

APPENDIX B

HOME RULE CHARTER  
for the  
City of Bismarck

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Article 1. Incorporation

The inhabitants of the City of Bismarck, 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 the "City of Bismarck"

Article 2. Governing Body to Exercise Powers

Subject to the limitations imposed by the Constitution of the United States of America, the Constitution of the State of North Dakota, state law, and this charter, all powers of the city shall be vested in the people. Unless reserved herein, the powers will be exercised by the elected, governing body. The elected, governing body shall enact ordinances, adopt budgets, determine policies and prescribe the functions of government to be performed by the city under the authority of the charter and the constitution and laws of this state.

Article 3. 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 the 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 this chapter, shall be the authority:

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 evidences of indebtedness in accordance with the various provisions of state law; to

establish charges for any city or other services, and to establish mill levy limitations in accordance with Article 6 of this charter, provided that all real and personal property in order to be subject to the assessment provisions of this subsection shall be assessed in a uniform manner as prescribed by the state board of equalization and the state supervisor of assessments.

3. To fix the fees, number, terms, conditions, duration, and manner of issuing and revoking licenses in the exercise of its governmental police powers.

4. 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, provided that the proposed ordinance is first submitted to a vote pursuant to Article 6, Section 1.

5. 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.

6. To provide for all matters pertaining to city elections, except as to qualifications of electors.

7. 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.

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

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

10. To engage in any utility, business, or enterprise permitted by the constitution and not prohibited by statute or to grant and regulate franchises therefor to a private person, firm, or corporation.

11. 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.

12. To levy and collect franchise and license taxes for revenue purposes.

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

14. To fix the 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.

15. 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.

16. To impose registration fees on motor vehicles, or sales and use taxes in addition to any other taxes imposed by law.

17. To impose a retail sales tax and use tax of no more than one percent 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. Sales of natural gas.

2. Those sales exempted from the imposition and computation of the state sales tax and use tax pursuant to sections 57-39.2-04, 57-39.2-04.1, 57-40.2-04, 57-40.2-04.1, N.D.C.C. Sales to contractors that are exempt pursuant to subsection 15 of section 57-39.2-04 shall be exempt from any city sales tax, although contractors shall be subject to the city use tax on those items used within the city that would be taxed pursuant to section 57-40.2-03.3, N.D.C.C., on which the city sales tax has not been previously paid.

3. Any other transactions exempted from imposition of the state sales tax or use tax pursuant to state law.

4. Gross receipts from coin-operated amusement machines.

b. The tax shall not exceed \$25.00 on any single sales transaction involving one or more items.

c. Any retail sales tax or use tax imposed shall be computed and collected in the same manner provided by law for the collection of the state sales tax and use. The bracket system for the collection of the state sales tax and use tax. The bracket system for the application of the state sales tax set forth in section 57-39.2-08.2, N.D.C.C., shall be adjusted to incorporate the additional city sales tax.

d. The proceeds of any city sales tax shall be dedicated only to capital improvements as approved by a 60% majority vote of the electorate, debt retirement, utility capital improvements, utility rate reduction, economic development, snow removal, road and street improvements, existing facility rehabilitation and repair, up to \$750,000 through 2005 for Lewis and Clark promotions and improvements, Sales Tax Revenue Bond Issue 2002 and a minimum of 25 mills of annual property tax reduction. The requirement of a vote for dedication of city sales tax to capital improvements shall not apply to payments on Sales Tax Revenue Bond Issue 2002 for School, Community Bowl, Recreational Trail, North East Fire Station and 911 Center, Community Pavilion Feasibility Study, Disaster Siren System, and Transit improvements and Sales Tax Revenue Bond 2002 Administrative Bond and Election Costs. Uses of sales tax revenue included in Sales Tax Revenue Bond Issue 2002 which involve other local political subdivisions shall be accomplished through joint powers agreements pursuant to NDCC Chapter 54-40.3.

e. A retailer who pays the tax due under Article 3 of this Charter, within the time limitations prescribed may deduct and retain 3% of the tax due. The aggregate of deductions allowed

by this paragraph may not exceed two hundred fifty dollars per quarterly period for each business location which has been issued a sales or use tax permit by the state tax commissioner. The deduction allowed retailers by this paragraph is to reimburse retailers for expenses incurred in keeping records, preparing and filing returns, remitting the tax, and supplying information to the state tax department, and auditor, upon request.

f. An ordinance imposing a city sales tax approved by a majority vote of the voters shall remain in effect unless repealed or amended thereafter pursuant to law.

It is intended that the statutes of this state, so far as applicable, shall continue to apply to this city, except insofar as superseded by this charter or by ordinance passed pursuant to this charter, and that in addition to the powers enumerated herein or implied hereby, or appropriate to the exercise of such powers, the city shall have and may exercise all powers under the constitution and laws of the state applicable generally to all cities.

#### Article 4. Adoption and Amendment of Ordinances

Ordinances implementing the home rule powers provided herein shall be promulgated by the Board of City Commissioners. Each ordinance shall have two readings, with the first reading consisting of announcement of title of the ordinance at a meeting of the Board. The Board shall file the proposed ordinance with the City Auditor, or other official designated by ordinance, and shall publish a summary of the proposed ordinance in the official newspaper of the city at least 10 days before the second reading. The Board shall hold a public hearing at the second reading of the proposed ordinance, which shall be by title, and shall consider any amendments to the proposed ordinance. If the Board substantially amends the proposed ordinance after the second reading, the Board shall republish a summary of the proposed ordinance at least 10 days before reconsideration at a public hearing. If a majority of the commissioners adopt the proposed ordinance on a roll call vote, the ordinance shall become effective on the date stated in the ordinance. The Board of City commissioners shall follow the same procedure for amending an ordinance.

#### Article 5. Powers Reserved to the People

Section 1 - Referral of Ordinances. The citizens of Bismarck shall have the right to refer ordinances implementing home rule powers. Qualified city electors at least equal in number to ten per cent of the number of electors voting in the city for all candidates for the executive officer in the last election may, by referendum petition, suspend the operation of any ordinance enacted by the Board of City Commissioners, except emergency ordinances approved by at least four members of the Board of City Commissioners, ordinances upon which an election or a referendum has already been held pursuant to law or this charter, or ordinances which provide for meeting obligations of bonded indebtedness incurred by a prior ordinance or a prior election or referendum. An emergency ordinance shall contain a clause declaring an emergency and it shall become effective upon final passage.

Each petition shall have printed thereon: "Referral of City Ordinance \_\_\_\_), providing for \_\_\_\_\_" and shall accurately identify and summarize the nature of the ordinance, or portion of ordinance, being referred. In addition, each petition shall have listed the names of three electors who shall constitute the "Committee for the Petitioners" and who shall represent and act for the petitioners. At the bottom of each petition, the circulator of the petition shall sign an affidavit affirming that the signers are known to be qualified electors of the city.

The City Attorney, or other official designated by ordinance, shall pass upon the form of each petition and, if the City Attorney, or other official designated by ordinance, finds it insufficient, the City Attorney, or other official designated by ordinance, shall notify the "Committee for the Petitioners" and allow five work days for correction or amendment.

The filing of referendum petitions against one or more items, sections or parts of any ordinance, shall not prevent the remainder from going into effect. Referendum petitions shall be filed with the City Auditor, or other official designated by ordinance, not later than 60 days after adoption of the ordinance.

If a referendum petition is filed against an emergency ordinance, the ordinance shall be in effect until voted upon by the electors. If the emergency ordinance is rejected by a majority of the votes cast thereon, it shall be repealed as of the tenth calendar day after the election.

Each ordinance referred to the electors shall be placed

upon the ballot by the City Auditor, or other official designated by ordinance, at the next election occurring 60 days after the filing of sufficient petitions, or at a special election called by the Board of City Commissioners, whichever shall occur first.

The City Auditor, or other official designated by ordinance, shall publish each referred ordinance once each week for two consecutive weeks prior to the election in the official city newspaper. The notice shall include the date of the election, the hours of the election, and a list of the polling places.

If the ordinance is successfully referred by a majority vote, the Board of City Commissioners may not re-adopt the ordinance for a period of three years after the election unless all members of the Board approve the ordinance.

Section 2 - Initiative. A petition to initiate an ordinance shall be presented to the City Attorney, or other official designated by ordinance, for approval as to form prior to circulation. Each petition shall have printed thereon: "Initiation of city ordinance providing \_\_\_\_\_" and shall accurately summarize the nature of the initiated ordinance and set forth the text of the ordinance. A request for approval shall be presented over the names and signatures of three (3) or more qualified electors who shall constitute the "Committee for the Petitioners" and who shall represent and act for the petitioners. Within ten (10) working days after receipt of the petition, the City Attorney, or other official designated by ordinance, shall approve the petition for circulation if it is in proper form and contains the full text of the measure. If the City Attorney, or other official designated by ordinance, does not approve the petition because it is not in the proper form or because it does not contain the full text of the measure, the City Attorney, or other official designated by ordinance, shall give written notice to the Committee for the Petitioners of the reason for not approving their petition.

Any proposed ordinance may be submitted to the Board of City Commissioners by a petition signed by qualified electors at least equal in number to fifteen percent of the number of electors voting in the City for all candidates for the executive officer at the last election. The petition shall be filed in the office of the City Auditor, or other official designated by ordinance, and shall contain a request that the ordinance set out in the petition be submitted to a vote of the qualified electors of the City if it is not passed by the governing body of the city.

After receiving the petition for the initiation of a proposed ordinance, the Board of City Commissioners shall:

a. pass the ordinance without alteration within thirty (30) calendar days after the attachment of the certificate of the City Auditor, or other official designated by ordinance, to the accompanying petition that it appears in order; or

b. direct the City Auditor, or other official designated by ordinance, to place the proposed initiated ordinance upon the ballot at the next election occurring after 60 days after the filing of sufficient petitions, or at a special election called by the Board, whichever shall occur first. The City Attorney, or other official designated by ordinance, shall prepare the language to be placed on the ballot.

The City Auditor, or other official designated by ordinance, shall publish each initiated ordinance once each week for two consecutive weeks prior to the election in the official city newspaper. The notice shall include the date of the election, the hours of the election, and a list of the polling places.

If a majority of the qualified electors voting on an initiated ordinance vote in favor of the ordinance, it shall become an ordinance of the city. The initiated ordinance shall take effect 30 days after approval by the voters unless a different effective date is stated in the ordinance. The Board of City Commissioners may not repeal or make any material amendment to an initiated ordinance except by vote of all members for a period of five (5) years after the date of the election adopting the ordinance, but an initiated ordinance may be amended at any time by an initiated amendment. Thereafter, the ordinance may be repealed or amended the same as any ordinance. An initiated ordinance approved by the Board of City Commissioners without being submitted to the electors may be referred as provided in Section 1.

Section 3 - Article is self executing. This article shall be self-executing and all of its provisions treated as mandatory. Ordinances may be enacted to facilitate its operation but no ordinances shall be enacted to hamper, restrict or impair the exercise of the rights herein reserved to the people.

Article 6. Referenda by Board of Commissioners

Section 1 - Advisory Vote. Before adopting ordinances, the Board of City Commissioners may on its own motion submit questions to the city electorate for an advisory vote of the people at any city-wide election specified by the Board. If the question is submitted in the form of a proposed ordinance and it is approved by a majority of votes cast thereon, and the Board subsequently adopts the ordinance within six months of the vote, the ordinance shall not be subject to referral for five years after the effective date.

Section 2 - Tax Ordinances.

1. The Board of City Commissioners may adopt a budget without regard to the dedication of mill levies to specific purposes. However, unless a tax has been approved by a vote of the city electors, the taxes from all sources imposed by the Board of City Commissioners shall not exceed the total of levies authorized by the state constitution and state statutes for cities, less the levy not actually needed to fund the Old Age and Survivors Insurance System pursuant to Subsection 52-09-08(c) of the North Dakota Century Code.

2. If the Board of City Commissioners determines that the revenue which may be raised by levies specified in Article 3, together with all other available funds, will be insufficient to provide for the requirements of the city, the Board may propose an ordinance in accordance with section 1 to authorize a specified mill levy tax in excess of the limitation for a designated or indefinite period of time.

3. In the event the President of the United States or the Governor of the State of North Dakota declares the City of Bismarck a disaster area because of a natural or man made disaster, the Board of City Commissioners may, pursuant to Article 3, adopt tax ordinances without an advisory vote. Any tax ordinance adopted pursuant to this subsection shall be submitted to the electorate at the next city-wide election. The ordinance shall remain in effect if it is approved by a majority of votes cast on the issue.

Article 7. Boundaries

The boundaries of the city shall be the boundaries as established at the time this charter takes effect, or as such boundaries may be changed thereafter in the manner authorized by law.

Article 8. Separability 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.

#### Article 9. Powers of the Governing Body

The governing body, except when powers are reserved to the people, may enact and make all proper and necessary ordinances, resolutions and orders to carry out and give effect to the express and implied powers granted by law or in this charter to the end that a complete, harmonious and effective municipal government may be initiated, installed, operated and maintained in the city.

#### Article 10. Succession in Government

Section 1 - Rights of Officers and Employees Preserved. Except as otherwise specifically provided, this charter shall not affect or impair the rights or privileges of officers or employees of the city, or any office, department or agency thereof, existing in force at the time this charter shall take effect. Any provision of law in force at the time this charter shall take effect, which provision of law is not inconsistent herewith, shall remain in full force and effect as respects qualifications of 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 thereof.

Section 2 - 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 in accordance therewith for the performance of such duties or the discontinuance of such office.

Section 3 - Continuance of Present Offices, Departments or Agencies. Any office, department or 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 of this state shall, if such office, department or agency be abolished by this charter or under its authority, be thereafter exercised and discharged by the office, department or agency designated by the governing body.

Section 4- Continuance of Appointive Boards, Authorities and Commissions. All appointive boards, authorities commissions, heretofore existing shall continue and shall exercise such powers and duties as were granted them until such boards, authorities and commissions and the powers thereof shall be changed or abolished by the governing body.

Section 5 - 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.

Section 6 - Pending Actions and Proceedings. The adoption of this charter shall not abate or otherwise affect any action or proceeding civil or criminal, pending when it takes full effect, brought by or against the city or any office, department, agency or officer thereof.

Section 7 - Ordinances and Statutes to Remain in Force. All ordinances, resolutions and regulations of the city, together with state statutes applicable to municipalities which are in force at the time this charter takes effect, and not inconsistent with the provisions thereof, are hereby continued in force until such ordinances, resolutions and regulations of the city are duly amended or repealed and until ordinances are enacted providing procedures replacing those previously required by state statute.

Section 8 - 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 ninety days after the filing of the charter by the governing body with the Secretary of State, the Clerk of District Court for Burleigh County, and the office of the City Auditor, or other official designated by ordinance.

#### Article 11. Intergovernmental Agreements

Article VII, Section 10, of the North Dakota Constitution authorizes the Board of City Commissioners to enter agreements, including those for cooperative or joint

administration of any powers or functions, with other political subdivisions, the State, and the United States.

It is the intent of the citizens of Bismarck that the Board of City Commissioners take every opportunity to enter appropriate agreements in order to reduce duplication, to improve efficiency, and to improve the delivery of governmental services to the public.

It is also the intent of the citizens of Bismarck that the Board of City Commissioners enter appropriate agreements with the City of Mandan, the County of Burleigh, the County of Morton, and other political subdivisions in an effort to improve the delivery of government services to the public in the most cost-effective manner.

Accordingly, the Board of City Commissioners is authorized to enter the appropriate agreements to implement Article VII, Section 10, of the Constitution.

#### Article 12. Financial Procedures

Section 1 - Fiscal year. The Fiscal year of the city shall begin on the first day of January and end the last day of December.

Section 2 - Submission of Budget. On or before a date established by the Board of City Commissioners, each elected or appointed official heading a department, office, or agency shall submit to the commissioners a budget for the next fiscal year. The budget shall include a five year capital program.

Section 3 - Budget Preparation and Form. The City Auditor, or other official designated by ordinance, shall organize, and the Board of City Commissioners shall approve, a budget which defines in fiscal terms and in terms of work programs an outline of the proposed financial policies of the city for the next fiscal year. The budget must provide a complete financial plan of all city funds and activities for the next fiscal year, including a city-wide five year capital program.

Section 4 - Board of City Commissioners Action on Budget. The commissioners shall publish once in the official newspaper of the city a notice stating:

1. A general summary of the proposed budget.
2. The times and places where copies of the budget are available for inspection by the public, and

3. The time and place, not less than two weeks after such publication, for a public hearing on the budget.

After the public hearing, the Board of City Commissioners may adopt the budget with or without amendments. No amendment may decrease expenditures required for debt service. Except as provided in Section 6(b), the budget may not authorize expenditures which are greater than total estimated revenue plus reserves.

The commissioners shall adopt the budget for the next fiscal year on or before the 1st day of October of the fiscal year currently ending.

Section 5 - Revenue Certification. To implement the adopted budget, the Board of City Commissioners shall, not later than the 10th day of October, file a tax levy certification authorizing the tax dollar levy.

Section 6 - Amendments After Adoption.

a. Supplemental Appropriations. If during the fiscal year the City Auditor, or other official designated by ordinance, certifies that there are available for appropriation revenues in excess of those estimated in the budget, the commissioners by ordinance may make supplemental appropriations for the year up to the amount of such excess.

b. Emergency Appropriations. To meet a public need affecting life, health, property or the public peace, the commissioners may, by emergency ordinance, approve an emergency appropriation. To the extent that there are no available un-appropriated revenues or a sufficient fund balance to meet such appropriations, the commissioners may by such emergency ordinance authorize the issuance of emergency notes, which may be renewed from time to time, but the emergency notes and renewals of any fiscal year shall be paid not later than the last day of the fiscal year next succeeding that in which the emergency appropriation was made.

c. Reduction of appropriations. If at any time during the fiscal year it appears probable to the City Auditor, or other official designated by ordinance, that the revenues or fund balance available will be insufficient to finance the expenditures for which appropriations have been authorized, the City Auditor,

or other official designated by ordinance, shall report to the commissioners without delay, indicating the estimated amount of the deficit, any remedial action taken by the City Auditor, or other official designated by ordinance, and recommendations as to any other steps to be taken. The commissioners shall then take such further action as they deem necessary to prevent or reduce any deficit and for that purpose may by ordinance reduce one or more appropriations.

d. Transfer of appropriations. At any time during the fiscal year the commissioners may amend the budget ordinance or transfer part or all of the unencumbered appropriation balances within a department or organizational unit.

e. Effective Date. The supplemental and emergency appropriations and reduction or transfer of appropriations authorized by this section may be made effective immediately upon adoption.

Section 7 - Lapse of Appropriations. Every appropriation, except an appropriation for a capital expenditure, shall lapse at the close of the fiscal year to the extent that it has not been expended or encumbered. An appropriation for a capital expenditure shall continue in force for two years after the fiscal year in which the appropriation was established unless the original budget ordinance establishes a different lapse period for the capital appropriation, the Board of City Commissioners extends the lapse period in a subsequent budget ordinance, or the Board approves a motion to return the unexpended funds to the general fund or other appropriate special fund.

Section 8 - Administration of the Budget. The commissioners shall provide by ordinance the procedures for administering the budget.

#### Article 13. Method of Amendment and Repeal

This charter may be amended or repealed as provided by Chapter 40-05.1 of the North Dakota Century Code.

*Adopted January 14, 1986. Article 3(d) was amended on November 8, 1988 and August 6, 1991. Entire Charter was amended November 3, 1992. Article 3(17)(d) was amended on June 14, 1994. Article 3(17)(d) was amended on June 11, 1996. Article 3(17)(d) was amended on March 19, 2002.*