

Fifty-fifth
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2384

Introduced by

Senators Fischer, DeMers, Nalewaja

Representatives Clark, Galvin, Skarphol

1 A BILL for an Act to amend and reenact sections 40-47-01.1 and 40-48-18 of the North Dakota
2 Century Code, relating to extraterritorial zoning and subdivision regulation authority of cities.

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

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

6 **40-47-01.1. ~~Territorial authority of~~ Extraterritorial zoning regulations - Mediation -**
7 **Determination by administrative law judge.** ~~Based upon the population of the~~

8 1. A city as determined by the last official regular or special federal census or, in case
9 of a city incorporated subsequent to such census, a census taken in accordance
10 with chapter 40-02, the governing body of a city may, by ordinance, extend the
11 application of a city's zoning regulations to any quarter quarter section of
12 unincorporated territory if a majority of the quarter quarter section is located within
13 the following distance of the corporate limits of the city:

14 ~~1. a. To each quarter quarter section of unincorporated territory the majority of~~
15 ~~which is located within one half~~ One ~~mile [.80 kilometer~~ 1.61 kilometers] ~~of its~~
16 ~~limits in any direction if it is a~~ the city having has a population of less than five
17 thousand.

18 ~~2. b. To each quarter quarter section of unincorporated territory the majority of~~
19 ~~which is located within one mile~~ Two miles ~~[4.64~~ 3.22 ~~kilometers]~~ of its limits
20 ~~in any direction if it is a~~ the city having has a population of five thousand or
21 more, but less than twenty-five thousand.

22 ~~3. c. To each quarter quarter section of unincorporated territory the majority of~~
23 ~~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 bisects 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 [0.80 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'

1 written notice has been given to the governing bodies of the cities involved in the
2 dispute. At the hearing, the governor's appointee who mediated the meetings
3 under subsection 2 shall provide information to the administrative law judge on the
4 dispute between the cities involved and any proposed resolutions or
5 recommendations made by a majority of the committee members. Any resident of,
6 or person owning property in, a city involved in the dispute or the unincorporated
7 territory that is the subject of the proposed subdivision regulation, a representative
8 of such a resident or property owner, and any representative of a city involved,
9 may appear at the hearing and present evidence on any matter to be determined
10 by the administrative law judge. A decision by the administrative law judge is
11 binding upon all the cities involved in the dispute and remains effective until the
12 governing bodies of the cities agree to a change in the subdivision regulation
13 authority of the cities. The governing body of a city may request a review of a
14 decision of an administrative law judge due to changed circumstances at any time
15 ten years after the decision has become final. An administrative law judge shall
16 consider the following factors in making a decision under this subsection:
17 a. The proportional extraterritorial subdivision regulation authority of the cities
18 involved in the dispute;
19 b. The proximity of the land in dispute to the corporate limits of each city
20 involved;
21 c. The proximity of the land in dispute to developed property in the cities
22 involved;
23 d. Whether any of the cities has exercised extraterritorial subdivision regulation
24 authority over the disputed land;
25 e. Whether natural boundaries such as rivers, lakes, highways, or other physical
26 characteristics affecting the land are present;
27 f. The growth pattern of the cities involved in the dispute; and
28 g. Any other factor determined to be relevant by the administrative law judge.