

**FIRST ENGROSSMENT**  
**with Conference Committee Amendments**  
**ENGROSSED HOUSE BILL NO. 1554**

Introduced by

Representatives Damschen, D. Johnson, Wrangham

Senator Klein

1 A BILL for an Act to amend and reenact section 40-47-01.1 of the North Dakota Century Code,  
2 relating to extraterritorial zoning jurisdiction of cities; to provide legislative intent; and to declare  
3 an emergency.

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

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

7 **~~40-47-01.1. (Effective through July 31, 2009) Extraterritorial zoning—Mediation—~~**  
8 **~~Determination by administrative law judge.~~**

- 9 ~~1. A city may, by ordinance, extend the application of a city's zoning regulations to~~  
10 ~~any quarter quarter section of unincorporated territory if a majority of the quarter~~  
11 ~~quarter section is located within the following distance of the corporate limits of the~~  
12 ~~city:~~
- 13 ~~a. One half mile [.80 kilometer] if the city has a population of fewer than five~~  
14 ~~thousand.~~
- 15 ~~b. One mile [1.61 kilometers] if the city has a population of five thousand or~~  
16 ~~more, but fewer than twenty five thousand.~~
- 17 ~~c. Two miles [3.22 kilometers] if the city has a population of twenty five~~  
18 ~~thousand or more.~~
- 19 ~~2. Subject to subsections 5 and 6, a city, by ordinance, may extend the application of~~  
20 ~~the city's zoning regulations to two times the distance allowed under~~  
21 ~~subdivisions a, b, and c of subsection 1 if the extension is approved by at least five~~  
22 ~~of six members of a committee established to review the proposed extension. The~~  
23 ~~committee must consist of three members appointed by the governing body of the~~  
24 ~~city and three members appointed, jointly, by the governing bodies of any political~~

subdivision that is exercising zoning authority within the territory to be  
extraterritorially zoned.

3. ~~If a quarter quarter section line divides 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.~~

4. ~~A city exercising its extraterritorial zoning authority shall hold a zoning transition  
meeting if the territory to be extraterritorially zoned is currently zoned. The city's  
zoning or planning commission shall provide at least fourteen days' notice of the  
meeting to the zoning board or boards of all political subdivisions losing their  
partial zoning authority. The purpose of the zoning transition meeting is to review  
existing zoning rules, regulations, and restrictions currently in place in the territory  
to be extraterritorially zoned and to plan for an orderly transition. The zoning  
transition meeting must take place before the city's adoption of an ordinance  
exercising extraterritorial zoning.~~

5. ~~If two or more cities have boundaries at a distance where there is an overlap of  
extraterritorial zoning authority under this section, 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.

6. ~~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 4 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.~~

7. ~~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.~~

8. ~~When a portion of the city is attached to the bulk of the city by a strip of land less than one hundred feet [30.48 meters] 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.~~

9. ~~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.~~

**~~(Effective after July 31, 2009) Extraterritorial zoning - Mediation - Determination~~  
by administrative law judge - Definition.**

1. a. A city may, by ordinance, extend the application of a city's zoning regulations to any quarter quarter section of unincorporated territory if a majority of the quarter quarter section is located within the following distance of the corporate limits of the city:

a. (1) One mile [1.61 kilometers] if the city has a population of ~~less~~ fewer than five thousand. A city that has exercised its authority under this subdivision has joint zoning and subdivision regulation jurisdiction from one-half mile [.80 kilometer] to one mile [1.61 kilometers] with the other political subdivision.

b. (2) Two miles [3.22 kilometers] if the city has a population of five thousand or more, but ~~less~~ fewer than twenty-five thousand. A city that has exercised its authority under this subdivision has joint zoning and subdivision regulation jurisdiction from one mile [1.61 kilometers] to two miles [3.22 kilometers] with the other political subdivision.

1 e. (3) Four miles [6.44 kilometers] if the city has a population of twenty-five  
2 thousand or more. A city that has exercised its authority under this  
3 subdivision has joint zoning and subdivision regulation jurisdiction from  
4 two miles [3.22 kilometers] to four miles [6.44 kilometers] with the other  
5 political subdivision.

6 b. Any section or portion of a section of unincorporated territory within the area  
7 of joint zoning and subdivision regulation jurisdiction in which a plat or site  
8 plan has been presented before May 1, 2009, remains subject to the zoning  
9 designations and the regulations in place on May 1, 2009, unless changed as  
10 allowed under this section.

11 c. The extraterritorial zoning jurisdiction and authority to receive applications  
12 and issue permits under this section may be changed by written agreement  
13 between the city and the other political subdivision.

14 2. Joint jurisdiction is jurisdiction in which the other political subdivision has  
15 jurisdiction to receive applications and issue permits and impose administrative  
16 fees for applications and permits. In addition, under this jurisdiction the other  
17 political subdivision may adopt, modify, and enforce any zoning designation or  
18 regulation and approve any subdivision plat or regulation. For a decision to be  
19 final, the other political subdivision shall give written notice to the city. The city  
20 may request negotiation as to any decision made by the other political subdivision  
21 under the other political subdivision's jurisdiction within thirty days of notice. If  
22 negotiation is not requested, the decision of the other political subdivision is final.  
23 If the governing body of the other political subdivision and the city do not come to  
24 an agreement as to the disputed zone or subdivision regulation within thirty days of  
25 request for negotiation, the dispute must be submitted to a committee for  
26 mediation. The committee must be comprised of one member appointed by the  
27 governor and two members of the governing body of the other political subdivision  
28 and two members of the governing body of the city. The governor's appointee  
29 shall arrange and preside over the meeting and act as mediator at the meeting. A  
30 meeting may be continued until the dispute has been resolved or until the mediator  
31 determines that continued mediation is no longer worthwhile. If the mediation

committee is unable to resolve the dispute to the satisfaction of the governing bodies, the dispute must be resolved by the board of county commissioners.

3. Notwithstanding subsection 2, in any section or portion of a section of unincorporated territory in which there would otherwise be joint jurisdiction and in which a plat or site plan has been presented before May 1, 2009, the city has jurisdiction to receive applications and issue permits and impose administrative fees for applications and permits relating to zoning and subdivision regulation. In addition, under this jurisdiction the city may adopt, modify, and enforce any zoning designation or regulation and approve any subdivision plat or regulation. For a decision of the city made after May 1, 2009, to be final, the city shall give written notice of the decision of the governing body of the political subdivision that would otherwise have jurisdiction. The governing body may request negotiation as to any decision made by the city under the city's jurisdiction within thirty days of notice. If negotiation is not requested, the decision of the city is final. If the city and governing body of the political subdivision that would otherwise have jurisdiction do not come to an agreement as to the disputed zoning or subdivision regulation within thirty days of the request for negotiation, the dispute must be submitted to a committee for mediation. The committee must be comprised of one member appointed by the governor and two members of the governing body of the other political subdivision and two members of the governing body of the city. 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. If the mediation committee is unable to resolve the dispute to the satisfaction of the governing bodies, the dispute must be resolved by the board of county commissioners.

4. If a quarter quarter section line divides 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.

1       ~~3.~~ 5. A city exercising its extraterritorial zoning authority shall hold a zoning transition  
2 meeting if the territory to be extraterritorially zoned is currently zoned. The city's  
3 zoning or planning commission shall provide at least fourteen days' notice of the  
4 meeting to the zoning board or boards of all political subdivisions losing their  
5 partial zoning authority. The purpose of the zoning transition meeting is to review  
6 existing zoning rules, regulations, and restrictions currently in place in the territory  
7 to be extraterritorially zoned and to plan for an orderly transition. The zoning  
8 transition meeting must take place before the city's adoption of an ordinance  
9 exercising extraterritorial zoning.

10       ~~4.~~ 6. If two or more cities have boundaries at a distance where there is an overlap of  
11 extraterritorial zoning authority under this section, the governing bodies of the  
12 cities may enter into an agreement regarding the extraterritorial zoning authority of  
13 each city. The agreement must be for a specific term and is binding upon the  
14 cities unless the governing bodies of the cities agree to amend or rescind the  
15 agreement or unless determined otherwise by an administrative law judge in  
16 accordance with this chapter. If a dispute arises concerning the extraterritorial  
17 zoning authority of a city and the governing bodies of the cities involved fail to  
18 resolve the dispute, the dispute must be submitted to a committee for mediation.  
19 The committee must be comprised of one member appointed by the governor, one  
20 member of the governing body of each city, and one member of the planning  
21 commission of each city who resides outside the corporate city limits. The  
22 governor's appointee shall arrange and preside over the meeting and act as  
23 mediator at the meeting. A meeting may be continued until the dispute has been  
24 resolved or until the mediator determines that continued mediation is no longer  
25 worthwhile.

26       ~~5.~~ 7. If the mediation committee is unable to resolve the dispute to the satisfaction of the  
27 governing bodies of all the cities involved, the governing body of any of the cities  
28 may petition the office of administrative hearings to appoint an administrative law  
29 judge to determine the extraterritorial zoning authority of the cities in the disputed  
30 area. A hearing may not be held until after at least two weeks' written notice has  
31 been given to the governing bodies of the cities involved in the dispute. At the

1 hearing, the governor's appointee who mediated the meetings under subsection 4  
2 6 shall provide information to the administrative law judge on the dispute between  
3 the cities involved and any proposed resolutions or recommendations made by a  
4 majority of the committee members. Any resident of, or person owning property in,  
5 a city involved in the dispute or the unincorporated territory that is the subject of  
6 the proposed extraterritorial zoning, a representative of such a resident or property  
7 owner, and any representative of a city involved, may appear at the hearing and  
8 present evidence on any matter to be determined by the administrative law judge.  
9 A decision by the administrative law judge is binding upon all the cities involved in  
10 the dispute and remains effective until the governing bodies of the cities agree to a  
11 change in the zoning authority of the cities. The governing body of a city may  
12 request a review of a decision of an administrative law judge due to changed  
13 circumstances at any time ten years after the decision has become final. An  
14 administrative law judge shall consider the following factors in making a decision  
15 under this subsection:

- 16 a. The proportional extraterritorial zoning authority of the cities involved in the  
17 dispute;
- 18 b. The proximity of the land in dispute to the corporate limits of each city  
19 involved;
- 20 c. The proximity of the land in dispute to developed property in the cities  
21 involved;
- 22 d. Whether any of the cities has exercised extraterritorial zoning authority over  
23 the disputed land;
- 24 e. Whether natural boundaries such as rivers, lakes, highways, or other physical  
25 characteristics affecting the land are present;
- 26 f. The growth pattern of the cities involved in the dispute; and
- 27 g. Any other factor determined to be relevant by the administrative law judge.

28 ~~6-~~ 8. For purposes of this section, the population of a city must be determined by the  
29 last official regular or special federal census. If a city has incorporated after a  
30 census, the population of the city must be determined by a census taken in  
31 accordance with chapter 40-22.



1        ~~7.~~ 9.    When a portion of the city is attached to the bulk of the city by a strip of land less  
2                    than one hundred feet [30.48 meters] wide, that portion and strip of land must be  
3                    disregarded when determining the extraterritorial zoning limits of the city. This  
4                    subsection does not affect the ability of a city to zone land within its city limits.

5        ~~8.~~ 10.    For the purposes of this section, a section or a quarter quarter section shall be is  
6                    as determined in the manner provided by 2 Stat. 313 [43 U.S.C. 752]. When  
7                    appropriate, the phrase "quarter quarter section" refers to the equivalent  
8                    government lot.

9                11.    As used in this section, "other political subdivision" means a political subdivision,  
10                   not including another city, which would otherwise have zoning or subdivision  
11                   regulation jurisdiction.

12                **SECTION 2. LEGISLATIVE INTENT.** It is the intent of the sixty-first legislative  
13 assembly that land use regulations under consideration by local governments be readily  
14 available to the public. Local governments are encouraged to jointly discuss their land use  
15 regulations and consider the cumulative impact of local regulations.

16                **SECTION 3. EMERGENCY.** This Act is declared to be an emergency measure.