CHAPTER 40-51.2
ANNEXATION AND EXCLUSION OF TERRITORY

40-51.2-01. Short title.

This chapter may be cited as the Municipal Annexation Act of 1969.

40-51.2-02. Declaration of purpose.

It is hereby declared that the policies and procedures contained in this chapter are necessary and desirable for the orderly growth of urban communities in the state of North Dakota. It is the purpose of this chapter:

1. To encourage natural and well-ordered development of municipalities of the state;
2. To extend municipal government to areas which form a part of the whole community;
3. To simplify government structure in urban areas; and
4. To recognize the inter-relationship and interdependence between a municipal corporation and areas contiguous or adjacent thereto,

and to these ends this chapter shall be liberally construed. For the purposes of this chapter, contiguity will not be affected by the existence of a platted street or alley, a public or private right of way, or a public or private transportation right of way or area, or a lake, reservoir, stream, or other natural or artificial waterway between the annexing municipality and the land to be annexed.

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.

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.

40-51.2-03. Annexation by petition of owners and electors.

Upon a written petition signed by not less than three-fourths of the qualified electors or by the owners of not less than three-fourths in assessed value of the property in any territory contiguous or adjacent to any incorporated municipality and not embraced within the limits thereof, the governing body of the municipality, by ordinance, may annex such territory to the municipality.

40-51.2-04. Exclusion by petition of owners and electors.

Upon a petition signed by not less than three-fourths of the qualified electors and by the owners of not less than three-fourths in assessed value of the property in any territory within the limits of an incorporated municipality and contiguous or adjacent to such limits, the governing body of the municipality, by ordinance, may in its discretion, disconnect and exclude such territory from the municipality. This section, however, applies only to lands that have not been platted under either sections 40-50.1-01 through 40-50.1-17 or section 57-02-39, and where no municipal improvements have been made or constructed therein or adjacent thereto. Further, in the event any property for which exclusion is petitioned has been within the limits of an incorporated municipality for more than ten years prior thereto and, as of the time of filing the

petition, is not platted and has no municipal improvements thereon, the governing body of the municipality may disconnect and exclude such territory by ordinance from the municipality.

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 the petition by one publication in the official newspaper of the city as provided by section 40-01-09 and the governing body has mailed at least seven days before the presentation, by certified mail, a notice of the time and place of consideration of the petition to the owner of each parcel of real property within the area described in the petition at the person's last-known mailing address. 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. At the same time, the governing body of the city also shall mail, by certified mail, the notice of the time and place of consideration of the petition to the governing body of each city, county, or township directly affected by the land area petitioned to be annexed.
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, 40-51.2-11, 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.

40-51.2-06. Petition of owners and electors - Annexation or exclusion - Classification of annexed agricultural lands for tax purposes.

If the governing body annexes the area, it shall do so by ordinance. When a copy of the ordinance 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. An 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. If the governing body determines to exclude the area petitioned for, it may do so by ordinance adopted and recorded as in the case of annexation.

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

1. The governing body of any city may adopt a resolution to annex contiguous or adjacent territory as follows:
   a. The governing body of the city shall adopt a resolution describing the property to be annexed.
   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 at least seven days before the meeting, by certified 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. The governing body of the city also shall mail at least seven days before the meeting, by certified mail, the notice of the time and place of the hearing to the

governing body of each city, county, or township directly affected by the land area proposed to be annexed. 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.

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.

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.

40-51.2-08. Petition to office of administrative hearings.

If the governing body of a city involved in the dispute is not satisfied with the result of the mediation, the governing body may petition the director of the office of administrative hearings to hear the matter. If the annexation was initiated under section 40-51.2-07, the petition must include an accurate map of the area sought to be annexed, a description of the area, and the reasons for the annexation.

40-51.2-09. Administrative law judge to be appointed - Hearing set.

Upon receipt of a petition, the director of the office of administrative hearings shall appoint an administrative law judge to hear the petition. 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 petition will be heard. The time of the hearing may not be less than thirty days after receipt of the petition.

40-51.2-10. Annexation review commission - Composition.

Repealed by S.L. 1997, ch. 357, § 16.

40-51.2-11. Notice required.

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:

1. 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. 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;
3. 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.

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.

40-51.2-12. Administrative law judge - Hearing.

At the time of the hearing, the administrative law judge shall hear all evidence with respect to the annexation and shall consider all studies, surveys, maps, data, reports, and other material prepared by any state or local governmental subdivision or planning or zoning commission. 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 city, or a representative of any such person, may appear at the hearing and present evidence upon any matter to be determined by the administrative law judge. All proceedings at the hearing must be recorded but need not be transcribed unless proceedings for judicial review are initiated as provided in section 40-51.2-15.

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;
   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 the administrative law judge is satisfied that the annexation should be granted, the administrative law judge shall determine the terms and conditions of the annexation and enter an order granting the petition. In all cases, the administrative law judge shall set forth in writing a decision, including findings of fact, conclusions of law, 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 of the decision to all parties to the annexation proceedings.
4. An order granting the petition must include in detail all the terms and conditions upon which the petition is granted and the effective date of the petition. The annexing city shall file and record the order and an accurate map of the annexed area, certified by the executive officer of the city, in the office of the recorder of the county in which the annexed territory is situated.

40-51.2-14. Powers of the administrative law judge - Decision - Terms.

The administrative law judge shall enter an order setting forth what the administrative law judge deems to be fair and reasonable terms and conditions and shall direct the annexation in conformity with those terms and conditions. The administrative law judge may:

1. Approve or disapprove, with or without amendment, wholly, partially, or conditionally the petition for annexation.
2. 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. Require payment by the city of a sum determined by the administrative law judge payable to compensate for the value of public improvements acquired by the annexation proceedings and to require the assumption by the 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.

40-51.2-15. Review of determination of administrative law judge by certiorari.

Within thirty days after receipt of the administrative law judge's order, any interested party dissatisfied with the decision may apply to the district court for a writ of certiorari. The review upon the writ may extend only to the determination of whether the administrative law judge has acted regularly and has not exceeded the administrative law judge's jurisdiction or abused the administrative law judge's discretion under this chapter.

40-51.2-16. Effective date of annexation by administrative law judge - Classification of annexed agricultural lands for tax purposes.

Territory annexed to a city pursuant to petition to the director of the office of administrative hearings is annexed as of the date of the order of the 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 city, must be filed and recorded with the county recorder. 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.

40-51.2-17. Cost of annexation.

The costs of the annexation proceedings, and the costs for services rendered by an administrative law judge, must be paid to the office of administrative hearings by the annexing city. The costs of the annexation proceedings are the same as those allowed in any civil action.

40-51.2-18. Relation of this chapter to other laws.

The powers conferred and the limitations imposed by this chapter shall be in addition and supplemental to, and not in substitution for, powers conferred by any other law.

40-51.2-19. Savings clause.

Repealed by S.L. 1983, ch. 82, § 154.