

Introduced by

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; and to provide for application.

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

4 **SECTION 1. AMENDMENT.** Section 40-47-01.1 is amended:

5 **40-47-01.1. (Effective through July 31, 2009) Extraterritorial zoning - Mediation -**  
6 **Determination by administrative law judge.**

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

- 1           3. If a quarter quarter section line divides a platted lot and the majority of that platted  
2           lot lies within the quarter quarter section, a city may apply its extraterritorial zoning  
3           authority to the remainder of that platted lot. If the majority of the platted lot lies  
4           outside the quarter quarter section, the city may not apply its extraterritorial zoning  
5           authority to any of that platted lot.
- 6           4. A city exercising its extraterritorial zoning authority shall hold a zoning transition  
7           meeting if the territory to be extraterritorially zoned is currently zoned. The city's  
8           zoning or planning commission shall provide at least fourteen days' notice of the  
9           meeting to the zoning board or boards of all political subdivisions losing their partial  
10          zoning authority. The purpose of the zoning transition meeting is to review existing  
11          zoning rules, regulations, and restrictions currently in place in the territory to be  
12          extraterritorially zoned and to plan for an orderly transition. The zoning transition  
13          meeting must take place before the city's adoption of an ordinance exercising  
14          extraterritorial zoning.
- 15          5. If two or more cities have boundaries at a distance where there is an overlap of  
16          extraterritorial zoning authority under this section, the governing bodies of the cities  
17          may enter into an agreement regarding the extraterritorial zoning authority of each  
18          city. The agreement must be for a specific term and is binding upon the cities  
19          unless the governing bodies of the cities agree to amend or rescind the agreement  
20          or unless determined otherwise by an administrative law judge in accordance with  
21          this chapter. If a dispute arises concerning the extraterritorial zoning authority of a  
22          city and the governing bodies of the cities involved fail to resolve the dispute, the  
23          dispute must be submitted to a committee for mediation. The committee must be  
24          comprised of one member appointed by the governor, one member of the  
25          governing body of each city, and one member of the planning commission of each  
26          city who resides outside the corporate city limits. The governor's appointee shall  
27          arrange and preside over the meeting and act as mediator at the meeting. A  
28          meeting may be continued until the dispute has been resolved or until the mediator  
29          determines that continued mediation is no longer worthwhile.
- 30          6. If the mediation committee is unable to resolve the dispute to the satisfaction of the  
31          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 zoning authority of the cities in the disputed  
3           area. A hearing may not be held until after at least two weeks' written notice has  
4           been given to the governing bodies of the cities involved in the dispute. At the  
5           hearing, the governor's appointee who mediated the meetings under subsection 4  
6           shall provide information to the administrative law judge on the dispute between  
7           the cities involved and any proposed resolutions or recommendations made by a  
8           majority of the committee members. Any resident of, or person owning property in,  
9           a city involved in the dispute or the unincorporated territory that is the subject of the  
10          proposed extraterritorial zoning, a representative of such a resident or property  
11          owner, and any representative of a city involved, may appear at the hearing and  
12          present evidence on any matter to be determined by the administrative law judge.  
13          A decision by the administrative law judge is binding upon all the cities involved in  
14          the dispute and remains effective until the governing bodies of the cities agree to a  
15          change in the zoning authority of the cities. The governing body of a city may  
16          request a review of a decision of an administrative law judge due to changed  
17          circumstances at any time ten years after the decision has become final. An  
18          administrative law judge shall consider the following factors in making a decision  
19          under this subsection:

- 20          a.    The proportional extraterritorial zoning authority of the cities involved in the  
21              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 zoning authority over  
27              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           7. For purposes of this section, the population of a city must be determined by the last  
2           official regular or special federal census. If a city has incorporated after a census,  
3           the population of the city must be determined by a census taken in accordance  
4           with chapter 40-22.

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

9           9. For the purposes of this section, a quarter quarter section shall be determined in  
10          the manner provided by 2 Stat. 313 [43 U.S.C. 752]. When appropriate, the phrase  
11          "quarter quarter section" refers to the equivalent government lot.

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

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

18           a. One mile [1.61 kilometers] if the city has a population of less than five  
19           thousand and the quarter quarter section is within the city's ten-year growth  
20           plan projection. A city may not change zoning or subdivision regulations from  
21           the regulations that applied before the extension unless the city has the  
22           approval of the governing body that had exercised zoning or subdivision  
23           jurisdiction before the extension.

24           b. Two miles [3.22 kilometers] if the city has a population of five thousand or  
25           more, but less than twenty-five thousand and the quarter quarter section is  
26           within the city's ten-year growth plan projection. A city may not change  
27           zoning or subdivision regulations from the regulations that applied before the  
28           extension unless the city has the approval of the governing body that had  
29           exercised zoning or subdivision jurisdiction before the extension.

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

- 1                   growth plan projection. A city may not change zoning or subdivision  
2                   regulations from the regulations that applied before the extension unless the  
3                   city has the approval of the governing body that had exercised zoning or  
4                   subdivision jurisdiction before the extension.
- 5           2. For purposes of this section, a ten-year growth projection must be made by a  
6           person that is independent of the city extending zoning or subdivision regulation  
7           and which is approved by the board of county commissioners of the county in  
8           which the area of the extension is predominantly located. The city shall  
9           recommend a person to the county and the county may reject the person on the  
10           sole factor of not being or not appearing to be independent of the city.
- 11           3. The zoning and subdivision regulations of the city govern the entire extraterritorial  
12           area assumed by the city.
- 13           4. Any change in zoning or subdivision regulation in the unincorporated territory must  
14           be approved by the governing body of the city and the governing body that had  
15           exercised zoning or subdivision regulation authority before the extension of  
16           extraterritorial zoning authority. If the governing bodies are unable to agree, either  
17           governing body may petition the office of administrative hearings to appoint an  
18           administrative law judge to determine whether the proposed regulation is  
19           substantially related to the purpose of the regulation and does not unnecessarily  
20           burden affected persons. A hearing may not be held until after at least two weeks'  
21           written notice has been given to the governing bodies of the jurisdictions involved  
22           in the dispute. At the hearing each governing body and any resident of, or person  
23           owning property in, the unincorporated territory or a representative of that resident  
24           or property owner may appear at the hearing and present evidence on any matter  
25           to be determined by the administrative law judge. A decision by the administrative  
26           law judge is binding on all jurisdictions involved in the dispute and remains  
27           effective until the governing bodies in the area of joint jurisdiction agree to change  
28           the zoning. Within ten years after the decision has become final, the governing  
29           body may request a review of a decision of an administrative law judge due to  
30           change in circumstances. An administrative law judge may consider any factor  
31           determined to be relevant by the administrative law judge, including the need of the

1           city to plan for development of the city and the preferences of the residents or  
2           property owners in the unincorporated territory.

3           5. If a quarter quarter section line divides a platted lot and the majority of that platted  
4           lot lies within the quarter quarter section, a city may apply its extraterritorial zoning  
5           authority to the remainder of that platted lot. If the majority of the platted lot lies  
6           outside the quarter quarter section, the city may not apply its extraterritorial zoning  
7           authority to any of that platted lot.

8           ~~3.~~ 6. A city exercising its extraterritorial zoning authority shall hold a zoning transition  
9           meeting if the territory to be extraterritorially zoned is currently zoned. The city's  
10          zoning or planning commission shall provide at least fourteen days' notice of the  
11          meeting to the zoning board or boards of all political subdivisions losing their partial  
12          zoning authority. The purpose of the zoning transition meeting is to review existing  
13          zoning rules, regulations, and restrictions currently in place in the territory to be  
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15          meeting must take place before the city's adoption of an ordinance exercising  
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17          4. 7. If two or more cities have boundaries at a distance where there is an overlap of  
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30          meeting may be continued until the dispute has been resolved or until the mediator  
31          determines that continued mediation is no longer worthwhile.

1        ~~5.~~ 8. 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  
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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  
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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  
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- 22        a. The proportional extraterritorial zoning authority of the cities involved in the  
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- 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  
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- 28        d. Whether any of the cities has exercised extraterritorial zoning authority over  
29            the disputed land;
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31            characteristics affecting the land are present;

- 1           f.    The growth pattern of the cities involved in the dispute; and
- 2           g.    Any other factor determined to be relevant by the administrative law judge.
- 3       ~~6.~~ 9.   For purposes of this section, the population of a city must be determined by the last
- 4           official regular or special federal census. If a city has incorporated after a census,
- 5           the population of the city must be determined by a census taken in accordance
- 6           with chapter 40-22.
- 7       ~~7.~~ 10. When a portion of the city is attached to the bulk of the city by a strip of land less
- 8           than one hundred feet [30.48 meters] wide, that portion and strip of land must be
- 9           disregarded when determining the extraterritorial zoning limits of the city. This
- 10          subsection does not affect the ability of a city to zone land within its city limits.
- 11       ~~8.~~ 11. For the purposes of this section, a quarter quarter section ~~shall~~ must be
- 12          determined in the manner provided by 2 Stat. 313 [43 U.S.C. 752]. When
- 13          appropriate, the phrase "quarter quarter section" refers to the equivalent
- 14          government lot.

15           **SECTION 2. APPLICATION.** A city that has extended zoning or subdivision regulation

16   beyond the ten-year growth projection on the effective date of this Act may not exercise

17   extended zoning or subdivision regulation further than the ten-year growth projection by

18   January 1, 2010.