

## **CHAPTER 40-05.1 HOME RULE IN CITIES**

### **40-05.1-00.1. Definitions.**

In this chapter, unless the context or subject matter otherwise requires:

1. "City officers" means the elected and appointed officers of the city and includes the governing body of the city and its members.
2. "Executive officer" means the chief officer in whom resides the power to execute the laws of the city.
3. "Governing body" means the body which performs the legislative functions of the city.

### **40-05.1-01. Enabling clause.**

Any city may frame, adopt, amend, or repeal home rule charters as provided in this chapter.

### **40-05.1-02. Methods of proposing home rule charter.**

The governing body of any city may on its own motion cause a home rule charter to be framed and submitted for adoption to the qualified electors of the city in the manner provided in this chapter, or such proposal may be made in a petition filed with the governing body and signed by not less than fifteen percent of the qualified electors of the city voting in the last city election.

### **40-05.1-03. Charter commission - Membership - Preparation and submission of charter - Compensation and expenses - Publication or distribution.**

Within sixty days after proceedings have been initiated for a home rule charter, the governing body of the city shall appoint a charter commission, composed of at least five members, to frame the charter, unless a petition proposing a charter pursuant to section 40-05.1-02 prescribes the composition of the commission or the manner by which the composition of the commission is to be determined. The chairman of the charter commission shall be designated by the governing body and shall be a charter commission member. Compensation and expenses of commission members shall be as determined by the governing body. The governing body may furnish the charter commission with office space, clerical help, legal and other assistance, and supplies, and may appropriate and pay for same out of its general funds. The charter commission shall hold at least one public hearing on the proposed charter, and may use other suitable means to disseminate information, receive suggestions and comments, and encourage public discussion of the proposed charter. The commission shall prepare and submit the charter within one year after appointment, unless the governing body allows additional time for submission of the charter. The proposed charter shall then be published once in the city's official newspaper as provided in section 40-01-09. However, cities with a population of one thousand or less may, in lieu of publishing the charter in a newspaper, distribute copies of the charter door-to-door and have them posted and available at prominent locations in the city. In the event a city does not publish the charter in a newspaper, it must still publish a notice of the election.

### **40-05.1-04. Submission of charter to electors.**

At least sixty days, but no more than two years, after submission of the charter to the governing body of the city, the proposed charter must be submitted to a vote of the qualified electors of the city at a regular or special city election, or at any statewide election that is held within that time, or at a special city election held concurrently with any statewide election. If the proposed charter has been submitted to a vote of the qualified electors of the city, the governing body of the city may call a special election to resubmit the proposed charter to a vote of the qualified electors of the city, and the special election must take place at least sixty days after the call for the special election. The governing body may amend the proposed charter prior to its resubmission to the electors.

**40-05.1-05. Ratification by majority vote - Supersession of existing charter and state laws in conflict therewith - Filing of copies of new charter.**

If a majority of the qualified voters voting on the charter at the election vote in favor of the home rule charter, the charter is ratified and is the organic law of the city, and extends to all its local and city matters. The charter and the ordinances made pursuant to the charter in such matters supersede within the territorial limits and other jurisdiction of the city any law of the state in conflict with the charter and ordinances and must be liberally construed for such purposes. One copy of the charter ratified and approved must be filed with the secretary of state and one with the auditor of the city to remain as a part of its permanent records. Thereupon the courts shall take judicial notice of the new charter.

**40-05.1-05.1. Multicity home rule.**

1. Two or more cities may draft and submit for adoption a multicounty home rule charter to the electors of each city pursuant to this section. The other provisions of this chapter apply to a multicounty home rule charter, except as otherwise provided by this section.
2. The process for drafting and submitting a multicounty home rule charter may be initiated by:
  - a. Separate motions by the governing bodies of the participating cities;
  - b. The execution of a joint powers agreement between participating cities; or
  - c. A petition filed with each governing body of two or more cities and signed by ten percent or more of the total number of qualified electors of each city voting for governor at the most recent gubernatorial election.
3. Within sixty days after proceedings are initiated for a multicounty home rule charter, the boards of governing bodies shall enter into a joint powers agreement specifying the procedure for framing the charter, which may include the establishment of a single cooperative charter commission with membership representing each city. As an alternative, the governing bodies in each affected city may establish a separate charter commission pursuant to section 40-05.1-03 to frame the charter in cooperative study with the charter commission of any other affected city. The charter commissions must submit a single joint report and proposed charter.
4. The charter commission, during its deliberation, may hold public hearings and community forums and use other suitable means to disseminate information, receive suggestions and comments, and encourage public discussion on the subject of the proposed multicounty home rule charter, and may report periodically to the affected governing bodies on their progress. In preparing the charter, the charter commission may:
  - a. Include any of the available powers enumerated in section 40-05.1-06;
  - b. Provide for adjustment of existing bonded indebtedness and other obligations in a manner which will provide for a fair and equitable burden of taxation for debt service;
  - c. Provide for the transfer or other disposition of property and other rights, claims, assets, and franchises of the cities;
  - d. Provide for the reorganization, abolition, or adjustment of boundaries of any existing boards, commissions, agencies, and special districts of the city governments, including city park districts;
  - e. Include provisions for transition in implementing the charter, including elements that consider the reasonable expectations of current officeholders or personnel such as delayed effective dates for implementation at the end of a current term or a future term, upon the occurrence of a vacancy, or on a date certain;
  - f. Include provision for the limited application or temporary implementation of the charter, including provisions that permit implementation on an experimental or pilot basis such as the expiration of the charter on a date certain in the future, required reapproval of the charter by the electors at a future date, or a phased-in implementation of various aspects of the charter; and
  - g. Include other provisions that the charter commission elects to include and which are consistent with state law.

5. The proposed charter or accurate summary of the charter must be published in the official newspaper of each affected city, at the expense of each city, at least once during two different weeks within the thirty-day period immediately preceding the date of election. However, a city with a population of one thousand or less may, instead of publishing the charter in a newspaper, distribute copies of the charter door-to-door and have them posted and available at prominent locations in the city.
6. If a majority of the qualified electors voting in each city on the charter vote in favor of the multicity home rule charter, it is ratified and becomes the organic law of the cities on the first day of January following the election or other effective date specified in the charter.
7. The amendment or repeal of a multicity home rule charter may proceed pursuant to the amendment and repeal provisions of section 40-05.1-07 on a multicity basis. A majority vote of the qualified electors voting in each city in the election is required to adopt any amendment of a multicity charter. A majority vote of the qualified electors of only one or more participating cities is required to repeal a multicity charter.

#### **40-05.1-06. Powers.**

From and after the filing with the secretary of state of a charter framed and approved in reasonable conformity with the provisions of this chapter, such city, and the citizens thereof, shall, if included in the charter and implemented through ordinances, have the following powers set out in this chapter:

1. To acquire, hold, operate, and dispose of property within or without the corporate limits, and, subject to chapter 32-15, exercise the right of eminent domain for such purposes.
2. To control its finances and fiscal affairs; to appropriate money for its purposes, and make payment of its debts and expenses; to contract debts, borrow money, issue bonds, warrants, and other evidences of indebtedness; to establish charges for any city or other services; and to establish debt limitations.
3. To levy and collect property taxes and special assessments for benefits conferred, for its public and proprietary functions, activities, operations, undertakings, and improvements, and establish mill levy limitations. Notwithstanding any authority granted under this chapter, all property must be assessed in a uniform manner as prescribed by the state board of equalization and the state supervisor of assessments and all taxable property must be taxed by the city at the same rate unless otherwise provided by law.
4. To levy and collect an infrastructure fee. The fee must replace a general special assessment on all property for payment of infrastructure maintenance costs through a utility bill issued by a municipality. The money collected under this subsection may not be used for any purpose other than infrastructure maintenance costs. If a home rule city levies an infrastructure fee, the home rule city also may levy and collect green field special assessments. As used in this subsection:
  - a. "General special assessments" means special assessments levied for the purpose of maintaining existing roads and infrastructure and special assessments levied for the construction or repair of arterial roads and infrastructure that provide a benefit to the entire community.
  - b. "Green field special assessments" means special assessments levied for infrastructure costs associated with the development of agricultural or undeveloped property.
5. To levy and collect excises, fees, charges, franchise and license taxes, sales and use taxes, farm machinery gross receipts taxes, alcoholic beverage gross receipts taxes, a city lodging tax, and a city restaurant tax. For purposes of this section, any taxes imposed under this section on farm machinery, farm irrigation equipment, and farm machinery repair parts used exclusively for agricultural purposes, or on alcoholic beverages, which were in effect on December 31, 2005, become gross receipts taxes after December 31, 2005. After December 31, 2005, any portion of a charter or any portion of an ordinance passed pursuant to a charter which does not conform to the

requirements of this section is invalid to the extent it does not conform. The invalidity of a portion of a charter or ordinance because it does not conform with this subsection does not affect the validity of any other portion of the charter or ordinance of the eligibility for a refund under section 57-01-02.1. Ordinances enacted after August 1, 2017, may not allow for the collection and levy of any tax not otherwise specified under this section. Sales and use taxes and gross receipts taxes levied under this section:

- a. Must conform in all respects with regard to the taxable or exempt status of items under chapters 57-39.2, 57-39.5, 57-39.6, and 57-40.2 and may not be imposed at multiple rates with the exception of sales of manufactured homes or mobile homes.
  - b. May not be newly imposed or changed except to be effective on the first day of a calendar quarterly period after a minimum of ninety days' notice to the tax commissioner or, for purchases from printed catalogs, on the first day of a calendar quarter after a minimum of one hundred twenty days' notice to the seller.
  - c. May not be limited to apply to less than the full value of the transaction or item as determined for state sales and use tax purposes, except for farm machinery gross receipts tax.
  - d. Must be subject to collection by the tax commissioner under an agreement under section 57-01-02.1, with the exception of a city lodging or city restaurant tax, and must be administered by the tax commissioner in accordance with the relevant provisions of chapter 57-39.2, including reporting and paying requirements, correction of errors, payment of refunds, and application of penalty and interest.
6. To fix the fees, number, terms, conditions, duration, and manner of issuing and revoking licenses in the exercise of its governmental police powers.
  7. To provide for city officers, agencies, and employees, their selection, terms, powers, duties, qualifications, and compensation. To provide for change, selection, or creation of its form and structure of government, including its governing body, executive officer, and city officers.
  8. To provide for city courts, their jurisdiction and powers over ordinance violations, duties, administration, and the selection, qualifications, and compensation of their officers; however, the right of appeal from judgment of such courts shall not be in any way affected.
  9. To provide for all matters pertaining to city elections, except as to qualifications of electors.
  10. To provide for the adoption, amendment, and repeal of ordinances, resolutions, and regulations to carry out its governmental and proprietary powers and to provide for public health, safety, morals, and welfare, and penalties for a violation thereof.
  11. To lay out or vacate streets, alleys, and public grounds, and to provide for the use, operation, and regulation thereof.
  12. To define offenses against private persons and property and the public health, safety, morals, and welfare, and provide penalties for violations thereof. This subsection is subject to the provisions of section 62.1-01-03.
  13. To engage in any utility, business, or enterprise permitted by the constitution or not prohibited by statute or to grant and regulate franchises therefor to a private person, firm, corporation, or limited liability company.
  14. To provide for zoning, planning, and subdivision of public or private property within the city limits. To provide for such zoning, planning, and subdivision of public or private property outside the city limits as may be permitted by state law. This subsection is subject to the provisions of section 62.1-01-03.
  15. To exercise in the conduct of its affairs all powers usually exercised by a corporation.
  16. To fix the boundary limits of said city and the annexation and deannexation of territory adjacent to said city except that such power shall be subject to, and shall conform with the state law made and provided.
  17. To contract with and receive grants from any other governmental entity or agency, with respect to any local, state, or federal program, project, or works.

It is the intention of this chapter to grant and confirm to the people of all cities coming within its provisions the full right of self-government in both local and city matters within the powers enumerated herein. The statutes of the state of North Dakota, so far as applicable, shall continue to apply to home rule cities, except insofar as superseded by the charters of such cities or by ordinance passed pursuant to such charters.

**40-05.1-06.1. Sales tax revenue transfer to school districts prohibited.**

Notwithstanding the provisions of chapters 54-40 and 54-40.3 or any other provision of law, revenue from sales, use, or other excise taxes levied under this chapter may not be transferred to or for the primary benefit of a school district except for payment of bonded indebtedness incurred before April 19, 2007, or for capital construction and associated costs approved by the electors of the city before April 19, 2007.

**40-05.1-07. Amendment or repeal.**

The home rule charter adopted by any city may be amended or repealed by proposals submitted to and ratified by the qualified electors of the city in the same general manner provided in sections 40-05.1-02 and 40-05.1-04 for the adoption of the charter. Amendments may be proposed by the governing body of the city or by petition of the number of electors provided in section 40-05.1-02 and submitted to the voters at the same election. The voters may at their option accept or reject any or all of the amendments by a majority vote of qualified electors voting on the question at the election. A proposal to repeal a home rule charter that has been adopted must likewise be submitted to the electors of the city as set forth in this section. One copy of a ratified amendment or a repeal of a home rule charter must be filed with the secretary of state and one with the city auditor. Upon proper filing of the amendment or repeal, the courts shall take judicial notice of the amendment or repeal.

**40-05.1-08. Commission - Terms of office - Vacancies.**

The terms of office of the members of the charter commission shall be four years. Any vacancy on said commission shall be filled by the governing body of the city.

**40-05.1-09. Restriction on proposals to amend or repeal.**

Repealed by S.L. 1993, ch. 401, § 53.

**40-05.1-10. Manner of calling and holding elections.**

The elections provided for in this chapter shall be called and held in the same manner as is provided for the calling and holding of city elections except that all qualified voters of the city shall be eligible to vote at such elections. The form of ballot shall be prescribed by the charter commission so that the voter may signify whether the voter is for or against the proposed home rule charter or the amendment or repeal, as the case may be.

**40-05.1-11. Effect of amendment or repeal on salary or term of office.**

Repeal of a home rule charter shall cause the city affected by such repeal to revert to the form of government of such city immediately preceding adoption of the home rule charter and when positions to which officials were elected under the home rule charter are substantially the same as positions under the form of government to which the city reverts upon repeal, such elected officials shall continue to exercise the authority of such position for the salary prescribed by the home rule charter until expiration of their terms of office as prescribed by the home rule charter. No amendment of a home rule charter shall shorten the term for which any official was elected or reduce the salary of the official's office for that term.

**40-05.1-12. Former powers preserved.**

All powers heretofore granted any city by general law are hereby preserved to each home rule city, respectively, and the powers so conferred upon said cities by general law, are hereby granted to home rule cities.

**40-05.1-13. Vested property - Claims for relief - Actions saved.**

The adoption of any charter hereunder or any amendment thereof shall never be construed to destroy any property, action, claims for relief, claims, and demands of any nature or kind whatever vested in the city under and by virtue of any charter theretofore existing or otherwise accruing to the city, but all such claims for relief, claims, or demands vest in and inure to the city and to any persons asserting any such claims against the city as fully and completely as though the said charter or amendment had not been adopted hereunder. The adoption of any charter or amendment hereunder shall never be construed to affect the right of the city to collect by special assessment any special assessment theretofore levied under any law or charter for the purpose of public improvements, nor affect any right of any contract or obligation existing between the city and any person, firm, corporation, or limited liability company for the making of any such improvements and for the purpose of collecting any such special assessments and carrying out of any such contract.