

Sixty-first
Legislative Assembly
of North Dakota

HOUSE BILL NO.

Introduced by

Representative Wrangham

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 of the North Dakota Century Code is
9 amended and reenacted as follows:

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

16 **SECTION 2. AMENDMENT.** Subsections 1 and 2 of section 23-25-11 of the North
17 Dakota Century Code are amended and reenacted as follows:

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

1 after the agricultural operation was established, the measurement for compliance
2 with the seven odor concentration units standard must be taken within one hundred
3 feet [30.48 meters] of the subsequently established residence, church, school,
4 business, or public building making the complaint rather than at the property
5 boundary of the agricultural operation. The measurement may not be taken within
6 five hundred feet [.15 kilometer] of the property boundary of the agricultural
7 operation.

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

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

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 of the North Dakota Century Code is amended and reenacted as follows:

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

1 enforced therein. ~~In addition to the members appointed by the city, the zoning commission~~
2 ~~shall include at least one person residing outside of the corporate limits of a city having a~~
3 ~~population of less than five thousand, two persons residing outside the corporate limits of a city~~
4 ~~having a population of five thousand or more, but less than twenty five thousand, or three~~
5 ~~persons residing outside the corporate limits of a city having a population of twenty five~~
6 ~~thousand or more if zoning authority is exercised pursuant to section 40-47-01.1. Such persons~~
7 ~~shall be appointed by the board or boards of county commissioners of the county or counties~~
8 ~~within which such zoning authority is to be exercised and shall reside within the territorial limits~~
9 ~~of the zoning regulation authority exercised by the city, if such persons are available and will~~
10 ~~serve on the zoning commission. Of the members of the commission appointed by a board or~~
11 ~~boards of county commissioners pursuant to this section, the first member appointed shall hold~~
12 ~~office for five years, the second member appointed shall hold office for three years, and the~~
13 ~~third member appointed shall hold office for one year. Thereafter, the members shall be~~
14 ~~appointed for terms of five years. Such~~ The commission shall make a preliminary report and
15 hold public hearings thereon before submitting its final report. The governing body ~~shall~~ may
16 not hold its public hearings or take action until it has received the final report of the zoning
17 commission. If a city has a planning commission, it may be appointed as the zoning
18 commission.

19 **SECTION 4. AMENDMENT.** Section 40-48-03 of the North Dakota Century Code is
20 amended and reenacted as follows:

21 **40-48-03. (Effective through July 31, 2009) Planning commission - Creation -**
22 **Members - Ex officio members.** The governing body of any city may create, by ordinance, a
23 planning commission to consist of not more than ten members to be appointed by the executive
24 officer of the city with the approval of its governing body. ~~If the city exercises extraterritorial~~
25 ~~zoning authority under section 40-47-01.1, the planning commission must include at least one~~
26 ~~individual residing outside the corporate limits of the city if the city has a population of fewer~~
27 ~~than five thousand, two individuals residing outside the corporate limits if the city has a~~
28 ~~population of five thousand or more, but fewer than twenty five thousand, or three individuals~~
29 ~~residing outside the corporate limits of the city if the city has a population of twenty five~~
30 ~~thousand or more. Those individuals must be appointed by the board or boards of county~~
31 ~~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 of the North Dakota Century Code is amended and reenacted as follows:

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

1 planning commission over plats ~~shall be~~ is exclusive within the territory under its jurisdiction;
2 ~~except as otherwise provided in section 40-48-18.~~

3 **SECTION 6. AMENDMENT.** Section 40-51.2-05 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **40-51.2-05. Notice - Petition of owners and electors ~~–Mediation.~~**

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

18 2. ~~If the land area petitioned to be annexed to the city lies within the extraterritorial~~
19 ~~zoning or subdivision regulation authority of another city and written consent to~~
20 ~~annex the land area is not received from the governing body of the other city, the~~
21 ~~annexing city may either stop its pursuit of the annexation or submit the matter to a~~
22 ~~committee for mediation as provided in section 40-51.2-07.1. If mediation does not~~
23 ~~resolve the matter, the office of administrative hearings may be petitioned to hear~~
24 ~~the matter in accordance with sections 40-51.2-08, 40-51.2-09, 40-51.2-11,~~
25 ~~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.~~

26 **SECTION 7. AMENDMENT.** Section 40-51.2-07 of North Dakota Century Code is
27 amended and reenacted as follows:

28 **40-51.2-07. Annexation by resolution of city.**

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

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

~~2-~~ b. The governing body of the city shall publish the resolution and a notice of the time and place the governing body will meet to hear and determine the sufficiency of any written protests against the proposed annexation in the official newspaper once each week for two consecutive weeks. The governing body of the city shall 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 of the North Dakota Century Code is
amended and reenacted as follows:

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;
 - ~~2-~~ 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 of the North Dakota Century Code is
amended and reenacted as follows:

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;

- 1 c. The educational, recreational, civic, social, religious, industrial, commercial, or
2 city facilities and services made available by or in the annexing city to any
3 resident, business, industry, or employee of the business or industry located
4 in the area sought to be annexed;
- 5 d. Whether any governmental services or facilities of the annexing city are or
6 can be made available to the area sought to be annexed;
- 7 e. The economic, physical, and social relationship of the inhabitants,
8 businesses, or industries of the area sought to be annexed to the annexing
9 city, and to the school districts and other political subdivisions affected;
- 10 f. The economic impact of the proposed annexation on the property owners in
11 the area of the proposed annexation, and the economic impact on the
12 annexing city of a decision to deny the annexation; and
- 13 g. ~~Whether the area proposed to be annexed is in the extraterritorial zoning or~~
14 ~~subdivision regulation authority of another city; and~~
- 15 h. Any other factor determined to be relevant by the administrative law judge.
- 16 2. ~~a.~~ Based upon those factors, the administrative law judge may order the
17 annexation if the administrative law judge finds that:
 - 18 ~~(1)~~ a. The area proposed to be annexed is now, or is about to become, urban in
19 character;
 - 20 ~~(2)~~ b. City government in the area proposed to be annexed is required to protect the
21 public health, safety, and welfare; or
 - 22 ~~(3)~~ c. The annexation would be in the best interest of the area proposed to be
23 annexed.
 - 24 ~~b.~~ ~~The administrative law judge may deny the annexation if it appears that~~
25 ~~annexation of all or a part of the property to a different city would better serve~~
26 ~~the interests of the residents of the property.~~
- 27 3. If the administrative law judge is satisfied that the annexation should be granted,
28 the administrative law judge shall determine the terms and conditions of the
29 annexation and enter an order granting the petition. In all cases, the administrative
30 law judge shall set forth in writing a decision, including findings of fact, conclusions
31 of law, and an order. The decision must include the factors upon which the

1 decision is based. The administrative law judge shall direct the governing body of
2 the annexing city to mail a copy of the decision to all parties to the annexation
3 proceedings.

4 4. An order granting the petition must include in detail all the terms and conditions
5 upon which the petition is granted and the effective date of the petition. The
6 annexing city shall file and record the order and an accurate map of the annexed
7 area, certified by the executive officer of the city, in the office of the recorder of the
8 county in which the annexed territory is situated.

9 **SECTION 10. REPEAL.** Sections 11-35-02, 40-47-01.1, 40-47-01.2, 40-48-18,
10 40-51.2-02.1, and 40-51.2-02.2 of the North Dakota Century Code are repealed.

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