

TITLE 1 GENERAL PROVISIONS

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CHAPTER 1.01 PENALTIES AND REPEALING CLAUSE

- 1.0101 Penalty in General. Except in cases where a different or additional penalty is imposed by this Ordinance or by some existing provision of law, every violation of any of the provisions of this Ordinance shall be punishable by a fine not to exceed two hundred dollars for each violation, or by imprisonment for a period not to exceed thirty days for each violation, or by both the fine and imprisonment. (SDCL 7-18A-2)
- 1.0102 Ordinances Repealed. All ordinances and parts of ordinances in conflict with the provisions of this Ordinance and not re-enacted as part of this Ordinance, are hereby repealed; and all other ordinances not previously in this Ordinance restated, refined, or modified are similarly hereby repealed.
- 1.0103 Unconstitutionality. Should any section, paragraph, sentence, clause, or phrase of this Ordinance be declared unconstitutional or invalid for any reason the remainder of this Ordinance shall not be affected thereby.
- 1.0104 Publication and Effect. This Ordinance, upon its adoption, shall take effect on the twentieth day after its completed publication as provided by SDCL 7-18A-8.

CHAPTER 1.02 EMPLOYEE SALARY OR WAGE RATES

1.0201 Salaries and Wage Rates Set by Board of County Commissioners. Salaries and wage rates may be annually or at such other times altered, modified, changed, or increased by the Board of County Commissioners, with said change spread in the Official Minutes.

CHAPTER 1.03 - CONDUCT OF HEARINGS AND CONTESTED CASES

1.0301 Purpose: Unless otherwise provided in these ordinances, the conduct of any contested hearing or appeal before any administrative body or board of Brown County or before the Brown County Commissioners shall be conducted in accordance with the procedures set forth in this ordinance.

1.0302 Notice: In any appeal, or hearing on a contested case, before any agency or board of Brown County the notice of appeal, or the notice in a contested case, shall include:

1. A statement of the time, place and nature of the hearing;
2. A statement of the legal authority and jurisdiction under which the hearing is to be held;
3. A reference to the particular sections of the statutes, ordinances and rules involved;
4. A short and plain statement of the matters asserted. If the agency or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, upon application, a more definite and detailed statement shall be furnished.
5. If the matter is an appeal to the Brown County Commission there shall be included copies of any finding, conclusions or order of any agency from which the decision is being appealed together with a copy of any transcript of any record or minutes of any proceedings of such agency;
6. A statement of any action authorized by law, which may affect the parties, as a result of any decision made at the hearing, whether it be the revocation of a license, the assessment of a fine, or other effect;
7. If the proceeding is an adversary hearing, a statement that the hearing is an adversary proceeding and that a party has the right at the hearing, to be present, to be represented by a lawyer, and that these and other due process rights will be forfeited if they are not exercised at the hearing;
8. A statement, if applicable, that the decision based on the hearing may be appealed to the circuit court and the State Supreme Court as provided by law.

1.0303 Rights of Parties at Hearings on Contested Cases. Opportunity shall be afforded all parties to respond and present evidence on issues of fact and argument on issues of law or policy. A party to a contested case proceeding may appear in person or by counsel, or both, may be present during the giving of all evidence, may have reasonable opportunity to inspect all documentary evidence, may examine and cross-examine witnesses, may present evidence in support of his interest, and may have subpoenas issued to compel attendance of witnesses and production of evidence in his behalf.

1.0304 Rules of Evidence in Contested Cases. In contested cases:

1. Irrelevant, incompetent, immaterial, or unduly repetitious evidence shall be excluded. The rules of evidence as applied under statutory provisions and in the trial of civil cases in the circuit courts of this state, or as may be provided in statutes relating to the specific agency, shall be followed. When necessary to ascertain facts not reasonably susceptible of proof under those rules, evidence not otherwise admissible thereunder may be admitted except where precluded by statute if it is a type commonly relied upon by reasonably prudent persons in the conduct of their affairs. Agencies shall give effect to the rules of privilege recognized by law. Objections to evidentiary offers may be made and shall be noted in the record. Subject to these requirements, when a hearing will be expedited and the interest of the parties will not be prejudiced substantially, any part of the evidence may be received in written form.

2. A party may conduct cross-examinations required for a full and true disclosure of the facts.

3. Notice may be taken of judicially cognizable facts. In addition, notice may be taken of generally recognized technical or scientific facts within the agency's specialized knowledge. Parties present at the hearing shall be informed of the matters to be noticed, and those matters shall be noted in the record, referred to therein, or appended thereto. Any such party shall be given a reasonable opportunity on request to refute the officially noticed matters by evidence or by written or oral presentation of authority, the manner of such refutation to be determined by the agency.

1.0305 Transcript – Minutes in Lieu of Transcript. Whenever a party requests in writing that oral proceedings be transcribed, a verbatim record of all proceedings and testimony shall be kept by the agency/board. Unless otherwise provided by law the agency/board shall not be required to transcribe the record unless the requesting party tenders and pays the reasonable cost thereof. If transcribed, a copy of the record shall be furnished to any other party to the hearing at the request and expense of such requesting party. If no verbatim record is transcribed, the agency or commission shall prepare minutes of the hearing. The minutes shall consist of a written summary of the evidence and proceedings.

1.0306 Expert Opinion Evidence. In any contested case, it shall be the responsibility of the parties to supply expert opinion and/or testimony when necessary to meet the respective burdens of proof. Experts may be appointed by the agency/board with the costs being assessed against the parties.

1.0307 Master/Hearing Examiner. The agency or board involved, whichever the case may be, may appoint a hearing examiner which shall preside over the conduct of the hearing. The board or agency involved may also appoint an expert to act as a special master who shall make recommendations and findings to the agency/board for their consideration. Neither the agency nor the board is bound by any findings or recommendations made by the Master. The costs and expenses of either or both the hearing examiner and the master may be assessed against the litigants, appellants or petitioners, whatever the particular designation may be.

1.0308 Arbitration. Any appellant, petitioner, party or litigant may, in lieu of appearing before any formal proceedings before the Brown County Board of Commissioners or its

subordinate agencies and boards, submit to binding arbitration by unanimous consent of all interested parties.

1.0309 Notice to Interested Parties. Notice of any hearing shall be given to all interested parties by service upon them of a true and correct copy of the notice set forth in Section 1.0302. Proof of service shall be evidenced by certificate or affidavit establishing that due and proper service was accomplished upon all interested parties. Service by first class mail shall be permitted.