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## CITIES

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### CHAPTER 170.

(S. B. No. 32—Atkins.)

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#### MUNICIPAL BONDED INDEBTEDNESS.

An Act to Amend and Re-enact Section 4016 of the Compiled Laws of 1913 Relating to Bonded Indebtedness of Cities and Villages, and Purposes for which incurred.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

Sec. 1. AMENDMENT.) That Section 4016 of the Compiled Laws of 1913 be amended and re-enacted to read as follows:

Sec. 4016. BONDED INDEBTEDNESS, PURPOSES FOR WHICH INCURRED.) The Board of City Commissioners, or the City Council of any city, or the Board of Trustees of any incorporated village, shall have power to submit to a vote of the electors at any general or special election propositions for the issuing of bonds for the purchase or erection of a Municipal Auditorium, Armory, Gymnasium, Public Baths, or other public places of amusement or entertainment, and for the purchase of suitable sites for such erection or purpose; and that in case a two-thirds majority of the electors voting on any such proposition vote for the same at any regular election or any special election, called for that purpose, it shall be the duty of the Board of City Commissioners, or of the City Council, and the mayor of any city, or of the Board of Trustees of any incorporated village, forthwith to issue such bonds and to proceed to carry out such proposition so submitted.

Sec. 2. REPEAL.) All acts and parts of acts in conflict with this act are hereby repealed.

Approved March 1st, 1923.

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### CHAPTER 171.

(S. B. No. 226—Kaldor.)

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#### CITY ELECTIONS.

An Act to Amend and Re-enact Section 3784 of the Compiled Laws of North Dakota for the year 1913, as Amended and Re-enacted by Chapter 120 of the Session Laws of North Dakota for the Year 1919, Relating to Municipal Elections in Cities.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

Sec. 1. AMENDMENT.) That Section 3784 of the Compiled

Laws of North Dakota for the year 1913, as amended and re-enacted by Chapter 120 of the Session Laws of North Dakota for the year 1919, be amended and re-enacted to read as follows:

Sec. 3784. ELECTION BIENNIAL.) Biennial municipal elections in all cities shall be held the first Tuesday in April at such place or places as the Board of City Commissioners shall designate. The polls of such election shall be opened at nine o'clock A. M., and close at seven o'clock P. M. Ten days previous notice of the time and place of such election and of the officers to be elected, shall be given by the City Auditor by the publication in the official paper and by posting written or printed notices in three public places in the city; but the failure to give such notice shall not invalidate such election. In all other respects such election shall be conducted as prescribed by general election laws, and for all general and special elections held under the provisions of this Act in the city, for city officers and for other purposes, the Board of City Commissioners shall, at least ten days before any election is held, appoint in each precinct established in the city one inspector and two judges of election.

Sec. 2. All acts and parts of acts in conflict with the provisions of this act are hereby repealed.

Approved March 1st, 1923.

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## CHAPTER 172.

(S. B. No. 395—Garberg.)

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### EXCLUDING FARM LANDS FROM MUNICIPALITIES.

An Act to amend and re-enact Section 3969 of the Compiled Laws of North Dakota for the year 1913, as Amended by Chapter 79 of the Session Laws of North Dakota for the year 1919, and Chapter 32 of the Session Laws of North Dakota for the year 1921, relating to excluding farm lands from the limits of city, town and villages.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

Sec. 1. AMENDMENT.) That Section 3969 of the Compiled Laws of North Dakota for the year 1913, as amended by Chapter 79 of the Session Laws of North Dakota for the year 1919, and Chapter 32 of the Session Laws of North Dakota for the year 1921, be and the same is hereby amended and re-enacted to read as follows:

Sec. 3969. LIMITS MAY BE RESTRICTED.) On petition, in writing, signed by not less than three-fourths of the legal voters and by property owners of not less than three-fourths in value

of the property in any territory, within any incorporated city, town or village, and being upon the border and within the limits thereof, the city council of the city, or the board of trustees of the town or village, as the case may be, may disconnect and exclude such territory from such city, town or village; provided, that the provisions of this section shall only apply to lands not laid out into city, town or village lots or blocks.

Provided, further, that when the property or lands described in such petition bordering upon and within the limits of any such incorporated city, town or village are wholly unplatted, and no municipal sewers, water-mains, pavements, sidewalks or other city, town or village improvements have been made or constructed therein, except as hereinafter provided, and this is made to appear upon the hearing upon such petition by the city council, commission or board of trustees of the town or village, as the case may be, it shall be the duty of the city council, commission or board of trustees to disconnect and exclude such territory from the city, town or village.

And, provided further, that where a sewer outlet extends upon or over said unplatted lands, it shall be the duty of the city council, commission or board of trustees to disconnect and exclude such territory from such city, town or village, provided, that this Act shall not in any way repeal or otherwise effect the provisions of Section 3697 of the Compiled Laws of 1913.

(Provided, further, that if any interested party is dissatisfied with the findings of fact upon which a decision is made, application may be made to a court having jurisdiction for a Writ of Certiorari and the review upon this writ shall extend only to the determination of whether the inferior court, tribunal, board or officer has regularly pursued the authority of such court, tribunal, board or officer, which shall include the determination of the sufficiency of the evidence to sustain the findings of fact and of law made in the course of the exercise of the authority of such inferior court, tribunal, board or officer and the correctness as a matter of law of the particular order, judgment or act inquired into.)

Provided, further, that in cities having a population of three thousand and over according to the last Federal census the findings of fact and conclusions of the City Council or the City Commission shall be conclusive upon the courts.

Approved March 6th, 1923.

## CHAPTER 173.

(H. B. No. 43—Trubshaw.)

## RECALL OF CITY OFFICIALS.

An Act to Amend and Re-enact Section 3835 of the Compiled Laws of the State of North Dakota for the year 1913 as amended and re-enacted by Chapter 81 of the Session Laws of 1919 relating to recall of City Officials in Cities under City Council or Commission form of Government.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

Sec. 1. AMENDMENT.) That Section 3835 of Compiled Laws of the State of North Dakota for the year 1913 as amended and re-enacted by Chapter 81 of the Laws of 1919 relating to the Recall of City Officials under City Council or Commission forms of Government.

Sec. 3835. RECALL.) The holder of any elective office in Cities operating under a city council form of Government, or which may adopt or have adopted the Commission plan of Government, including all members of park boards, under any of the laws of this state, may be removed at any time by the Electors qualified to vote for a successor of such incumbent. The procedure to effect the removal of an incumbent of an elective office shall be as follows: A petition signed by electors entitled to vote for the successor to the incumbent so sought to be removed, equal in number to at least thirty per centum of the entire votes for all the candidates for mayor or president of the City Commission cast at the last preceding general municipal election, demanding the election of the successor of the person sought to be removed, shall be filed with the city auditor, which petition shall contain a general statement of the grounds for which the removal is sought. The signatures to the petition need not all be appended to one paper, but each signer shall add to his signature his place of residence, giving the street and number. One of the signers of each such paper shall make oath before an officer, competent to administer oaths, that the statements therein are true as he believes and that each signature to the paper appended is the genuine signature of the person whose name it purports to be. After the said petition is filed with the city auditor any petitioner shall be allowed to withdraw his name from such petition within five days from the date of filing of the same with the city auditor. Within ten days from the date of filing of such petition, the city auditor shall examine the same and from the voters' register ascertain whether or not said petition is signed by the requisite number of qualified voters, and if necessary the board of city commissioners or city council shall allow extra help for that purpose

and he shall attach to said petition his certificate showing the result of said examination and said certificate shall show why the said petition is deemed insufficient, provided said auditor certifies that same is insufficient. If, by the auditor's certificate, the petition is shown to be insufficient it may be amended within ten days of said certificate. The auditor shall within ten days after such amendment, make like examination of the amended petition, and if his certificate shall show the same to be insufficient, it shall be returned to the person filing the same, without prejudice, however, to the filing of a new petition of the same effect. If the petition shall be deemed to be sufficient, the auditor shall submit the same to the city council or board of city commissioners without delay. If the petition shall be found sufficient, the city council or board of city commissioners shall order and fix date for said election, not less than thirty nor more than forty days from the date of the auditor's certificate to the city council or board of city commissioners that a sufficient petition is filed. The city council or board of city commissioners shall make, or cause to be made, publication of notice and all arrangements for holding such election, and the same shall be conducted, returned and the result thereof declared in all respects as are other city elections. The successor of any officer so removed shall hold office during the unexpired term of his predecessor. Any person sought to be removed may be a candidate to succeed himself, and unless he requests otherwise in writing the auditor shall place his name on the official ballot without nomination. In any such removal election, the candidate receiving the highest number of votes shall be declared elected. At such election if some other person than the incumbent receives the highest number of votes, the incumbent shall thereupon be deemed removed from the office upon the qualification of his successor. In case the party who receives the highest number of votes shall fail to qualify within ten days after receiving the notification of election the office shall be deemed vacant. If the incumbent shall receive the highest number of votes, he shall continue in office. The said method of removal shall be cumulative and additional to the methods heretofore provided by law.

Approved February 7th, 1923.

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#### CHAPTER 174.

(S. B. No. 220—McLachlin & Rusch.)

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#### DEFICIENCY IN SPECIAL ASSESSMENTS.

An Act to Amend and Re-enact Section 3716 of the Compiled Laws of 1913 Relating to Payment of Deficiency in Special Assessments.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

Sec. 1. AMENDMENT.) Section 3716 of the Compiled Laws

of North Dakota for the year 1913 is hereby amended and re-enacted to read as follows:

Sec. 3716. PAYMENT OF DEFICIENCY.) Whenever all special assessments collected for a specific improvement are insufficient to pay the special improvement warrants issued against such improvement with interest, the city council or city commission, as the case may be, shall upon the maturity of the last special improvement warrant, levy a tax upon all the taxable property in the city for the payment of such deficiency, and in case of a balance of such special assessment remaining unexpended, it may be used for repairs of such improvement.

Approved February 26th, 1923.

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## CHAPTER 175.

(H. B. No. 8—Jardine.)

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### CITY ZONING.

An Act to Empower all Cities having a population in excess of six thousand inhabitants, by the Federal Census of 1920, or by any subsequent Federal Census, to Provide for the establishment of Districts or Zones within the corporate limits, and to empower such Cities by ordinance, to regulate within such zones or districts, the use or uses of land, the height, the area, the size and the location of buildings, the required open spaces for the light and ventilation of such buildings and the density of population; to provide for a Board of Appeals, and for the carrying out of such ordinances and to provide a penalty for the violation thereof.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

Sec. 1. GRANT OF POWER.) For the purpose of promoting health, safety, morals, or the general welfare of the community, the City Council or City Commission of any city having a population in excess of six thousand inhabitants by the Federal Census of 1920, or by any subsequent Federal Census is hereby empowered to regulate and restrict the height, number of stories, and size of buildings and other structures, the percentage of lot that may be so occupied, the size of yards, courts and other open spaces, the density of population, and the location and use of buildings, structures, and land for trade, industry, residence or other purposes. Such regulations may provide that a board of adjustment may determine and vary their application in harmony with their general purpose and intent, and in accordance with general or specific rules therein contained.

Sec. 2. DISTRICTS.) For any or all of said purposes it may divide the City into districts of such number, shape and area as

may be deemed best suited to carry out the purposes of this Act; and within such districts it may regulate and restrict the erection, construction, reconstruction, alteration, repair or use of buildings, structures or land. All such regulations shall be uniform for each class or kind of buildings throughout each district, but the regulations in one district may differ from those in other districts.

Sec. 3. PURPOSES IN VIEW.) Such regulations shall be made in accordance with a comprehensive plan and designed to lessen congestion in the streets; to secure safety from fire, panic and other dangers; to promote health and the general welfare; to provide adequate light and air, to prevent the over-crowding of land; to avoid undue concentration of population; to facilitate the adequate provisions of transportation, water, sewerage, schools, parks and other public requirements. Such regulations shall be made with reasonable consideration, among other things as to the character of the district and its peculiar suitability for particular uses, with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout such City.

Sec. 4. METHOD OF PROCEDURE.) The City Council or City Commission of such City shall provide for the manner in which such regulations and restrictions and the Boundaries of such districts shall be determined, established and enforced, and from time to time amended, supplemented or changed. However, no such regulation, restriction or boundary shall become effective until after a public hearing in relation thereto, at which parties in interest and citizens shall have an opportunity to be heard. At least fifteen days' notice of the time and place of such hearing shall be published in an official paper or a paper of general circulation in such City.

Sec. 5. CHANGES.) Such regulations, restrictions and boundaries may from time to time be amended, supplemented, changed, modified or repealed. In case, however, of a protest against such change signed by the owners of twenty per cent or more, either of the area of the lots included in such proposed change, or of those immediately adjacent in the rear thereof extending one hundred and fifty feet therefrom, or of those directly opposite thereto, extending one hundred and fifty feet from the street frontage of such opposite lots, such amendment shall not become effective except by the favorable vote of three-fourths of all the members of the City Council or the City Commission of such City. The provisions of the previous section relative to public hearings and official notice shall apply equally to all changes or amendments.

Sec. 6. ZONING COMMISSION.) In order to avail itself of the powers conferred by this Act, such City Council or City Com-

mission shall appoint a commission to be known as the Zoning Commission to recommend the boundaries of the various original districts and appropriate regulations to be enforced therein. Such Zoning Commission shall make a preliminary report and hold public hearings thereon before submitting its final report; and such City Council or City Commission shall not hold its public hearings or take action until it has received the final report of such Zoning Commission. Where a city plan commission already exists, it may be appointed as the Zoning Commission.

Sec. 7. BOARD OF ADJUSTMENT.) Such City Council or City Commission may provide for the appointment of a board of adjustment consisting of five members, each to be appointed for three years. Such board of adjustment shall hear and decide appeals from and review any order, requirement, decision or determination made by an administrative official charged with the enforcement of any ordinance adopted pursuant to this Act. It shall also hear and decide all matters referred to it or upon which it is required to pass under any such ordinance. The concurring vote of four members of the board shall be necessary to reverse any order, requirement, decision or determination of any such administrative official, or to decide in favor of the applicant any matter upon which it is required to pass under any such ordinance or to effect any variation in such ordinance. Every decision of such board shall, however, be subject to review by certiorari. Such appeal may be taken by any person aggrieved or by an officer, department board or bureau of the City.

Such appeal shall be taken within such time as shall be prescribed by the board of adjustment by general rule by filing with the officer from whom the appeal is taken and with the board of adjustment, a notice of appeal, specifying the grounds thereof. The officer from whom the appeal is taken shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken.

An appeal stays all proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the board of adjustment after the notice of appeal shall have been filed with him that by reason of facts stated in the certificate a stay would, in his opinion, cause imminent peril of life or property, in which case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the board of adjustment or by a court of record on application, on notice to the officer from whom the appeal is taken and on due cause shown.

The board of adjustment shall fix a reasonable time for the hearing of the appeal and give due notice thereof to the parties, and decide the same within a reasonable time. Upon the hearing, any party may appear in person or by agent or by attorney.

The board of adjustment may reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from, and shall make such order, requirement, decision or determination as in its opinion ought to be made in the premises, and to that end shall have all the powers of the officer from whom the appeal is taken. Where there are practical difficulties or unnecessary hardship in the way of carrying out the strict letter of such ordinance, the board of adjustment shall have the power in passing upon appeals, to vary or modify any of the regulations or provisions of such ordinance relating to the use, construction or alteration of buildings, or structures or the uses of land, so that the spirit of the ordinance shall be observed, public safety and welfare secured and substantial justice done.

Sec. 8. REMEDIES.) In case any building or structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained; or any building, structure or land is used in violation of this Act or of any ordinance or other regulation made under authority conferred thereby, the proper local authorities of the City, in addition to other remedies, may institute any appropriate action or proceedings to prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance or use, to restrain, correct or abate such violation, to prevent the occupancy of said building, structure or land or to prevent any illegal act, conduct, business or use in or about such premises.

Sec. 9. CONFLICT WITH OTHER LAWS.) Wherever the regulations made under authority of this Act require a greater width or size of yards, or courts, or requires lower height of building or less number of stories, or require a greater percentage of lot to be left unoccupied, or impose other higher standards than are required in any other statute or local ordinance or regulation, the provisions of the regulations made under authority of this Act shall govern. Wherever the provisions of any other statute or local ordinance or regulation require a greater width or size of yards or courts, or require a lower height of building or a less number of stories, or require a greater percentage of lot to be left unoccupied, or impose other higher standards than are required by the regulations made under the authority of this Act, the provisions of such statute, or local ordinance or regulation shall govern.

Approved February 23rd, 1923.