

## **CHAPTER 40-18 MUNICIPAL JUDGES**

### **40-18-01. Jurisdiction and qualifications of municipal judge.**

1. The municipal judge within a city having a population of five thousand or more must be licensed to practice law in this state, unless no person so licensed is available in the city. In a city with a population of less than five thousand, the municipal judge need not be licensed to practice law in this state, nor may the judge be required to be a resident of the city. The municipal judge has jurisdiction to hear, try, and determine offenses against the ordinances of the city.
2. In a city with a population of less than five thousand, the city may, by resolution or ordinance, require that municipal judges of the city be licensed to practice law in this state.
3. Notwithstanding any other provision of law, the municipal court has no jurisdiction to hear, try, and determine an offense which would be a violation of section 39-08-01 or equivalent ordinance, if the person charged with the offense has twice previously been convicted of violation of section 39-08-01 or equivalent ordinance within the five years preceding the commission of the offense charged or if the person charged with the offense has three times previously been convicted of violation of section 39-08-01 or equivalent ordinance within the seven years preceding the commission of the offense charged. If such an offense is charged in the municipal court and the municipal judge has notice of violation of section 39-08-01 or equivalent ordinance twice within the five years, or three times within the seven years, preceding the commission of the offense charged, the municipal judge shall dismiss the charge, without prejudice, and direct that the charge be filed against the person in the district court.
4. Notwithstanding any other provision of law, a municipal court in which the judge is not a person licensed to practice law in this state has no jurisdiction to hear, try, and determine an offense that would be a violation of section 39-08-01 or equivalent ordinance.

**40-18-02. City justice of the peace - Jurisdiction and procedure.** Repealed by S.L. 1959, ch. 268, § 34.

**40-18-03. Vacancy in office of municipal judge - Temporary absence of municipal judge.** If a vacancy exists in the office of municipal judge by death, resignation, or otherwise, it must be filled by appointment by the executive officer, subject to confirmation by the governing body of the city. An appointee shall qualify and hold office until the next city election and until a successor is elected and qualified. The governing body may appoint an alternate municipal judge to serve when the municipal judge is unable to serve due to temporary absence, interest, disqualification, or disability. The alternate judge must be compensated at a rate set by the governing body and shall possess the qualifications of a municipal judge.

**40-18-04. Office hours of municipal judge.** Superseded by N.D.R.Crim.P., Rule 56.

**40-18-05. Municipal judge is conservator of the peace - Powers on Sunday restricted.** The municipal judge within the judge's city shall be a conservator of the peace and shall have power to bring persons before the municipal judge forthwith for trial. The municipal judge's court shall be open every day except Sunday to hear and determine cases cognizable before the municipal judge. The municipal judge shall perform no official act on Sunday but may receive complaints, issue process, take bail, and receive verdicts.

**40-18-06. Salary of municipal judge - Payment of funds to treasury.** The municipal judge must be paid a salary by the city and may not be paid in relation to fees or fines collected

by the municipal court. The municipal judge's salary may not be reduced during the municipal judge's term of office.

At the end of each month, the municipal judge shall make and file with the city auditor a written report under oath showing an account of all fees, fines, costs, forfeitures, and any other monetary consideration collected by the court during the preceding month and showing the actions in which the fees were collected. The municipal court shall pay the amount of fees, fines, costs, forfeitures, and any other monetary consideration collected to the city treasury at the end of each month. The judge's salary may not be paid until the judge has complied with this section.

**40-18-06.1. Municipal court clerk - Appointment - Salary - Authority.** The governing body of a city, with the consent of its municipal judge, may appoint any qualified person to serve as municipal court clerk or deputy clerk for municipal ordinance violations. A municipal court clerk or deputy clerk is entitled to receive a salary as fixed by the governing body. The municipal judge is responsible for the supervision of the municipal court clerk or deputy clerk when the clerk or deputy clerk is performing judicial or administrative functions on behalf of the municipal court. The municipal judge may assign responsibilities to the municipal court clerk or deputy clerk, including the administration of the office of the municipal court and the supervision of other personnel of that office. The supreme court may adopt rules for the qualifications of municipal court clerks and deputy clerks, the extent and assignment of authority by municipal judges, and the conduct of the office, including rules for training sessions and for continuing education.

**40-18-06.2. Transfer of municipal ordinance cases to district court - Abolition of office of municipal judge.** With the agreement of the governing body of the county, the presiding judge of the judicial district in which the city is located, and the state court administrator, the governing body of a city may, by ordinance, transfer some or all of the cases of the municipal court to the district court serving the county in which the city is located. These cases are deemed district court cases for purposes of appeal. The governing body of a city with a population of less than five thousand, upon transferring all municipal court cases to the district court, may abolish by resolution the office of municipal judge. The term of office of the municipal judge elected to serve that city terminates upon the date the governing body of the city abolishes the office of municipal judge.

**40-18-07. Warrants of arrest issued by municipal judge - Service of warrant.** Superseded by N.D.R.Crim.P., Rule 4.

**40-18-08. Warrants issued by municipal judge to run to whom.** Superseded by N.D.R.Crim.P., Rule 4.

**40-18-09. Subpoena of witnesses - Continuance of trial - Verbal notice to witnesses to attend.** Superseded by N.D.R.Crim.P., Rule 17.

**40-18-10. Trials for misdemeanors before municipal judge governed by justice court procedure.** Repealed by S.L. 1967, ch. 327, § 4.

**40-18-11. How proceedings in criminal cases not provided for in this chapter to be governed.** Superseded by N.D.R.Crim.P., Rules 1, 54.

**40-18-12. Commitment for violation of city ordinance - Limitation - Labor in lieu of fine - Diagnosis and treatment of persons convicted while driving under the influence.** If the defendant is found guilty of the violation of a municipal ordinance and is committed as provided in section 40-11-12, the governing body may provide by ordinance that the defendant work for the city at such labor as the defendant's strength and health permit, not exceeding eight hours in each working day. For that work, the person so imprisoned must be allowed for each day, exclusive of board, ten dollars on account of the fines and costs assessed. If a person is convicted under an ordinance prohibiting driving or being in physical control of a vehicle while under the influence of an intoxicating liquor or a narcotic drug, the court shall order the person to an appropriate licensed addiction treatment program for addiction evaluation.

**40-18-13. Sentencing alternatives - Suspension of sentence or imposition of sentence.** Subject to section 40-05-06, a municipal judge may use the sentencing alternatives provided by section 12.1-32-02 and may suspend any sentence the judge imposes or defer the imposition of any sentence during the good behavior of any person adjudged to have committed an offense, or for other reasonable cause, under subsection 3 or 4 of section 12.1-32-02, except that a municipal judge may not suspend a sentence or the imposition of sentence for driving a motor vehicle in violation of an operator's license suspension, revocation, or restriction or for a violation of section 39-08-01 or equivalent ordinance if that suspension of sentence or suspension of the imposition of sentence is prohibited under section 39-06-17 or 39-06-42 or chapter 39-08.

**40-18-14. Municipal judge may enforce orders and judgments and punish for contempt.** A municipal judge has the power to enforce due obedience to the court's orders and judgments. The judge may fine or imprison for contempt committed in the judge's presence while holding court, as well as for contempt of process issued, and of orders made by the judge. When an act or omission constituting a contempt in a municipal court is not committed in the presence of the municipal judge, an affidavit alleging the facts may be filed and a warrant of arrest thereupon may issue on which the person accused may be arrested and brought before the municipal judge immediately. The person must be given a reasonable opportunity to employ counsel and defend against the alleged contempt. After hearing the allegations and proofs, the municipal judge may discharge the person or adjudge the person guilty and may punish by fine or imprisonment or both. The fine in any case may not be more than one thousand dollars and the imprisonment may not be more than thirty days.

**40-18-15. Trials in nonjury cases arising under the ordinances of a city.** An action for the violation of a city ordinance for which the right to a jury trial does not otherwise exist or in which the defendant has timely and appropriately waived a right to a jury trial in writing pursuant to rules of the supreme court may be tried and determined by the municipal judge without the intervention of a jury. In the event of an adverse verdict in a municipal court trial, a defendant may appeal as provided in section 40-18-19, but a waiver of jury trial in the municipal court proceeding also constitutes a waiver of jury trial in the district court.

**40-18-15.1. Transfer to district court - Expenses of prosecution - Division of funds and expenses between city, county, and state.** A matter may be transferred to district court for trial only if within twenty-eight days after arraignment the defendant has requested in writing to transfer the case to district court and to exercise the defendant's right to a jury trial. The city shall provide a prosecuting attorney and, in the case of any indigent defendant, a defense attorney. The city may contract with the county, state, or any individual or entity for prosecution or defense services. In the contract, the city, county, and state may agree to a division of all fees, fines, costs, forfeitures, and any other monetary consideration collected from cases transferred under this section, which must be paid to the city and county treasury and state general fund at least once each quarter. At the time of payment, the clerk of district court shall account under oath to the city auditor, county, and state treasurer for all money collected. In the contract the city, county, and state may also agree to a division of expenses, including jury and witness expenses, related to cases transferred under this section. In the absence of a contract all fees, fines, costs, forfeitures, and any other monetary consideration collected from transferred cases must be deposited in the state general fund.

**40-18-16. Procedure when jury demanded in court of municipal judge.** Repealed by S.L. 1973, ch. 327, § 2.

**40-18-17. Challenges for cause to jurors in court of municipal judge.** Repealed by S.L. 1973, ch. 327, § 3.

**40-18-18. Fee of juror in court of municipal judge.** Repealed by S.L. 1973, ch. 327, § 4.

**40-18-19. Appeals from determinations of municipal judge.** An appeal may be taken to the district court from a judgment of conviction or order deferring imposition of sentence in a

municipal court in accordance with the North Dakota Rules of Criminal Procedure. An appeal is perfected by notice of appeal. A perfected appeal to the district court transfers the action to such district court for trial anew. On all appeals from a determination in a municipal court, the district court shall take judicial notice of all of the ordinances of the city. No filing fee may be required in district court for the filing of an appeal from a judgment of conviction for the violation of a municipal ordinance. Expenses necessary for the adequate defense of a needy person in an appeal to district court from a judgment of conviction for the violation of a municipal ordinance, as approved by the presiding district judge, must be paid by the city wherein the alleged offense took place.

**40-18-20. Demand for change of judge.** Any party to a proceeding pending in any municipal court may obtain a change of judge pursuant to section 29-15-21, except that either a district judge or a municipal judge may be appointed to act in place of the disqualified judge. The alternate municipal judge, if any, is automatically appointed to preside in the case.

**40-18-21. Change of venue in municipal court.** Superseded by N.D.R.Crim.P., Rule 21.

**40-18-22. Continuing education of municipal judge and alternate judge required.** Each municipal judge and alternate judge shall comply with continuing judicial education requirements established by supreme court rule. The city shall reimburse the judge for necessary expenses of travel and subsistence as other city officials are so reimbursed.

If any judge fails to fulfill the requirements of this section, without being excused by the supreme court, the state court administrator shall report the judge's failure to the judicial conduct commission for appropriate action.