

To: Advisory Commission on Intergovernmental Relations
 From: North Dakota League of Cities
 Date: October 3, 2007
 Re: City Zoning and Planning – Protecting Property Owners

40-47-01. Cities may zone - Application of regulations. For the purpose of promoting health, safety, morals, or the general welfare of the community, the governing body of any city may, subject to the provisions of chapter 54-21.3, regulate and restrict the height, number of stories, and the size of buildings and other structures, the percentage of lot that may be occupied, the size of yards, courts, and other open spaces, the density of population, and the location and use of buildings, structures, and land for trade, industry, residence, or other purposes. Such regulations may provide that a board of adjustment may determine and vary the application of the regulations in harmony with their general purpose and intent and in accordance with general or specific rules therein contained. The governing body of a city may establish institutional controls that address environmental concerns with the state department of health as provided in section 23-20.3-03.1.

40-47-04. Determining and enforcing regulations - Public hearing and notice thereof - Publication of regulations, restrictions, and boundaries.

1. The governing body of a city which uses zoning regulations shall provide for the manner in which the regulations and restrictions must be established, enforced, or supplemented, and for the manner in which the boundaries of the districts must be established and from time to time changed. A copy of each proposed regulation, restriction, or boundary must be filed with the city auditor. No regulation, restriction, or boundary may become effective until after a public hearing at which parties in interest and citizens shall have an opportunity to be heard. Notice of the hearing must be published once a week for two successive weeks before the time set for the hearing in the official newspaper of the city. The notice must contain the following items:

- a. The time and place of the hearing.
- b. A description of any property involved in any zoning change, by street address if streets have been platted or designated in the area affected.
- c. A description of the nature, scope, and purpose of the proposed regulation, restriction, or boundary.
- d. A statement of the times at which it will be available to the public for inspection and copying at the office of the city auditor.

2. Upon establishment of any regulation, restriction, or boundary hereunder, the governing body of a city shall file a certified copy thereof with the city auditor and shall cause notice of the same to be published in the official newspaper of the city. The notice must describe the nature, scope, and purpose of the regulation, restriction, or boundary and must state the times at which it will be available to the public for inspection and copying at the office of the city auditor.

3. The governing body of a city, a city zoning commission, and a board of adjustment shall state the grounds upon which any request for a zoning amendment or variance is approved or disapproved, and written findings upon which the decision is based must be included within the records of the governing body, commission, or board.

40-47-05. Amendments to or repeals of zoning regulations - Protest - Required vote for passage. Regulations, restrictions, and boundaries may be amended, supplemented, changed, modified, or repealed from time to time. If a protest against a change, supplement, modification, amendment, or repeal is signed by the owners of twenty percent or more:

1. Of the area of the lots included in such proposed change; or
2. Of the area adjacent, extending one hundred fifty feet [45.72 meters] from the area to be changed, excluding the width of streets,

the amendment shall not become effective except by the favorable vote of three-fourths of all the members of the governing body of the city. The provisions of section 40-47-04 relating to public hearings, official notice, and publication of regulations, restrictions, and boundaries shall apply equally to all changes or amendments provided in this section; provided, that protests in writing must be filed with the city auditor prior to the time set for the hearing.

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 commission shall make a preliminary report and hold public hearings thereon before submitting its final report. The governing body shall 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.

40-48-02. Official master plan may be established - Filing - Effect - Purpose. Any municipality, by an ordinance of its governing body, may establish an official master plan of the municipality. Such ordinance shall make it the duty of some appropriate official or employee of the municipality to file for record immediately, with the recorder of the county in which the area covered by the plan is situated, a certificate showing that the municipality has established an official master plan. Such plan shall be final and conclusive with respect to the location and width of streets, ways, plazas, open spaces, and public easements, and the location of parks and playgrounds, and the establishment of public rights in lands shown thereon. The official master plan is declared to be established to conserve and promote the public health, safety, and general welfare of the municipality.

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. Those 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 ex officio members of the commission.

40-48-10. Hearing on plan before adoption by commission - Resolution to adopt - Action recorded on plan and maps - Governing body to receive copy of plan.

Before adopting the master plan or any part of it or any substantial amendment thereof, the planning commission shall hold at least one public hearing thereon. Notice of the time of such hearing shall be given by one publication in the official municipal newspaper. The adoption of the plan, or of a part thereof or amendment thereto, shall be by a resolution of the commission carried by the affirmative votes of not less than two-thirds of the members thereof. The resolution shall refer expressly to the maps and descriptive matter intended by the commission to form the whole or part of the plan or amendment. The action taken by the commission shall be recorded on the map, plan, and descriptive matter by the identifying signature of the secretary of the commission. An attested copy of the master plan shall be certified to the governing body of the municipality.

40-48-11. Hearing on plan by governing body - Notice - Changes in plan - Notice to planning commission - Disapproval of changes. Upon receipt of an attested copy of the master plan or of any part thereof after the adoption thereof by the planning commission, the governing body shall hold a public hearing thereon. At least ten days' notice of such hearing shall be published in the official municipal newspaper. No change or addition to the master plan or any part of it as adopted by the planning commission shall be made by the governing body until the proposed change or addition shall have been referred to the planning commission for report thereon and an attested copy of the commission's report is filed with the governing body. The failure of the planning commission to report within thirty days after the date of the request for the report by the governing body shall be deemed to be an approval by the commission of the additions or changes. If the additions or changes are disapproved by the commission, a two-thirds vote of the entire governing body shall be necessary to pass any ordinance overruling such disapproval.

40-48-16. Governing body may add to or change master plan - Notice. Whenever the governing body of the municipality may deem it for the public interest, it may change or add to the official master plan by laying out new streets, improvements, or conveniences mentioned in this chapter or by widening, enlarging, closing, or abandoning existing streets, improvements, or conveniences. At least ten days' notice of a public hearing on any proposed action with reference to such change in the official master plan shall be published in the official newspaper of the municipality. Before any such addition or change is made, the matter shall be referred to the planning commission for report thereon as provided in section 40-48-11. Such additions and changes, when adopted by an ordinance of the governing body, shall become a part of the official master plan of the municipality and shall be deemed to be final and conclusive with respect to all matters shown thereon. The layout, widening, enlarging, closing, or abandoning of streets, plazas, open spaces, and parks or playgrounds by the municipality under provisions of the laws of this state other than those contained in this chapter shall be deemed to be a change or addition to the official master plan and shall be subject to all the provisions of this chapter.