, except traction engines, road rollers, fire trucks, wagons and engines, police and patrol wagons, farm wagons, freight trailers, and such vehicles as run only on rails or tracks.

**Natural outlet** - Any outlet, including storm sewers and combined sewer overflows, into a watercourse, pond, ditch, lake, or other body of surface or groundwater.

**Normal strength domestic wastewater** - Normal strength wastewater for the city in which the average concentration of suspended materials and five (5) day BOD is established at not greater than two hundred fifty (250) and two hundred (200) parts per million respectively, by weight. Such wastewater does not include infiltration and/or inflow, and it is composed of domestic wastewater.

**NPDES Permit** - National Pollutant Discharge Elimination System Permit held by the city. This permit, which establishes limits on quality and quantity of discharges from the city treatment works, was issued by the state and federal governments in accordance with the provisions of the Federal Water Pollution Control Act, as amended (33 USC 1251, et. Seq.; the “ACT”).

**Parts per million** - A weight-to-weight ratio. The parts per million multiplied by the factor 8.345 shall be equivalent to pounds per million gallons of water. Parts per million and milligrams per liter (mg/l) shall be synonymous.

**pH** - The logarithm of the reciprocal of the hydrogen-ion concentration. The concentration is the weight of hydrogen-ions in grams per liter of solution. Neutral water, for example, has a pH value of 7 and a hydrogen-ion concentration of  $10^{-7}$ .

**Properly shredded garbage** - The wastes from the preparation, cooking, and dispensing of foods that have been shredded to such a degree that all particles will be carried freely under the flow conditions normally prevailing in public sewers, with no particle greater than one-half (½) inch or 1.27 centimeters in any dimension.

**Public sewer** - A common sewer controlled by a governmental agency or public utility.

**Recreational Fire** – Any fire including but not limited to fire places, grills, fire pits, or fire rings, that is fueled by wood, wood pellets, grain, charcoal, newspaper, natural or propane gas, or any other combustible material and used for the preparation of food or the enjoyment of an open flame. **(Added October 9, 2007)**

**Refuse** - All miscellaneous waste materials except “yard waste” not specifically defined as garbage. “Refuse” includes white goods (stoves, refrigerators, freezers, water heaters, etc.), scrap materials from the construction, remodeling and repair of buildings, concrete bricks, tree stumps, earth or earthy materials, automobile bodies, metal parts or materials of a toxic, highly flammable or explosive nature.

**Removal agency** - Any public body, private or non-profit organization, specifically including the city and its agents, and any person authorized by SDCL Title 32 to remove and salvage abandoned and junk motor vehicles, and other scrap metals.

**Rubbish** - All other refuse except rocks, concrete, bricks, and similar solid material, plaster, or dirt.

**Sanitary sewer** - A sewer that carries liquid and water-carried wastes from residences, commercial buildings, industrial plants, and institutions together with minor quantities of ground, storm, and surface waters that are not admitted intentionally.

**Sanitary waste** – Wastes discharged from the average residential user in the city, also referred to as domestic waste.

**Scrap metals** - Waste or refuse metals that have been in actual use and have been abandoned and are fit only to be remanufactured or recycled.

**Sewage** - See wastewater.

**Sewer** - A pipe or conduit that carries wastewater or drainage water.

**Slug** - Any discharge of water or wastewater, which in concentration of any given constituent or in quantity of flow exceeds for any period or duration longer than fifteen (15) minutes more than five (5) times the average twenty-four (24) hour concentration or flows during normal operation and shall adversely affect the collection system and/or performance of the wastewater treatment works.

**Storm drain** - Also referred to as storm sewer. A drain or sewer for conveying water, groundwater, subsurface water, or unpolluted water from any source.

**Storm sewer** – See storm drain.

**Storm water runoff** - The portion of rainfall or snowmelt that is drained to the storm drains or otherwise does not evaporate or enter the groundwater.

**Structure** - A walled and roofed building or manufactured home that is principally above ground.

**Subscribers** - Persons contracting with a satellite cable provider to receive cable television reception services.

**Substantial improvement** - Any repair, construction, or improvement of a structure, the cost of which equals or exceeds fifty (50%) percent of the market value of the structure either:

1. Before the improvement or repair is started; or
2. If the structure has been damaged and is being restored to the condition it was before the damage occurred.

For the purpose of this definition "substantial improvements" is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not the alteration affects the external dimensions of the structure. The term does not, however, include:

1. Any project for improvement of a structure to comply with existing state or local health, sanitary, or safety code specifications which are solely necessary to assure safe living conditions; or
2. Any alteration of a structure listed on the National Register of Historic Places or a State Inventory of Historic Places.

**Sump pump** - A pump for disposing of storm drainage or ground water collected by foundation drains or seepage to a common point.

**Superintendent** - The superintendent of water and wastewater facilities, wastewater treatment works, and/or water pollution control of the city or his authorized deputy, agent, or representative. Also refers to the superintendent of streets of the city or his authorized deputy, agent, or representative.

**Suspended solid** – SS - Total suspended matter that either floats on the surface of, or is in suspension in water, wastewater, or other liquids, and that is removable by laboratory filtering as prescribed in “Standard Methods for the Examination of Water and Wastewater” and referred to as non-filterable residue.

**Truck** – Any vehicle designed or operated for the transportation of property and whose combined body and load weight exceeds twenty-six thousand (26,000) pounds or which has a gross vehicle weight rating specified by the manufacturer that exceeds twenty-six thousand pounds. Such body and load weight shall include any trailer and its load weight that is attached to such motor vehicle. Any motor vehicle primarily designated to pull a semi-trailer, shall be considered a truck regardless of its weight, even if it is not attached to a semi-trailer while it is located within the city. **(Added September 4, 2007/Amended Decmeber 29, 2009)**

**Truck route** – A way over certain streets, as designated by map herein, over and along which trucks coming into, going out of and traveling within the city must operate. **(Added September 4, 2007/Amended December 29, 2009)**

**Unpolluted water** - Water of quality equal to or better than the effluent criteria in effect or water that would not cause violation of receiving water quality standards and would not be benefited by discharge to the sanitary sewers and wastewater treatment facilities provided.

**Wastewater** - The spent water of a community. From the standpoint of source, it may be a combination of the liquid and water-carried wastes from residences, commercial buildings, industrial plants, and institutions, together with any groundwater, surface water, and storm water that may be present.

**Wastewater facilities** - The structures, equipment, and processes required to collect, carry away, and treat domestic and industrial wastes and dispose of the effluent.

**Wastewater treatment works** - An arrangement of devices and structures for treating wastewater, industrial wastes, and sludge. Sometimes used as synonymous with “waste treatment plant,” “wastewater treatment plant,” or “water pollution control plant.”

**Watercourse** - A natural or artificial channel for the passage of water either continuously or intermittently.

**Wooden building** - A frame or building of which the external or division walls are constructed in whole or in part of wood, and having more wood on the exterior than that required for the door and window frames, doors, sash, shutters, verandas and steps, and all frame buildings and sheds, although the sides and ends are proposed to be covered with corrugated iron or other metal, or veneered with brick.

**Yard Waste** - Debris such as grass clippings, leaves, garden waste, brush and trees. “Yard Waste” does not include tree stumps.

#### **Section 1-4 Continuation of city’s rights and obligations.**

- A. The city shall continue to own, possess and control all rights and property of every kind and nature owned, possessed or controlled by it at the time this Code takes effect and shall be subject to all its debts, obligations, liabilities and contracts.
- B. The official survey of the Original Site of the city; the Official Datum for establishing official benchmarks within the city; and the Governmental Seal of the city; all as heretofore established by previous ordinances, shall continue in effect upon adoption of this Ordinance in Revision.
- C. The occupants of offices provided for in this ordinance and employees, at the time this ordinance takes effect, shall continue to perform the duties of their respective offices and employments without interruption and for the same compensations and under the same conditions until the appointment or election, and qualification of their successors, but subject to the provisions of this ordinance.

#### **Section 1-5 Code does not impair vested rights or valid obligations.**

Nothing in this Code shall be so construed as to impair any vested rights or valid obligations existing when it takes effect.

#### **Section 1-6 Territorial applications of Code.**

Except as otherwise provided in this Code or by state law, the provisions of this Code shall be applicable in and over all territory within the corporate limits of the city and any public ground or park belonging to the city, whether within or without the corporate limits, and in and over all places, except within the corporate limits of another municipality, within one mile of the corporate limits of the city or of any public ground or park belonging to the city outside the corporate limits.

**Section 1-7 Continuation in force of prior ordinances and resolutions.**

All ordinances and resolutions in force when this Code takes effect which are not inconsistent with its provisions shall continue in force and effect until repealed or amended as provided by law.

**Section 1-8 Miscellaneous ordinances not affected by Code.**

Nothing in this Code shall affect the validity of any of the following:

- A. Ordinances granting any franchise, right-of-way, easement or contract right.
- B. Ordinances providing for the issuance of bonds, special assessment certificates or other evidences of obligation.
- C. Ordinances providing for appropriations.
- D. Ordinances establishing or changing street grades, widths, or names.
- E. Ordinances relating to city boundaries, local improvements, annual tax levies, zoning, subdivision, and subdivision plats.
- F. Temporary ordinances and special ordinances.

**Section 1-9 General penalty; continuing violations.**

Wherever in this Code or in any ordinance of the city an act is prohibited or is made or declared to be unlawful or an offense or a misdemeanor, or wherever in such Code or ordinance the doing of any act is required or the failure to do any act is declared to be unlawful, and no specific penalty is provided therefore, any person who shall be convicted of any such violation shall be punished by a fine of not more than \$200.00. Each day any violation of this Code or other ordinance continues shall constitute a separate offense. In addition, such person shall pay all costs and expenses involved in the case.

**Section 1-10 Liability of corporations for violations.**

For a violation of this Code or any other ordinance of the city which, by nature, does not require intent exercisable only by natural persons, a corporation may be fined or punished by appropriate penalties in addition to any punishment provided for its agents who violate this Code or other ordinances while acting as such agents.

**Section 1-11 Prosecution's election when offense created by more than one section.**

In all cases where the same offense is made punishable or is created by different clauses or sections of this Code, the prosecuting officer may elect under which to proceed, but not more than one recovery shall be had against the same person for the same offense; provided, that the revocation of a license or permit shall not be considered a recovery or penalty so as to bar any other penalty being enforced.

**Section 1-12 Powers and authorities are cumulative; separability of parts of Code.**

Except as otherwise expressly provided, all powers and authorities conferred by any provision of this Code shall be cumulative and additional to, and not in derogation of, any powers and authorities otherwise existing. Notwithstanding any other evidence of intent, it is hereby declared to be the

controlling intent of the common council that, if any provision of this Code or the application thereof to any persons or circumstances, shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder of this Code, or its application to other persons or circumstances, but such judgment shall be confined in its operation to the provisions of the particular chapter, section, subsection or provision involved, or the application thereof to the persons and circumstances directly involved in the controversy in which such judgment is rendered.

**Section 1-13 Effect of Repeal.**

- A. All ordinances and parts of ordinances in conflict with the provisions of this Code or relating to the subject matter of this Code and not re-enacted as part of this Code, except as stated in this Chapter are hereby repealed.
- B. The repeal of an ordinance shall not affect any punishment or penalty incurred before the repeal took effect, nor any suit, prosecution or proceeding pending at the time of the repeal, or any offense committed under the ordinance repealed.
- C. The repeal of an ordinance shall not revive any ordinances in force before or at the time the ordinances repealed took effect.