PETITION TO AMEND THE CITY OF FARGO'S HOME RULE CHARTER AND RELATED ORDINANCES TO INSTITUTE A COUNCIL SYSTEM OF GOVERNMENT.

SUMMARY

This petition intends to amend the City of Fargo's Home Rule Charter and related ordinances to change its system of government from a commission system to a council system.

INITIATIVE PETITION TO THE CITY AUDITOR, CITY OF FARGO, NORTH DAKOTA

We, the undersigned, being qualified electors, request the following initiated measure be placed on the ballot as provided by law.

SPONSORING COMMITTEE

The following are the names and addresses of the qualified electors of the City of Fargo, North Dakota who, as the sponsoring committee for the petitioners, represent and act for the petitioners in accordance with the law:

Arlette Preston – 505 Broadway N., #300, Fargo, ND 58102

Martin Riske – 2901 27th St. S., Fargo, ND 58103

Anthony Gehrig – 1329 9th St. N., Fargo, ND 58102

REASONING

WHEREAS, the State of North Dakota provides that the charter of Home Rule Charter cities (such as Fargo) and the ordinances made pursuant to the charter for the city supersede any law of the state in conflict with the charter and ordinances, and must be liberally construed for such purposes (see N.D.C.C. § 40-05.1-05); and

WHEREAS, state law grants Home Rule Charter cities the authority to provide for all matters pertaining to the "change, selection, or creation of its form and structure of government, including its governing body, executive officer, and city officers." N.D.C.C. § 40-05.1-06(7); and

WHEREAS, city law recognizes the right of citizens to amend the Fargo Home Rule Charter through the initiative process. Fargo Home Rule Charter, Art. 5(B); and

WHEREAS, the petitioners find it necessary and desirable to propose an amendment to the Home Rule Charter to adopt a city council form of government to replace the current commission form of government;

BE IT ENACTED BY THE CITY OF FARGO:

The Fargo Home Rule Charter and related ordinances be amended as follows:

SECTION ONE. That Article 2 of the Home Rule Charter of the City of Fargo, pertaining to the system of government governing the city, be amended to read as follows:

A. Subject to the limitations imposed by the constitution of the United States of America, the constitution of the state of North Dakota, state law, and this charter, all powers of the city shall be vested in the elected governing body. The elected governing body shall enact ordinances, adopt annual and long-range budgets, raise revenue, determine policies and prescribe the functions of government to be performed by the city's elected and appointed officials under the authority of this charter.

1. The Fargo city government shall operate with the ~~commission~~ council form of government. The governing body shall consist of the mayor and ~~four commissioners~~ six council members, forming the ~~board of city commissioners~~ city council. The mayor is the presiding officer of the ~~commission~~ council and the city's chief executive officer. ~~The mayor may participate in all respects in commission action.~~ The mayor shall not vote at meetings of the city council except in case of a tie, where the mayor shall cast the deciding vote.

2. The mayor and all other members of the governing body shall hold office for four years and until a successor has been duly elected and qualified. To qualify after election, the governing board members shall take the following oath or affirmation, filing a signed copy of same with the city auditor.

> "I do solemnly swear (or affirm) that I will support the constitution of the United States, constitution of the state of North Dakota, and the home rule charter of the city of Fargo, so help me God (if an oath) under the pains and penalties of perjury (if an affirmation)".

3. The governing body shall by ordinance, resolution or other appropriate action take such steps as may be necessary to make effective the provisions of this home rule charter.

4. Each member of the governing body shall act as the governing body's representative in examining and reporting on the operations and performance of the major city departments. The individual assignments will be proposed by the mayor and approved by the governing body.

~~5. At the first meeting of the new governing body after each biennial election, the governing body shall elect one of its members as deputy mayor. The deputy mayor shall perform all of the duties of the office of mayor in the absence or inability of the mayor to act. If the mayor's office becomes vacant, the deputy mayor shall become the acting mayor until the vacancy is filled as provided for in this charter.~~

~~6~~5. The governing body shall have the sole authority to pass and adopt ordinances, rules and regulations concerning the organization, management and operation of all departments of the city and other agencies created by it for the administration of city affairs.

~~7~~6. A member of the governing body may serve as a participating member on any board, commission, or other governmental units as may be determined by the governing body. Appointments to these entities shall be made by the mayor and confirmed by the governing body.

~~8~~7. The governing body shall determine the annual salaries paid to each of its members, including the mayor. The salary levels shall be determined as part of the annual budget.

~~9~~8. Each elected official before entering the duties of office shall furnish bond in the penal sum which is required by North Dakota state law.

~~10~~9. The mayor ~~and each of the commissioners~~ shall be elected by all the voters in the city, and shall serve four-year terms. The mayor will be elected in the next regular mayoral election following the passage of the initiative to change the city's system of government to a council system and every four years thereafter. The mayor's term will ~~start~~ begin on such day as is specified by city ordinance.

~~11~~10. ~~Two city commissioners shall be elected in the 1986 city election and two in the 1988 city election. The terms shall begin on such day as is specified by city ordinance following each election and shall expire on such day as is specified by city ordinance four years thereafter.~~ City council members shall be elected in the next regular city election following the passage of the initiative to change the city's system of government to a council system. The terms shall begin on such day as is specified by city ordinance following each election and shall expire on such day as is specified by city ordinance four years thereafter, except following the initial election under the city council system of government, in which the terms of half of those council members elected will expire two years thereafter.

~~12~~11. Candidates for the governing body must be qualified electors of the city of Fargo, and each council member must be a resident of their ward, and must have been in continuous residence in the city and their respective ward where applicable for at least six months prior to filing their nomination papers.

~~13~~12. Any elector desiring to become a candidate for the governing body shall file with the city auditor a statement of such candidacy. The filing must meet the deadline required by law. Each filing shall be accompanied by a filing fee of one hundred dollars ($100), or in lieu thereof, by a petition signed by 300 qualified electors of the city.

~~14~~13. The regular city election shall be held in every even-numbered year on the date specified by city ordinance. The governing body shall be the judge of the election and qualifications of its own members.

~~15~~14. Every resident of Fargo who is qualified to vote in North Dakota general elections is qualified to vote in Fargo city elections. The governing body shall establish all the necessary election procedures by ordinance.

~~16~~15. Members of the governing body shall be residents of the city of Fargo and their respective ward if a council member and shall surrender their office if such residency is terminated unless stated otherwise by city ordinance. No member of the governing body shall hold a position of remuneration in the employment of the city or any of its agencies or utilities.

~~17~~16. Whenever it is necessary for the more efficient supervision and direction of city affairs, the governing body may summon and compel the attendance of witnesses and the production of books and papers, including computer information, before it. The governing body may cite reluctant witnesses for contempt, and may punish contempt with the same fines and penalties as the county judge may impose for contempt of county court.

~~18~~17. Any member of the governing board may resign by filing a written resignation with the city auditor. When a vacancy occurs or whenever a resignation is submitted, the governing body may call a special election to fill such vacancy for the unexpired term unless a city-wide election occurs within the next six months. In that case, the governing body may fill the position by appointment until the vacancy is filled by election.

~~19~~18. The governing body shall meet in regular sessions at such time as the governing body may establish. Special meetings may be called by the mayor or any two members of the governing body to consider matters listed in the call of such meeting. Written notice of any special meeting shall be given to each member of the governing body.

B. As the elected head of the city of Fargo, the mayor shall represent or designate a representative at city functions and at meetings, conferences and negotiations

relating to policy matters with other units of government and legislative bodies. The mayor shall represent the city in negotiations with individuals and private or public enterprises when cultural or economic improvement of the city of Fargo may be involved.

1. The mayor shall be the executive officer of the city and shall see that all the laws of the city are enforced. ~~The mayor shall have the right to vote as a member of the board, but shall have no veto power.~~
2. The procedure for making appointments of members to all boards, commissions and other agencies shall be established by city ordinance.
3. The mayor shall cause to be prepared and shall present to the governing body on or before September 1 of each year, the proposed budget for the ensuing fiscal year, which starts on January 1 and ends on December 31. The budget shall be in a form as permitted by state law. The proposed budget shall include all maintenance and operating expenses, all wages and salaries, all carryover cash reserves anticipated from the current fiscal year, and all anticipated revenues from city taxes and fees and all other sources of revenue, and all debt retirement requirements.
4. The proposed budget may establish reserves for equipment replacement and other capital improvement projects.
5. The proposed budget shall include the total anticipated revenue of all city-operated utilities, and the allotment of that revenue to the city treasury, to utility operating expenses, to debt retirement, to capital improvements and to reserves.
6. The mayor in his budget message shall include all long-range plans, in place or anticipated, for major capital improvement and investment programs. The proposed budget shall contain a review of the economic, physical and social conditions and needs of the city, and its long-range plans for cultural and economic development.

SECTION TWO. That Article 5 of the Home Rule Charter of the City of Fargo, pertaining to the amendment or repeal of the charter governing the city, be amended to read as follows:

This Fargo Home Rule Charter may be amended or repealed only by a majority of the electorate voting on charter proposals submitted to them.

A. Proposals to amend or repeal the Fargo Home Rule Charter may be submitted to the voters by adoption of a resolution approved by a majority of all members of the governing body. The proposed amendment shall be

published in the official newspaper of the city at least 60 days prior to the election at which the matter will be decided.

B. Fargo citizens also reserve to themselves the right to amend or repeal this home rule charter by the initiative process. Petitions for such purpose must conform to the rules prescribed in this charter on initiative and referendum of ordinances.

C. The complete amendment must be printed on the petitions. When petitions to amend or repeal are certified as valid, a proposal must be submitted to the voters at the next city-wide election occurring at least 60 days after publication of the petition in the official newspaper of the city. The ballot question shall be "Shall such amendment be approved?" If there is a majority of "Yes" votes of those voting on the matter, the charter amendment becomes effective ten days after the election results are certified.

D. If either the governing body or an initiative petition seeks to repeal the Fargo Home Rule Charter, the ballot proposal must establish the form of government which would replace the system established by this charter.

E. If the majority of the votes cast on the question of changing the system of government of the city of Fargo favor changing to a council system of government, the existing Board of City Commissioners shall appoint an independent committee to divide the city of Fargo into six wards. Each ward must be formed from contiguous territory, be reasonably compact, and all wards must be numbered consecutively and must have, as nearly as practicable, the same number of inhabitants.

SECTION THREE. That Fargo Municipal Code Chapter 2, currently relating to the city commission, be amended to read as follows:

~~CHAPTER 2 – BOARD OF CITY COMMISSIONERS~~ CHAPTER 2 – CITY COUNCIL

SECTION FOUR. That Fargo Municipal Code Art. 2-01, currently relating to the city commission, be substituted with the language as follows:

ARTICLE 2-01 – DUTIES OF CITY COUNCIL – SERVICE ON OTHER BOARDS OR COMMISSIONS – DUTIES OF PRESIDENT – SALARY OF COUNCIL MEMBERS AND MAYOR - MEETING

2-0101. City council - Who constitutes.

The governing body of a city operating under the council form of government is the city council, which is composed of the mayor and six council members.

2-0102. City Council – Duties.

The mayor and six council members, hereafter collectively known as the city council, shall be the governing body of the city of Fargo and shall perform all duties as specified by the laws of the state of North Dakota, the Fargo Home Rule Charter, and the ordinances of the city of Fargo.

2-0103. Additional duties – Appointments to other bodies – Terms of such appointments.

Members of the city council who are appointed by said council as representatives of the city on other boards, commissions, councils, or any other group or organization, shall be deemed to have been appointed for a term of one year unless otherwise specified in said appointment by the city council.

2-0104. Governing body is judge of election and qualifications of members.

The city council shall be judge of the election and qualifications of its own members.

2-0105. Number of council members.

The number of council members is not less than six. The number of council members may be increased or decreased pursuant to Art. 5 of the Home Rule Charter of the City of Fargo.

2-0106. Election of council members.

Council members must be elected by wards.

2-0107. Qualifications of council members.

An individual is not eligible to the office of council member if the individual is not a qualified elector of and resident within the ward for which the individual was elected.

2-0108. Term of office of council members - Staggered terms following initial election.

Council members shall hold office for four years and until their successors are elected and qualified. The city council shall stagger the terms of council members following the initial election under the council system of government to allow half of the council to stand for election every two years. The alternation of council members' terms shall be determined as follows: of the six council members elected from each of their respective wards at the election following the adoption of the council form of government, the three receiving the greatest number of votes shall serve a four-year term and the three receiving the fewest number of votes shall serve a two-year term.

2-0109. Salary of council members.

The salary of each member of the city council of the city of Fargo shall not exceed the sum as established by the city council in the annual budget.

2-0110. Vacancies on council - How filled.

If a vacancy occurs in a city council office by death, resignation, or otherwise, the city council may call a special city election to fill the vacancy for the unexpired term, or may, after fifteen days of the date of the vacancy appoint a person from the ward in which the council member previously holding was elected or appointed to fill the vacancy until the next city election, at which election the unexpired term must be filled. Upon petition of five percent of the qualified electors of the ward, as determined by the total number of votes cast in that ward in the last city general election, the council shall call a special election to

fill a vacancy occurring more than six months before the next city election, if the petition has been submitted within fifteen days and before four p.m. of the fifteenth day of the date of the vacancy or of the vacancy being filled by appointment. If the petition is mailed, it must be in the possession of the city auditor before four p.m. on the fifteenth day after the vacancy occurs or after the vacancy was filled by appointment.

2-0111. Limitation on terms.

No member of the city council may serve more than three (3) successive four-year terms; provided, that such term limitation shall be subject to the following:

A. Any member elected to a term of less than four years as a result of a vacancy on the city council shall be eligible to serve three additional four-year terms and any such partial term or terms shall not be deemed to interrupt a succession of four-year terms.

B. Any member who has completed three successive four-year terms shall not be eligible for re-election until the next regular election following the expiration of such member's third successive term.

C. Any member who has served in the capacity of mayor, as well as city council member, may not serve more than four (4) successive four-year terms.

D. The provisions of this ordinance apply to the terms of the existing mayor and commission members at the time of the passage of the initiative to change the city's system of government to a council system.

2-0112. Restrictions on members of council.

Except as provided in this section, no member of the city council shall:

A. Be eligible to any other office the salary of which is payable out of the city Treasury;

B. Hold any other office under the city government; or

C. Hold a position of remuneration in the employment of the city.

2-0113. Regular meetings of the city council – When and where held.

A regular meeting of the city council of the city of Fargo, North Dakota, shall be held at 5:00 p.m. at least once every two weeks and at such additional times as the city council may establish. The meetings shall be held at the city hall, except that a majority of the city council may, at any regular or special meeting, vote to dispense with and not hold any regular meeting. The city council shall, by resolution adopted on or before December 1 of the preceding year, establish the schedule of meetings for the following calendar year.

2-0114. When president and vice president of council elected.

At the organizational meeting in each even-numbered year, the members of the city council shall proceed to elect from their number a president and a vice president who shall hold their respective offices until their successors are elected at the organization meeting following the next biennial election.

2-0115. Presiding officer of council in absence or disability of mayor - President of council.

The president of the city council shall be the presiding officer of the council in the absence or temporary disability of the mayor. In the absence or disability of the mayor and president of the city council, the vice president shall be the presiding officer.

2-0116. Mayor - Qualifications - Term.

The chief executive officer of the city is the mayor. The mayor shall be a qualified elector within the city and shall hold office for four years and until a successor is elected and qualified.

2-0117. Compensation of mayor.

The salary of the mayor of the city of Fargo shall not exceed the sum as established by the city council in the annual budget.

2-0118. Vacancy in office of mayor - Filled by election or by council - President of council to be acting mayor.

If a vacancy occurs in the office of mayor, the city council may call a special city election to fill such vacancy for the unexpired term or may, after fifteen days from the date of such vacancy, elect one of its members to act as mayor. The member so elected shall possess all the rights and powers of the mayor until the next election and until a mayor is elected and qualified. Upon petition of five percent of the qualified electors, as determined by the total number of votes cast in the city in the last city general election, the council shall call a special election to fill a vacancy occurring more than six months prior to the next city election, provided such petition is submitted within fifteen days of the date of such vacancy. During the interim between the date when a vacancy occurs in the office of mayor and election and qualification of a successor, the president of the city council shall be the acting mayor.

2-0119. Absence or disability of mayor - Acting mayor.

During the absence of the mayor from the city or during the mayor's temporary disability, the president of the city council shall be the acting mayor and shall possess all the powers of the mayor. In the absence or disability of the mayor and president of the city council, the vice president of the city council shall be the acting mayor.

2-0120. Mayor to preside at council meetings - Voting power of mayor.

The mayor shall preside at all meetings of the city council, but shall not vote except in case of a tie, when the mayor shall cast the deciding vote.

2-0121. Mayor to perform duties prescribed by law - Enforce laws and ordinances.

The mayor shall perform all duties prescribed by law or by the city ordinances and shall see that the laws and ordinances are faithfully executed.

2-0122. Inspection of books, records, and papers of city by mayor.

The mayor, at any time, may examine and inspect the books, records, and papers of any agent, employee, or officer of the city.

2-0123. Ordinance or resolution signed or vetoed by mayor.

The mayor shall sign or veto each ordinance or resolution passed by the city council. Any action vetoed by the mayor may be overridden by the city council as provided under Fargo Municipal Code § 2-0124.

2-0124. Ordinances and resolutions adopted by city council - Mayor's veto power - Reconsideration after veto.

An ordinance or resolution adopted by the city council is not enacted until the ordinance or resolution is approved by the mayor or passed over the mayor's veto. An ordinance or resolution passed by the city council must be deposited in the office of the city auditor for the approval of the mayor. If the mayor approves the ordinance or resolution, the mayor shall sign the ordinance or resolution. An ordinance or resolution not approved by the mayor must be returned by the mayor with the mayor's objections in writing to the next regular or special meeting of the city council occurring not less than five days after the passage of the ordinance or resolution. The veto may extend to an entire ordinance or resolution or to any one or more items or appropriations contained in any ordinance or resolution making an appropriation. If a veto extends to only a part of an ordinance or resolution, the residue takes effect. If the mayor fails to return any ordinance or resolution with the mayor's objections within the time specified in this section, the mayor is deemed to have approved the ordinance or resolution. Any veto of an ordinance or resolution may be overridden by the city council, if two-thirds of its members pass a motion to override the veto. Upon such action, the ordinance or resolution is effective notwithstanding the veto. The vote to pass an ordinance or resolution over the mayor's veto must be taken by yeas and nays and entered in the minutes.

2-0125. Messages to council.

The mayor annually and from time to time shall give the council information relative to the affairs of the city and shall recommend for its consideration such measures as the mayor may deem expedient.

2-0126. Mayor may administer oaths.

The mayor of the city of Fargo may administer oaths and affirmations.

SECTION FIVE. That a new article to Fargo Municipal Code Chapter 2 be created and enacted as follows:

ARTICLE 2-03 – ESTABLISHMENT OF WARDS – CHANGES TO WARDS

2-0301. Changing the boundaries of wards and precincts.

The names and boundaries of the wards and precincts in a city may be changed by an ordinance adopted by a majority vote of the members of the governing body. Such ordinance shall be introduced at a regular meeting of the council, and before final action is taken on the proposed ordinance, it shall be published in the official newspaper of the city once each week for four successive weeks. When the name or boundaries of wards are fixed by ordinance, the names and boundaries thereof shall not be changed for a period of two years, except by adding thereto territory which is added to the city limits. Each ward must be formed from contiguous territory, be reasonably compact, and all wards must be numbered consecutively and must have, as nearly as practicable, the same number of inhabitants.

2-0302. Changes to be made in papers, plats, and records of municipality.

Whenever a change to the names or boundaries of wards is made, the governing body of the municipality shall direct the municipal attorney to cause to be made all needful changes in papers, plats, and matters of record.

2-0303. City auditor to make changes in assessment list.

The city auditor shall make any changes in assessment lists necessitated by any change in the names or boundaries of the wards in the municipality.

2-0304. Holding elections in new ward or wards.

Ten days before the regular municipal election following any change in the wards in the municipality, the governing body shall designate the proper polling place or places for the new ward or wards, appoint judges and clerks therefor, make all necessary provisions for holding the election, and designate the several officers to be chosen therefrom.

2-0305. Council member changing wards can continue in office.

A council member who was duly elected, but because of the change in boundaries of the ward no longer resides within the ward from which the member was elected, but is still residing within the city limits, can continue in office for the term for which the member was elected and until a successor is duly elected and qualified for the ward.