

CHAPTER 11-28

COUNTY PARKS AND RECREATIONAL AREAS

11-28-01. Board of county park commissioners - Appointment by county commissioners - Number. The board of county commissioners shall establish a five-member to seven-member board of county park commissioners consisting of at least two members of the county commission and at least two resident citizens of the county.

11-28-02. Eligibility for appointment - Term - Vacancy - Compensation. Any resident citizen of the county, including county, city, and township officers, is eligible for appointment to the board of county park commissioners. Each appointed county park commissioner shall hold office for a term of three years, or until a successor is appointed and qualified. Any vacancy in the board must be filled for the unexpired term by appointment by the board of county commissioners as soon as practicable. Each member of the county park board is entitled to receive the same compensation for services for each day actually engaged in the performance of the duties of the office as that paid a county commissioner but not to exceed a total of twenty-four days in any one year, and is entitled to reimbursement for actual necessary expenses incurred in the performance of the member's duties. Unless otherwise agreed upon, the board of county park commissioners shall meet at the time of the regular meetings of the board of county commissioners upon the order of the chairman, and appointed members only are entitled to compensation for attendance at the concurrent meetings.

11-28-03. County auditor, county treasurer, and state's attorney shall serve board. The county auditor or other official designated by the board shall serve as secretary of the board of county park commissioners and the county treasurer shall serve as treasurer of the board and custodian of all its funds from whatever source received. Such funds shall be placed in a separate fund and shall not be diverted to any other use or purpose. The state's attorney of the county shall act as legal adviser to the board and shall prosecute and defend any and all actions brought by or against said board. Neither the county auditor nor official designee, the county treasurer, nor the state's attorney shall receive any additional compensation for acting in their respective capacities.

11-28-04. Organization of board - Quorum - Meetings. Within twenty days after the appointment of the board of county park commissioners, and within twenty days after any change in its personnel, the board shall meet and shall organize by selecting one of its members as chairman. One-half or more of the members constitutes a quorum of the board. The board shall hold such meetings as may be required for the transaction of its business and activities. If the board decides to hold meetings at a time other than the time for regular meetings of the board of county commissioners, the board shall draft a schedule of regular meetings to be held throughout the year. The schedule must be filed with the county auditor and the meetings must be noticed in accordance with section 44-04-20. A special or emergency meeting may be called by the secretary upon the order of the chairman, or upon the request of the majority of the board with notice provided in accordance with section 44-04-20.

11-28-05. Powers and duties of the board of park commissioners. The board of county park commissioners shall have the power and it shall be its duty to:

1. Sue and be sued in the name of the board.
2. Accept on behalf of the county any and all lands and waters and any and all interests, easements, or rights therein, and any gifts, grants, donations, or trusts in money or property, or other assistance, financial or otherwise, from federal, state, municipal, and other public or private sources for park and recreational purposes; accept and assume the supervision, control, and management of any privately owned property or recreational area, when the conditions of the offer for its public use are such as in the judgment of the board will be conducive to the best interests of the people of the county and state; and acquire by lease, purchase, gift, devise, or

otherwise and hold, own, possess, and maintain real and personal property for parks and recreational purposes.

3. Cooperate and contract with the state or federal government or any department or agency thereof in furnishing assurances and meeting local cooperation requirements in connection with any project involving the construction, improvement, operation, maintenance, conservation, or use of any park or recreational area under the jurisdiction, supervision, control, and management of the board.
4. Regulate, supervise, control, and manage all areas of land and water owned or held by the county or which may be, under written agreement, placed by an individual, a corporation, a limited liability company, the federal, state, or a municipal government, or any department or agency thereof, under the jurisdiction, supervision, control, and management of the board of county park commissioners for park or recreational purposes.
5. Promulgate, publish, and impose rules and regulations concerning the uses to which such land and water areas may be put, including the regulation or prohibition of the construction, establishment, or maintenance therein or thereon or within one-half mile [.80 kilometer] thereof of any concession, dancehall, dance parlor, dance pavilion, soft or hard drink parlor or bar, and of any and all establishments of every name, nature, or description which may, in the judgment of the board, be unsightly, noisome, improper, inappropriate, or detrimental to the social usages of the area or areas for park and recreational purposes.
6. Regulate, supervise, control, and manage all such land and water areas, including all lakes, streams, and ponds and all artificial bodies of water created by any water development or water conservation or flood control project of the county, state, or federal government not under the jurisdiction, supervision, or control of any other board, department, or governing body.
7. Exercise full police power, supervision, control, and management over such areas and the adjoining and adjacent lands within one-half mile [.80 kilometer] thereof, and by regulations duly promulgated, published, and imposed regulate or prohibit the construction, establishment, maintenance, or operation within one-half mile [.80 kilometer] of any such land or water area of any dancehall, dance parlor, dance pavilion, soft or hard drink parlor or bar, and any and all establishments of every name, nature, and description which may, in the judgment of the board, be unsightly, noisome, improper, inappropriate, or detrimental to the social usages of any land area or body of water so developed or created. The authority provided by these subsections is intended to be exercised for the protection of the health, safety, good morals, and general welfare of the people of the county and state to the fullest extent permissible under the police power of the county and state.
8. Prevent the pollution, contamination, or other misuse of any water resource, stream, or body of water under its jurisdiction, supervision, control, or management.
9. Certify to the county auditor the amount of money necessary to meet the estimated expenses and costs of properly conducting its business and activities, including the operation, maintenance, and improvement of the park and recreational areas under its control and those recreational activities of benefit to the general populace of the county which are under the control of a city or a city park district within the county for the ensuing year, such certificate to be filed with the county auditor not later than the first day of July each year. Such certificate shall be accompanied by an itemized budget statement showing the detailed expenditure program, as nearly as possible, of the board for the ensuing year.

10. Do all the things reasonably necessary and proper to preserve the benefits accruing from the park and recreational areas under the jurisdiction, supervision, control, and management of the board of county park commissioners.
11. To exercise the power of eminent domain in the manner provided by title 32 for the purpose of acquiring and securing any right, title, interest, estate, or easement necessary to carry out the duties imposed by this chapter, and particularly to acquire the necessary rights in land for the control of the shores of any lake and to protect the right of ingress and egress therefrom and to provide recreational areas or facilities.
12. Lease lands owned or controlled by the board for residential, camping, concession, and other purposes under terms determined by the board, and to deposit and expend any income from the lease as other moneys under the control of the board.

11-28-05.1. Board of county park commissioners authorized to collect user fees and issue evidences of indebtedness in anticipation of user fee revenues.

1. A board of county park commissioners may prescribe and collect user fees for facilities or activities furnished by the county 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 county 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.

11-28-06. Tax levy by board of county commissioners. At the time of levying taxes for other county purposes, the board of county commissioners shall consider the certificate and budget statement of the board of county park commissioners and shall levy each year upon all taxable property in the county a tax sufficient in amount to pay the actual necessary expenses and activities program of the board of county park commissioners, including construction, improvement, repair, operation, and maintenance of the park and recreational areas and their facilities under its control and those recreational activities of benefit to the general populace of the county which are under the control of a city or a city park district within the county, not exceeding the limitation in subsection 10 of section 57-15-06.7. No levy in excess of this limitation shall be made without approval of the eligible voters in the county at a special or general election. The county auditor shall credit the proceeds of such tax to the separate fund of the board of county park commissioners. This levy shall not apply to cities that already have a park levy unless the governing body of the city by resolution consents to the levy.

11-28-07. Auditing and payment of bills. All bills incurred by the board of county park commissioners shall be audited and recommended for payment by said board and shall be certified to the county auditor who shall present them for audit and allowance by the board of county commissioners in the same manner as other bills of the county are audited and allowed. Upon the allowance of such bills, they shall be paid out of the funds standing to the credit of the

board of county park commissioners, from whatever source received, in the same manner in which other county obligations are usually paid.

11-28-08. Publication of rules, regulations, and proceedings. All rules and regulations governing the use of county parks and recreational areas under the jurisdiction, supervision, control, and management of the board of county park commissioners and all proceedings of said board shall be published in the same manner as the proceedings of the board of county commissioners.

11-28-09. Violation of any rule or regulation - Penalty - Injunction. Violation of any rule or regulation of the board of county park commissioners shall be an infraction, and in addition, the board of county park commissioners shall have remedy by injunction to enjoin the operation or maintenance of any establishment, concession, or activity prohibited by the rules and regulations of the board.

11-28-10. Police and sheriff to enforce chapter. It is the duty of all police, the sheriff, and other peace officers to enforce this chapter and of the rules of the board of county park commissioners within their respective jurisdictions.

11-28-11. Declaration of power - Saving clause. It is the purpose of sections 11-28-01 through 11-28-11, among other things, to ensure to the people of the state that the bodies of water, parks, and recreational areas created by public agencies in whole or in part with public funds for the use and enjoyment of the public shall not be made the source of private gain through means inconsistent with the best social uses of the same, and to that end the above-named sections shall be liberally construed. The provisions of sections 11-28-01 through 11-28-11 relating to the manner in which these objectives are to be accomplished do not form an inducement for its enactment. The powers herein granted to the board over private lands shall extend only so far as not prohibited by the state or federal constitutions. Should any word, sentence, paragraph, or section hereof be held to be unconstitutional, or should the exercise of any of the powers herein granted be in any particular circumstances in violation of either the state or federal constitution, the remaining provisions would have been enacted even though such provisions had been eliminated, hence invalidity of any part of sections 11-28-01 through 11-28-11 shall not affect the remainder of these sections, but the same shall continue to be in full force and effect as to all other provisions and all other circumstances within the limits of the constitution.

11-28-12. Joint county park district. Two or more contiguous or adjacent counties may form a joint county park district by resolution duly adopted by the board of county commissioners of each county affected. Contiguity of counties shall not be affected by intervening waters. The powers of such joint county park district shall be exercised by a board of park commissioners chosen as follows: The board of county commissioners of each county comprising such joint county park district shall select two members of such joint board, of whom one shall be a member of such board of county commissioners, and such joint board shall select one additional member at large. Each member of the joint park board shall serve for a term of two years and until a successor is selected and qualified.

11-28-13. Compensation - Vacancy - Meetings. Each member of the joint park board shall receive the same compensation for services as may be paid to a county commissioner, but no member shall be paid for more than twenty-four days in any one year, and in addition, a member shall be paid mileage and other actual expense incurred in the performance of the member's duties at the same rate as may be paid to county commissioners. No member of the board of county commissioners serving on a joint park board shall be paid compensation for days or period for which the member receives compensation for services as a member of the board of county commissioners. A vacancy in the board shall be filled by the body making the original appointment. The board shall fix the time and place for meetings. Special meetings may be held at such time and place as the chairman of the board may direct.

11-28-14. Secretary and treasurer. The board of park commissioners may name a secretary and treasurer. The board shall have the right to fix the compensation of such secretary, treasurer, and attorney.

11-28-15. Organization - Quorum. Within twenty days after the appointment of the board of joint park commissioners, and within twenty days after any change in its personnel, the board shall meet at its regular place of meeting and shall organize by selecting one of its members as chairman. The first meeting for organization purposes shall be held in the office of the county auditor in the most populous county in such district, and such county auditor shall fix the time of such meeting and notify the several members of the joint park board. Two-thirds of the members of the board shall constitute a quorum of any meeting thereof. The board shall hold such meetings as may be required for the transaction of its business. Meetings shall be called by the secretary upon the order of the chairman or upon the written request of the majority of the board. Notice of such meeting shall be delivered or mailed to each member at least five days prior to the date of meeting, except that a meeting attended by all of the members shall be valid whether notice thereof shall have been given or not.

11-28-16. Powers and duties of board. The board of joint park commissioners shall have the following powers and duties:

1. To establish and maintain within the district public parks, playgrounds, and recreational areas.
2. To sue and be sued in the name of the district.
3. To exercise the power of eminent domain in the manner provided by title 32 for the purpose of acquiring and securing any right, title, interest, estate, or easement necessary to carry out the duties imposed by sections 11-28-12 through 11-28-22, and particularly to acquire the necessary rights in land for the control of the shores of any lake and to protect the right of ingress and egress therefrom and to provide recreational areas or facilities.
4. To accept on behalf of the district any and all lands and waters and any and all interest, easement, or right therein and any gifts, grants, donations, or trusts in money or property, or other assistance, financial or otherwise, from federal, state, municipal, and other public or private sources for park and recreational purposes; and accept and assume the supervision, control, and management of any privately owned property or recreational area, when the conditions of the offer for its public use are such as in the judgment of the board will be conducive to the best interests of the people of the district and state.
5. To cooperate and contract with the state or federal government or any department or agency thereof in furnishing assurances and meeting local cooperation requirements in connection with any project involving the construction, improvement, operation, maintenance, conservation, or use of any park or recreational area under the supervision, jurisdiction, control, and management of the board.
6. To regulate, supervise, control, and manage all areas of land and water owned or held by the district or which may be, under written agreement, placed by an individual, a corporation, a limited liability company, the federal, state, or a municipal government, or any department or agency thereof, under the jurisdiction, supervision, control, and management of such board for park or recreational purposes.
7. To promulgate, publish, and impose rules and regulations concerning the uses to which such land and water areas may be put, including the regulation or prohibition of the construction, establishment, or maintenance therein or thereon or within one-half mile [804.67 meters] thereof of any concession, dancehall, dance pavilion, establishments selling soft drinks or alcoholic beverages, and of any and all

establishments of every name, nature, or description which may, in the judgment of the board, be unsightly, noisome, improper, inappropriate, or detrimental to the social usages of the area or areas for park and recreational uses.

8. To regulate, supervise, control, and manage all such land and water areas, including all lakes, streams, and ponds and all artificial bodies of water created by any water development or water conservation or flood control project of the county, state, or federal government not under the jurisdiction, supervision, or control of any other board, department, or governing body.
9. To prevent the pollution, contamination, or other misuse of any water resource, stream, or body of water under its jurisdiction, supervision, control, or management.
10. To maintain an office for meetings of the board and for the use of its secretary and treasurer.
11. To levy a tax, when authorized by the electors of the affected counties, annually on each dollar of taxable valuation in the district for the payment of the expenses of the district, including, but not limited to, per diem, mileage, and other expenses of the members of the board and other operating expenses, including the payment of obligations incurred under subsection 12. All moneys collected shall be paid over to the treasurer of the joint county park district, who shall deposit the funds in the Bank of North Dakota.
12. To enter into contracts with the United States of America, or any department or agency thereof, and with public corporations of North Dakota for the development of any land or water resource within the district.
13. To employ a superintendent of the park area and to employ such other assistance as may be necessary to carry out the purposes of sections 11-28-12 through 11-28-22.
14. To lease lands owned or controlled by the board for residential, camping, concession, and other purposes upon such terms and for such periods as the board may determine proper, and to deposit and expend any income therefrom the same as other moneys belonging to the district.
15. To provide by contract or otherwise for the relocation of highways, public utilities, railroad lines, or other structures as may be reasonably necessary in developing and maintaining the park facilities.
16. To do all the things necessary and proper to preserve the benefits accruing from the park and recreational areas under the jurisdiction, supervision, control, and management of the board of county park commissioners.

The authority provided by these subsections is intended to be exercised for the protection of health, safety, and good morals of the people of the district and state to the fullest extent permissible under the police power of the state.

11-28-17. District budget - Tax levy - Election. The board of joint park commissioners shall request the respective boards of county commissioners of the counties within the joint park district to submit to the electors of the joint county park district at any general election the question of a maximum tax levy therein for park purposes. The question shall be submitted as follows: Shall the board of county commissioners be authorized to levy a tax of not to exceed _____ mills for joint county park district purposes? The rate proposed shall in no event exceed three mills. If a majority of the vote cast thereon is favorable to such levy, the board of joint park commissioners shall meet annually during the month of July and at such meeting shall prepare a budget for the ensuing year, estimating and itemizing the expenses and obligations of the joint county park district. Upon completion and adoption of such budget, the board shall

make a tax levy in mills, within the limit of the authorization, to meet such budget. Such levy shall be in the form of a resolution adopted by a majority vote of the members of the board and thereafter prior to the first day of July of each year such levy shall be certified to the county auditor of each county within the joint park district by the secretary of the board. At the time of levying taxes for other county purposes, the respective boards of county commissioners of each county within the joint park district shall levy the tax certified by the board of joint park commissioners upon all taxable property in the county in the same manner other taxes are levied. The question of the maximum levy may be submitted from time to time by the board of joint park commissioners.

11-28-18. Auditing and payment of bills. All bills incurred by the board of joint park commissioners shall be audited and allowed by the board, and the same shall be paid by the secretary. The secretary shall draw the secretary's order upon the joint county park district treasurer and the district treasurer shall draw the treasurer's check upon the Bank of North Dakota.

11-28-19. Publication of rules and proceedings. All rules governing the use of county parks and recreational areas under the jurisdiction, supervision, control, and management of the board of joint park commissioners and all proceedings of the board must be published in the official newspaper of all counties affected in the same manner as the proceedings of the board of county commissioners. Any person adversely affected by any rule promulgated by the board may appeal to the district court of a county comprising a portion of the district. If the court finds the rule arbitrary, unreasonable, or beyond the scope of sections 11-28-12 through 11-28-22, it shall declare the rule invalid. Appeals under this section must be taken in accordance with the procedure provided in section 28-34-01.

11-28-20. Violation of rules - Penalty. The violation of any rule or regulation of the board of joint park commissioners shall be an infraction. The courts of the county wherein such violation occurred shall have jurisdiction over any such violation. In addition, the board of joint park commissioners shall have remedy by injunction to enjoin the operation or maintenance of any establishment, concession, or activity prohibited by the rules and regulations of the board.

11-28-21. Police officers to enforce provisions. It shall be the duty of all police officers to enforce the provisions of sections 11-28-12 through 11-28-22 and of the rules and regulations of the board of joint park commissioners within their respective jurisdictions.

11-28-22. Declaration of power. It is the purpose of sections 11-28-12 through 11-28-22 to ensure to the people of the state that the bodies of water, parks, and recreational areas created by public agencies under the provisions of such sections for the use and enjoyment of the public shall be used to promote the health and service of the citizens, and that such purpose shall not be defeated by uses inconsistent with the best social uses and to this end sections 11-28-12 through 11-28-22 shall be liberally construed.