

HOUSE BILL NO. 1297

Introduced by

Representatives M. Nelson, Becker, Ertelt, Magrum, D. Ruby, Simons

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, subsections 1 and 2 of section 23.1-06-15, sections 40-47-06, 40-48-03, 40-48-26,
3 and 40-51.2-05, subsection 2 of section 40-51.2-07, section 40-51.2-11, and subsection 1 of
4 section 40-51.2-13 of the North Dakota Century Code, relating to extraterritorial zoning and
5 subdivision authority; to repeal sections 11-35-02, 40-47-01.1, 40-48-18, 40-51.2-02.1,
6 40-51.2-02.2, and 61-35-26.3 of the North Dakota Century Code, relating to zoning and
7 subdivision authority; and to provide a contingent effective date.

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

9 **SECTION 1. AMENDMENT.** Section 11-33.2-03 of the North Dakota Century Code is
10 amended and reenacted as follows:

11 **11-33.2-03. Scope of county authority.**

12 County regulation of subdivisions pursuant to ~~the provisions of this chapter shall in no~~
13 ~~way do not~~ affect subdivisions within the corporate limits, ~~or within the area of application of~~
14 ~~extraterritorial zoning jurisdiction adopted pursuant to section 40-47-01.1,~~ of any city.

15 ~~Additionally, no~~ A resolution, regulation, or restriction adopted pursuant to ~~the provisions of this~~
16 ~~chapter shall~~ does not prohibit or prevent the use of land or buildings for farming or any of the
17 normal incidents of farming.

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

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

1 than one year, as provided by section 42-04-02, and the business or residence making
2 the odor complaint was built or established after the agricultural operation was
3 established, the measurement for compliance with the seven odor concentration units
4 standard must be taken within one hundred feet [30.48 meters] of the subsequently
5 established residence, church, school, business, or public building making the
6 complaint rather than at the property boundary of the agricultural operation. The
7 measurement may not be taken within five hundred feet [.15 kilometer] of the property
8 boundary of the agricultural operation.

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

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

1 campground within the setback distance which was built or established before
2 the animal feeding operation was established, unless the animal feeding
3 operation has obtained an odor easement from the pre-existing facility.

4 **SECTION 3. AMENDMENT.** Subsections 1 and 2 of section 23.1-06-15 of the North Dakota
5 Century Code are amended and reenacted as follows:

6 1. In areas located within a city ~~or the area over which a city has exercised extraterritorial~~
7 ~~zoning as defined in section 40-47-01.1~~, a person may not discharge into the ambient
8 air any objectionable odorous air contaminant that measures seven odor concentration
9 units or higher outside the property boundary where the discharge is occurring. If an
10 agricultural operation as defined by section 42-04-01 has been in operation for more
11 than one year, as provided by section 42-04-02, and the person making the odor
12 complaint was built or established after the agricultural operation was established, the
13 measurement for compliance with the seven odor concentration units standard must
14 be taken within one hundred feet [30.48 meters] of the subsequently established
15 residence, church, school, business, or public building making the complaint rather
16 than at the property boundary of the agricultural operation. The measurement may not
17 be taken within five hundred feet [.15 kilometer] of the property boundary of the
18 agricultural operation.

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

24 a. Within one hundred feet [30.48 meters] of any residence, church, school,
25 business, or public building, or within a campground or public park. An odor
26 measurement may not be taken at the residence of the owner or operator of the
27 source of the odor, or at any residence, church, school, business, or public
28 building, or within a campground or public park, that is built or established within
29 one-half mile [.80 kilometer] of the source of the odor after the source of the odor
30 has been built or established;

- 1 b. At any point located beyond one-half mile [.80 kilometer] from the source of the
2 odor, except for property owned by the owner or operator of the source of the
3 odor, or over which the owner or operator of the source of the odor has
4 purchased an odor easement; or
- 5 c. If a county or township has zoned or established a setback distance for an animal
6 feeding operation which is greater than one-half mile [.80 kilometer] under either
7 section 11-33-02.1 or 58-03-11.1, or if the setback distance under subsection 7 is
8 greater than one-half mile [.80 kilometer], measurements for compliance with the
9 seven odor concentration units standard must be taken at the setback distance
10 rather than one-half mile [.80 kilometer] from the facility under subdivision b,
11 except for any residence, church, school, business, public building, park, or
12 campground within the setback distance which was built or established before
13 the animal feeding operation was established, unless the animal feeding
14 operation has obtained an odor easement from the pre-existing facility.

15 **SECTION 4. AMENDMENT.** Section 40-47-06 of the North Dakota Century Code is
16 amended and reenacted as follows:

17 **40-47-06. Zoning commission – Appointment - Duties - Preliminary and final report.**

18 The governing body of a city desiring to avail itself of the powers conferred by this chapter
19 shall appoint a commission, to be known as the zoning commission, to recommend the
20 boundaries of the various original districts and appropriate regulations to be enforced therein. ~~In~~
21 ~~addition to the members appointed by the city, the zoning commission shall include at least one~~
22 ~~person residing outside of the corporate limits of a city having a population of less than five~~
23 ~~thousand, two persons residing outside the corporate limits of a city having a population of five~~
24 ~~thousand or more, but less than twenty five thousand, or three persons residing outside the~~
25 ~~corporate limits of a city having a population of twenty five thousand or more if zoning authority~~
26 ~~is exercised pursuant to section 40-47-01.1. Such persons shall be appointed by the board or~~
27 ~~boards of county commissioners of the county or counties within which such zoning authority is~~
28 ~~to be exercised and shall reside within the territorial limits of the zoning regulation authority~~
29 ~~exercised by the city, if such persons are available and will serve on the zoning commission. Of~~
30 ~~the members of the commission appointed by a board or boards of county commissioners~~
31 ~~pursuant to this section, the first member appointed shall hold office for five years, the second~~

1 member appointed shall hold office for three years, and the third member appointed shall hold
2 office for one year. Thereafter, the members shall be appointed for terms of five years. ~~Such~~The
3 commission shall make a preliminary report and hold public hearings thereon ~~on the preliminary~~
4 report before submitting ~~it~~the final report. The governing body ~~shall~~may not hold its public
5 hearings or take action until it has received the final report of the zoning commission. If a city
6 has a planning commission, ~~it~~the planning commission may be appointed as the zoning
7 commission.

8 **SECTION 5. AMENDMENT.** Section 40-48-03 of the North Dakota Century Code is
9 amended and reenacted as follows:

10 **40-48-03. Planning commission - Creation –~~Members~~ - Ex officio members.**

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

28 **SECTION 6. AMENDMENT.** Section 40-48-26 of the North Dakota Century Code is
29 amended and reenacted as follows:

1 **40-48-26. Exclusive jurisdiction of planning commission –Exception.**

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

5 **SECTION 7. AMENDMENT.** Section 40-51.2-05 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **40-51.2-05. Notice - Petition of owners and electors –Mediation.**

8 4. The governing body may not take final action on a petition presented by owners and
9 qualified electors until the petitioners have given notice of presentation of the petition
10 by one publication in the official newspaper of the city as provided by section 40-01-09
11 and the governing body has mailed at least seven days before the presentation, by
12 certified mail, a notice of the time and place of consideration of the petition to the
13 owner of each parcel of real property within the area described in the petition at the
14 person's last-known mailing address. The notice is not required to be sent to any
15 owner of real property who signed a petition pursuant to section 40-51.2-03 or
16 40-51.2-04. At the same time, the governing body of the city ~~also~~ shall mail, by
17 certified mail, the notice of the time and place of consideration of the petition to the
18 governing body of each city, county, or township directly affected by the land area
19 petitioned to be annexed.

20 ~~2. If the land area petitioned to be annexed to the city lies within the extraterritorial~~
21 ~~zoning or subdivision regulation authority of another city and written consent to annex~~
22 ~~the land area is not received from the governing body of the other city, the annexing~~
23 ~~city may either stop its pursuit of the annexation or submit the matter to a committee~~
24 ~~for mediation as provided in section 40-51.2-07.1. If mediation does not resolve the~~
25 ~~matter, the office of administrative hearings may be petitioned to hear the matter in~~
26 ~~accordance with sections 40-51.2-08, 40-51.2-09, 40-51.2-11, 40-51.2-12, 40-51.2-13,~~
27 ~~40-51.2-14, 40-51.2-15, 40-51.2-16, and 40-51.2-17.~~

28 **SECTION 8. AMENDMENT.** Subsection 2 of section 40-51.2-07 of the North Dakota
29 Century Code is amended and reenacted as follows:

30 2. If the owners of one-fourth or more of the territory proposed to be annexed protest, ~~or~~
31 ~~if a city that has extraterritorial zoning or subdivision regulation authority over the area~~

1 ~~petitioned to be annexed protests,~~ the city may either stop its pursuit of the annexation
2 or submit the matter to a committee for mediation as provided in section 40-51.2-07.1.

3 **SECTION 9. AMENDMENT.** Section 40-51.2-11 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **40-51.2-11. Notice required.**

6 1. At the time the administrative law judge sets the time and place of hearing, the
7 administrative law judge shall direct the governing body of the annexing city to:

8 4. a. Publish a notice of the hearing and a copy of the petition, if the annexation was
9 initiated under section 40-51.2-07, at least once a week for two successive
10 weeks in the official newspaper of the city;

11 2. b. Mail a notice of the hearing and a copy of the petition, if the annexation was
12 initiated under section 40-51.2-07, to the owner of each parcel of real property in
13 the area to be annexed at the person's last-known mailing address; and

14 3. c. Serve a copy of the notice and petition upon the chairman of the governing body
15 of the county and township, if organized, in which the territory to be annexed lies;
16 and

17 4. ~~Serve a copy of the notice and petition upon the head of the governing body of any~~
18 ~~other city in whose extraterritorial zoning or subdivision regulation authority the land~~
19 ~~area petitioned to be annexed is located.~~

20 2. The hearing must be held ~~not less than~~ at least thirty days after the first publication of
21 the notice. Proof of publication and service of the notice and petition must be filed with
22 the administrative law judge before the time of the hearing.

23 **SECTION 10. AMENDMENT.** Subsection 1 of section 40-51.2-13 of the North Dakota
24 Century Code is amended and reenacted as follows:

25 1. In arriving at a decision, the administrative law judge shall consider the following
26 factors:

27 a. The present uses and planned future uses or development of the area sought to
28 be annexed;

29 b. Whether the area sought to be annexed is a part of the community of the
30 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 in
4 the area sought to be annexed;
- 5 d. Whether any governmental services or facilities of the annexing city are or can be
6 made available to the area sought to be annexed;
- 7 e. The economic, physical, and social relationship of the inhabitants, businesses, or
8 industries of the area sought to be annexed to the annexing city, and to the
9 school districts and other political subdivisions affected;
- 10 f. The economic impact of the proposed annexation on the property owners in the
11 area of the proposed annexation, and the economic impact on the annexing city
12 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 **SECTION 11. REPEAL.** Sections 11-35-02, 40-47-01.1, 40-48-18, 40-51.2-02.1,
17 40-51.2-02.2, and 61-35-26.3 of the North Dakota Century Code are repealed.

18 **SECTION 12. CONTINGENT EFFECTIVE DATE.** Section 3 of this Act becomes effective
19 upon the receipt by the legislative council of the certification by the chief of the environmental
20 health section of this state department of health attesting that all necessary federal approvals
21 have been obtained and all necessary federal and other agreements have been amended to
22 ensure the state will continue to meet the primacy requirements it currently satisfies after the
23 transfer of authority, powers, and duties from the state department of health to the department
24 of environmental quality.