

**TITLE 40
MUNICIPAL GOVERNMENT**

**CHAPTER 40-01
GENERAL PROVISIONS**

40-01-01. Definitions.

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

1. "City" includes cities incorporated under the city council form and city commission system of government, unless the contrary shall appear.
2. "Executive officer" means the mayor in council cities or the president of the board of city commissioners in commission cities.
3. "Governing body" means the city council or the board of city commissioners, as the case may be, of a municipality concerned or affected.
4. "Municipal corporation" or "municipality" includes all cities organized under the laws of this state, but shall not include any other political subdivision.
5. "Warrant" means an order drawn by the proper official of the city on its treasury, the warrant or order to be so drawn that when signed by the auditor in an appropriate place it becomes a check on the depository of such city, and no warrant upon the treasury shall be delivered or mailed to the payee or the payee's agent or representative until such warrant has been signed by the auditor and entered on the auditor's books as a check drawn on a bank depository.

40-01-02. Municipalities are bodies corporate.

Municipalities shall be bodies politic and corporate under the name and style of "city of _____" and under such name may sue and be sued, contract and be contracted with, acquire and hold real and personal property for corporate purposes, and have an official seal which may be changed at pleasure.

40-01-03. Judicial notice of existence and change of organization to be taken by courts.

Courts shall take judicial notice of the existence of a municipality by the name and style designated at the time of its incorporation, and of the change of the form of the organization of any municipality from its original form to any other type of organization provided by this title.

40-01-04. Vested rights.

All rights and property of every kind and description vested in any municipal corporation previous to any change in its form of organization shall be vested in the same municipal corporation upon its being incorporated under a different type of organization as provided by this title. No rights or liabilities in favor of or against such corporation existing at the time of a change in the form of its organization, and no action or prosecution of any kind shall be affected by such change, but the same shall stand and progress as if no change had been made. When by reason of a change in the form of organization, there is made available a different remedy which is applicable to any right existing before such change became effective, such remedy shall be additional to the remedies theretofore provided.

40-01-05. Ordinances and resolutions remain in force - Legal identity not changed.

A change in the form of organization of a municipality shall not change its legal identity as a municipal corporation. All ordinances and resolutions in force therein at the date of such change shall continue in full force and effect until repealed or amended.

40-01-06. Bonds, contracts, and conveyances - How signed and countersigned.

All bonds, contracts, and conveyances of a municipality, except as otherwise provided, shall be signed by the executive officer and countersigned by the auditor or clerk, as the case may be.

40-01-07. Property exempt from taxation and sale on execution.

Lands, houses, moneys, claims receivable, and property and assets of every kind and description belonging to a municipality shall be exempt from taxation and from sale on execution.

40-01-08. Removal of building when taxes and special assessments or share of bonded indebtedness are due - Lien - Penalty.

No person may remove a building from any lot or tract of land in any municipality, unless it is assessed as personalty or exempt from taxation, until after the taxes and special assessments then due have been paid, nor until the owner shall have paid into the sinking fund for the retirement of any bonded indebtedness of the municipality an amount equal to the just share of the tax which would then be required against the property in the municipality to pay the principal outstanding, less amount in sinking funds, of the bonded indebtedness of the municipality. The phrase "taxes and special assessments then due" means all taxes and special assessments that have been levied plus a pro rata estimated tax for the current assessment year. For property classified as residential, "special assessments then due" means the sum of the installments of special assessments certified to the county auditor for extension on the tax list plus the pro rata installment of the special assessment to be certified in the current assessment year. If the building is removed without the payment of the taxes and special assessments and pro rata share of bonded indebtedness, the taxes, special assessments, and pro rata share of bonded indebtedness shall be a lien on the building notwithstanding its removal as well as upon the lot, lots, tract, or tracts of land from which the building was removed. This section does not apply where a building is removed to permit the erection or installation of improvements equal or greater in value than the building removed. Any person violating the provisions of this section is guilty of a class A misdemeanor.

40-01-09. Official newspaper of municipality.

The official newspaper as chosen by the electors of the county shall be the official newspaper of the municipality in which it is published, and such official notices and legal publications as the municipality is required to publish by law shall be published therein. In municipalities where the official newspaper is not published, the governing body of the municipality, annually by resolution at its first meeting in May, or as soon thereafter as practicable, shall designate a newspaper published in the municipality, or if there is not one published, then it shall designate a newspaper which is circulated in the municipality, as the official newspaper of the municipality, including park districts therein, for the publication of notices and legal publications, including legal notices and official statements of the school districts embracing or encompassed by the municipality.

40-01-09.1. Publication of city government proceedings - Electorate to decide.

Beginning with the 1996 biennial municipal elections, and every four years thereafter, all cities in North Dakota, regardless of their form of government, must put on the ballot the question of whether the minutes of its governing body shall be published in its official newspaper. If voters approve publication, the governing body shall, within seven days after each of its meetings, give its official newspaper, for publication, the complete minutes, or a complete summary showing the substantive actions taken at the meeting.

Roll call votes must be published, but may be indicated as "unanimous" when appropriate. A list of the individual checks written by the city and approved by the governing body, showing the payee and the amount of each check, must be published. However, employee salary checks need not be published if the governing body elects to publish an annual salary schedule for each employee. When applicable, these minutes may be labeled as being published subject to the governing body's review and revision. The minutes shall continue to be published until disapproved at a succeeding quadrennial election.

40-01-10. Certificate of publication filed in auditor's office - Conclusive evidence - When bill for publication audited.

After any ordinance, notice, resolution, or other proceeding has been published, a copy of the publication, together with the affidavit of publication stating the length of time it has been published, shall be filed with the city auditor. Such affidavit shall be conclusive evidence of the publication. The bill for the publication shall not be audited until such affidavit is filed.

40-01-11. Publication by a city or park district in which no official newspaper is published.

Whenever any ordinance, notice, or other instrument is required by law to be published in a city or park district in which no official newspaper is published, such publication may be made or such notice given by publication of such ordinance, notice, or other instrument in the official newspaper designated pursuant to section 40-01-09. In a county in which no newspaper is published, any notice required by law to be published may be published in a newspaper printed in an adjoining county and having a general circulation in said county.

40-01-12. Claims and accounts against municipalities audited.

No account or claim against a municipality to be paid from any fund, including a municipal utilities fund, shall be allowed by the governing body thereof until a full itemized statement in writing has been filed with the governing body or unless otherwise authorized by the governing body pursuant to contract or other action. The governing body, in its discretion, 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. Every account or claim which is allowed by the governing body shall be shown in the minutes of the proceedings of the governing body except that wages and salaries of persons employed by the city may be consolidated and allowed in one order as provided by subsection 15 of section 40-16-03 and reference made in the proceedings of the governing body to the payroll record certified to the city auditor.

40-01-13. Payment of accounts by municipality.

No account or claim shall be paid by a municipality unless the same has been audited and allowed by the governing body thereof. Approval by the governing body shall be recorded in the record of its proceedings and this shall be sufficient to indicate approval without requiring a majority of the members of the governing body to sign or initial the voucher or order for payment. No moneys shall be drawn from the treasury of a municipality except upon a warrant from the auditor thereof signed by the executive officer of the municipality and attested by its auditor or clerk.

40-01-14. Office of municipality located in more than one county - Form of official proceeding - Seal.

The officers of a municipality which consists of territory located in more than one county may maintain an office for the performance of their duties in any portion of the municipality. All official proceedings shall be headed with the name of the municipality and of each county of which a portion is embraced within such corporate limits and the name of the state. The official seal which may be used by such municipality shall contain all of such names.

40-01-15. Assessors where municipality is in more than one county - Powers and duties of assessors.

In any municipality which contains territory located in more than one county, an assessor shall be elected or appointed in accordance with the law applicable to such form of municipality for that portion of the municipality situated in each county. Such assessor must be a resident of the county in which the assessor is to act and shall have the same powers and duties as an assessor in a municipality situated within the limits of one county.

40-01-16. Duty of auditor relating to assessments in municipality located in more than one county.

The auditor of a municipality embracing territory in more than one county shall transmit the appropriate assessment books, with a certified copy of the minutes showing the proceedings of the board of equalization, to the county auditor of each county in which the municipality is situated. The auditor shall apportion correctly the amount of any tax levy to be certified to each county in accordance with the valuations as determined finally by the equalization board.

40-01-17. County treasurers' duties relating to municipality located in more than one county.

If a municipality contains territory located in more than one county, the county treasurer of each county in which such municipality is located shall perform the same duties in relation to all property returned as assessed by the municipality in the county of which the treasurer is an officer as the treasurer performs with relation to property situated in a municipality wholly within such county.

40-01-18. Other provisions applicable to municipalities situated in more than one county.

The holding of elections, organization of the board of elections, the election and term of office of the original officers, and the powers and duties of officers of a city embracing territory in more than one county shall be governed by the provisions of this title relating to cities under the council form of government, or to cities under the commission system of government, as the case may be.

40-01-19. Provisions of title shall apply to all cities.

All cities in North Dakota shall be governed by the provisions of this title.

40-01-20. Daylight saving time prohibited.

No city or other political subdivision within the state shall adopt daylight saving time or any other seasonal standard of time which varies from the time in effect in such city or political subdivision during the greater portion of the year. All ordinances, resolutions, or other enactments, whether enacted prior to or subsequent to the effective date of this section, are hereby nullified.

40-01-21. Removal of city advisory or policy decisionmaking members.

The executive officer of a city and a sixty percent majority of the members-elect of a city's governing body at a regular meeting of such body may remove any member of an appointive agency, board, or commission which has spending, borrowing, or eminent domain powers and acts in an advisory capacity or assists in policy decisionmaking.

40-01-22. Antitrust immunity of cities and city governing bodies.

All immunity of the state from the provisions of the Sherman Antitrust Act [Act July 2, 1890, c.647; 26 Stat. 209; 15 U.S.C. 1 et seq.] is hereby extended to any city or city governing body acting within the scope of the grants of authority contained in sections 40-05-01, 40-05-02, and 40-05.1-06. When acting within the scope of the grants of authority contained in sections 40-05-01, 40-05-02, and 40-05.1-06, a city or city governing body shall be presumed to be acting in furtherance of state policy.

40-01-23. Authorization to organize and participate in an organization of city governments.

1. Cities incorporated under the statutes of North Dakota are hereby authorized upon motion of the city governing body to organize and participate in an organization of city governments.
2. The organization or organizations authorized hereunder must be organized pursuant to chapter 10-33.

40-01-24. Firefighters may solicit charitable contributions from motorists.

Notwithstanding section 39-10-34 or any other provision of law, a city, by resolution, may permit permanent, on-duty or off-duty, full-time firefighters employed by the city or volunteers serving the city to solicit charitable contributions from motorists under the following conditions:

1. The solicitation is limited to one charitable organization annually which is qualified under section 501(c)(3) of the Internal Revenue Code [26 U.S.C. 501(c)(3)] and is registered under state law.
2. The solicitation is limited to three days in the calendar year.
3. The charitable organization provides the city proof of commercial general liability insurance against claims for bodily injury and property damage that may occur on the public streets, roads, or right of ways as a result of the actions of those soliciting.