

CITY OF POWERS LAKE CHAPTER EIGHTEEN

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CHAPTER EIGHTEEN

HOME RULE CHARTER

ARTICLE 1 - Home Rule Charter

18.0101 Incorporation

The inhabitants of the City of Powers Lake, within the corporate limits as now established or as hereafter established in the manner provided by law, shall continue to be a municipal body politic and corporate in perpetuity, under the name of "City of Powers Lake."

18.0102 Governing Body to Exercise Powers

Subject to the limitations imposed by the state constitution, state law, and this charter, all powers of the City shall be vested in the elected governing body. The elected governing body shall enact local legislation, adopt budgets, determine policies, and prescribe the function of government to be performed under this charter by the City. All powers of the City shall be exercised in the manner prescribed in this chapter, or if the manner not prescribed, then in such manner as may be prescribed by ordinance.

18.0103 Powers of City

The City shall have all powers granted to municipal corporations by the constitution and laws of this state and by this charter, together with all implied powers necessary to carry into execution all powers granted.

Among its enumerated powers, which may be implemented by ordinance subject to the limitations specified in the charter, shall be the following:

1. To acquire, hold, operate and dispose of property within or without the corporate limits, and 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 levy and collect taxes, excises, fees, charges and special assessments for benefits conferred, for its public and proprietary functions, activities, operations, undertakings and improvements; to contract debts, borrow money, issue bonds, warrants and other evidence of indebtedness; to establish charges for any City or other services and to establish debt mill levy limitations, provided that the mill levies ordered and imposed by the governing body on taxable property subject to ad valorem taxation shall not exceed in total the sum of levies authorized by state statutes and the constitution for cities of similar classifications to that of the City of Powers Lake.

The governing body shall be permitted to promulgate the City budget without regard to the specific dedications of mill levies to specific purposes as long as the total of the budget is not more than the total amount of mills authorized to be levied by a city.

3. Among its enumerated powers, which may be implemented by ordinance subject to the limitations specified in this charter, shall be the authority to impose a retail sales tax and use tax of no more than two percent (2%) of those gross receipts taxed pursuant to Chapters 57-39.2 and 57-40.2, N.D.C.C., subject to the following:

A. The following shall be specifically exempted from any tax imposed pursuant to this article:

1. The exemptions, exclusions, immunities, credits, and privileges provided for in N.D.C.C. Chapter 57-39.2 which avoid or limit the imposition of the state sales tax provided for herein, or which give rise to the right of refund, shall likewise avoid or limit the city sales tax imposed by this ordinance or give the right to a refund. Such exemptions shall specifically include sales to contractors that are exempt pursuant to Subsection 15 of 57-39.2-04 N.D.C.C.
2. Gross receipts from the sale of sporting event tickets, and other school functions.

3. Any sales tax imposed shall not exceed 1% of the gross retail sales, nor shall the tax exceed \$25.00 on any single purchase or sales transaction involving one or more items.
4. The furnishings or services of public utilities.
5. Any other transaction exempted from imposition of the state sales tax or use tax pursuant to state law.
6. Gross receipts from the sale of repair parts and farm machinery.
7. Gross receipts from the sale of heating fuels and electricity.

B. All revenues raised and collected under this chapter shall be dedicated only to “The Powers Lake Fund” established hereinafter, and shall not be used for any other purpose than those specifically described herein. All revenue shall be maintained in the fund separate and apart from all other funds, except as provided by this section.

C. The proceeds of one percent (1%) sales tax shall be dedicated to:

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|---|-----|
| New home property tax relief and municipal improvements | 25% |
| Parks and recreational improvements | 10% |
| Economic Development | 65% |

By using the above-stated formula, if the amount dedicated to economic development exceeds one hundred fifty thousand dollars (\$150,000.00), the excess monies shall be transferred from the economic development to the new home property tax relief and municipal improvements fund.

D. The fund shall be administered by the City Council of the City of Powers Lake, with assistance of a five (5) member advisory committee appointed by the Powers Lake City Council, of which one member shall be a member of the Powers Lake City Council. This advisory committee shall receive, review and make recommendations to the City Council on all applications for funds. The final decision for the distribution of funds shall remain under the discretion of the Powers Lake City Council.

E. The tax administrator shall be the city council. However, the city council or its authorized representative is authorized to contract with the state tax commissioner to enforce this ordinance, subject to confirmation of the contract by the city council. If the contract is made and confirmed, the tax administrator shall be the state tax commissioner as long as the contract remains in force.

F. The sales tax shall be for a term of 6 years from the date of passage of this Home Rule Charter, and then the city shall call a special election to determine whether the tax shall continue or be terminated

4. To fix fees, number, terms, conditions, duration and manner of issuing and revoking licenses in the exercise of its governmental police powers.
5. To provide for City officers, agencies, and employees, their selection, terms, powers, 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.
6. To provide for City courts, their jurisdiction and powers over ordinance violations, duties, administration, and the selection, qualifications, and compensation of their officers. Provided, however, that the municipal judge shall be elected in the manner as may from time to time be provided by state law.
7. To provide for all matters pertaining to City elections, except as to qualifications of electors.

8. To provide for 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.

9. To lay out or vacate streets, alleys, and public grounds, and to provide for the use, operation, and regulation thereof.

10. To define offenses against private persons and property and the public health, safety, morals, and welfare, and provide penalties for violations thereof.

11. To engage in any utility or enterprise permitted by the constitution or not prohibited by statute or to grant and regulate franchise therefore to a private person, firm, or corporation.

12. 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.

13. To levy, collect franchise and license taxes for revenue purposes.

14. To exercise in the conduct of its affairs all powers usually exercised by a corporation.

15. To fix boundary limits of said City and the annexation and de-annexation of territory adjacent to said City except that such power shall be subject to, and shall conform with, the state law made and provided.

16. 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.

The enumeration of particular powers by this chapter shall be deemed to be exclusive, and in addition to the powers enumerated herein or implied hereby, or appropriate to the exercise of such powers, it is intended that the City shall have and may exercise all powers which under this constitution and laws of this state, it would be competent for this charter specifically to mandate.

18.0104 Referendum and Initiative

1. The voters of the City of Powers Lake shall have the power to refer an initiate ordinances and resolutions, except that the power of initiative and referendum shall not extend to the annual appropriations ordinance, nor to those ordinances or resolutions implementing public projects upon which an election has previously been held, nor shall the power of initiative and referendum extend to special improvement projects under which the law provides for protest procedures or to special assessment projects carried out under the provisions of the North Dakota Century Code.

2. Initiative petitions must be signed by qualified votes of the City equal to at least twenty- five (25%) of the total votes cast in the City at the most recent gubernatorial election.

3. Referendum petitions must be signed by qualified voters of the City equal to at least twenty-five percent (25%) of the total votes cast in the City in the most recent gubernatorial election.

4. Each petition, whether for initiating or referring an ordinance or resolution, shall contain or have attached thereto throughout their circulation the full text of the ordinance or resolution proposed or referred. In addition, each petition shall list the names of the three electors who shall constitute the "Committee for the Petitioners" who shall represent and act for the petitioners. Each petition shall also contain an affidavit signed by the circulator of the petition affirming that the signers thereto are believed by him to be qualified electors of the City of Powers Lake.

5. Referendum petitions for ordinances must be filed with the City Auditor within thirty (30) days after the second reading of the ordinance referred. Referendum petitions for resolutions must be filed with the City Auditor within thirty (30) days after the passage of the resolution referred.

6. The City Auditor shall pass upon the sufficiency of each petition and shall have twenty days (20) after the petition is filed to certify as to its sufficiency. A petition shall be deemed sufficient if City Auditor has not certified to the contrary in said twenty (20) day period. If the City Auditor finds the petition insufficient, he shall notify the "Committee of the Petitioners" specifying the insufficiencies, and allow seven (7) days for correction or amendment, and, in the case of a petition for initiating an ordinance only, for additional signatures within said seven (7) day period.

7. Upon the filing of a referendum petition, the ordinance or resolution referred, except emergency ordinances or resolutions, as hereafter defined, shall be suspended. Such suspension shall terminate:

- a. If the petitions are deemed to be insufficient and not corrected or amended as above provided; or
- b. The petitions are withdrawn by the "Committee of Petitioners" as provided in section 10 of this article; or
- c. The governing body of the City repeals the ordinance or resolution; or
- d. After thirty (30) days have elapsed after the City election on the referral.

An emergency ordinance or resolution is an ordinance or resolution thus designated by the full governing body and passed by a 4/5ths vote of such body.

8. Upon the final determination of the sufficiency of the petitions for initiating an ordinance or resolution the governing body shall have sixty (60) days in which to adopt the proposed ordinance or resolution. If the City Commission fails to adopt the proposed ordinance or resolution, without any change in substance from the proposed, within the said sixty (60) day period, the governing body shall submit the same to the votes of the City at an election within one hundred eighty (180) days after the final determination of the sufficiency of the petition. If no regular City election is held within said time period, the governing body shall provide for a special election, otherwise the vote shall be taken at such regular election.

Copies of the proposed ordinance or resolution shall be available at the office of the City Auditor at least ten (10) days prior to the election. The ballot shall fairly state a summary of the proposed ordinances or resolution's provisions and copies of the ordinance or resolution shall be made available at the polling places.

9. Upon the final determination of the sufficiency of the petition of referendum, the City governing body shall cause an election on the referral to be held within ninety (90) days thereafter. The election shall be held at a regular City election if one is scheduled within said time period; in none, than at a special election called by the governing body. The ballot shall fairly state a summary of the ordinance or resolution referred. Copies of the ordinance or resolution shall be available at the polls as well as from the City Auditor for at least ten (10) days prior to the election.

10. An initiative or referred referendum petition may be withdrawn at any time prior to the scheduling of the election by the governing body upon the filing of a request for withdrawal signed by all members of the "Committee for the Petitioners."

11. If a majority of electors voting on an initiated ordinance or resolution vote in its favor, it shall be considered adopted upon certification of election results and shall thenceforth stand the same as if adopted by the City's governing body. If a majority of electors voting on a referred ordinance or resolution vote against it, such ordinance or resolution shall be considered repealed upon certification of the election results.

12. Any ordinance or resolution pursuant to initiative as by this article provided may not be referred except at a regular City election taking place at least two (2) years after the election at which such initiative ordinance or resolution was adopted. The governing body may not repeal or make any material amendment to the initiated ordinance or resolution or to an ordinance or resolution referred and upheld by a vote of the people except by a vote of 4/5ths of the members thereof for ten (10) years after the date of the election adopting such ordinance or resolution; thereafter such an ordinance or resolution may be repealed or amended the same as any other ordinance or resolution.

13. This article shall be self-executing and all of its provisions treated as mandatory. Ordinances or resolutions may be enacted to facilitate its operation but no ordinance or resolution shall be enacted to hamper, or impair the exercise of the right herein reserved to the people.

18.0105 Severability Clause

If any section or part of section of this charter shall be held invalid by a court of competent jurisdiction, such holding shall not affect the remainder of this charter, except to the extent that an entire section or part of section may be inseparably connected in meaning and effect with the section or part of section to which such holding shall directly apply.

18.0106 Plenary and Implied Powers of the Governing Body

The governing body shall have plenary power to enact and make all proper and necessary ordinances, resolutions and orders to carry out and give effect to the express and implied powers granted in this charter to the end that a complete, harmonious and effective municipal government may be initiated, installed, operated and maintained in the City, and thereby protect and safeguard the rights, interests, safety, morality, health and welfare of the City and its inhabitants.

ARTICLE 2 - Succession in Governments

18.0201 Rights of Officers and Employees Preserved

Nothing in this charter, except as specifically provided, shall affect or impair the rights or privileges of officers or employees of the City or of any office, department or agency existing at the time when this charter shall take effect and not inconsistent with the provisions of this charter, in relation to the personnel, appointment, removal, pension, and retirement rights, civil rights or any other rights or privileges of officers or employees of the City or any office, department or agency.

18.0202 Continuance of Present Officers

All persons holding executive and administrative office at the time this charter takes effect shall continue in office and shall continue the performance of their duties until provisions shall have been made by the governing board for their performance of such duties in some other manner or discontinuance of such office.

18.0203 Continuance of Present Offices, Department or Agencies

Any office, department, agency, heretofore existing, shall continue to exercise powers and duties the same as were heretofore exercised and shall have the power to continue any business proceedings or other matters within the scope of its regular powers and duties until such office, department, or agency shall be changed or abolished by the governing body.

The powers conferred and the duties imposed upon any office, department or agency of the City by the laws or this state shall, if such office, department or agency be abolished by this charter or under its authority, be hereafter exercised and discharged by this office, department or agency designated by the governing body.

18.0204 Continuance of Appointive Boards, Authorities and Commissions

All appointive boards, authorities and commissions heretofore existing shall continue and shall exercise such powers and duties as were granted them until such boards, authorities and commissions shall be changed or abolished by the governing body.

18.0205 Continuance of Contracts

All contracts entered into by the City, or for its benefit, prior to the taking effect of this charter, shall continue in full force and effect.

18.0206 Pending Actions and Proceedings

The adoption of this charter shall not abate or otherwise affect any action or proceedings civil or criminal pending when it takes full effect, brought by or against the City or any office, department, agency or officer thereof.

18.0207 Ordinances to Remain in Force

All ordinances, resolutions and regulations of the City in force at the time this charter takes effect, and not inconsistent with the provisions thereof, are hereby continued in force until the same shall be duly amended or repealed.

18.0208 Inauguration of Government Under this Charter

If a majority of the qualified electors of the City voting on the question, vote to ratify this charter, the provisions of this charter shall go into effect upon the filing of the charter by the governing body with the Secretary of State, the Clerk of the District Court for Burke County, and the office of the City Auditor.

18.0209 Changing the Form of Government

Changes in the form of government may be proposed and effected in the manner provided by the North Dakota Century Code and acts mandatory thereto.

18.0210 Construction

The powers of the City under this charter shall be constructed liberally in favor of the City, and the specific mention of particular powers in the charter shall not be construed as limiting in any way the general power stated in this charter.

18.0211 Method of Amendment and Appeal

This chapter may be amended or repealed as provided by Section 40-05.1-07 N.D.C.C and acts amendatory thereto.