

WISHEK HOME RULE CHARTER

Article I - Incorporation

The inhabitants of the City of Wishek, 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 Wishek".

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.

Among 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 the city electorate at an election held for that purpose.

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

- c. To fix the fees, number, terms, conditions, 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 therefor 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 with, 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 a one percent (1%) sales and use tax effective January 1, 1997 subject to the following conditions:
1. The proceeds of any sales tax shall be dedicated to:

Capital and Park Improvements	- 25%
Economic Development	- 75%
 2. Sales and uses taxed shall be only those taxed pursuant to Chapters 57-39.2 And 57-40.2 of the North Dakota Century Code.
 3. Any sales or use tax imposed shall not exceed (1%) of taxable sales and purchases, nor shall the tax exceed \$25.00 on any single purchase or sales transaction involving one or more items.
 4. A sales and use tax permit holder 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 (\$250.00) 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 by this paragraph is to reimburse permit holders for expenses incurred in keeping records, preparing said filing returns, remitting the tax, and supplying information to the state tax department, and auditor, upon request.
 5. The power of the City to impose a city sales and use tax shall be submitted to a vote of the qualified voters at a special city election to be held on or before December 31, 2001. If a majority of the qualified voters do not vote to continue the tax in effect, it shall cease to be imposed and collected after midnight on December 31, 2001.
 6. The tax administrator is authorized to create, publish, and require the use of, such tax forms and information and information reports as in his/her judgment are necessary to administer the program and they 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.
 7. The tax imposed herein shall be paid and collected as nearly as practical in accordance with the payment, collection and penalty provisions of sections 57-39.2 and 57-40.2 NDCC .

8. The tax administrator shall be the City Auditor. However, the City Auditor is authorized to contract with the 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 State Tax Commissioner as long as the contract remains in force.

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 Wishek 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 (15) percent 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 (15) percent 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 Wishek.

Section 5 - Referendum deadlines

Referendum petition for ordinances must be filed with the City Auditor within 30 days after the second reading of the ordinance referred. Referendum petitions for resolutions must be filed with the City Auditor within 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 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 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 days for correction or amendment, and, in the case of a petition for initiating an ordinance only, for additional signatures within said seven day period.

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 resolution; or
4. After 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 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 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 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 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 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 years after the date of the election adoption 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 or 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 months of such vote, such ordinance shall not be subject to referral by petition for a period of 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, interests, 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 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 and the office of the city auditor, within ninety (90) days.

Article 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 governor 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 foregoing Home Rule Charter was submitted by the Wishek Home Rule Charter Commission to the Wishek City Commission on August 26 1996. It was published in the Wishek Star on August 28 1996, and approved by a majority vote of the electors at the November 5, 1996 election.



RESOLUTION RATIFYING ACTS OF THE HOME RULE CHARTER COMMISSION

Whereas, on March 4, 1996, this council passed a motion indicating a desire to cause a home rule charter to be framed and adopted for submission to the qualified electors of the City of Wishek; and,

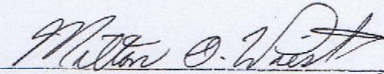
Whereas, the Council at that meeting desired that Randy Mundt, the chairman of the Job Development Authority, would proceed to cause such a home rule charter to be drafted; and,

Whereas, pursuant to said authorization, Randy Mundt did form a committee consisting of himself as chairman, James Weber, Richard Spiedel, LaVern Blinsky, Cleo Boschee, David Ogren, Donald Kosiak, Delmar Zimmerman, Tom Lovik and Polly Huber, and they have conducted proceedings to frame such a home rule charter; now therefore,

Be it resolved that the aforesaid persons are confirmed as the home rule charter commission of the City of Wishek, and Randy Mundt is confirmed as the chairman of said commission; and,

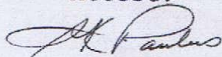
Be it further resolved that all actions taken by said persons as the home rule charter commission of the City of Wishek taken between March 4, 1996, and the date of the adoption of this resolution, are hereby ratified, confirmed and adopted.

Dated: September 4, 1996.



Mayor

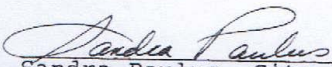
Attest:



CERTIFICATE

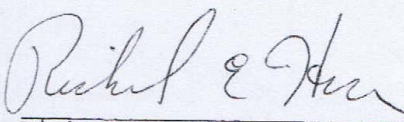
I, Sandra Paulus, City Auditor of the City of Wishek, McIntosh County, North Dakota, do hereby certify that the attached copy of the Home Rule Charter for the City of Wishek, McIntosh County, North Dakota is a true and correct copy of the Home Rule Charter that was filed in my office on August 26, 1996, and that was enacted in accordance with Chapter 40-05.1 of the North Dakota Century Code.

I further certify that the Home Rule Charter was published in the Wishek Star more than sixty (60) days prior to the election of November 5, 1996, and that said Home Rule Charter was approved by a majority of the votes cast thereon.


Sandra Paulus, City Auditor

STATE OF NORTH DAKOTA)
) ss.
COUNTY OF MCINTOSH)

On this 2nd day of December, 1996, before me personally appeared Sandra Paulus, the City Auditor of the City of Wishek, North Dakota, known to be the person who is described in and who executed the within and foregoing Certificate and acknowledged to me that she executed the same.


Richard E. Herr, Notary Public
McIntosh County, North Dakota
My commission expires July 17, 1999.

Filed Dec. 11, 1996 *JKF*

RESOLUTION CALLING SPECIAL ELECTION

Whereas, the Home Rule Charter Commission of the City of Wishek prepared a proposed Home Rule Charter which was filed with the City Auditor on August 20, 1996; and,

Whereas, said Home Rule Charter was published in the Wishek Star on August 28, 1996;

NOW THEREFORE, BE IT RESOLVED, that the question of whether such Home Rule Charter be approved shall be submitted to the electors of this City; and,

BE IT FURTHER RESOLVED that the above question be submitted to the electors of this city at a special election to be held on November 5, 1996 at the statewide election to be held that day; and,

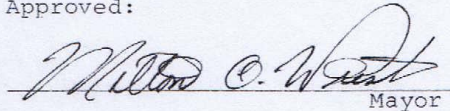
BE IT FURTHER RESOLVED, that the hours of said election shall be the same as for the statewide election; and,

BE IT FURTHER RESOLVED, that the inspector, judges and clerks of said election shall be the same persons as are appointed to conduct the statewide election; and,

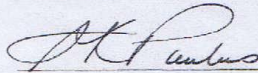
BE IT FURTHER RESOLVED, that the polling place for said election shall be the same as those for the statewide election to be held on that day.

Dated: September 4, 1996.

Approved:


Milton C. West
Mayor

Attest:


City Auditor