CHAPTER 40-49
PARKS AND PARK DISTRICTS

40-49-01. Municipalities may acquire real estate for parks or public grounds by gift or devise - Extension of police power.

A municipality may receive by gift or devise, real estate within its corporate limits, or within five miles [8.05 kilometers] thereof, for use as parks or public grounds. Such real estate shall be vested in the municipality upon the conditions imposed by the donors, and upon the acceptance of the gift or the devise by the executive officer and governing body of the municipality, the jurisdiction of the governing body shall be extended over such real estate. The governing body may enact bylaws, rules, and ordinances for the protection and preservation of any real estate acquired as provided in this section and may provide suitable penalties for the violation of any such bylaws, rules, or ordinances. The police powers of the municipality shall be extended at once over any real estate acquired in the manner provided in this section.

40-49-02. Cities may take advantage of chapter - Vote required - How taken.

Any incorporated city by a two-thirds vote of its governing body, at a regular meeting of such governing body, may take advantage of the provisions of this chapter. The vote of the governing body on such question shall be taken by yeas and nays.

40-49-03. Ordinance required to create park districts - Territory embraced to be park district.

Any municipality desiring to take advantage of this chapter shall do so by an ordinance regularly adopted expressing such intent or desire. The territory embraced in the municipality or within any park which may be acquired under the provisions of this chapter shall be a park district of the state of North Dakota.

40-49-04. Designation of park district - General powers - Park defined.

A park district shall be known as "park district of the city of _____". The park district shall have a seal and perpetual succession, and may:

1. Sue and be sued.
2. Contract and be contracted with.
3. Acquire by purchase, gift, devise, or otherwise, and hold, own, possess, and maintain real and personal property in trust for use as parks, boulevards, and ways.
4. Exercise all the powers designated in this chapter.

"Park", as used in this chapter, and in other statutes relating to park districts, unless from the context a contrary intent plainly appears, includes public grounds used or acquired for use as airfields, parade grounds, public recreation areas, playgrounds and athletic fields, memorial or cemetery grounds, and sites or areas devoted to use and accommodation of the public as distinguished from use for purposes of municipal administration.

40-49-05. Board of park commissioners in city - Terms.

1. The powers of a park district in a city must be exercised by a board of park commissioners consisting of five or three members, as determined by the governing body of the city in creating the park district or pursuant to sections 40-49-07.1 and 40-49-07.2. Except as provided in subsection 2, each commissioner shall hold office for a term of four years and until a successor is elected and qualified. The term of office of a commissioner begins two weeks after the regular biennial city election at which the commissioner is elected.
2. Members of a newly created five-member board shall hold office as follows:
   a. Three members until two weeks after the next regular biennial city election.
   b. Two members until two years from the time mentioned in subdivision a.
3. Members of boards of park commissioners which existed before July 1, 1987, shall hold office on the staggered basis in effect on June 30, 1986.
4. Members of a newly created three-member board shall hold office as follows:

a. Two members until two weeks after the next regular biennial city election.
b. One member until two years after the next regular biennial city election.

40-49-06. Board of park commissioners in villages - Term - Term on first board.
Repealed by S.L. 1967, ch. 323, § 285.

40-49-07. Election and qualification of members of board of park commissioners.
The members of the board of park commissioners shall possess the qualifications of electors of the city and must be elected by the qualified electors of the park district. The members of the first board may be elected at any regular city election or at a special election called for that purpose by the governing body of the city. Thereafter, members of the board must be elected at the regular city elections. Such members shall qualify within two weeks after their election by taking and filing with the city auditor the oath prescribed for civil officers. The board of park commissioners may enter into an agreement with the governing body of the city concerning sharing of election personnel, printing of election materials, and apportioning of election expenses.

40-49-07.1. Change in number of park commissioners - Election.
1. The number of park commissioners may be increased from three to five, or decreased from five to three, pursuant to this section.
2. The process for increasing or decreasing the number of park commissioners may be initiated:
   a. By resolution approved by a majority vote of the board of park commissioners and submitted to the governing body of the city; or
   b. By a petition signed by ten percent or more of the total number of qualified electors of the city park district voting for governor at the most recent gubernatorial election and submitted to the governing body of the city.
3. The governing body of the city shall submit the question of increasing or decreasing the number of park commissioners to the electors of the park district at any regular city election or primary or general election as specified in the resolution or petition submitted pursuant to subsection 2. The question requires an affirmative vote of a majority of those voting on the question for passage.
4. If an increase in the number of park commissioners is approved by the electors, the two additional park commissioners must be elected at the next regular city election or as specified in the resolution or petition pursuant to subsection 2. One of the additional commissioners shall hold office for a term of four years, and the other commissioner for a term of two years and until a successor is elected and qualified, unless other terms are specified in the resolution or petition pursuant to subsection 2.
5. If a decrease in the number of park commissioners is approved by the electors, the existing board members shall continue in office until the time when the terms of office of two members of the board expire simultaneously. At that time, those two offices are abolished. A different procedure for abolition of the two offices may be specified in the resolution or petition pursuant to subsection 2.

40-49-07.2. Dissolution of city park district - Election.
1. A city park district may be dissolved pursuant to a plan adopted pursuant to this section. A proposal for dissolving a city park district may be initiated:
   a. By resolution incorporating a dissolution plan, approved by a majority vote of the board of park commissioners and submitted to the governing body of the city; or
   b. By a petition incorporating a dissolution plan, signed by twenty-five percent or more of the total number of qualified electors of the city park district voting at the last regular city election and submitted to the governing body of the city.
2. The governing body of the city shall submit the question of dissolution to the electors of the park district at any regular city election or primary or general election as specified in the resolution or petition submitted pursuant to subsection 1. The plan

incorporated in the resolution or petition is effective and becomes operative according to its terms if a majority of the qualified electors voting on the question approves the plan.

3. A plan for dissolving a city park district may specify:
   a. The disposition and maintenance of land and other property acquired by the board of park commissioners of the dissolved park district;
   b. The manner for payment of any current indebtedness, evidences of indebtedness in anticipation of user fee revenues, bonded indebtedness, and other obligations of the dissolved park district;
   c. The disposition of any outstanding special assessments or other anticipated revenues;
   d. The transition in implementing the plan, including elements that consider the reasonable expectations of current officeholders and personnel such as delayed effective dates for implementation; and
   e. Other considerations and provisions that are consistent with state law.
4. The governing body of the city shall cause the complete text, or a fair and accurate summary, of the plan to be published in the official newspaper of the city, not less than two weeks nor more than thirty days, before the date of the election. The governing body may, prior to the election, hold public hearings and community forums and use other suitable means to disseminate information, receive suggestions and comments, and encourage public discussion of the purpose and provisions of the plan.

40-49-08. Organization of board of park commissioners - City auditor to act as treasurer of board or board to appoint clerk.

Two weeks after their election, the members of the board of park commissioners shall organize the board by selecting a president and a vice president. The city auditor shall be ex officio treasurer of the park district or the board may appoint a clerk and such other employees as shall be deemed needed for the efficient conduct of the district's business and shall fix their compensation. The clerk shall take the oath prescribed for civil officers and shall obtain such bond as may be required by the board.

40-49-09. Vacancies - How filled - Removal of residence creates vacancy.

Vacancies on the board of park commissioners shall be filled by the board until the next regular election of members thereof at which time such vacancies shall be filled by election for the unexpired term. The removal of the person's residence from the park district by a member of the board shall create a vacancy thereon.

40-49-10. Members of board of park commissioners may receive compensation - Interest in contracts restricted.

The members of the board of park commissioners are entitled to receive compensation for their services in the amount approved by the board in the park district annual budget. A park board member may not be directly or indirectly interested in any contract requiring the expenditure of park district funds unless the contract has been approved by two-thirds of the park board. Before the contract is approved, a motion must be made and approved that the service or property is not readily available elsewhere at equal cost. Regardless of this section, any park board, by resolution duly adopted, may contract with park board members for minor supplies or incidental expenses.

40-49-11. Regular and special meetings of the board of park commissioners - Procedure.

The board of park commissioners shall hold a regular meeting at least once each month at a time and place to be designated by ordinance and such special meetings as it may deem necessary. A special meeting may be called at any time by the president or any two members of the board to consider matters specified in the call of such meeting. Written notice of any special

meeting shall be given to each member of the board prior to such meeting. The board may adopt such rules of procedure as it deems necessary.

40-49-12. Powers of the board of park commissioners.

A board of park commissioners may:

1. Acquire by purchase, gift, devise, or, subject to chapter 32-15, condemnation, or otherwise, land anywhere within this state, or outside this state if located adjacent to a boundary of this state and of the park district, for parks, boulevards, and ways. The board has the sole and exclusive authority to maintain, govern, and improve the land, and to provide for the erection of structures thereon. Such parks, boulevards, and ways are considered for purposes of taxation and for all other purposes as being within the territorial limits of the municipality. If the board has acquired the legal title in fee to such lands, the board may sell and convey the same. A conveyance must be executed by the president and clerk of the board upon a resolution approved by not less than two-thirds of the members thereof.
2. Lay out, open, grade, curb, pave, and otherwise improve any path, way, or street, in, through, or around the parks, and construct, erect, build, maintain, manage, and govern any and all buildings, pavilions, play and pleasure grounds or fields, and such other improvements of a like character as may be deemed necessary.
3. Pass all ordinances necessary and requisite to carry into effect the powers granted to a board of park commissioners, with such penalties as the board may deem proper. No such penalty, however, shall exceed five hundred dollars.
4. Levy special assessments on all property especially benefited by the purchase, opening, establishment, and improvement of such parks or boulevards and of ways or streets about the same.
5. Employ such engineers, surveyors, clerks, and other employees, including a police force, as may be necessary, define and prescribe their respective duties, and fix and pay their compensation.
6. Issue negotiable bonds of the park district as provided in title 21.
7. Levy taxes upon all the property within the district for the purpose of maintaining and improving parks, boulevards, and ways, and to defray the expenses of the district. The proceeds of the taxes shall be available also for use in payment for any land purchased during the year or previously, or for improvements previously made for park purposes.
8. Establish building lines for all property fronting on any park, boulevard, or way under the direction and control of the board, and control the subdivision and platting of property within four hundred feet [121.92 meters] thereof.
9. Borrow money to defray the expenses of the year, subject to the limitations contained in title 21, in anticipation of taxes already levied, and issue therefor the warrants or other obligations of the district.
10. Connect any park or parks owned or controlled by it with any other park or parks, and for that purpose, it may select and take charge of any connecting street or streets or parts thereof; and the board shall have the sole and exclusive charge and control of any street or streets taken for such purpose.
11. Plant, set out, maintain, protect, and care for shade trees in any of the public streets or highways of the park district. The board may specify and regulate the kinds of trees that shall be planted in any such street or highway, the size and location of such trees, and the methods to be used in the planting and cultivation thereof and may pass such ordinances as may be necessary for the protection and control of such trees.
12. Plat and lay out such portions of park property as are not needed for the accommodation of the general public, and lease and demise lots or portions thereof for residential or concession purposes. The board may prescribe by ordinances the use that may be made of such leaseholds and the character of structures that may be placed thereon and may regulate generally the use and enjoyment thereof by the lessees or their successors.

13. Levy taxes upon all the property within the district, within the general fund levy authority of section 57-15-12, for the purpose of funding a comprehensive health care program for district employees.

40-49-13. Ordinances - Powers exercised by - Readings - Adopting - Approving - Publication - Enacting clause.

The powers of the board of park commissioners shall be exercised by ordinance unless otherwise provided in this chapter. All ordinances shall be read twice, and at least eight days shall intervene between the readings. Ordinances shall be adopted by a yea and nay vote, shall be approved by the president, shall be published once in the official newspaper of the municipality, and shall go into effect within three days after the publication thereof. The enacting clause of all ordinances shall be: "Be it enacted by the board of park commissioners of the park district of the city of _____".

40-49-14. When yea and nay vote taken - Letting contracts - Debt limit - Bills, claims, and demands against board.

Yea and nay votes must be taken on all propositions involving the expenditure of money, levying of taxes, or the issuance of bonds or certificates of indebtedness. Approval of an expenditure of money must be recorded in the record of the board's proceedings and is sufficient to indicate approval without requiring the members to sign or initial the voucher or order for payment. Except as provided in chapter 48-01.2, all contracts exceeding twenty-five thousand dollars must be let to the lowest responsible bidder after advertisement in the official newspaper of the municipality once each week for two successive weeks. The board may reject any or all bids. All contracts must be in writing and must be signed by the president of the board or a designated representative and unless so executed, they shall be void. The debt of a park district may not exceed one percent of the taxable property within the district according to the last preceding assessment. No bill, claim, account, or demand against the district may be audited, allowed, or paid until a full, written, itemized statement has been filed with the governing body or unless otherwise authorized by the governing body pursuant to contract or other action. The governing body may require the filing of any additional information which it may deem necessary to the proper understanding and audit of any claim or account and it may require the filing of a sworn statement in such form as it may prescribe or as noted below:

CERTIFICATE

I do hereby certify that the within bill, claim, account, or demand is just and true; that the money therein charged was actually paid for the purposes therein stated; that the services therein charged were actually rendered and of the value therein charged; and that no part of such bill, claim, account, or demand has been paid; and that the goods therein charged were actually delivered and were of the value charged.

Sign here _____

_____

If signed for a firm or company,
show authority on this line.

40-49-15. Purchase of land by city park district on installment contract - Conditions and limitations.

After declaring by resolution duly passed that an emergency exists in that it is desirable and necessary that additional lands, as described in the resolution, be acquired for park purposes, the board of park commissioners of any city may enter into a contract or contracts for the purchase of such additional land for park purposes and for the payment of the purchase price therefor in annual installments. The power to enter into such contract shall be subject to the following limitations and conditions:

1. All moneys to be paid annually under any such contract shall be available and paid only from revenues to be derived from the authorized tax levy of the park district.
2. Contracts which at any time shall create aggregate future obligations of the park district in an amount in excess of one-fifth of one percent of the value of all taxable

property within the park district may not be entered into under the provisions of this section.

3. The total amount contracted to become payable within any year by any park board shall not exceed twenty percent of the authorized tax revenue of the park district for the year in which any such contract is made.

40-49-16. City engineer is ex officio engineer and surveyor for board of park commissioners.

The city engineer of any city included within a park district shall be ex officio engineer and surveyor for the board of park commissioners and shall render to the board such services as it may require.

40-49-17. Jurisdiction to determine actions involving violations of ordinances of board of park commissioners.

Full and exclusive jurisdiction to try and determine all claims for relief involving violations of rules or ordinances enacted by the board of park commissioners is vested in the municipal judge. The procedure, including the right of appeal, is the same as in actions involving offenses against city ordinances.

40-49-18. General code provisions to govern park districts.

Except as otherwise provided in this chapter, the board of park commissioners and its officers and the park district shall be governed, in the issuing of warrants and certificates of indebtedness and in the levying of any tax or special assessment, or in carrying out, enforcing, or making effective any of the powers granted in this chapter, by the provisions of the laws of this state applicable to municipalities of the kind in which the park district is established.

40-49-19. Dissolution of village park district - Petition for election - Notice of election - Order of dissolution.

Repealed by S.L. 1967, ch. 323, § 285.

40-49-20. Park districts may adopt civil service systems.

The board of park commissioners of a park district in any city which has adopted a civil service system pursuant to the provisions of chapter 40-44, may, with the consent of the governing body of such city, provide that the employees of such park district shall be subject to the provisions of said chapter 40-44; provided, that appointments to positions of employment within such park district shall be made by the board of park commissioners of the district.

40-49-21. Park districts may provide for employees' pensions.

A board of park commissioners may provide for employees' pensions pursuant to an authorized city pension plan with the consent of the city governing body and the consent of not less than a majority of the city employees covered by the city pension plan. In addition, a board of park commissioners may provide for employer pensions pursuant to chapter 54-52 or under a program approved by the internal revenue service. Payments made by employees or taxes levied by the park district must be paid into the employees' pension fund. If a board of park commissioners wishes to leave an existing city pension plan, the board, upon the request of the pension fund governing body, shall fund an actuarial study of the financial impacts to the pension fund. Any losses or costs to the fund by the park district leaving the pension plan are the responsibility of the park district. A park district may not leave the city's pension plan without the approval of the pension fund governing body.

40-49-22. Tax levy for park district employees' pension fund.

A park district adopting the provisions of section 40-49-21 provide funding from revenues derived from its general fund levy authority for the benefit of its employees' pension fund.

40-49-23. Land transfers or abandonment.

Any municipality or park district may abandon and discontinue as a park or recreational area any land acquired by any municipality or park district for park and recreational purposes under the provisions of section 11-27-08 and any municipality or park district may sell, convey, or transfer any such lands free from any restrictions as to their use for park and recreational purposes.

40-49-24. Park district authorized to collect user fees and issue evidences of indebtedness in anticipation of user fee revenues.

1. A board of park commissioners may prescribe and collect user fees for facilities or activities furnished by the park district and in anticipation of the collection of such revenues may issue evidences of indebtedness for the purpose of acquiring, constructing, improving, and equipping parks and park and recreational buildings and facilities, and for the purpose of acquiring land for those purposes.
2. Evidences of indebtedness issued under this section are payable, as to principal and interest, solely from all or part of the revenues referred to in this section and pledged for such payment.
3. Notwithstanding any other provision of law, evidences of indebtedness issued under this section are fully negotiable, do not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction, and together with interest thereon and income therefrom, are not subject to taxation by the state of North Dakota or any political subdivision of the state.
4. Evidences of indebtedness issued under this section must be authorized by resolution of the board of park commissioners and, notwithstanding any other provision of law, may be issued and sold in such manner and amounts, at such times, in such form, and upon such terms, bearing interest at such rate or rates, as may be determined in the resolution.

40-49-25. Medal of honor monument.

Upon completion of the medal of honor monument in Roosevelt park in Minot, ownership and responsibility for the monument's maintenance belongs to the Minot park board or its successor.