

Sixty-first
Legislative Assembly
of North Dakota

Introduced by

1 A BILL for an Act to amend and reenact section 11-33.2-03, subsections 1 and 2 of section
2 23-25-11, and sections 40-47-06, 40-48-03, 40-48-26, 40-51.2-05, 40-51.2-07, 40-51.2-11, and
3 40-51.2-13 of the North Dakota Century Code, relating to the extraterritorial zoning authority of
4 a city; to repeal sections 11-35-02, 40-47-01.1, 40-47-01.2, 40-48-18, 40-51.2-02.1, and
5 40-51.2-02.2 of the North Dakota Century Code, relating to extraterritorial zoning and
6 subdivision regulation by cities; and to provide for application.

7 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

8 **SECTION 1. AMENDMENT.** Section 11-33.2-03 is amended:

9 **11-33.2-03. Scope of county authority.** County regulation of subdivisions ~~pursuant to~~
10 ~~the provisions of under~~ this chapter ~~shall in no way~~ may not affect subdivisions within the
11 corporate limits, ~~or within the area of application of extraterritorial zoning jurisdiction adopted~~
12 ~~pursuant to section 40-47-01.1~~, of any city. Additionally, no resolution, regulation, or restriction
13 adopted ~~pursuant to the provisions of under~~ this chapter ~~shall~~ may prohibit or prevent the use
14 of land or buildings for farming or any of the normal incidents of farming.

15 **SECTION 2. AMENDMENT.** Subsections 1 and 2 of section 23-25-11 is amended:

- 16 1. In areas located within a city ~~or the area over which a city has exercised~~
17 ~~extraterritorial zoning as defined in section 40-47-01.1~~, a person may not discharge
18 into the ambient air any objectionable odorous air contaminant that measures
19 seven odor concentration units or higher outside the property boundary where the
20 discharge is occurring. If an agricultural operation as defined by section 42-04-01
21 has been in operation for more than one year, as provided by section 42-04-02,
22 and the business or residence making the odor complaint was built or established
23 after the agricultural operation was established, the measurement for compliance
24 with the seven odor concentration units standard must be taken within one hundred

1 feet [30.48 meters] of the subsequently established residence, church, school,
2 business, or public building making the complaint rather than at the property
3 boundary of the agricultural operation. The measurement may not be taken within
4 five hundred feet [.15 kilometer] of the property boundary of the agricultural
5 operation.

6 2. In areas located outside a city ~~or outside the area over which a city has exercised~~
7 ~~extraterritorial zoning as defined in section 40-47-01.1~~, a person may not discharge
8 into the ambient air any objectionable odorous air contaminant that causes odors
9 that measure seven odor concentration units or higher as measured at any of the
10 following locations:

- 11 a. Within one hundred feet [30.48 meters] of any residence, church, school,
12 business, or public building, or within a campground or public park. An odor
13 measurement may not be taken at the residence of the owner or operator of
14 the source of the odor, or at any residence, church, school, business, or
15 public building, or within a campground or public park, that is built or
16 established within one-half mile [.80 kilometer] of the source of the odor after
17 the source of the odor has been built or established;
- 18 b. At any point located beyond one-half mile [.80 kilometer] from the source of
19 the odor, except for property owned by the owner or operator of the source of
20 the odor, or over which the owner or operator of the source of the odor has
21 purchased an odor easement; or
- 22 c. If a county or township has zoned or established a setback distance for an
23 animal feeding operation which is greater than one-half mile [.80 kilometer]
24 under either section 11-33-02.1 or 58-03-11.1, or if the setback distance
25 under subsection 7 is greater than one-half mile [.80 kilometer],
26 measurements for compliance with the seven odor concentration units
27 standard must be taken at the setback distance rather than one-half mile [.80
28 kilometer] from the facility under subdivision b, except for any residence,
29 church, school, business, public building, park, or campground within the
30 setback distance which was built or established before the animal feeding

operation was established, unless the animal feeding operation has obtained an odor easement from the preexisting facility.

SECTION 3. AMENDMENT. Section 40-47-06 is amended:

40-47-06. (Effective through July 31, 2009) Zoning commission - Appointment -

Duties - Preliminary and final report. The governing body of a city desiring to avail itself of the powers conferred by this chapter shall appoint a ~~commission, to be known as the zoning~~ commission, to recommend the boundaries of the various original districts and appropriate regulations to be enforced therein. ~~If the city exercises extraterritorial zoning authority under section 40-47-01.1, the zoning commission must include at least one individual residing outside the corporate limits of a city if the city has a population of fewer than five thousand, two individuals residing outside the corporate limits of the city if the city has a population of five thousand or more, but fewer than twenty five thousand, or three individuals residing outside the corporate limits of the city if the city has a population of twenty five thousand or more. Those individuals must be appointed by the board or boards of county commissioners of the county or counties within which the zoning authority is to be exercised and must reside within the territorial limits of the zoning regulation authority exercised by the city, if any such individual is available and will serve on the zoning commission. Of the members of the commission appointed by a board or boards of county commissioners pursuant to this section, the first member appointed shall hold office for five years, the second member appointed shall hold office for three years, and the third member appointed shall hold office for one year. Thereafter, the members shall be appointed for terms of five years.~~ The commission shall make a preliminary report and hold public hearings ~~thereon~~ before submitting its final report. The governing body may not hold its public hearings or take action until it has received the final report of the zoning commission. If a city has a planning commission, it may be appointed as the zoning commission.

(Effective after July 31, 2009) Zoning commission - Appointment - Duties -

Preliminary and final report. The governing body of a city desiring to avail itself of the powers conferred by this chapter shall appoint a ~~commission, to be known as the zoning~~ commission, to recommend the boundaries of the various original districts and appropriate regulations to be enforced therein. ~~In addition to the members appointed by the city, the zoning commission shall include at least one person residing outside of the corporate limits of a city having a~~

~~population of less than five thousand, two persons residing outside the corporate limits of a city having a population of five thousand or more, but less than twenty five thousand, or three persons residing outside the corporate limits of a city having a population of twenty five thousand or more if zoning authority is exercised pursuant to section 40-47-01.1. Such persons shall be appointed by the board or boards of county commissioners of the county or counties within which such zoning authority is to be exercised and shall reside within the territorial limits of the zoning regulation authority exercised by the city, if such persons are available and will serve on the zoning commission. Of the members of the commission appointed by a board or boards of county commissioners pursuant to this section, the first member appointed shall hold office for five years, the second member appointed shall hold office for three years, and the third member appointed shall hold office for one year. Thereafter, the members shall be appointed for terms of five years. Such~~ The commission shall make a preliminary report and hold public hearings thereon before submitting its final report. The governing body ~~shall~~ may not hold its public hearings or take action until it has received the final report of the zoning commission. If a city has a planning commission, it may be appointed as the zoning commission.

SECTION 4. AMENDMENT. Section 40-48-03 is amended:

40-48-03. (Effective through July 31, 2009) Planning commission - Creation - Members - Ex officio members. The governing body of any city may create, by ordinance, a planning commission to consist of not more than ten members to be appointed by the executive officer of the city with the approval of its governing body. ~~If the city exercises extraterritorial zoning authority under section 40-47-01.1, the planning commission must include at least one individual residing outside the corporate limits of the city if the city has a population of fewer than five thousand, two individuals residing outside the corporate limits if the city has a population of five thousand or more, but fewer than twenty five thousand, or three individuals residing outside the corporate limits of the city if the city has a population of twenty five thousand or more. These individuals must be appointed by the board or boards of county commissioners of the county or counties within which the subdivision authority is to be exercised and must reside within the territorial limits of the subdivision regulation authority exercised by the city, if any such individual is available and will serve on the planning commission. Of the members of the commission appointed by a board or boards of county~~

~~commissioners pursuant to this section, the first member appointed shall hold office for five years, the second member appointed shall hold office for three years, and the third member appointed shall hold office for one year. Thereafter, the members shall be appointed for terms of five years. The executive officer, the engineer, and the attorney of the city are ex officio members of the commission.~~

(Effective after July 31, 2009) Planning commission - Creation - Members -

Ex officio members. The governing body of any city may create, by ordinance, a planning commission to consist of not more than ten members to be appointed by the executive officer of the city with the approval of its governing body. ~~In addition to the members appointed by the city, the planning commission shall include at least one person residing outside of the corporate limits of a city having a population of less than five thousand, two persons residing outside the corporate limits of a city having a population of five thousand or more, but less than twenty five thousand, or three persons residing outside the corporate limits of a city having a population of twenty five thousand or more if zoning authority is exercised pursuant to section 40-47-01.1. Such persons shall be appointed by the board or boards of county commissioners of the county or counties within which such subdivision authority is to be exercised and shall reside within the territorial limits of the subdivision regulation authority exercised by the city, if such persons are available and will serve on the planning commission. Of the members of the commission appointed by a board or boards of county commissioners pursuant to this section, the first member appointed shall hold office for five years, the second member appointed shall hold office for three years, and the third member appointed shall hold office for one year. Thereafter, the members shall be appointed for terms of five years. The executive officer, the engineer, and the attorney of the city shall be~~ are ex officio members of the commission.

SECTION 5. AMENDMENT. Section 40-48-26 is amended:

40-48-26. Exclusive jurisdiction of planning commission ~~–Exception.~~ After the adoption of a major traffic street plan by any planning commission, the jurisdiction of the planning commission over plats ~~shall be~~ is exclusive within the territory under its jurisdiction; ~~except as otherwise provided in section 40-48-18.~~

SECTION 6. AMENDMENT. Section 40-51.2-05 is amended:

40-51.2-05. Notice - Petition of owners and electors ~~–Mediation.~~

1 4- The governing body may not take final action on a petition presented by owners
2 and qualified electors until the petitioners have given notice of presentation of the
3 petition by one publication in the official newspaper of the city as provided by
4 section 40-01-09 and the governing body has mailed a notice of the time and place
5 of consideration of the petition to the owner of each parcel of real property within
6 the area described in the petition at the person's last-known mailing address. The
7 notice is not required to be sent to any owner of real property who signed a petition
8 pursuant to section 40-51.2-03 or 40-51.2-04. ~~If the land area petitioned to be~~
9 ~~annexed to the city lies within the extraterritorial zoning or subdivision regulation~~
10 ~~authority of another city, the governing body of the city must also mail the notice of~~
11 ~~the time and place of consideration of the petition to the governing body of the~~
12 ~~other city.~~

13 2- ~~If the land area petitioned to be annexed to the city lies within the extraterritorial~~
14 ~~zoning or subdivision regulation authority of another city and written consent to~~
15 ~~annex the land area is not received from the governing body of the other city, the~~
16 ~~annexing city may either stop its pursuit of the annexation or submit the matter to a~~
17 ~~committee for mediation as provided in section 40-51.2-07.1. If mediation does not~~
18 ~~resolve the matter, the office of administrative hearings may be petitioned to hear~~
19 ~~the matter in accordance with sections 40-51.2-08, 40-51.2-09, 40-51.2-11,~~
20 ~~40-51.2-12, 40-51.2-13, 40-51.2-14, 40-51.2-15, 40-51.2-16, and 40-51.2-17.~~

21 **SECTION 7. AMENDMENT.** Section 40-51.2-07 is amended:

22 **40-51.2-07. Annexation by resolution of city.**

23 1. The governing body of any city may adopt a resolution to annex contiguous or
24 adjacent territory as follows:

25 4- a. The governing body of the city shall adopt a resolution describing the property to
26 be annexed.

27 2- b. The governing body of the city shall publish the resolution and a notice of the time
28 and place the governing body will meet to hear and determine the sufficiency of
29 any written protests against the proposed annexation in the official newspaper
30 once each week for two consecutive weeks. The governing body of the city shall
31 mail a notice to the owner of each parcel of real property within the area to be

annexed at the person's last-known mailing address. The notice must inform landowners of the resolution, the time and place of hearing, and the requirement that protests must be filed in writing. The owners of any real property within the territory proposed to be annexed within thirty days of the first publication of the resolution may file written protests with the city auditor protesting against the proposed annexation. No state-owned property may be annexed without the written consent of the state agency or department having control of the property. The governing body of the city, at its next meeting after the expiration of the time for filing the protests, shall hear and determine the sufficiency of the protests.

3. c. In the absence of protests filed by the owners of more than one-fourth of the territory proposed to be annexed as of the date of the adoption of the resolution, the territory described in the resolution becomes a part of the city. When a copy of the resolution and an accurate map of the annexed area, certified by the executive officer of the city, are filed and recorded with the county recorder, the annexation becomes effective. Annexation is effective for the purpose of general taxation on and after the first day of the next February. However, the city shall continue to classify as agricultural lands for tax purposes all lands in the annexed area which were classified as agricultural lands immediately before the annexation proceedings until those lands are put to another use.

2. If the owners of one-fourth or more of the territory proposed to be annexed protest; ~~or if a city that has extraterritorial zoning or subdivision regulation authority over the area petitioned to be annexed protests,~~ the city may either stop its pursuit of the annexation or submit the matter to a committee for mediation as provided in section 40-51.2-07.1.

SECTION 8. AMENDMENT. Section 40-51.2-11 is amended:

40-51.2-11. Notice required.

1. At the time the administrative law judge sets the time and place of hearing, the administrative law judge shall direct the governing body of the annexing city to:
4. a. Publish a notice of the hearing and a copy of the petition, if the annexation was initiated under section 40-51.2-07, at least once a week for two successive weeks in the official newspaper of the city;

- ~~3-~~ b. Mail a notice of the hearing and a copy of the petition, if the annexation was initiated under section 40-51.2-07, to the owner of each parcel of real property in the area to be annexed at the person's last-known mailing address; and
- ~~3-~~ c. Serve a copy of the notice and petition upon the chairman of the governing body of the county and township, if organized, in which the territory to be annexed lies; ~~and~~
- ~~4-~~ ~~Serve a copy of the notice and petition upon the head of the governing body of any other city in whose extraterritorial zoning or subdivision regulation authority the land area petitioned to be annexed is located.~~
2. The hearing must be held not less than thirty days after the first publication of the notice. Proof of publication and service of the notice and petition must be filed with the administrative law judge before the time of the hearing.

SECTION 9. AMENDMENT. Section 40-51.2-13 is amended:

40-51.2-13. Decision.

1. In arriving at a decision, the administrative law judge shall consider the following factors:
 - a. The present uses and planned future uses or development of the area sought to be annexed;
 - b. Whether the area sought to be annexed is a part of the community of the annexing city;
 - c. The educational, recreational, civic, social, religious, industrial, commercial, or city facilities and services made available by or in the annexing city to any resident, business, industry, or employee of the business or industry located in the area sought to be annexed;
 - d. Whether any governmental services or facilities of the annexing city are or can be made available to the area sought to be annexed;
 - e. The economic, physical, and social relationship of the inhabitants, businesses, or industries of the area sought to be annexed to the annexing city, and to the school districts and other political subdivisions affected;

- 1 f. The economic impact of the proposed annexation on the property owners in
2 the area of the proposed annexation, and the economic impact on the
3 annexing city of a decision to deny the annexation; and
4 g. ~~Whether the area proposed to be annexed is in the extraterritorial zoning or~~
5 ~~subdivision regulation authority of another city; and~~
6 h. Any other factor determined to be relevant by the administrative law judge.
- 7 2. a. Based upon those factors, the administrative law judge may order the
8 annexation if the administrative law judge finds that:
- 9 (1) a. The area proposed to be annexed is now, or is about to become, urban in
10 character;
- 11 (2) b. City government in the area proposed to be annexed is required to protect the
12 public health, safety, and welfare; or
- 13 (3) c. The annexation would be in the best interest of the area proposed to be
14 annexed.
- 15 b. ~~The administrative law judge may deny the annexation if it appears that~~
16 ~~annexation of all or a part of the property to a different city would better serve~~
17 ~~the interests of the residents of the property.~~
- 18 3. If the administrative law judge is satisfied that the annexation should be granted,
19 the administrative law judge shall determine the terms and conditions of the
20 annexation and enter an order granting the petition. In all cases, the administrative
21 law judge shall set forth in writing a decision, including findings of fact, conclusions
22 of law, and an order. The decision must include the factors upon which the
23 decision is based. The administrative law judge shall direct the governing body of
24 the annexing city to mail a copy of the decision to all parties to the annexation
25 proceedings.
- 26 4. An order granting the petition must include in detail all the terms and conditions
27 upon which the petition is granted and the effective date of the petition. The
28 annexing city shall file and record the order and an accurate map of the annexed
29 area, certified by the executive officer of the city, in the office of the recorder of the
30 county in which the annexed territory is situated.

1 **SECTION 10. REPEAL.** Sections 11-35-02, 40-47-01.1, 40-47-01.2, 40-48-18,
2 40-51.2-02.1, and 40-51.2-02.2 is repealed:

3 **SECTION 11. APPLICATION.** Any extraterritorial zoning or subdivision regulation in
4 effect before the effective date of this Act is void and zoning and subdivision authority over
5 those areas must revert to the township or county that would have subdivision and zoning
6 authority in that area.