

## Chapter 3

### Administration

#### Article I. In General

##### Sections 3-1 Definitions

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

**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 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.

**Employee.** The term "employee", as used in this chapter, is defined to include all persons who receive compensation for personal services rendered to the city and who are not officers as defined below.

**Oath.** "Oath" includes affirmation.

**Officer.** An "officer" is defined to include all appointive and elective officers of the city, or the several offices, boards and departments thereof.

**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.

#### Article II. Council Meetings

##### Section 3-2 Time and place of regular meetings.

The council shall hold its regular meetings on the first Monday of each month at the city hall, at such hour as the council shall fix by resolution. If a regular meeting day shall fall upon a holiday, the regular meeting shall be held on a day chosen by the council. (SDCL 9-8-8)

##### Section 3-3 Notice of meeting.

At least 24 hours prior to each regular council meeting, a notice, including the proposed agenda, must be posted at city hall visible to the public. (SDCL 1-25-1.1)

##### Section 3-4 Special meetings.

A special meeting may be called by the mayor or any two council members at any time, to consider such matters as shall be mentioned in the call for such meeting. (SDCL 1-25-1.1)

**Section 3-5 Notice of special meetings.**

If possible, 24 hours prior to each special meeting, a notice, including the proposed agenda, must be posted at city hall visible to the public. Notice of special meetings shall be given in person, by mail, or by telephone to all city council members and to members of the local news media who have requested notice, to the extent that circumstances permit. (SDCL 1-25-1.1)

**Section 3-6 Action to reconsider or rescind at special meeting.**

No vote of the council shall be reconsidered or rescinded at a special meeting unless at such special meeting there be present as large a number of council members as were present when such vote was taken. (SDCL 9-8-11)

**Section 3-7 Meetings open to public; interference with meetings, etc.**

- A. The council shall sit with open doors, except as provided by law, and shall keep a journal of its proceedings. (SDCL 9-8-8)
- B. It shall be unlawful for any person to interfere in any way with the deliberations of the council at such meetings.
- C. No person not a member of the council shall address or deliver any remarks to the council at such meetings, without first asking for and receiving the privilege of so doing.

**Section 3-8 Attendance may be compelled; penalty for failure to attend.**

The council may compel the presence of absent members by sending the chief of police or any police officer to require their attendance. If any member refuses to attend after being so notified, he shall state his reasons therefore to the council at its next meeting. If the council deems such reasons insufficient, the council may impose any reasonable penalty of up to \$200. (SDCL 9-8-8)

**Section 3-9 Quorum.**

A majority of the council members elected shall constitute a quorum to do business, but a less number may adjourn from time to time and may compel the attendance of absentees, as provided in Section 3-8 and may impose a penalty for not attending in an amount of up to \$200.00. (SDCL 9-8-8)

**Section 3-10 Deferment of final action on council committee reports.**

Upon the request of any two council members present, any report of a committee of the council shall be deferred for final action thereon to the next regular meeting of the council after the report is made. (SDCL 9-8-9)

**Section 3-11 Voting.**

1. No action of the council shall be effective unless upon a vote of a majority of a quorum.
2. The yeas and nays shall be taken by roll call upon the final passage of all ordinances and resolutions and upon any proposal to create a liability against the city or for the expenditure or appropriation of its money and in all other cases at the request of any member, and shall be

entered on the journal of its proceedings. The concurrence of a majority of all the council members shall be necessary to the passage of any such ordinance or proposal. (SDCL 9-8-10)

3. It shall require a two-thirds vote of all the council members to sell any city property.
4. No vote of the council shall be reconsidered or rescinded at a special meeting unless at such special meeting there be present as large a number of council members as were present when such vote was taken. (SDCL 9-8-11)

### **Section 3-12 Adjourned meeting.**

The council may take an adjournment of a meeting to a later date, in which event the adjourned meeting shall be considered as a part of the first meeting.

### **Section 3-13 Parliamentary rules.**

Robert's Rules of Order, Newly Revised, are hereby adopted as the rules to govern the deliberations of the council, insofar as applicable.

### **Section 3-14 Expulsion of members.**

Whenever two-thirds vote of the whole number of the council shall concur, the council may expel any member of the council for gross misconduct, disorder or repeated violation of duty.

### **Section 3-15 Compensation of members.**

Compensation for officers and employees shall be set by resolution of the council and published as part of the annual salary listing.

### **Sections 3-16 – 3-25 Reserved**

## **Article III. Elected Officials - Mayor**

### **Section 3-26 Mayor-Term of office.**

The mayor shall be the chief executive of the city. The mayor shall hold office for two years. A person may hold the office of mayor for more than one term.

### **Section 3-27 Qualifications of mayor.**

No person is eligible to be nominated, elected or appointed as a mayor unless such person is a citizen of the United States, has resided in the city for three months, and is a registered voter of the city. Statute provides that no person who is a defaulter to the city can be an officer. (SDCL 9-14-2)

### **Section 3-28 Powers and duties of mayor.**

The mayor shall, except as provided in Section 3-50, preside at all meetings of the council but shall have no vote except in case of a tie. The mayor shall perform such other duties as may be prescribed by the laws and ordinances and take care that such laws and ordinances are faithfully executed. He shall give the council information relative to the affairs of the city and shall recommend for their consideration such measures as he may deem expedient. The mayor shall have the power to sign or veto any ordinance or

resolution passed by the council, and the power to veto any part or item of an ordinance or resolution appropriating money. (SDCL 9-8-3)

**Section 3-29 Vacancy in office of mayor.**

If there is a vacancy from any cause in the office of the mayor, the vacancy shall be filled by appointment by a majority vote of the members-elect of the common council, as soon as practicable after the vacancy occurs, to serve until the office is filled by election for the unexpired term at the next annual municipal election. Until the vacancy is filled or during the time of temporary disability of the mayor, the powers and duties of mayor shall be executed by the president of the city council. (SDCL 9-8-2)

**Section 3-30 – 3-45 Reserved**

**Article IV. Elected Officials - Council**

**Section 3-46 Composition of city council – Election and terms of office of aldermen.**

The city council shall consist of the mayor elected at large and two aldermen elected from and by the voters of each ward of the city, who shall hold office for two years and until their successors are elected and qualified. A person may hold office for more than one term. (SDCL 9-8-4)

**Section 3-47 Qualifications of city council members.**

No person is eligible to be nominated, elected or appointed as an alderman unless such person is a citizen of the United States, has been a resident of the city for three months, is a registered voter of the city and resides in the ward for which he has been elected to serve. No person who is a defaulter to the city can be an officer. (SDCL 9-14-2)

**Section 3-48 Power of council to judge members and govern proceedings – Bribery vacating office.**

The council shall be the judge of the election and qualifications of its own members. It shall determine its own rules of procedure, punish its members for disorderly conduct, and, with the concurrence of two-thirds of the aldermen elected thereto, may expel a member. (SDCL 9-8-5)

Any alderman who shall have been convicted of bribery shall thereby vacate his office. (SDCL 9-8-5)

**Section 3-49 Vacancy on city council.**

When a vacancy exists on the city council, the remaining members, by majority vote, shall appoint a replacement to serve until the next annual city election. Such appointment must be a qualified person from the ward in which such vacancy exists. There shall not be a special election held to fill a vacancy before the date of the annual city election. (SDCL 9-13-14.1)

In cases where the mayor or a member of the city council is called to active duty in the military, that person may temporarily resign and a temporary replacement may be made. The replacement serves until the person called to active duty returns from active duty or until the expiration of the original term, whichever occurs first.  
(SDCL 3-4-8)

**Section 3-50 President and vice-president of council.**

At the first regular meeting after the annual election in each year and after the qualification of the newly elected aldermen, the council shall elect from among its own members a president and vice-president who shall hold their respective offices for the municipal year. (SDCL 9-8-7)

The president of the council, in the absence or disability of the mayor, shall be the presiding officer of the council and shall possess all the powers of the mayor. (SDCL 9-8-7)

In the absence or disability of the mayor and president of the council, the vice-president shall perform the duties of the mayor and president of the council and shall possess all the powers of the mayor and president of the council. (SDCL 9-8-7)

**Section 3-51 Grounds for removal.**

Any member of the city council may be removed from office for misconduct, malfeasance, nonfeasance, crimes while in office, drunkenness, gross incompetence, corruption, theft, oppression, or gross partiality.

**Section 3-52 – 3-65 Reserved**

**Article V. Officers and Employees**

**Section 3-66 Officers and employees.**

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

No provision of this ordinance 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 ordinance 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.

**Section 3-67 Authority to appoint municipal officers. (Amended 7-3-12)**

All appointive officers of the city shall be appointed by the mayor with the approval of the council. (SDCL 9-14-3)

The following shall be considered appointive officers of the city:

- A. Attorney
- B. Civil Defense Engineer
- C. Health Officer
- D. Other officers as may from time to time may be deemed necessary (SDCL 9-14-1)

All other personnel employed by the city shall be considered municipal employees and shall be subject to the policies and procedures of the City of Menno Personnel Manual, to include separation from municipal service, disciplinary action and grievance procedure.

**Section 3-68 Commissions and certificate of appointment.**

All appointed officers, except the finance officer and police chief, shall be commissioned by warrant under the corporate seal and signed by the mayor and finance officer. The police chief shall be commissioned by warrant, under the corporate seal, signed by the president of the council. The mayor shall issue a certificate of appointment under the seal of the city to the finance officer. (SDCL 9-14-4)

**Section 3-69 Residence requirements.**

There are no residence requirements for appointive officers. (SDCL 9-14-2)

**Section 3-70 Qualifications and entry into office.**

Each appointed municipal officer shall enter upon the discharge of their duties as soon as they shall have duly qualified and shall hold office until the appointment and qualification of their successor. (SDCL 9-14-5)

Each elective municipal officer, when elected to fill a vacancy, shall enter upon the discharge of their duties as soon as they shall have duly qualified; and, every such officer, when elected for a full term, shall enter upon the discharge of their duties on the first Monday of May next succeeding his election or as soon thereafter as they shall have duly qualified, except as otherwise provided. (SDCL 9-14-5)

**Section 3-71 Oath of office.**

All appointed and elective municipal officers before entering upon the discharge of their duties shall take and subscribe an oath or affirmation of office in the following form: (SDCL 9-14-6)

*“I do solemnly swear that I will support the Constitution of the United States and the Constitution of the State of South Dakota, and that I will faithfully discharge the duties of the office of \_\_\_\_\_ according to the best of my ability.”*

**Section 3-72 Bond requirements.**

The city council shall approve and furnish a bond for the finance officer in an amount annually established by the city council and equal to the maximum monetary total estimated to be on hand at any one time, but the amount of such bond required may not exceed one hundred fifty thousand (150,000) dollars. The bond will be filed in the finance office. (SDCL 9-14-6.1.)

**Section 3-73 Removal from office.**

The mayor shall have power, except as otherwise provided, to remove from office any officer appointed by him, whenever the mayor shall be of the opinion that the interests of the city demand such removal. The mayor shall report the reasons for the removal to the city council at its next regular meeting. (SDCL 9-14-13)

**Section 3-74 City attorney duties.**

When required by the city council or any officer of the city, the city attorney shall furnish an opinion upon any matter relating to the affairs of the city or the official duties of such officer, conduct the prosecution of all actions or proceedings arising out of the violation of any ordinance, and perform such

other professional services incident to his office as may be required by ordinance or directed by the city council. (SDCL 9-14-22)

**Section 3-75 Finance officer duties.**

The finance officer shall in all things perform any duties required by state law to be performed by the city auditor or the city treasurer and any references in state law to duties, obligations or requirements of the city auditor or city treasurer shall be deemed as reference to and duties of the finance officer. (SDCL 9-14-17 – 9-14-21)

**Section 3-76 Additional duties of municipal officers.**

The city council may prescribe by resolution additional duties to be performed by any municipal officer not inconsistent with the laws of this State. (SDCL 9-14-27)

**Section 3-77 Civil process fees accounted for by policemen**

The chief of police or any other policemen, receiving a salary for his services, shall account for and pay over on or before the end of each month to the finance officer all fees received by him in the service of any civil process, taking a receipt therefore and filing an itemized account thereof with the finance officer. (SDCL 9-14-29)

**Section 3-78 Delivery of records and property to successor in office – Liability and penalties for refusal.**

Any person having been an officer of the city shall, within five (5) days after demand, deliver to the city finance officer or his successor in office all books, property, and effects of every description in his possession belonging to the city or pertaining to his office. Upon refusal to do so he shall be liable for all damages caused thereby and to such penalties as may be prescribed by ordinance. (SDCL 9-14-39)

**Section 3-79 Compensation of officers and employees. (Amended 5-6-13)**

Compensation for officers and employees will be as published in the annual salary listing at the first meeting in January of each year

**Section 3-80 Expenses of officers and employees in attending meetings**

The city may appropriate funds to pay the necessary expenses of its officers or employees in conducting such business or attending such meetings within or without the State of South Dakota as the city council shall determine necessary to carry out its authorized municipal activities.

**Section 3-81-100 Reserved**

**Article VI. Board of Health**

**Section 3-101 Establishment**

There is hereby established and created within and for the city a Board of Health consisting of the members, officers, assistants, and employees, who shall be clothed by the powers and duties hereinafter set forth. (SDCL 9-32-2)

**Section 3-102 Appointment of officers and members. (Amended 7-3-12)**

The board of health shall consist of the health officer who shall be, if available, a graduate of a reputable medical college, and one council member from each ward of the city. The mayor shall appoint the members of said board and all officers, employees and assistants thereof, and fill all vacancies thereof.

**Section 3-103 Meetings of the board.**

Meetings of the board shall be held with such frequency as it shall determine. Meetings may be called by the health officer at any time and shall be called by him at the request of two members of the board.

**Section 3-104 Duties and powers of the board.**

The board of health shall exercise general supervision over the health of the city and put into effect all necessary measures to promote the health and cleanliness thereof. It shall have all those powers and duties as may be provided by law. (SDCL Chapter 9-32)

It shall be the duty of the board of health to ascertain and cause all nuisances declared in this ordinance to be abated, and said board shall have authority in the daytime to enter any house, stable, store, or building, in order to make a thorough examination of cellars, vaults, sinks or drains; to enter upon all lots and grounds and cause all stagnant waters to be drained off and filled up or otherwise purified; and to cause all noxious, harmful, foul-smelling, and offensive substances to be abated or removed.

**Section 3-105 Duty of health officer.**

The health officer shall be the executive officer of the board. He shall take notice of all ordinances relating to the sanitary condition of the city and enforce the same, and to this end he is hereby authorized to enter in the day time, any premises, houses, or buildings in the city.

**Section 3-106 Police powers of inspectors.**

All members of the health department shall have all rights, duties, and obligations of police officers and shall enforce and effectuate all laws of the State of South Dakota, ordinances of the city and rules of the board of health relating to the general health of the city.

**Section 3-107 Quarantine.**

The board of health may declare quarantine in the city or any part thereof against a contagious disease prevailing there or elsewhere and against all persons and things likely to spread contagion or infection. The board of health shall have authority to enforce such quarantine until the same is raised by it, and may confine any person affected with, or likely to spread contagion or infection, to the house or premises in which he resides, or to a place provided by the board for that purpose.

**Section 3-108 Right to enter premises.**

The board of health or any duly authorized representative thereof is hereby empowered, when it shall be deemed necessary to secure or preserve the public health, to enter into or upon any premises, buildings, or other places open to the public to examine into the condition of building, premise, or other place, or of any person occupying the same or working therein or thereon, and also to examine, analyze or test any products or goods manufactured, stored, kept for sale upon or in any building or premises, and if, after

such examination analysis or test, such products or goods shall be found unfit for human food, or unsanitary, to condemn or destroy all such foodstuffs, goods, or products.