

**HOME RULE CHARTER**

**CITY OF GWINNER**

**NORTH DAKOTA**

**Prepared by**

**Gwinner Home Rule Charter Committee**

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# **The City of Gwinner**

## **Proposed Schedule of the City Charter Preparation, Public Hearings, Voters Response and Action of the City Council**

### **Outline for Discussion June 23, 2004**

1. Meetings of Charter Commission drafting the City Charter and sales tax ordinance
2. Joint meeting of the Charter Commission and the City Council in July 2004
3. Public hearing before Charter Commission in July 2004
4. Public Hearing before the City Council, August 2, 2004
5. Adoption of the City Charter and one sales tax scheduled for voters approval in November
6. Placing the City Charter and one cent sales tax on the Ballot (at least 60 days before 11/02/04)
7. November Election (11/02/04), Voters Response on City Charter and one cent sales tax
8. November/December 2004, action of the City Council
9. Filing of the City Charter with the ND Secretary of State
10. Effective Date of the sales tax Ordinance

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# **HOME RULE CHARTER CITY OF GWINNER NORTH DAKOTA**

## **Article 1**

### **Incorporation**

The inhabitants of the City of Gwinner, North Dakota, within the corporate limits as now established or as established later 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 Gwinner"

## **Article 2**

### **Governing Body to Exercise Powers**

Subject to the limitations imposed by the North Dakota State Constitution, Laws, and this Charter, all powers of the City shall be vested in the elected City governing body. The elected City governing body shall enact local ordinances, adopt budgets, determine policies, and prescribe the functions of government to be performed under this Charter by the City. The elected City governing body shall have the power to enact all proper and necessary ordinances, resolutions and orders to carry out and give effect to the express and implied powers granted in this Charter. All powers of the City shall be exercised in the manner prescribed by this Charter, or if the manner is not prescribed then in such manner as may be prescribed by ordinance.

## **Article 3**

### **Powers of the 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 of 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 Charter, shall be the following:

**Section 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.

**Section 2**

To control its finances and fiscal affairs; to appropriate money for its purposes, and taxes. To 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 all real and personal property in order to be subject to the assessment provisions of this section shall be assessed in a uniform manner as prescribed by the State Board of Equalization and the State Supervisor of Assessments.

**Section 3**

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

**Section 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.

**Section 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.

**Section 6**

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

**Section 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.

**Section 8**

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

**Section 9**

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

**Section 10**

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, corporation, or limited liability company.

**Section 11**

To provide for zoning, planning, and subdivision of public or private property within the City limits and to provide for such zoning, planning, and subdivision of public or private property outside the City limits as may be permitted by State Law.

**Section 12**

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

**Section 13**

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

**Section 14**

To fix the boundary limits of the City and the annexation and de-annexation of territory adjacent to the City except that such power shall be subject to, and shall conform with the State Law.

**Section 15**

To contract with and receive grants from any other governmental entity or agency, with respect to any local, State, or federal programs, projects, or works.

**Section 16**

To impose sales and use taxes in addition to any other taxes authorized by Law. Sales and use taxes must conform in all respects with regard to the taxable or exempt status of items under chapters 57-39.2 and 57-40.2 of the North Dakota Century Code and may not be imposed at multiple rates with the exception of sales of electricity, piped natural or artificial gas, or other heating fuels delivered by the seller or the retail sale or transfer of motor vehicles, aircraft, watercraft, modular homes, manufactured homes, or mobile homes.

Allocation of the proceeds from sales and use taxes for community projects and programs shall be based on all of the following three criteria:



- a. Shall be devoted to projects and programs that meet the needs of the City, beyond the existing and routine services and programs offered by the City and governing bodies with jurisdiction in Gwinner. This includes improvements of public facilities and infrastructure.
- b. Shall be devoted to projects and programs that improve the employment opportunities, business expansion and new business development that expand the tax base in Gwinner.
- c. Shall be devoted to projects and programs that would encourage residency in Gwinner.

It is intended that the Laws of this State, so far as applicable, shall continue to apply to this City, except as superseded by this Charter or by ordinance passed pursuant to this Charter. In addition to the powers enumerated herein, 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 this State applicable generally to all cities.

## Article 4

### Referendum and Initiative

#### Section 1

The voters of the City shall have the power to refer and initiate ordinances, except that the power of initiative and referendum shall not extend to the annual appropriation ordinances, nor to those ordinances implementing public projects upon which an election has previously been held, or special improvement projects under which the Law provides for protest procedures.

#### Section 2

Initiative petitions must be signed by qualified voters of the City equal to at least thirty percent (30%) of the total votes cast in the City at the most recent presidential election.

#### Section 3

Referendum petitions must be signed by qualified voters of the City equal to at least thirty percent (30%) of the total votes cast in the City at the most recent presidential election.

#### **Section 4**

Each petition, whether for initiating or referring an ordinance, shall contain or have attached thereto throughout their circulation the full text of the ordinance 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 that petition affirming that the signers of the petition are believed by the circulator to be qualified voters of the City.

#### **Section 5**

Referendum petitions must be filed with the City Auditor within thirty (30) days after the second reading of the ordinance referred.

#### **Section 6**

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 within the 20-day period. If the City Auditor finds the petition insufficient, the City Auditor shall notify the "Committee for 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 the seven day period.

#### **Section 7**

Upon proper filing of a referendum petition, the ordinance referred, except emergency ordinances as defined in this section, shall be suspended. Such suspension shall terminate:

- a. If the petitions are determined to be insufficient and not collected or amended as provided in section 6 of this article; or
- b. The petitions are withdrawn by the "Committee for the Petitioners", as provided in section 10 of this article; or

- c. The governing body of the City repeals the ordinance; or an "emergency ordinance" is an ordinance designated as an emergency ordinance by the City governing body and passed by a 3/4 vote of the City governing body.

### **Section 8**

Upon the final determination of the sufficiency of the petitions for initiating an ordinance, the City governing body shall have 60 days in which to adopt the proposed ordinance. If the City governing body fails to adopt an ordinance, without any change in the substance from that proposed, within the 60 day time period, the City governing body shall submit the ordinance to the voters of the City at an election to be held within 120 days after the final determination of the sufficiency of the petitions. If no regular City election is to be held within that time period, the City governing body shall provide for a special election. Copies of the proposed ordinance shall be available at the office of the City Auditor at least 10 days prior to the election. The ballot shall fairly state a summary of the provisions of the proposed ordinance and copies of the ordinance shall be available at the polling places.

### **Section 9**

Upon the final determination of the sufficiency of the petitions of referendum, the City governing body shall cause an election on the referendum to be held within 60 days. The election shall be held at a regular City election, if one is scheduled within that time period, or at a special election called by the City governing body. Copies of the ordinance shall be available at the office of the City Auditor at least 10 days prior to the election. The ballot shall fairly state a summary of the ordinance referred, and copies of the ordinance shall be available at the polling places.

### **Section 10**

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

### **Section 11**

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

### **Section 12**

The City governing body may not repeal or make any material amendments to an initiated ordinance for ten years after it is approved by the voters except by a 3/4 vote of the City governing body.

### **Section 13**

An ordinance referred and repealed by a vote of the electors shall not be re-enacted by the City governing body before a period of at least two years from the date of the referral election.

### **Section 14**

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

## **Article 5**

### **Succession in Government**

#### **Section 1. Rights of officers and employees**

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 takes effect.

**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 continue the performance of their duties until provisions are made by the City governing body for the performance of those duties in some other manner or for the discontinuance of that office.

**Section 3. Continuance of present offices, departments, or agencies**

Any office, department, or agency existing at the time this Charter takes effect shall continue to exercise its regular powers and duties until such office, department, or agency is changed or abolished by the City governing body. Any powers and duties established for any office, department, or agency by the Laws of the State shall, if such office, department, or agency is abolished under the authority of this Charter, be exercised by the office, department, or agency designated by the City governing body.

**Section 4. Continuance of appointive boards, authorities, and commissions**

All appointive boards, authorities, and commissions existing at the time this Charter takes effect shall continue to exercise such powers and duties as were granted them until such boards, authorities, and commissions are changed or abolished by the City 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 affect any pending action or proceeding, civil or criminal, when it takes full effect.

**Section 7. Ordinances, resolutions and regulations to remain in force**

All ordinances, resolutions and regulations of the City in force at the time this Charter takes effect, and not inconsistent with the provisions of this Charter, shall continue in force until they are amended or repealed.

**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 upon the filing of the Charter by the City governing body with the Secretary of State, the County Register of Deeds or other designated county official, and the City Auditor.

**Article 6**

**Changing the Form of City Government**

Changes in the form of City government may be proposed and put into effect in the manner provided by the North Dakota Century Code as amended,

**Article 7**

**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 this Charter shall not be construed as limiting in any way the general powers of the City.

**Article 8**

**Separability**

If any section or part of a section of this Charter is 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 a section may be inseparably connected in meaning and effect with the section or part of a section to which the holding directly applies.

## **Article 9**

### **Amendments and Repeal**

This Charter may be amended or repealed as provided by Section 40-05.1-07 of the North Dakota Century Code as amended.