

BUFFALO HOME RULE CHARTER

Article I – Incorporation

The inhabitants of the City of Buffalo, 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 Buffalo”.

Article 2 – 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 functions of government to be performed under this charter by the city. All powers of the city shall be exercised in the manner prescribed by this charter, or if the manner be not prescribed, then in such manner as may be prescribed by ordinance.

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.

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

- a. To acquire, hold, operate and dispose of property within or without the corporate limits, and exercise the right of eminent domain for such purposes.
- b. 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; to establish charges for any city or other services, and to establish debt and mill levy limitations, provided that the mill levies ordered 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 classification, and/or amounts authorized by city electorate at an election held for that purpose.

The governing body shall be permitted to promulgate the city budget without regard to specific dedications of mill levies to specific purposes.

- c. To fix the fees, number, terms, condition, duration, and manner of issuing and revoking licenses in the exercise of its governmental police powers.
- d. To provide for city officers, agencies, and employees, their selection, terms, powers, qualifications and compensation.
- e. 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.

- f. To provide for all matters pertaining to city elections, except as to qualifications of electors.
- g. 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.
- h. To lay out or vacate streets, alleys, and public grounds, and to provide for the use, operation and regulation thereof.
- i. To define offenses against private persons and property and the public health, safety, morals and welfare, and provide penalties for violations thereof.
- j. To engage in any utility, business, or enterprise permitted by the constitution or not prohibited by statute or to grant and regulate franchises therefore to a private person, firm or corporation.
- k. 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.
- l. To levy and collect franchise and license taxes for revenue purposes.
- m. To exercise in the conduct of its affairs all powers usually exercised by a corporation.
- n. 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 to, the state law made and provided.
- o. 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.
- p. To impose registration fees on motor vehicles, or sales and use taxes in addition to any other taxes imposed by law.

The enumeration of particular powers by this charter shall not 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 the construction and laws of this state, it would be competent for this charter specifically to enumerate.

Article 4 – Referendum and Initiative

Section 1

The voters of the City of Buffalo shall have the power to refer and 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.

Section 2 – Initiative petitions

Initiative petitions must be signed by qualified voters of the city equal to at least fifteen percent (15%) of the total votes cast in the most recent gubernatorial election.

Section 3 – Referendum petitions

Referendum petitions must be signed by qualified voters of the city equal to at least fifteen percent (15%) of the votes cast in the city at the most recent gubernatorial election.

Section 4 – Committee for the petitioners

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/her to be qualified electors of the City of Buffalo.

Section 5 – Referendum deadlines

Referendum petition 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.

Section 6- Certification of petition

The city auditor shall pass upon the sufficiency of each petition and shall have twenty (20) days after the petition is filed to certify as to its sufficiency. A petition shall be deemed sufficient if the city auditor has not certified to the contrary in said ninety (90) day period. If the city auditor finds the petition insufficient, he/she 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 periods.

Section 7 – Suspension of referral petition

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:

1. If the petitions are deemed to be insufficient and not corrected or amended as above provided; or
2. The petitions are withdrawn by the “Committee for the Petitioners”, as provided in subsection 10 of this article; or
3. The governing body of the city repeals the ordinance or resolutions; or
4. 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 4/5 vote of such body.

Section 8 – Provisions for ordinance adoption or election

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 governing body fails to adopt the proposed ordinance or resolution, without any change in substance from that within the said sixty (60) day period, the governing body shall submit the same to the voters of the city at an election within 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 the election. The ballot shall accurately summarize the provisions of the proposed ordinance or resolution and copies of the ordinance or resolution shall be available at the polling places.

Section 9– Election on referred ordinance or resolution

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; if none, then at a special election called by the governing body. The ballot shall accurately summarize 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.

Section 10 – Withdrawal of petition

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

Section 11 – Election results

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 election results.

Section 12 – Repeal of initiated ordinance or resolution

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 4/5 of the members thereof for five (5) years after the date of the election adoption of such ordinance or resolution, or by a majority vote of the people; thereafter such an ordinance or resolution may be repealed or amended the same as any other ordinance or resolution.

Section 13 – Implementation of Article 4

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.

Article 5 – Referendum by Governing Body

Before adopting ordinances the governing body may on its own motion submit questions to the electorate for an advisory vote of the people at any city-wide election specified by the governing body. If a question is submitted in the form of a proposed ordinance and it is approved by a majority of the votes cast thereon, and the governing body thereafter adopts the ordinance within six (6) months of such vote, such ordinance shall not be subject to referral by petition for a period of five (5) years from the date of the election.

Article 6 – 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 7 – 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 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 be initiated, installed, operated and maintained in the city, and thereby protect and safeguard the rights, interest, safety, morality, health and welfare of the city and its inhabitants.

Article 8 – Succession in Government

Section 1 – 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.

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 by the governing board for the performance of such duties in some other manner or the discontinuance of such office.

Section 3 – 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.

Section 4 – 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 be abolished by this Charter or under its authority, be thereafter, exercised and discharged by the office, department or agency designated to 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 to remain in force

All ordinances, resolutions and regulations of the city in force at the time of 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.

Section 8 – Inauguration of government under this charter

If a majority of the qualified electors of the city voting on the questions, vote to ratify the 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 and the office of the city auditor, within ninety (90) days.

Section 9 – Changing the form of government

Changes in the form of government may be proposed on motion of the governing body or, may be proposed by petitions bearing the signatures of qualified city electors equal to fifteen (15%) or those voting for the office of mayor in the last election. Proposals for the form of government shall be voted upon at a special election called by the governing body or at the next regular municipal election, which ever shall occur first, provided that at least thirty (30) days have passed after the motion of the governing board or the filing of petitions with the city auditor.

Article 10 – Construction

The powers of the city under this charter shall be construed 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.

Article 11 – Method of Amendment and Repeal

This charter may be amended or repealed provided by section 40-05.1-07 of the North Dakota Century Code acts amendatory thereto.

The Buffalo Home Rule Charter Commission to the Buffalo City Commission on 3/04/02 submitted the foregoing Home Rule Charter. It was distributed door to door on 4/07/02, and approved by a majority vote of the electors at the 6/11/02 election.

ORDINANCE # _____

ORDINANCE ENACTING A CITY SALES AND USE TAX

Whereas the City Council of the City of Buffalo, North Dakota, wishes to enact a Sales & Use tax, be it ordained as follows:

City Sales and Use Tax

Section 1	Definition
Section 2	Sales Tax Imposed
Section 3	Use Tax Imposed
Section 4	Exemptions
Section 5	Maximum Tax Imposed
Section 6	Tax Returns and Information Reports
Section 7	Tax Payments; Collections; Penalties
Section 8	Tax Administrator
Section 9	Corporate Officer Liability
Section 10	Deduction to Reimburse Retailer for Administrative Expenses
Section 11	Dedication of Tax Proceeds
Section 12	Penalties
Section 13	Tax Commencement
Section 14	Termination

Section 1. Definitions

All terms defined in Chapter 57-39.2 and Chapter 57-40.2 of the North Dakota Century Code (NDCC), including all future amendments, are adopted by reference and incorporated herein.

Section 2. Sales Tax Imposed

Except as other wise provided in this Chapter, a tax of one percent (1%) is imposed upon the gross receipts of retailers from all sales at retail including the leasing or renting of tangible personal property as provided in this section, within the corporate limits of the City of Buffalo, North Dakota, of the following to consumers or users:

1. Tangible personal property, consisting of goods, wares or merchandise, including mobile homes.
2. The furnishing or service of communication services or steam other than steam used for processing agriculture products.
3. Tickets or admissions to places of amusement or entertainment or athletic events, including amounts charged for participation in an amusement, entertainment, or athletic activity, and including the furnishing of bingo cards and playing of any machine for amusement or entertainment in response to the use of a coin. The tax imposed by this section applies only to eighty percent (80%) of the gross receipts collected from coin-operated amusement devices.
4. The leasing or renting of a hotel or motel or tourist court accommodations.

5. The leasing or renting of tangible personal property, the transfer of title to which has not been subjected to a retail sales or use tax under this chapter.
6. Sales of alcoholic beverages and tobacco products as defined in Section 57-39.2-03.2 NDCC.
7. Furnishing and installment or attachment to real property in this state by a contractor or a subcontractor who is retailer of drapes, hardware for hanging drapes, or carpet for floor covering.
8. Sales through vending machines to the extent taxable by the State under Section 57-39.2-03.3 NDCC.

Section 3. Use Tax Imposed

Except as otherwise provided in this chapter, an excise tax of one percent (1%) is imposed on the storage, use, or consumption in the city of Buffalo on:

1. The purchase price of tangible personal property, including mobile homes purchased at retail for storage, use, or consumption within the city.
2. The fair market value of tangible personal property, including mobile homes, which was not originally purchased for storage, use or consumption in the city, at the time which it is brought into this city.
3. Alcoholic beverages and tobacco products, which are stored, used or consumed in this city, as, provided in Section 57-40.2-03.2 NDCC.
4. The purchase price of tangible personal property used by a contractor or subcontractor to fulfill a contract as defined in Section 57-40.2-03.3 NDCC. This tax applies only to bids submitted on or after the effective date of this chapter.

Section 4. Exemptions

There are specifically exempted from the provisions of this chapter and from the computation of the amount of tax imposed by it the following:

1. All sales, storage, use, or consumption of tangible personal property, which are exempt from imposition, and computation of the sales or use tax of the State of North Dakota are specifically exempt from the provision of this chapter.

Section 5. Maximum Tax Imposed

No single transaction by the taxpayer from any one customer involving one or more items is subject to a tax in excess of \$25.00.

Section 6. Tax Returns and Information Reports

The tax administrator is authorized to create, publish, and to require the use of, such tax return forms and information reports as are necessary to administer the tax provided for herein. To the extent feasible, these forms shall incorporate or be integrated with the returns and reports required by the State Tax Commissioner under Sections 57-39.2 and 57-40.2 NDCC.

Section 7. Tax Payments; Collections; Penalties

The tax imposed herein shall be paid and collected as nearly as practical in accordance with the payment, collection and penalty provisions of Chapters 57-39.2 and 57-40.2 NDCC.

Section 8. Tax Administrator

The tax administrator shall be the city auditor. However, the city auditor is authorized to contract with the ND State Tax Commissioner to enforce this chapter, subject to confirmation of the contract by the city commission. If the contract is made and confirmed, the tax administrator shall be the ND State Tax Commissioner as long as the contract remains in force.

Section 9. Corporate Officer Liability

Officers of any corporation required to remit taxes imposed by this chapter are personally liable for the failure of the corporation to file required returns or remit required payments. The dissolution of a corporation shall not discharge an officer's liability for a prior failure of the corporation to make a return or remit the tax due. The tax, penalty, and interest due may be assessed and collected pursuant to the provisions adopted by this chapter.

Section 10. Deduction to Reimburse Retailer for Administrative Expenses

1. A retailer who pays the tax due hereunder within the time limitations prescribed may deduct and retain three percent (3%) of the tax due.
2. The aggregate of deductions allowed by this section may not exceed Two Hundred Fifty and No/100 Dollars (\$250.00) per quarterly period for each business location required to remit sales tax hereunder.
3. The deduction allowed retailers by this section is to reimburse retailers for expenses incurred in keeping records, preparing and filing returns, remitting the tax, and supplying information to the auditor and commission upon request.

Section 11. Dedication of Tax Proceeds

All revenues raised and collected under this article, less administrative expenses, shall be placed in a separate sales and use tax fund which shall be dedicated exclusively as follows:

1. Capital and general improvements – 25%
2. Community development – 75%

Section 12. Penalties

1. If any person fails to file a return or corrected return or to pay any tax within the time required by this chapter or, if upon audit, is found to owe additional tax, such person shall be subject to a penalty as established in Section 57-39.2-18(1) of the North Dakota Century Code. The Municipal Court of the City of Buffalo or any other court of competent jurisdiction may impose such penalty.
2. The certificate of the auditor, or where applicable, the North Dakota State Tax Commissioner to the effect that a tax has not been paid, that a return has not been filed, or that information has not been supplied pursuant to the provisions of this chapter, shall be prima facie evidence thereof.

3. Any person failing to comply with any of the provisions of this chapter or failing to remit within the time herein provided the tax due or any use, sale or purchase of tangible personal property subject to said sales and use tax shall, in addition to penalties imposed hereinabove, be subject to a fine, upon conviction in the municipal court, not to exceed Five Hundred Dollars (\$500.00).

Section 13. Tax Commencement

The taxes imposed herein shall apply to sales and uses from and after the 1st day of April, 2002.

Section 14. Termination

1. The sales and use tax imposed by this article shall terminate after December 31, 2001, unless prior to that date a majority of the qualified electors of the City of Buffalo vote to extend the sales and use tax indefinitely or to a time certain.
2. This ordinance shall be in full force and effect from and after its final passage, approval and publication.

Mayor Bill Marcks (Signed in office)

State of North Dakota
City of Buffalo, North Dakota

The foregoing instrument was filed for record in my office on the 3rd day of September 2002, at 8:00 PM, and was recorded in the Ordinance Book.

Anita Hovland (Signed in office)
City Auditor

First Reading: 8/27/02
Second Reading: 9/3/02
Publication: 9/11/02