

MUNICIPAL GOVERNMENT

CHAPTER 334

SENATE BILL NO. 2304

(Senators Oban, Burckhard, Piepkorn)
(Representatives Bosch, Lefor, D. Ruby)

AN ACT to amend and reenact section 12.1-01-05 and subsection 2 of section 40-05-06 of the North Dakota Century Code, relating to the effect of state law on city or county ordinances and limits on city fines and penalties.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12.1-01-05 of the North Dakota Century Code is amended and reenacted as follows:

12.1-01-05. Crimes defined by state law shall not be superseded by city or county ordinance or by home rule city's or county's charter or ordinance.

~~No~~Except as provided in section 40-05-06, an offense defined in this title or elsewhere by law ~~shall~~may not be superseded by any city or county ordinance, or city or county home rule charter, or by an ordinance adopted pursuant to such a charter, and all such offense definitions shall have full force and effect within the territorial limits and other jurisdiction of home rule cities or counties. This section ~~shall~~does not preclude any city or county from enacting any ordinance containing penal language when otherwise authorized to do so by law.

¹³³ **SECTION 2. AMENDMENT.** Subsection 2 of section 40-05-06 of the North Dakota Century Code is amended and reenacted as follows:

- For every violation of a city ordinance ~~regulating~~that regulates the operation or equipment of ~~a motor vehicles~~vehicle or ~~regulating~~which regulates traffic, except those ordinances listed in section 39-06.1-05, a fee may be established, by ordinance, which may ~~not~~not exceed, by up to one hundred percent, the limitslimit, for ~~an equivalent categories~~category of ~~violations~~violation, set forth in section 39-06.1-06.

Approved April 17, 2019

Filed April 18, 2019

¹³³ Section 40-05-06 was also amended by section 1 of House Bill No. 1244, chapter 335.

CHAPTER 335

HOUSE BILL NO. 1244

(Representatives K. Koppelman, Magrum)
(Senator Bakke)

AN ACT to amend and reenact section 40-05-06, subsection 3 of section 40-18-01, and section 40-18-14 of the North Dakota Century Code, relating to city fines and penalties and jurisdiction of municipal judges; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹³⁴ **SECTION 1. AMENDMENT.** Section 40-05-06 of the North Dakota Century Code is amended and reenacted as follows:

40-05-06. City fines and penalties limited.

1. Except as provided in subsections 2 and 3, the fine or penalty for the violation of any ordinance, resolution, or regulation of a city may not exceed one thousand five hundred dollars, and the imprisonment may not exceed thirty days for one offense.
2. For every violation of a city ordinance regulating the operation or equipment of motor vehicles or regulating traffic, except those ordinances listed in section 39-06.1-05, a fee may be established, by ordinance, which may not exceed the limits, for equivalent categories of violations, set forth in section 39-06.1-06.
3. For every violation of a city ordinance enforcing the requirements of ~~40-CFR 403~~title 40, Code of Federal Regulations, section 403 relating to publicly owned treatment works, or prohibiting shoplifting, vandalism, criminal mischief, or malicious mischief, the penalty may not exceed a fine of one thousand five hundred dollars, imprisonment for thirty days, or both such fine and imprisonment.
4. This section does not prohibit the use of the sentencing alternatives, other than a fine or imprisonment, provided by section 12.1-32-02 for the violation of a city ordinance, nor does this section limit the use of deferred or suspended sentences under subsections 3 and 4 of section 12.1-32-02.

SECTION 2. AMENDMENT. Subsection 3 of section 40-18-01 of the North Dakota Century Code is amended and reenacted as follows:

3. Notwithstanding any other provision of law, the municipal court has no jurisdiction to hear, try, and determine an offense which would be a violation of section 39-08-01 or equivalent ordinance, if the ~~person~~individual charged with the offense has twice previously been convicted of a violation of section 39-08-01 or equivalent ordinance within the ~~five~~seven years preceding the commission of the offense charged or if the ~~person~~individual charged with the

¹³⁴ Section 40-05-06 was also amended by section 2 of Senate Bill No. 2304, chapter 334.

offense has three times previously been convicted of a violation of section 39-08-01 or equivalent ordinance within the ~~seven~~fifteen years preceding the commission of the offense charged. If such an offense is charged in the municipal court and the municipal judge has notice of a violation of section 39-08-01 or equivalent ordinance twice within the ~~five~~seven years, or three times within the ~~seven~~fifteen years, preceding the commission of the offense charged, the municipal judge shall dismiss the charge, without prejudice, and direct that the charge be filed against the ~~person~~individual in the district court.

SECTION 3. AMENDMENT. Section 40-18-14 of the North Dakota Century Code is amended and reenacted as follows:

40-18-14. Municipal judge may enforce orders and judgments and punish for contempt.

A municipal judge ~~has the power to~~may enforce due obedience to the court's orders and judgments. The judge may fine or imprison for contempt committed in the judge's presence while holding court, as well as for contempt of process issued, and of orders made by the judge. When an act or omission constituting a contempt in a municipal court is not committed in the presence of the municipal judge, an affidavit alleging the facts may be filed and a warrant of arrest thereupon may issue on which the person accused may be arrested and brought before the municipal judge immediately. The person must be given a reasonable opportunity to employ counsel and defend against the alleged contempt. After hearing the allegations and proofs, the municipal judge may discharge the person or adjudge the person guilty and may punish by fine or imprisonment or both. The fine in any case may not be more than one thousand five hundred dollars and the imprisonment may not be more than thirty days.

Approved March 6, 2019

Filed March 6, 2019

CHAPTER 336

SENATE BILL NO. 2178

(Senators Erbele, Luick, Myrdal)
(Representatives K. Koppelman, Paur, Satrom)

AN ACT to amend and reenact section 40-18-06.2 of the North Dakota Century Code, relating to the term of a municipal judge; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 40-18-06.2 of the North Dakota Century Code is amended and reenacted as follows:

40-18-06.2. Transfer of municipal ordinance cases to district court - Abolition of office of municipal judge.

With the agreement of the governing body of the county, the presiding judge of the judicial district in which the city is located, and the state court administrator, the governing body of a city may, by ordinance, transfer some or all of the cases of the municipal court to the district court serving the county in which the city is located. These cases are deemed district court cases for purposes of appeal. The governing body of a city with a population of less than five thousand, upon transferring all municipal court cases to the district court, may abolish by resolution the office of municipal judge. The term of office of the municipal judge elected to serve that city terminates upon the ~~date the governing body of the city abolishes the office of municipal judge~~ last day of the month in which all municipal cases have been transferred to district court or the expiration of the judge's term, whichever occurs first.

SECTION 2. EMERGENCY. This Act is declared to be an emergency measure.

Approved March 20, 2019

Filed March 21, 2019

CHAPTER 337

HOUSE BILL NO. 1147

(Representatives Lefor, Devlin, Heinert, K. Koppelman, Roers Jones, M. Ruby)
(Senator Wardner)

AN ACT to create and enact a new section to chapter 40-18 of the North Dakota Century Code, relating to the location of a proceeding before a municipal judge and the use of reliable electronic means.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 40-18 of the North Dakota Century Code is created and enacted as follows:

Change of venue - Reliable electronic means.

1. A municipal judge may change the venue of a proceeding under this chapter upon consideration of the following factors:
 - a. Convenience to the parties and witnesses;
 - b. Judicial efficiency;
 - c. Available facilities; and
 - d. Administration of justice.
2. A municipal judge may not change the venue of a proceeding if any party to the proceeding objects to the change.
3. A municipal judge may use contemporaneous audio or audiovisual transmission by reliable electronic means in accordance with rule 52 of the North Dakota Supreme Court Administrative Rules. A municipal judge who presides over a proceeding through contemporaneous audio or audiovisual transmission by reliable electronic means is equivalent to a municipal judge who is physically present at the proceeding.

Approved March 12, 2019

Filed March 13, 2019

CHAPTER 338

SENATE BILL NO. 2040

(Legislative Management)
(Taxation Committee)

AN ACT to amend and reenact section 40-22-18 of the North Dakota Century Code, relating to treatment of property owned by a political subdivision when calculating protests against the formation of a special improvement district.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 40-22-18 of the North Dakota Century Code is amended and reenacted as follows:

40-22-18. Protest bar to proceeding - Invalid or insufficient protests - Payment of costs - Tax levy.

If the governing body finds the protests to contain the names of the owners of a majority of the area of the property included within the improvement district, the protests shall be a bar against proceeding with any special assessment for the improvement project. However, the protests do not bar proceeding with the improvement project described in the plans and specifications if the governing body funds the project with funds other than special assessments. If the governing body finds the protests to contain the names of the owners of a majority of any separate property area included within the district, ~~such~~the protests shall be a bar against proceeding with special assessments to be assessed in whole or in part upon property within ~~such~~the area, but shall not bar against proceeding with the improvement project or assessing the cost thereof against other areas within the district, unless ~~such~~the protests represent a majority of the area of the entire district. If the protests represent a majority of the area of the entire district, ~~such~~the protests bar any special assessment for the improvement project. Property owned by a political subdivision is not included when determining whether the protests contain the names of the owners of a majority of the area included within the improvement district or a separate property area unless the political subdivision filed a protest.

The termination of proceedings, by reason of protest or otherwise, shall not relieve the municipality of responsibility for payment of costs theretofore incurred and for payment of ~~such~~the costs a municipality may, if funds on hand and available for the purpose are insufficient, issue its certificates of indebtedness or warrants, or levy a tax which shall be considered a tax for a portion of the cost of a special improvement project by general taxation within the meaning of section 57-15-10. If the protests are found to be insufficient or invalid, the governing body may cause the improvement to be made and may contract or otherwise provide in accordance with this title for the construction thereof and the acquisition of property required in connection therewith and may levy and collect assessments therefor.

Approved April 23, 2019

Filed April 24, 2019

CHAPTER 339

HOUSE BILL NO. 1471

(Representative D. Ruby)

AN ACT to create and enact a new section to chapter 40-47 of the North Dakota Century Code, relating to extraterritorial zoning fees.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 40-47 of the North Dakota Century Code is created and enacted as follows:

Extraterritorial zoning - Limitation.

Notwithstanding any other provision of law, a city that exercises extraterritorial jurisdiction under this chapter may not impose building permit fees on any section of unincorporated territory which are higher than the building permit fees within the city exercising the jurisdiction.

Approved April 10, 2019

Filed April 11, 2019

CHAPTER 340

HOUSE BILL NO. 1360

(Representatives Bosch, Lefor, Nathe, Sanford)
(Senators Bakke, Bekkedahl, D. Larson, Oban)

AN ACT to amend and reenact sections 40-49-14 of the North Dakota Century Code, relating to bid requirements for park districts; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 40-49-14 of the North Dakota Century Code is amended and reenacted as follows:

40-49-14. When ye and nay vote taken - ~~Letting~~Awarding contracts - Debt limit - Bills, claims, and demands against board.

1. Ye and nay votes must be taken on all propositions involving the expenditure of money, levying of taxes, or the issuance of bonds or certificates of indebtedness. Approval of an expenditure of money must be recorded in the record of the board's proceedings and is sufficient to indicate approval without requiring the members to sign or initial the voucher or order for payment. Except as provided in chapter 48-01.2, in an emergency situation, or for cooperative purchases with the office of management and budget as provided in chapter 54-44.4, all contracts exceeding ~~twenty-five~~fifty thousand dollars must be ~~let~~awarded to the lowest responsible bidder after advertisement in the official newspaper of the municipality once each week for two successive weeks. The board may reject any or all bids. All contracts must be in writing and must be signed by the president of the board or a designated representative and unless so executed, they shall be void. The debt of a park district may not exceed one percent of the taxable property within the district according to the last preceding assessment. No bill, claim, account, or demand against the district may be audited, allowed, or paid until a full, written, itemized statement has been filed with the governing body or unless otherwise authorized by the governing body pursuant to contract or other action. The governing body may require the filing of any additional information which it may deem necessary to the proper understanding and audit of any claim or account and it may require the filing of a sworn statement in such form as it may prescribe or as noted below:

CERTIFICATE

I do hereby certify that the within bill, claim, account, or demand is just and true; that the money therein charged was actually paid for the purposes therein stated; that the services therein charged were actually rendered and of the value therein charged; and that no part of such bill, claim, account, or demand has been paid; and that the goods therein charged were actually delivered and were of the value charged.

Sign here

If signed for a firm or company,
show authority on this line.

2. As used in this section, "emergency situation" means a sudden or unexpected occurrence that requires immediate action to protect public health, safety, or property.

SECTION 2. EMERGENCY. This Act is declared to be an emergency measure.

Approved March 8, 2019

Filed March 8, 2019

CHAPTER 341

SENATE BILL NO. 2193

(Senators Wardner, Bekkedahl, Meyer)
(Representatives Lefor, Schreiber-Beck, Zubke)

AN ACT to amend and reenact sections 40-57.3-01, 40-57.3-01.1, and 40-57.3-02, subsections 21, 22, and 23 of section 57-39.2-01, subdivision e of subsection 1 of section 57-39.2-02.1, and subsection 22 of section 57-39.2-04 of the North Dakota Century Code, relating to city lodging and restaurant tax and visitors' committee membership and references to tourist court accommodations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 40-57.3-01 of the North Dakota Century Code is amended and reenacted as follows:

40-57.3-01. City lodging tax - Imposition - Amount - Disposition.

The governing body of any city ~~may~~, by ordinance, may impose a city tax, not to exceed two percent, upon the gross receipts of retailers on the leasing or renting of hotel, motel, or ~~tourist court~~other accommodations within the city for periods of ~~less~~fewer than thirty consecutive calendar days or one month. The tax imposed by this section ~~shall~~must be in addition to the state sales tax on rental accommodations provided in chapter 57-39.2 and any city ~~which~~that imposes the tax upon gross receipts described in this section shall deposit all proceeds in the city visitors' promotion fund. Moneys deposited in the city visitors' promotion fund ~~shall~~must be spent only as provided in this chapter. This chapter applies to all cities and does not limit the authority of a home rule city to levy any taxes authorized by other provisions of law.

SECTION 2. AMENDMENT. Section 40-57.3-01.1 of the North Dakota Century Code is amended and reenacted as follows:

40-57.3-01.1. City lodging and restaurant tax - Imposition - Amount - Disposition - Referral.

In addition to the tax under section 40-57.3-01, the governing body of any city ~~may~~, by ordinance, may impose a city tax, at a rate not to exceed one percent, upon the gross receipts of retailers on the leasing or renting of hotel, motel, or ~~tourist court~~other accommodations within the city for periods of ~~less~~fewer than thirty consecutive calendar days or one month and upon the gross receipts of a restaurant from any sales of prepared food or beverages, not including alcoholic beverages for consumption off the premises where purchased, which are subject to state sales taxes. For purposes of this section, "restaurant" means any place where food is prepared and intended for individual portion service for consumption on or off the premises and "prepared" includes heating prepackaged food. Accommodations, food, and beverages ~~may~~ all, each, or in any combination be ~~subjected~~subject to the tax under this section, if all items in any category which are taxable under state law are taxable, except as otherwise provided in this section. The tax imposed under this section is in addition to state sales taxes on rental accommodations and restaurant sales and any city ~~which~~that imposes the tax under this section shall deposit all

proceeds in the city visitors' promotion capital construction fund. Moneys deposited in the city visitors' promotion capital construction fund ~~shall~~must be spent only as provided in this chapter. An ordinance adopted under this section may not become effective sooner than sixty days after it is adopted by the governing body of the city. The provisions of chapter 40-12 with regard to referral of ordinances apply to an ordinance adopted under this section except that a petition to refer an ordinance adopted under this section must be presented to the governing body of the municipality before four p.m. on the sixty-fourth day after the ordinance described in the petition was adopted by the governing body of the municipality. Revenues from a tax imposed under this section may not be pledged under section 40-57.3-03 to payment of bonds or evidences of indebtedness until after the time has passed for filing a referral petition against an ordinance under this section or, if a referral petition is filed, until after the referral petition has been submitted to the vote of the electors of the municipality.

SECTION 3. AMENDMENT. Section 40-57.3-02 of the North Dakota Century Code is amended and reenacted as follows:

40-57.3-02. City visitors' promotion fund - City visitors' promotion capital construction fund - Visitors' committee - Establishment - Purpose.

The governing body of any city ~~which that~~ imposes a city tax pursuant to section 40-57.3-01, 40-57.3-01.1, or 40-57.3-01.2 shall, as appropriate, ~~shall~~ establish a city visitors' promotion fund; ~~and~~ a city visitors' promotion capital construction fund; ~~and a visitors' committee. The visitors' committee. The local destination marketing organization or visitors' committee~~ shall serve as an advisory committee to the city governing body in administering the proceeds from the taxes available to the city under this chapter. The moneys in the visitors' promotion fund must be used generally to promote, encourage, and attract visitors to come to the city and use the travel and tourism facilities within the city. The moneys in the visitors' promotion capital construction fund must be used generally for tourism or the purchase, equipping, improving, construction, maintenance, repair, and acquisition of buildings or property consistent with visitor attraction or promotion. ~~The advisory committee shall consist of five members appointed by the governing body of the city consists of the local destination marketing organization or the visitors' committee. These appointees shall serve without compensation, except for reimbursement for necessary expenses. Committee members shall serve for a term of four years, except that two of those initially appointed must be appointed for an initial term of two years. Vacancies must be filled in the same manner as the initial appointment. The committee shall elect a chairperson and vice chairperson from among its members to serve for a term of two years.~~

¹³⁵ **SECTION 4. AMENDMENT.** Subsections 21, 22, and 23 of section 57-39.2-01 of the North Dakota Century Code are amended and reenacted as follows:

21. "Retail sale" or "sale at retail" means any sale, lease, or rental for any purpose other than for resale, sublease, or subrental. "Retail sale" or "sale at retail" includes the sale, including the leasing or renting, to a consumer or to any person for any purpose, other than for processing or for resale, of tangible personal property; the sale of steam, gas, and communication service, excluding internet access service, to retail consumers or users; the sale of vulcanizing, recapping, and retreading services for tires; the ordering,

¹³⁵ Section 57-39.2-01 was also amended by section 1 of Senate Bill No. 2165, chapter 495, section 2 of Senate Bill No. 2192, chapter 95, and section 1 of Senate Bill No. 2338, chapter 496.

selecting, or aiding a customer to select any goods, wares, or merchandise from any price list or catalog, which the customer might order, or be ordered for such customer to be shipped directly to such customer; the sale or furnishing of hotel, motel, or ~~tourist court~~ other accommodations, tickets, or admissions to any place of amusement, athletic event, or place of entertainment; and the sales of magazines and other periodicals. By the term "processing" is meant any tangible personal property, including containers which it is intended, by means of fabrication, compounding, manufacturing, producing, or germination shall become an integral or an ingredient or component part of other tangible personal property intended to be sold ultimately at retail. The sale of an item of tangible personal property for the purpose of incorporating it in or attaching it to real property must be considered as a sale of tangible personal property for a purpose other than for processing; the delivery of possession within the state of North Dakota of tangible personal property by a wholesaler or distributor to an out-of-state retailer who does not hold a North Dakota retail sales tax permit or to a person who by contract incorporates such tangible personal property into, or attaches it to, real property situated in another state may not be considered a taxable sale if such delivery of possession would not be treated as a taxable sale in that state. As used in this subsection, the word "consumer" includes any hospital, infirmary, sanatorium, nursing home, home for the aged, or similar institution that furnishes services to any patient or occupant. The sale of an item of tangible personal property to a person under a finance leasing agreement over the term of which the property will be substantially consumed must be considered a retail sale if the purchaser elects to treat it as such by paying or causing the transferor to pay the sales tax thereon to the commissioner on or before the last day on which payments may be made without penalty as provided in section 57-39.2-12.

22. "Retailer" or "seller" includes every person engaged in the business of leasing or renting hotel, motel, or ~~tourist court~~ other accommodations, and every person engaged in the business of selling tangible goods, wares, or merchandise at retail, or furnishing of steam, gas, and communication services, excluding internet access service, or tickets or admissions to places of amusement, entertainment, and athletic events, or magazines or other periodicals; and includes any person as herein defined who by contract or otherwise agrees to furnish for a consideration a totally or partially finished product consisting in whole or in part of tangible personal property subject to the sales tax herein provided, and all items of tangible personal property entering into the performance of such contract as a component part of the product agreed to be furnished under said contract shall be subject to the sales tax herein provided and the sales tax thereon shall be collected by the contractor from the person for whom the contract has been performed in addition to the contract price agreed upon, and shall be remitted to the state in the manner provided in this chapter; and shall include the state or any municipality furnishing steam, gas, or communication service to members of the public in its proprietary capacity. For the purpose of this chapter, retailer shall also include every clerk, auctioneer, agent, or factor selling tangible personal property owned by any other retailer. A retailer also includes every person who engages in regular or systematic solicitation of a consumer market in this state by the distribution of catalogs, periodicals, advertising fliers, or other advertising, or by means of print, radio or television media, by mail, telegraphy, telephone, computer database, cable, optic, microwave, or other communication system.

23. "Sale" means any transfer of title or possession, exchange or barter, conditional or otherwise, in any manner or by any means whatever, for a consideration, and includes the furnishing or service of steam, gas, or communication, excluding internet access service, the furnishing of hotel, motel, or ~~tourist court~~ other accommodations, the furnishing of tickets or admissions to any place of amusement, athletic event, or place of entertainment, and sales of magazines and other periodicals. Provided, the words "magazines and other periodicals" as used in this subsection do not include newspapers nor magazines or periodicals that are furnished free by a nonprofit corporation or organization to its members or because of payment by its members of membership fees or dues.

¹³⁶ **SECTION 5. AMENDMENT.** Subdivision e of subsection 1 of section 57-39.2-02.1 of the North Dakota Century Code is amended and reenacted as follows:

- e. The leasing or renting of a hotel or motel room or ~~tourist court~~ other accommodations.

¹³⁷ **SECTION 6. AMENDMENT.** Subsection 22 of section 57-39.2-04 of the North Dakota Century Code is amended and reenacted as follows:

22. Gross receipts from the leasing or renting of manufactured homes, modular living units, or sectional homes, whether or not placed on a permanent foundation, for residential housing for periods of thirty or more consecutive days and the gross receipts from the leasing or renting of a hotel or motel room or ~~tourist court~~ other accommodations occupied by the same person or persons for residential housing for periods of thirty or more consecutive days.

Approved March 26, 2019

Filed March 27, 2019

¹³⁶ Section 57-39.2-02.1 was also amended by section 3 of Senate Bill No. 2192, chapter 95.

¹³⁷ Section 57-39.2-04 was also amended by section 3 of House Bill No. 1131, chapter 296, section 7 of Senate Bill No. 2089, chapter 477, and section 4 of Senate Bill No. 2192, chapter 95.