

## **CHAPTER 58-03**

### **POWERS OF TOWNSHIP AND OF ELECTORS OF THE TOWNSHIP**

**58-03-01. Powers of township.** Each township is a body corporate and has capacity:

1. To sue and be sued.
2. To purchase and hold lands within its limits and for the use of its inhabitants subject to the powers of the legislative assembly.
3. To make such contracts and purchase and hold such personal property as may be necessary for the exercise of its corporate or administrative powers.
4. To make such orders for the disposition, regulation, or use of its corporate property as may be deemed conducive to the interests of its inhabitants.

**58-03-02. Powers of township limited.** No township may possess or exercise any corporate powers except those enumerated in this chapter, those specially given by law, and those necessary to the exercise of the powers enumerated or granted.

**58-03-03. Acts of township to be in corporate name.** All acts or proceedings performed by a township in its corporate capacity must be done in the name of the township.

**58-03-04. Townships provide for confinement of prisoners.** Repealed by S.L. 1979, ch. 172, § 29.

**58-03-05. Notice to be given that township is providing jail.** Repealed by S.L. 1979, ch. 172, § 29.

**58-03-06. Township charges and levies.** The following must be deemed township charges:

1. The compensation of township officers.
2. Contingent expenses necessarily incurred for the use and benefit of the township.
3. The moneys authorized to be raised by the vote of the township meeting for any township purpose.
4. Each sum directed by law to be raised for any township purpose.

**58-03-07. Powers of electors.** The electors of each township have the power at the annual township meeting:

1. To establish one or more pounds within the township, to determine the location of the pounds, to determine the number of poundmasters and to choose the poundmasters, and to discontinue pounds which have been established.
2. To select the township officers required to be chosen.
3. To direct the institution or defense of actions in all controversies in which the township is interested.
4. To direct the raising of such sums as they may deem necessary to prosecute or defend actions in which the township is interested.
5. To make all rules and regulations for the impounding of animals.

6. To make such bylaws, rules, and regulations as may be deemed necessary to carry into effect the powers granted to the township.
7. To impose penalties for each offense on persons offending against any rule or regulation established by the township.
8. To apply penalties when collected in such manner as they deem most conducive to the interests of the township.
9. To ratify or reject recommendations offered by the board of township supervisors for the expenditure of funds for the purpose of purchasing building sites and for the purchase, location, erection, or removal of any building or erection for township purposes. No recommendation shall be adopted except by a two-thirds vote of the electors present and voting at any annual township meeting.
10. To authorize and empower the board of township supervisors to purchase liquids, compounds, or other ingredients for the destruction of noxious weeds, and sprinklers to be used in spraying said liquids or compounds. No township shall purchase more than two such sprinklers in any one year.
11. To authorize aid to a district fair association within the limits provided in title 4.
12. To authorize the levy of township taxes for the repair and construction of roads and bridges and for other township charges and expenses within the limits prescribed in title 57.
13. To direct the expenditure of funds raised for the repair and construction of roads within the limits provided in title 24.
14. To authorize the dissolution of the township in the manner provided in this title.
15. To authorize the entering into a contract for fire protection as provided for in section 18-06-10.
16. To establish a fund for the eradication of gophers, prairie dogs, crows, and magpies.
17. To authorize the expenditure of township funds for weather modification activities.
18. To authorize the expenditure of funds to pay membership fees in county, state, and national associations of township governments. This subsection may not be construed to authorize a mill levy.
19. To support an airport or to support or create an airport authority and to levy a tax for airport purposes within the limitations of section 57-15-37.1.
20. To direct the transfer of township funds to a rural fire protection district or rural fire department for fire protection within the township.
21. To direct the transfer of township funds to a rural ambulance service district for emergency medical service within the township.
22. To establish special assessment districts in accordance with chapter 58-18.

**58-03-08. Establishment of public library and reading room.** Repealed by S.L. 1971, ch. 410, § 4.

**58-03-09. Township electors shall designate public places for posting notices.** Repealed by S.L. 1977, ch. 562, § 7.

**58-03-10. Township bylaws - Clerk must publish and record - On whom binding.**

Bylaws made by a township do not take effect until they are published. The township clerk shall have the bylaws published in a legal newspaper published in the township. If there is no such newspaper, the bylaws must be published in the county's official newspaper. The clerk shall make an entry in the township records of the time when and place where the bylaws were published. The township bylaws duly made and published are binding upon all persons coming within the limits of the township as well as upon the inhabitants thereof and remain in force until altered or repealed at some subsequent township meeting.

**58-03-11. Establishment of zoning districts - Uniformity.** For the purpose of promoting the health, safety, morals, or the general welfare, or to secure the orderly development of approaches to municipalities, the board of township supervisors may establish one or more zoning districts and within such districts may, subject to the provisions of chapter 54-21.3 and section 58-03-11.1, regulate and restrict the erection, construction, reconstruction, alteration, repair, or use of buildings and structures, the height, number of stories, and size of buildings and structures, the percentage of lot that may be occupied, the size of courts, yards, and other open spaces, the density of population, and the location and use of buildings, structures, and land for trade, industry, residence, or other purposes. All such regulations and restrictions must be uniform throughout each district, but the regulations and restrictions in one district may differ from those in other districts. The board of township supervisors may establish institutional controls that address environmental concerns with the state department of health as provided in section 23-20.3-03.1.

**58-03-11.1. Farming and ranching regulations - Requirements - Limitations - Definitions.**

1. For purposes of this section:

- a. "Concentrated feeding operation" means any livestock feeding, handling, or holding operation, or feed yard, where animals are concentrated in an area that is not normally used for pasture or for growing crops and in which animal wastes may accumulate. The term does not include normal wintering operations for cattle.
- b. "Farming or ranching" means cultivating land for the production of agricultural crops or livestock, or raising, feeding, or producing livestock, poultry, milk, or fruit. The term does not include:
  - (1) The production of timber or forest products; or
  - (2) The provision of grain harvesting or other farm services by a processor or distributor of farm products or supplies in accordance with the terms of a contract.
- c. "Livestock" includes beef cattle, dairy cattle, sheep, swine, poultry, horses, bison, elk, fur animals raised for their pelts, and any other animals that are raised, fed, or produced as a part of farming or ranching activities.
- d. "Location" means the setback distance between a structure, fence, or other boundary enclosing a concentrated feeding operation, including its animal waste collection system, and the nearest occupied residence, the nearest buildings used for nonfarm or nonranch purposes, or the nearest land zoned for residential, recreational, or commercial purposes. The term does not include the setback distance for the application of manure or for the application of other recycled agricultural material under a nutrient management plan approved by the department of health.

2. For purposes of this section, animal units are determined as follows:

- a. One mature dairy cow, whether milking or dry, equals 1.33 animal units;
  - b. One dairy cow, heifer, or bull, other than an animal described in subdivision a equals 1.0 animal unit;
  - c. One weaned beef animal, whether a calf, heifer, steer, or bull, equals 0.75 animal unit;
  - d. One cow-calf pair equals 1.0 animal unit;
  - e. One swine weighing fifty-five pounds [24.948 kilograms] or more equals 0.4 animal unit;
  - f. One swine weighing less than fifty-five pounds [24.948 kilograms] equals 0.1 animal unit;
  - g. One horse equals 2.0 animal units;
  - h. One sheep or lamb equals 0.1 animal unit;
  - i. One turkey equals 0.0182 animal unit;
  - j. One chicken, other than a laying hen, equals 0.008 animal unit;
  - k. One laying hen equals 0.012 animal unit;
  - l. One duck equals 0.033 animal unit; and
  - m. Any livestock not listed in subdivisions a through l equals 1.0 animal unit per each one thousand pounds [453.59 kilograms] whether single or combined animal weight.
3. A board of township supervisors may not prohibit or prevent the use of land or buildings for farming or ranching or any of the normal incidents of farming or ranching.
  4. A regulation may not preclude the development of a concentrated feeding operation in the township.
  5. A board of township supervisors may not prohibit the reasonable diversification or expansion of a farming or ranching operation.
  6. A board of township supervisors may adopt regulations that establish different standards for the location of concentrated feeding operations based on the size of the operation and the species and type being fed.
  7. If a regulation would impose a substantial economic burden on a concentrated feeding operation in existence before the effective date of the regulation, the board of township supervisors shall declare that the regulation is ineffective with respect to any concentrated feeding operation in existence before the effective date of the regulation.
  8.
    - a. A board of township supervisors may establish high-density agricultural production districts in which setback distances for concentrated feeding operations and related agricultural operations are less than those in other districts.
    - b. A board of township supervisors may establish, around areas zoned for residential, recreational, or nonagricultural commercial uses, low-density

agricultural production districts in which setback distances for concentrated feeding operations and related agricultural operations are greater than those in other districts; provided, the low-density agricultural production districts may not extend more than one-half mile [0.80 kilometer] from the edge of the area zoned for residential, recreational, or nonagricultural commercial uses.

- c. The setbacks provided for in this subsection may not vary by more than fifty percent from those established in subdivision a of subsection 7 of section 23-25-11.
- d. For purposes of this subsection, a "related agricultural operation" means a facility that produces a product or byproduct used by a concentrated feeding operation.

**58-03-12. Basis for township zoning regulations and restrictions.** The regulations and restrictions established in any township zoning district must be made in accordance with a comprehensive plan with reasonable consideration as to the character of such district, its peculiar suitability for particular uses, the normal growth of the municipality, and the various types of occupations, industries, and land uses within the area, and must be designed to facilitate traffic movement, encourage orderly growth and development of the municipality and adjacent areas, promote health, safety, and general welfare, and provide for emergency management. "Emergency management" means a comprehensive integrated system at all levels of government and in the private sector which provides for the development and maintenance of an effective capability to mitigate, prepare for, respond to, and recover from known and unforeseen hazards or situations, caused by an act of nature or man, which may threaten, injure, damage, or destroy lives, property, or our environment. The comprehensive plan must be a statement in documented text setting forth explicit goals, objectives, policies, and standards of the jurisdiction to guide public and private development within its control.

**58-03-13. Township zoning commissions - Membership - Reports and recommendations - District boundaries - Hearings - Notice.** The board of township supervisors of a township desiring to avail itself of the powers conferred by sections 58-03-11 through 58-03-15 shall establish, by resolution, a township zoning commission to recommend the boundaries of the various township zoning districts and appropriate regulations and restrictions to be established therein. Membership of the commission must consist of three township supervisors and two members appointed from the municipalities concerned in relation to which the zoning is contemplated. Where the area to be regulated and restricted is situated in two or more townships, a joint zoning commission may be established. Membership of a joint zoning commission must consist of two township supervisors from each township and two members from the municipality in relation to which the zoning is contemplated. A zoning commission shall make a preliminary report and hold public hearings before submitting its final report and recommendations to the board or boards of township supervisors. The board or boards of township supervisors may establish, and from time to time change, the boundaries of township zoning districts and establish, amend, supplement, and enforce regulations and restrictions in the districts. No regulation, restriction, or boundaries become effective until after a public hearing at which parties in interest and citizens have an opportunity to be heard. At least fifteen days' notice of the time and place of the hearing must be published in the official newspaper of the county and also in the official newspaper of the municipality in relation to which the zoning action is taken, if in the municipality an official newspaper other than the official newspaper of the county is published. The description of any land within any zoning district established by a zoning commission together with any regulations and restrictions established must be filed with the governing bodies of the township and municipalities concerned, and if amendments are made to the boundaries of the zoning district or the regulations or restrictions, the amendments must be filed in the same manner. A zoning commission established under this section and a board of township supervisors shall state the grounds upon which any request for a zoning amendment or variance is approved or disapproved, and written findings upon which the decision is based must be included within the records of the commission or board.

**58-03-14. Violation of zoning regulations and restrictions - Remedies - Penalties.**

1. If any building or structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained, or if any building, structure, or land is used, in violation of any regulation or restriction made under the authority conferred by sections 58-03-11 through 58-03-15, the proper local authorities of the township or of the municipality in relation to which such zoning regulation or restriction is established, or any affected citizen or property owner, in addition to other remedies, may institute any appropriate action or proceeding:
  - a. To prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance, or use;
  - b. To restrain, correct, or abate such violations;
  - c. To prevent the occupancy of the building, structure, or land; or
  - d. To prevent any illegal act, conduct, business, or use in or about such premises.
2. If after reasonable notice and opportunity for hearing by the board of township supervisors, a property owner fails to bring a building or structure or the use of land owned by that person into compliance with a regulation or restriction made under sections 58-03-11 through 58-03-15, in addition to any other remedies, the board of township supervisors may impose a civil penalty of up to two thousand dollars annually against the property owner and the property. The board of township supervisors may also assess the property owner for all costs of the township in bringing the property into compliance or in instituting and prosecuting any appropriate action or proceeding under this section. Any civil penalty or assessment of costs, or both, against a property owner constitute a lien on the property and must be charged against the property and become a part of the taxes against the property for the ensuing year and must be collected in the same manner as other real estate taxes are collected and placed to the credit of the township.

**58-03-15. Appeals.** Appeals from any rule, restriction, or decision of the board of township supervisors may be made to the district court of the county in which such township lies. Appeals must be taken in accordance with the procedure provided in section 28-34-01. Upon a showing that any rule, restriction, or decision of the board of township supervisors is unreasonable under the circumstances or contrary to the intent of sections 58-03-11 through 58-03-15, any such rule, restriction, or decision may be set aside or reversed.

**58-03-15.1. Highways - Roads.** Sections 58-03-11 through 58-03-15 do not include any power relating to the role of the board of township supervisors in the establishment, repair, or maintenance of highways or roads.

**58-03-16. Real property transfers.** Every township may convey, sell, or dispose of real property of the township upon recommendation by the board of township supervisors and upon approval by the township electors at the annual meeting or at a special meeting called for such purpose. When the board estimates the real property to be of a value of less than one thousand dollars, it may be sold at private sale, but in all other cases such property may be sold only at public sale. A notice containing a description of the property to be sold and designating the place where and the day and hour when the sale will be held must be published in the official county newspaper once each week for two consecutive weeks with the last publication being at least ten days prior to the date set for the sale. The township electors shall determine and the notice must specify whether the bids are to be received at auction or as sealed bids. The property advertised must be sold to the highest bidder if that bid is deemed sufficient by a majority of the township supervisors.

**58-03-17. Regulation of concentrated animal feeding operations - Central repository.**

1. Any zoning regulation that pertains to a concentrated animal feeding operation and which is promulgated by a township after July 31, 2007, is not effective until filed with the state department of health for inclusion in the central repository established under section 23-01-30. Any zoning regulation that pertains to a concentrated animal feeding operation and which was promulgated by a county or a township before August 1, 2007, may not be enforced until the regulation is filed with the state department of health for inclusion in the central repository.
2. For purposes of this section:
  - a. "Concentrated animal feeding operation" means any livestock feeding, handling, or holding operation, or feed yard, where animals are concentrated in an area that is not normally used for pasture or for growing crops and in which animal wastes may accumulate, or in an area where the space per animal unit is less than six hundred square feet [55.74 square meters]. The term does not include normal wintering operations for cattle.
  - b. "Livestock" includes beef cattle, dairy cattle, sheep, swine, poultry, horses, and fur animals raised for their pelts.