

Introduced by

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; and to provide for
3 retroactive application.

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 thousand
18 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.

- 1 6. If the mediation committee is unable to resolve the dispute to the satisfaction of the
2 governing bodies of all the cities involved, the governing body of any of the cities
3 may petition the office of administrative hearings to appoint an administrative law
4 judge to determine the extraterritorial zoning authority of the cities in the disputed
5 area. A hearing may not be held until after at least two weeks' written notice has
6 been given to the governing bodies of the cities involved in the dispute. At the
7 hearing, the governor's appointee who mediated the meetings under subsection 4
8 shall provide information to the administrative law judge on the dispute between
9 the cities involved and any proposed resolutions or recommendations made by a
10 majority of the committee members. Any resident of, or person owning property in,
11 a city involved in the dispute or the unincorporated territory that is the subject of the
12 proposed extraterritorial zoning, a representative of such a resident or property
13 owner, and any representative of a city involved, may appear at the hearing and
14 present evidence on any matter to be determined by the administrative law judge.
15 A decision by the administrative law judge is binding upon all the cities involved in
16 the dispute and remains effective until the governing bodies of the cities agree to a
17 change in the zoning authority of the cities. The governing body of a city may
18 request a review of a decision of an administrative law judge due to changed
19 circumstances at any time ten years after the decision has become final. An
20 administrative law judge shall consider the following factors in making a decision
21 under this subsection:
- 22 a. The proportional extraterritorial zoning authority of the cities involved in the
23 dispute;
 - 24 b. The proximity of the land in dispute to the corporate limits of each city
25 involved;
 - 26 c. The proximity of the land in dispute to developed property in the cities
27 involved;
 - 28 d. Whether any of the cities has exercised extraterritorial zoning authority over
29 the disputed land;
 - 30 e. Whether natural boundaries such as rivers, lakes, highways, or other physical
31 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.

1. 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. One mile [1.61 kilometers] if the city has a population of less than five thousand and the quarter quarter section is within the city's twenty-year projected growth plan.

b. Two miles [3.22 kilometers] if the city has a population of five thousand or more, but less than twenty-five thousand and the quarter quarter section is within the city's twenty-year projected growth plan.

c. Four miles [6.44 kilometers] if the city has a population of twenty-five thousand or more and the quarter quarter section is within the city's twenty-year projected growth plan.

2. A projected growth plan must be a border of reasonable growth of a city delineated by the type of growth which includes present growth and expectations of future growth based primarily on past growth. A projected growth plan may adjust the

border on a yearly basis. The board of county commissioners for an area within the projected growth plan of a city must approve or reject that city's initial plan for that area. In addition, the board of county commissioners may review and approve or reject the plan every five years to determine if the assumptions used as a basis of plan have become unreasonable due to a significant change in circumstance. The board of county commissioners must approve or reject the plan within sixty days of a request of a city and if the board does neither, the plan is deemed approved. If the plan is rejected, the board of county commissioners shall state on the record the reasons for rejection. The city may appeal the rejection of the plan to district court.

3. A city that exercises its authority under subsection 1 in an area outside the ten-year projected growth plan has joint jurisdiction with the entity that would otherwise have jurisdiction to the effect that any change in the initial designation of a zoning district or the initial regulations in a district must be approved by both governing bodies. If the governing bodies are unable to agree, either governing body may petition the office of administrative hearings to appoint an administrative law judge to make a determination.

4. A zoning or subdivision decision requested by a property owner and made as to that owner's property in the extraterritorial area is to be made by the city. If the decision is to change a zoning classification or for a conditional use permit and if the decision is against the owner, however, the decision of the city must be approved or rejected by the governing body of the entity that would otherwise have jurisdiction within sixty days and if the other body does neither, the decision is deemed approved. If the decision of the city is rejected by the other governing body, that body shall state on the record the reasons for rejection. Within thirty days of the denial, the city may petition the office of administrative hearings to appoint an administrative law judge to make a determination as to the dispute between the city and the other body.

5. The party petitioning for an administrative law judge is responsible for the costs of the administrative law judge. A hearing may not be held until after at least two weeks' written notice has been given to the parties involved in the dispute. Each

party and any person affected by the designation, regulation, or decision may appear at the hearing and present evidence on any matter to be determined by the administrative law judge. The decision by the administrative law judge is binding on all jurisdictions involved in the dispute and any appeal must be made within thirty days of the decision. In making a decision under this section, the administrative law judge shall consider the following factors:

- a. Whether the proposed change is consistent with a projected growth plan;
- b. Whether the proposed change is substantially related to planning practices consistent with adopted comprehensive plans;
- c. The impact of the proposed change on the present and planned uses of the area under review;
- d. The impact of the proposed change on the health and safety of the residents of the area;
- e. The effect of the change on the ability of the affected jurisdiction to adequately staff and fairly enforce the change;
- f. The economic, physical, and social relationship of the inhabitants, businesses, and industries in the area affected by the change and the effect of the change on other political subdivisions;
- g. The economic impact of the proposed change on the property owners in the area of the proposed change and the economic impact on the city of a decision to deny the change; and
- h. Any other factor determined to be relevant by the administrative law judge.

6. The zoning regulations or subdivision regulations of the extraterritorial area assumed by the city are enforced solely by the city.

7. 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.

~~3.~~ 8. 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

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

8 ~~4.~~ 9. If two or more cities have boundaries at a distance where there is an overlap of
9 extraterritorial zoning authority under this section, the governing bodies of the cities
10 may enter into an agreement regarding the extraterritorial zoning authority of each
11 city. The agreement must be for a specific term and is binding upon the cities
12 unless the governing bodies of the cities agree to amend or rescind the agreement
13 or unless determined otherwise by an administrative law judge in accordance with
14 this chapter. If a dispute arises concerning the extraterritorial zoning authority of a
15 city and the governing bodies of the cities involved fail to resolve the dispute, the
16 dispute must be submitted to a committee for mediation. The committee must be
17 comprised of one member appointed by the governor, one member of the
18 governing body of each city, and one member of the planning commission of each
19 city who resides outside the corporate city limits. The governor's appointee shall
20 arrange and preside over the meeting and act as mediator at the meeting. A
21 meeting may be continued until the dispute has been resolved or until the mediator
22 determines that continued mediation is no longer worthwhile.

23 ~~5.~~ 10. If the mediation committee is unable to resolve the dispute to the satisfaction of the
24 governing bodies of all the cities involved, the governing body of any of the cities
25 may petition the office of administrative hearings to appoint an administrative law
26 judge to determine the extraterritorial zoning authority of the cities in the disputed
27 area. A hearing may not be held until after at least two weeks' written notice has
28 been given to the governing bodies of the cities involved in the dispute. At the
29 hearing, the governor's appointee who mediated the meetings under subsection 4
30 9 shall provide information to the administrative law judge on the dispute between
31 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.

~~6.~~ 11. 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.

~~7.~~ 12. 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.

- 8- 13. For the purposes of this section, a quarter quarter section ~~shall~~ must 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. Extraterritorial subdivision regulation - Mediation - Determination by administrative law judge.

1. A city may, by ordinance, extend its regulation of subdivisions beyond its corporate limits to the same extent and in the same manner 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

1 may petition the office of administrative hearings to appoint an administrative law
2 judge to determine the extraterritorial subdivision regulation authority of the cities in
3 the disputed area. A hearing may not be held until after at least two weeks' written
4 notice has been given to the governing bodies of the cities involved in the dispute.
5 At the hearing, the governor's appointee who mediated the meetings under
6 subsection 2 shall provide information to the administrative law judge on the
7 dispute between the cities involved and any proposed resolutions or
8 recommendations made by a majority of the committee members. Any resident of,
9 or person owning property in, a city involved in the dispute or the unincorporated
10 territory that is the subject of the proposed subdivision regulation, a representative
11 of such a resident or property owner, and any representative of a city involved,
12 may appear at the hearing and present evidence on any matter to be determined
13 by the administrative law judge. A decision by the administrative law judge is
14 binding upon all the cities involved in the dispute and remains effective until the
15 governing bodies of the cities agree to a change in the subdivision regulation
16 authority of the cities. The governing body of a city may request a review of a
17 decision of an administrative law judge due to changed circumstances at any time
18 ten years after the decision has become final. An administrative law judge shall
19 consider the following factors in making a decision under this subsection:

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

1 **SECTION 3. RETROACTIVE APPLICATION.** Effective August 1, 2011, this Act is
2 retroactive and also applies to the exercise of extended zoning and subdivision regulation by a
3 city before August 1, 2009.