

MUNICIPAL GOVERNMENT

CHAPTER 350

HOUSE BILL NO. 1230

(Representative Kretschmar)

CITY COUNCIL MEMBER ELECTION

AN ACT to amend and reenact section 40-08-04 of the North Dakota Century Code, relating to election of city council members.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 40-08-04 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

40-08-04. Election of council members. In cities containing six hundred inhabitants or less, the council members must be elected at large. ~~†~~ Except as provided in section 40-08-04.2, in all other cities operating under the council form of government, the council members must be elected by wards.

Approved March 5, 1997

Filed March 6, 1997

CHAPTER 351

HOUSE BILL NO. 1171 (Representatives Wald, Wardner) (Senator Goetz)

MUNICIPAL COURT CLERK SUPERVISION

AN ACT to amend and reenact section 40-18-06.1 of the North Dakota Century Code, relating to municipal court clerks.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 40-18-06.1 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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 ~~and has that authority which may be assigned by a judge having jurisdiction over municipal ordinance cases of the city.~~ 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 ~~court~~ judges, and the conduct of the office, including rules for training sessions and for continuing education.

Approved March 5, 1997
Filed March 6, 1997

CHAPTER 352**SENATE BILL NO. 2092**

(Political Subdivisions Committee)
(At the request of the Secretary of State)

CITY BALLOT NAME ARRANGEMENT

AN ACT to amend and reenact section 40-21-08 of the North Dakota Century Code, relating to the arrangement of candidate names on city ballots.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 40-21-08 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

40-21-08. Ballots in municipalities - Arrangement. The auditor of the city shall place only the names of the persons nominated upon the ballot. The auditor shall arrange the offices upon the ballot in the order in which they are named in the statutes. The auditor shall determine the arrangement of the names of the candidates upon the ballot by ~~let in the presence of the candidates or their representatives at noon on the day~~ conducting a drawing within five days following the last day for the filing of the nomination papers. The city auditor shall set the date, time, and location for conducting the drawing and shall give advanced notice of the drawing to the candidates involved.

Approved March 6, 1997

Filed March 6, 1997

CHAPTER 353

SENATE BILL NO. 2379

(Senators Robinson, Nalewaja, St. Aubyn)
(Representatives Keiser, Poolman)

ENGINEER CONSTRUCTION SUPERVISION

AN ACT to amend and reenact sections 18-12-04, 40-28-03, and 61-35-102 of the North Dakota Century Code, relating to construction supervision by engineers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 18-12-04 of the North Dakota Century Code is amended and reenacted as follows:

18-12-04. Employment of registered architects and engineers. All plans and specifications for construction, except agricultural sheds and barns, the monetary worth of which is ~~twenty five~~ one hundred thousand dollars or more, must be prepared by and the construction administration and construction observation services supervised by architects or engineers registered in this state. The architect or engineer is legally responsible for designing the building in accordance with the provisions of this chapter of adequate strength so as to resist fire, and constructing the building in a workmanlike manner, according to the plans and specifications as approved. All projects where the tax money exceeds two thousand dollars must be submitted to the department of public instruction or the board of higher education for approval.

SECTION 2. AMENDMENT. Section 40-28-03 of the North Dakota Century Code is amended and reenacted as follows:

40-28-03. Municipality may contract work when property owner fails to make service connections as required. If the connection with the sewer, main, wire, or conduit is not made by the owner of the property within the time specified in the notice given by the city auditor, the governing body shall order such work done by such person as it may contract with therefor at the expense of the lot or parcel of land adjoining each improvement or service connection. Such work shall be ~~done~~ administered and observed under the supervision of the engineer acting for the municipality. The expense of making such connection, including the expense of giving all notices relating thereto, of making the assessments therefor, and of any other nature, shall be assessed by the engineer against the lot or parcel of land properly chargeable therewith, and the assessment list shall be filed in the office of the city auditor. The city auditor shall cause such list, together with a notice of the time when and place where the governing body will meet to consider the approval thereof, to be published in one issue of the official newspaper of the municipality at least ten days prior to the meeting of the governing body at which the approval of the assessment will be considered.

SECTION 3. AMENDMENT. Section 61-35-102 of the North Dakota Century Code is amended and reenacted as follows:

61-35-102. Conditions and terms. A contract let under this chapter requires the work to be done pursuant to the plans and specifications on file in the office of

the district, subject to the approval of the engineer acting for the district, and must provide:

1. That the board has the right to suspend the work at any time for improper construction and to relet the contract or to order a reconstruction of the work as to any part improperly done.
2. The time within which the work must be completed.
3. The period of time for which the work must be guaranteed as to workmanship and materials.
4. The fund from which the contract price is to be paid by the district.
5. That the consideration expressed in the contract is payable only in bonds drawn on the fund described in the contract.
6. That the district assumes and incurs no general liability under the contract.
7. That failure of the engineer to reject work and materials that are not up to specifications and acceptance of the job by the engineer does not release the contractor from liability for any failure on the contractor's part to perform work or furnish materials in accordance with the plans and specifications.

The engineer acting for the district shall ~~supervise and inspect~~ provide construction administration and observation of the work during its progress. In addition to any rights a district may have under its contract for construction of part or all of an improvement after a contract has been awarded and before work under the contract has been completed, a district, with the consent of the contractor and without advertising for bids, may order additional work done by that contractor of the same character as the work that was contracted for, whether within or without the improvement district for which the original contract was made, and upon the same terms and conditions specified in the original contract except as to time of performance, and at the same prices for the additional work; provided, that the total price payable to the contractor for the additional work may not exceed twenty percent of the amount estimated by the engineer for the district to be payable for that character of work under the original contract.

Approved April 1, 1997

Filed April 2, 1997

CHAPTER 354

SENATE BILL NO. 2384

(Senators Fischer, DeMers, Nalewaja)
(Representatives Clark, Galvin, Skarphol)

CITY EXTRATERRITORIAL ZONING AND REGULATION

AN ACT to amend and reenact sections 40-47-01.1 and 40-48-18 of the North Dakota Century Code, relating to extraterritorial zoning and subdivision regulation authority of cities.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 40-47-01.1 of the North Dakota Century Code is amended and reenacted as follows:

**40-47-01.1. Territorial authority of Extraterritorial zoning regulations -
Mediation - Determination by administrative law judge. Based upon the population
of the**

1. A city as determined by the last official regular or special federal census or, in case of a city incorporated subsequent to such census, a census taken in accordance with chapter 40-02, the governing body of a city may, by ordinance, extend the application of a city's zoning regulations to any quarter quarter section of unincorporated territory if a majority of the quarter quarter section is located within the following distance of the corporate limits of the city:
 1. To each quarter quarter section of unincorporated territory the majority of which is located within one-half One mile [.80 kilometer 1.61 kilometers] of its limits in any direction if it is a the city having has a population of less than five thousand.
 2. To each quarter quarter section of unincorporated territory the majority of which is located within one mile Two miles [1.64 3.22 kilometers] of its limits in any direction if it is a the city having has a population of five thousand or more, but less than twenty-five thousand.
 3. To each quarter quarter section of unincorporated territory the majority of which is located within two Four miles [3.22 6.44 kilometers] of its limits in any direction if it is a the city having has a population of twenty-five thousand or more.
2. If a quarter quarter section line divides a platted lot and the majority of that platted lot lies within the quarter quarter section, a city may apply its extraterritorial zoning authority to the remainder of that platted lot. If the majority of the platted lot lies outside the quarter quarter section, the city may not apply its extraterritorial zoning authority to any of that platted lot.

3. Provided, that where ~~If~~ two or more noncontiguous cities have boundaries at a distance where there ~~would be~~ is an overlap of extraterritorial zoning authority under this section, each city is authorized to control the zoning of land on its side of a line established in proportion to the authority each city has to zone land outside its limits in accordance with this section or pursuant to mutual agreement. The governing body may thereafter enforce such regulation in the area to the same extent as if such property were situated within the city's corporate limits. This territorial authority shall not authorize the application of zoning regulations to territory outside the corporate limits of land attached to a city by a strip of land not more than one hundred feet [30.48 meters] wide, nor shall this territorial authority authorize application of zoning regulations to territory outside the corporate limits of land included within such a strip of land. the governing bodies of the cities may enter into an agreement regarding the extraterritorial zoning authority of each city. The agreement must be for a specific term and is binding upon the cities unless the governing bodies of the cities agree to amend or rescind the agreement or unless determined otherwise by an administrative law judge in accordance with this chapter. If a dispute arises concerning the extraterritorial zoning authority of a city and the governing bodies of the cities involved fail to resolve the dispute, the dispute must be submitted to a committee for mediation. The committee must be comprised of one member appointed by the governor, one member of the governing body of each city, and one member of the planning commission of each city who resides outside the corporate city limits. The governor's appointee shall arrange and preside over the meeting and act as mediator at the meeting. A meeting may be continued until the dispute has been resolved or until the mediator determines that continued mediation is no longer worthwhile.
4. If the mediation committee is unable to resolve the dispute to the satisfaction of the governing bodies of all the cities involved, the governing body of any of the cities may petition the office of administrative hearings to appoint an administrative law judge to determine the extraterritorial zoning authority of the cities in the disputed area. A hearing may not be held until after at least two weeks' written notice has been given to the governing bodies of the cities involved in the dispute. At the hearing, the governor's appointee who mediated the meetings under subsection 3 shall provide information to the administrative law judge on the dispute between the cities involved and any proposed resolutions or recommendations made by a majority of the committee members. Any resident of, or person owning property in, a city involved in the dispute or the unincorporated territory that is the subject of the proposed extraterritorial zoning, a representative of such a resident or property owner, and any representative of a city involved, may appear at the hearing and present evidence on any matter to be determined by the administrative law judge. A decision by the administrative law judge is binding upon all the cities involved in the dispute and remains effective until the governing bodies of the cities agree to a change in the zoning authority of the cities. The governing body of a city may request a review of a decision of an administrative law judge due to changed circumstances at any time ten years after the decision has become final. An administrative law judge shall consider the following factors in making a decision under this subsection:

- a. The proportional extraterritorial zoning authority of the cities involved in the dispute;
 - b. The proximity of the land in dispute to the corporate limits of each city involved;
 - c. The proximity of the land in dispute to developed property in the cities involved;
 - d. Whether any of the cities has exercised extraterritorial zoning authority over the disputed land;
 - e. Whether natural boundaries such as rivers, lakes, highways, or other physical characteristics affecting the land are present;
 - f. The growth pattern of the cities involved in the dispute; and
 - g. Any other factor determined to be relevant by the administrative law judge.
5. For purposes of this section, the population of a city must be determined by the last official regular or special federal census. If a city has incorporated after a census, the population of the city must be determined by a census taken in accordance with chapter 40-22.
 6. When a portion of the city is attached to the bulk of the city by a strip of land less than one-hundred feet wide, that portion and strip of land must be disregarded when determining the extraterritorial zoning limits of the city. This subsection does not affect the ability of a city to zone land within its city limits.
 7. For the purposes of this section, a quarter quarter section shall be determined in the manner provided by 2 Stat. 313 [43 U.S.C. 752]. When appropriate, the phrase "quarter quarter section" refers to the equivalent government lot.

SECTION 2. AMENDMENT. Section 40-48-18 of the North Dakota Century Code is amended and reenacted as follows:

40-48-18. Jurisdiction of Extraterritorial subdivision regulation authority - Mediation - Determination by administrative law judge. ~~The territorial jurisdiction of any city planning commission over the subdivision or platting of land shall include all land located within the corporate limits of the city. Based upon the population of the city as determined by the last official regular or special federal census or, in case of a city incorporated subsequent to such census, a census taken in accordance with chapter 40-02, the governing body of a city may, by ordinance, extend the application of the city's subdivision regulations:~~

1. ~~To unincorporated territory located within one-half mile [.80 kilometer] of its limits in any direction if it is a city having a population of less than five thousand.~~
2. ~~To unincorporated territory located within one mile [1.61 kilometers] of its limits in any direction if it is a city having a population of five thousand or more, but less than twenty-five thousand.~~

3. ~~To unincorporated territory located within two miles [3.22 kilometers] of its limits in any direction if it is a city having a population of twenty-five thousand or more.~~

Provided, that where two or more noncontiguous cities have boundaries at a distance where there would be an overlap of subdivision regulation authority under this section, each city is authorized to control the subdivision of land on its side of a line established in proportion to the authority each city has to control the subdivision of land outside its limits in accordance with this section or pursuant to mutual agreement. The governing body may thereafter enforce such regulations in the area to the same extent as if such property were situated within the city's corporate limits.

1. A city may, by ordinance, extend its regulation of subdivisions beyond its corporate limits to the same extent as a city is authorized to extend its zoning authority under section 40-47-01.1.
2. If two or more cities have boundaries at a distance where there is an overlap of extraterritorial subdivision regulation authority under this section, the governing bodies of the cities may enter into an agreement regarding the extraterritorial subdivision regulation authority of each city. The agreement must be for a specific term and is binding upon the cities unless the governing bodies of the cities agree to amend or rescind the agreement or unless determined otherwise by an administrative law judge in accordance with this chapter. If a dispute arises concerning the extraterritorial subdivision regulation authority of a city, and the governing bodies of the cities involved fail to resolve the dispute, the dispute must be submitted to a committee for mediation. The committee must be comprised of one member appointed by the governor, one member of the governing body of each city, and one member of the planning commission of each city who resides outside the corporate city limits. The governor's appointee shall arrange and preside over the meeting and act as mediator at the meeting. The meeting may be continued until the dispute has been resolved or until the mediator determines that continued mediation is no longer worthwhile.
3. If the mediation committee is unable to resolve the dispute to the satisfaction of the governing bodies of all the cities involved, the governing body of any of the cities may petition the office of administrative hearings to appoint an administrative law judge to determine the extraterritorial subdivision regulation authority of the cities in the disputed area. A hearing may not be held until after at least two weeks' written notice has been given to the governing bodies of the cities involved in the dispute. At the hearing, the governor's appointee who mediated the meetings under subsection 2 shall provide information to the administrative law judge on the dispute between the cities involved and any proposed resolutions or recommendations made by a majority of the committee members. Any resident of, or person owning property in, a city involved in the dispute or the unincorporated territory that is the subject of the proposed subdivision regulation, a representative of such a resident or property owner, and any representative of a city involved, may appear at the hearing and present evidence on any matter to be determined by the administrative law judge. A decision by the administrative law judge is binding upon all the cities involved in the dispute and remains effective until the governing bodies of the cities agree to a change in the subdivision regulation authority of the cities. The governing body of a city may request a review of a decision of an

administrative law judge due to changed circumstances at any time ten years after the decision has become final. An administrative law judge shall consider the following factors in making a decision under this subsection:

- a. The proportional extraterritorial subdivision regulation authority of the cities involved in the dispute;
- b. The proximity of the land in dispute to the corporate limits of each city involved;
- c. The proximity of the land in dispute to developed property in the cities involved;
- d. Whether any of the cities has exercised extraterritorial subdivision regulation authority over the disputed land;
- e. Whether natural boundaries such as rivers, lakes, highways, or other physical characteristics affecting the land are present;
- f. The growth pattern of the cities involved in the dispute; and
- g. Any other factor determined to be relevant by the administrative law judge.

Approved April 2, 1997
Filed April 3, 1997

CHAPTER 355**SENATE BILL NO. 2199**

(Senators Holmberg, Lee)
(Representatives Froseth, Poolman)

**ZONING AMENDMENT OR MODIFICATION
APPROVAL**

AN ACT to create and enact a new section to chapter 40-47 and a new section to chapter 40-48 of the North Dakota Century Code, relating to conditions for approval of an amendment or modification of a zoning regulation or approval of a plat.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 40-47 of the North Dakota Century Code is created and enacted as follows:

Agreements to not oppose annexation void. The zoning commission or governing body may not require as a condition of approval of a request to amend or modify a zoning regulation the execution of an agreement by the owner of the property requesting the amendment or modification stating that the owner will not oppose the annexation of the property by the municipality. This section does not apply to property located within one quarter mile of the municipality's corporate limits or to an agreement that contains a provision whereby the municipality agrees to provide a municipal service or services before the annexation. Any agreement entered in violation of this section is void.

SECTION 2. A new section to chapter 40-48 of the North Dakota Century Code is created and enacted as follows:

Agreements to not oppose annexation void. The planning commission or governing body may not require as a condition of approval of a request for approval of a plat the execution of an agreement by the owner of the property requesting the approval stating that the owner will not oppose the annexation of the property by the municipality. This section does not apply to property located within one quarter mile of the municipality's corporate limits or to an agreement that contains a provision whereby the municipality agrees to provide a municipal service or services before the annexation. Any agreement entered in violation of this section is void.

Approved March 19, 1997
Filed March 19, 1997

CHAPTER 356

HOUSE BILL NO. 1240 (Representative Maragos) (Senator Watne)

PARK DISTRICT PENSION PLANS

AN ACT to amend and reenact sections 40-49-21, 40-49-22, and subsection 1 of section 57-15-12.2 of the North Dakota Century Code, relating to park district pension plans.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 40-49-21 of the North Dakota Century Code is amended and reenacted as follows:

40-49-21. Park districts may provide for employees' pensions. ~~The A board of park commissioners of a park district in any city which has adopted an employees' pension system pursuant to the provisions of chapter 40-46, may, with the consent of the governing body of such city and the consent of not less than a majority of the city employees covered by the provisions of such chapter, provide for employees' pensions pursuant to such chapter 40-46, and payments an authorized city pension plan with the consent of the city governing body and the consent of not less than a majority of the city employees covered by the city pension plan. In addition, a board of park commissioners may provide for employer pensions pursuant to chapter 54-52, or under a program approved by the internal revenue service. Payments made by employees or taxes levied by such the park district shall must be paid into the employees' pension fund of such city, and the benefits provided for the employees of such park district shall be the same as provided for employees of such city. If a board of park commissioners wishes to leave an existing city pension plan, the board, upon the request of the pension fund governing body, shall fund an actuarial study of the financial impacts to the pension fund. Any losses or costs to the fund by the park district leaving the pension plan are the responsibility of the park district. A park district may not leave the city's pension plan without the approval of the pension fund governing body.~~

SECTION 2. AMENDMENT. Section 40-49-22 of the North Dakota Century Code is amended and reenacted as follows:

40-49-22. Tax levy for park district employees' pension fund. ~~Any A park district adopting the provisions of section 40-49-21 may levy a tax not exceeding the limitation in subsection 1 of section 57-15-12.2. The proceeds of the tax levy shall must be placed in the employees' pension fund of the city.~~

SECTION 3. AMENDMENT. Subsection 1 of section 57-15-12.2 of the North Dakota Century Code is amended and reenacted as follows:

1. A park district levying a tax for employees an employees' pension fund according to sections 40-49-21 and 40-49-22 may levy a tax not exceeding the ratio which the total amounts paid to the employees of the city per annum bears to the total amount of taxes levied by the city for such employees amount necessary for the district's annual contribution to the employees' pension fund.

Approved April 8, 1997

Filed April 8, 1997

CHAPTER 357

SENATE BILL NO. 2200

(Senator Holmberg)
(Representatives Froseth, Poolman)

ANNEXATION AGREEMENTS AND MEDIATION

AN ACT to create and enact sections 40-51.2-02.1, 40-51.2-02.2, and 40-51.2-07.1 of the North Dakota Century Code, relating to annexation agreements, annexation of land in another city's extraterritorial zoning area, and the mediation of city annexations; to amend and reenact sections 40-51.2-05, 40-51.2-06, 40-51.2-07, 40-51.2-08, 40-51.2-09, 40-51.2-11, 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 of the North Dakota Century Code, relating to the annexation of property to a city; and to repeal section 40-51.2-10 of the North Dakota Century Code, relating to the composition of the annexation review commission.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Section 40-51.2-02.1 of the North Dakota Century Code is created and enacted as follows:

40-51.2-02.1. Annexation agreements. The governing body of a city may enter a written annexation agreement with the governing body of another city regarding the annexation of property located within the extraterritorial zoning or subdivision regulation authority of the cities under chapter 40-47 or 40-48. An agreement is binding on the governing bodies of the cities for the term of the agreement unless the governing bodies agree otherwise or unless determined otherwise by an administrative law judge in accordance with this chapter. An agreement may not have a term greater than twenty years.

SECTION 2. Section 40-51.2-02.2 of the North Dakota Century Code is created and enacted as follows:

40-51.2-02.2. Annexation of land in the extraterritorial zoning or subdivision regulation authority of another city. A city may not annex land located within the extraterritorial zoning or subdivision regulation authority of another city by ordinance or resolution unless:

1. Written consent is received from the governing body of the other city; or
2. The annexation is ordered by an administrative law judge in accordance with this chapter.

SECTION 3. AMENDMENT. Section 40-51.2-05 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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

1. The governing body may not take final action on a petition presented by owners and qualified electors until the petitioners have given notice of presentation of ~~their~~ the petition by one publication in the official newspaper of the city as provided by section 40-01-09 and the governing

body has ~~caused~~ mailed a notice of the time and place of consideration of the petition ~~to be mailed~~ to the owner of each parcel of real property within the area described in the petition at the person's last known mailing address. ~~Said~~ The notice is not required to be sent to any owner of real property who signed a petition pursuant to section 40-51.2-03 or 40-51.2-04. If the land area petitioned to be annexed to the city lies within the extraterritorial zoning or subdivision regulation authority of another city, the governing body of the city must also mail the notice of the time and place of consideration of the petition to the governing body of the other city.

2. If the land area petitioned to be annexed to the city lies within the extraterritorial zoning or subdivision regulation authority of another city and written consent to annex the land area is not received from the governing body of the other city, the annexing 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. If mediation does not resolve the matter, the office of administrative hearings may be petitioned to hear the matter in accordance with sections 40-51.2-08, 40-51.2-09, 40-51.2-10, 40-51.2-11, 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.

SECTION 4. AMENDMENT. Section 40-51.2-06 of the North Dakota Century Code is amended and reenacted as follows:

40-51.2-06. Petition of owners and electors - Annexation or exclusion - Classification of annexed agricultural lands for tax purposes. If the governing body ~~determines to annex~~ said annexes the area, it shall do so by ordinance; ~~a.~~ When a copy of ~~which~~ with the ordinance and an accurate map of the annexed area, certified by the executive officer of the ~~municipality~~ city, ~~shall be~~ are filed and recorded with the county register of deeds, ~~whereupon the annexation shall then be~~ becomes effective. ~~Annexation shall be~~ An annexion is effective for the purpose of general taxation on and after the first day of the next February ~~next ensuing;~~ provided, however. However, the ~~municipal corporation~~ city shall continue to classify as agricultural lands for tax purposes all lands in the annexed area which were classified as agricultural lands immediately ~~prior to such~~ before the annexation proceedings until ~~such~~ those lands are put to another use. If the governing body determines to exclude the area petitioned for, it may do so by ordinance adopted and recorded as in case of annexation.

SECTION 5. AMENDMENT. Section 40-51.2-07 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

40-51.2-07. Annexation by resolution of ~~municipal corporation~~ city. The governing body of any ~~municipality~~ city may adopt a resolution to annex contiguous or adjacent territory as follows:

1. The governing body of the ~~municipality~~ city shall adopt a resolution describing the property to be annexed.
2. The governing body of the ~~municipality~~ city shall ~~cause said~~ publish the resolution ~~together with~~ and a notice of the time and place ~~it~~ the governing body will meet to hear and determine the sufficiency of any written protests against ~~such~~ the proposed annexation ~~to be published~~ in the official newspaper once each week for two consecutive weeks. The governing body of the ~~municipality~~ city shall ~~cause~~ mail a notice ~~to be~~

~~mailed~~ 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 ~~such~~ 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 ~~thereof~~ of the property. The governing body of the ~~municipality~~ city, at its next meeting after the expiration of the time for filing ~~such~~ the protests, shall hear and determine the sufficiency ~~thereof~~ of the protests.

3. 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 ~~must be included within and shall become~~ becomes a part of the city; ~~and~~ When a copy of the resolution ~~with and~~ an accurate map of the annexed area, certified by the executive officer of the ~~municipality~~ city, ~~must be are~~ are filed and recorded with the county register of deeds, ~~whereupon the~~ annexation shall become becomes effective. Annexation is effective for the purpose of general taxation on and after the first day of ~~the next~~ February next ensuing; provided, however, However, the ~~municipal corporation~~ city shall continue to classify as agricultural lands for tax purposes all lands in the annexed area which were classified as agricultural lands immediately ~~prior to such~~ before the annexation proceedings until ~~such~~ those lands are put to another use.

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 ~~seek annexation by petition to the annexation review commission~~ either stop its pursuit of the annexation or submit the matter to a committee for mediation as ~~hereinafter~~ provided in section 40-51.2-07.1.

SECTION 6. Section 40-51.2-07.1 of the North Dakota Century Code is created and enacted as follows:

40-51.2-07.1. Mediation. The mediation committee must be comprised of a person appointed by the governor, representatives of the petitioners under section 40-51.2-03 or the protesters under section 40-51.2-07, the involved cities, counties, and townships, and any other parties having an interest in the proposed annexation. The governor's appointee shall arrange and preside over the meeting and act as mediator at the meeting. The meeting may be continued until a resolution agreeable to all parties is reached or the mediator determines that continued mediation is no longer worthwhile.

SECTION 7. AMENDMENT. Section 40-51.2-08 of the North Dakota Century Code is amended and reenacted as follows:

40-51.2-08. Annexation by petition of municipal corporation Petition to office of administrating hearings. ~~The~~ If the governing body of any ~~municipal corporation~~ a city involved in the dispute is not satisfied with the result of the mediation, the governing body may petition the ~~attorney general for annexation of any territory contiguous or adjacent to it~~ director of the office of administrative hearings to hear the matter. ~~The~~ If the annexation was initiated under section 40-51.2-07, the petition

~~shall set forth~~ must include an accurate map of the area sought to be annexed, ~~its~~ a description of the area, and the reasons for ~~its~~ the annexation.

SECTION 8. AMENDMENT. Section 40-51.2-09 of the North Dakota Century Code is amended and reenacted as follows:

40-51.2-09. ~~Annexation review commission~~ Administrative law judge to be constituted appointed - Hearing set. Upon receipt of ~~such~~ a petition, the ~~attorney general~~ director of the office of administrative hearings shall ~~issue an order to constitute an annexation review commission~~ appoint an administrative law judge to hear ~~such~~ the petition and he. If the annexation was initiated under section 40-51.2-07, the administrative law judge shall determine whether the annexing city has substantially complied with all of the procedural requirements in the annexation process. If substantial compliance has been met, or if the annexation was initiated under section 40-51.2-03, the administrative law judge shall designate a time and place at which the commission shall meet to consider the petition will be heard. The time of ~~such~~ the hearing shall be may not be less than thirty days after receipt of ~~such~~ the petition.

SECTION 9. AMENDMENT. Section 40-51.2-11 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

40-51.2-11. Notice required. At the time ~~he~~ the administrative law judge sets the time and place of hearing, the ~~chairman of such commission~~ administrative law judge shall direct the governing body of the annexing ~~municipality~~ city to ~~cause~~:

1. Publish a notice of such the hearing and a copy of its the petition to be published, 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 such municipal corporation, to mail the city;
2. Mail a notice of the hearing and a copy of its 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 to serve;
3. Serve a copy of such the notice and petition upon the chairman of the governing body of the county and township, if organized, wherein 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.

~~Such~~ The hearing must be held not less than thirty days after the first publication of ~~such~~ the notice. Proof of publication and service of the notice and petition as required herein must be filed with the ~~chairman of such commission~~ prior to administrative law judge before the time of ~~such~~ the hearing.

SECTION 10. AMENDMENT. Section 40-51.2-12 of the North Dakota Century Code is amended and reenacted as follows:

40-51.2-12. ~~Annexation review commission~~ Administrative law judge - Hearing. At the time of the hearing the ~~commission~~ administrative law judge shall hear all evidence with respect to ~~such~~ the annexation and ~~it~~ shall consider all studies, surveys, maps, data, reports, and other material prepared by any state or local

governmental subdivision; or planning or zoning commission ~~in the performance of their functions~~. At the hearing, the governor's appointee who mediated the meetings under section 40-51.2-07.1 shall provide information to the administrative law judge on the proposed annexation and any proposed resolutions or recommendations made by a majority of the representatives of the interested parties. Any resident of or person owning property or having any interest in the area proposed to be annexed and any elector of the annexing municipality city, or his representatives a representative of any such person, may appear at ~~such the~~ hearing and present evidence upon any matter to be determined by the ~~commission~~ administrative law judge. All proceedings at the hearing ~~and any continuances thereof shall~~ must be recorded but the same need not be transcribed unless proceedings for judicial review are initiated as provided in section 40-51.2-15.

SECTION 11. AMENDMENT. Section 40-51.2-13 of the North Dakota Century Code is amended and reenacted as follows:

40-51.2-13. Decision. ~~Upon the completion of the hearing~~

1. ~~In arriving at a decision, the commission~~ administrative law judge shall determine if the annexation should be granted after considering and finding that from the evidence one or more of consider the following factors are present with respect to the proposed annexation which will constitute a more harmonious and compatible metropolitan community:
 4. ~~a.~~ a. The present uses and planned future uses or development of the area sought to be annexed-;
 2. ~~b.~~ b. Whether ~~a community of interest exists between~~ the area sought to be annexed and is a part of the community of the annexing municipality city;
 3. ~~c.~~ c. The educational, recreational, civic, social, religious, industrial, commercial, or ~~municipal city~~ facilities and services made available by or in the annexing municipality city to any resident, business, industry, or employee of ~~such the~~ business or industry located in the area sought to be annexed-;
 4. ~~d.~~ d. Whether any governmental services or facilities of the annexing municipality city are or can be made available to the area sought to be annexed-;
 5. ~~e.~~ e. The economic, physical, and social relationship of the inhabitants, businesses, or industries of the area sought to be annexed to the annexing ~~municipal corporation city~~, and to the school districts and other political subdivisions affected ~~thereby;~~
 - f. The economic impact of the proposed annexation on the property owners in the area of the proposed annexation, and the economic impact on the annexing city of a decision to deny the annexation;
 - g. Whether the area proposed to be annexed is in the extraterritorial zoning or subdivision regulation authority of another city; and
 - h. Any other factor determined to be relevant by the administrative law judge.

2. a. Based upon those factors, the administrative law judge may order the annexation if the administrative law judge finds that:
- (1) The area proposed to be annexed is now, or is about to become, urban in character;
 - (2) City government in the area proposed to be annexed is required to protect the public health, safety, and welfare; or
 - (3) The annexation would be in the best interest of the area proposed to be annexed.
- b. The administrative law judge may deny the annexation if it appears that annexation of all or a part of the property to a different city would better serve the interests of the residents of the property.
3. If a majority of the ~~commission~~ administrative law judge is satisfied that the annexation should be granted, ~~it~~ the administrative law judge shall determine the terms and conditions upon which of the annexation is to be had and shall enter an order granting the petition. In all cases, the ~~commission~~ administrative law judge shall set forth in writing its a decision, including findings of fact, its conclusions based thereon of law, and its decision, and an order. The decision must include the factors upon which the decision is based. The administrative law judge shall direct the governing body of the annexing city to mail a copy thereof of the decision to all parties to the annexation proceedings.
4. The An order granting the petition shall set forth must include in detail all such the terms and conditions upon which the petition is granted and the effective date thereof of the petition. Such The annexing city shall file and record the order together with and an accurate map of the annexed area, certified by the executive officer of the municipality city, shall be filed and recorded in the office of the register of deeds of the county wherein in which the annexed territory is situated.

SECTION 12. AMENDMENT. Section 40-51.2-14 of the North Dakota Century Code is amended and reenacted as follows:

40-51.2-14. Powers of the ~~commission~~ administrative law judge - Decision - Terms. The ~~commission~~ in making its decision shall balance the equities presented by the evidence and administrative law judge shall enter an order setting forth what ~~it~~ the administrative law judge deems to be fair and reasonable terms and conditions and shall direct the annexation in conformity therewith with those terms and conditions. ~~It shall have power~~ The administrative law judge may:

1. ~~To approve~~ Approve or disapprove, with or without amendment, wholly, partially, or conditionally the petition for annexation.
2. ~~To determine~~ Determine the metes and bounds of the territory to be annexed and may include the same area or a smaller area than that described in the petition.
3. ~~To require~~ Require payment by the ~~municipal corporation~~ city of a sum determined by the ~~commission~~ administrative law judge payable to compensate for the value of public improvements acquired by the annexation proceedings and to require the assumption by the ~~municipal~~

~~corporation~~ city of a pro rata share of any existing bonded indebtedness of any township from which territory is annexed.

4. Require payment by the city of a sum determined by the administrative law judge payable to compensate a water district for losses resulting from the annexation in accordance with section 61-35-26.

SECTION 13. AMENDMENT. Section 40-51.2-15 of the North Dakota Century Code is amended and reenacted as follows:

40-51.2-15. Review of determination of ~~commission~~ administrative law judge by certiorari. Within thirty days after receipt of the ~~commission's~~ administrative law judge's order, any interested party dissatisfied with the decision ~~made by the annexation review commission~~ may ~~make an application~~ apply to the district court for a writ of certiorari. The review upon ~~such~~ the writ ~~shall~~ may extend only to the determination of whether ~~such commission~~ the administrative law judge has ~~pursued its authority~~ acted regularly and has not exceeded ~~its~~ the administrative law judge's jurisdiction or abused ~~its~~ the administrative law judge's discretion under the provisions of this chapter.

SECTION 14. AMENDMENT. Section 40-51.2-16 of the North Dakota Century Code is amended and reenacted as follows:

40-51.2-16. Effective date of annexation by ~~annexation review commission~~ administrative law judge - Classification of annexed agricultural lands for tax purposes. Territory annexed to a ~~municipality~~ under the provisions of this chapter, ~~relating city pursuant to petition to annexation review commission~~ the director of the office of administrative hearings, ~~shall be is~~ annexed as of the date of the order of the ~~commission~~ administrative law judge, except for tax purposes, and a copy of the resolution with an accurate map of the annexed area, certified by the executive officer of the ~~municipality~~ city, ~~shall~~ must be filed and recorded with the county register of deeds. Annexation ~~shall be is~~ effective for the purpose of general taxation on and after the first day of the next February ~~next ensuing; provided, however, However,~~ the ~~municipal corporation~~ city shall continue to classify as agricultural lands for tax purposes all lands in the annexed area which were classified as agricultural lands immediately ~~prior to such~~ before the annexation proceedings until ~~such~~ those lands are put to another use.

SECTION 15. AMENDMENT. Section 40-51.2-17 of the North Dakota Century Code is amended and reenacted as follows:

40-51.2-17. Cost of annexation. The costs of the annexation proceedings ~~shall~~, and the costs for services rendered by an administrative law judge, must be paid to the office of administrative hearings by the ~~municipal corporation~~ instituting the proceeding and ~~shall be~~ annexing city. The costs of the annexation proceedings are the same as those allowed in any civil action.

SECTION 16. REPEAL. Section 40-51.2-10 of the North Dakota Century Code is repealed.

Approved April 2, 1997

Filed April 3, 1997