

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.

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 extraterritoriality 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~~ fewer than five  
19          thousand. A city that has exercised its authority under this subdivision has  
20          joint zoning and subdivision regulation jurisdiction beyond one-half mile [.80  
21          kilometer] with the entity that would otherwise have jurisdiction.

22          b. Two miles [3.22 kilometers] if the city has a population of five thousand or  
23          more, but ~~less~~ fewer than twenty-five thousand. A city that has exercised its  
24          authority under this subdivision has joint zoning and subdivision regulation  
25          jurisdiction beyond one mile [1.61 kilometers] with the entity that would  
26          otherwise have jurisdiction.

27          c. Four miles [6.44 kilometers] if the city has a population of twenty-five  
28          thousand or more. A city that has exercised its authority allowed under this  
29          subdivision has joint zoning and subdivision regulation beyond two miles [3.22  
30          kilometers] with the entity that would otherwise have jurisdiction.

- 1           2.   The zoning and subdivision regulations of the city govern the entire extraterritorial  
2                   area assumed by the city.
- 3           3.   Any zoning change or subdivision plat approved or any change in zoning or  
4                   subdivision regulation in the area of joint jurisdiction must be approved by both  
5                   governing bodies before the change becomes effective. If the governing bodies  
6                   are unable to agree, either governing body may petition the office of administrative  
7                   hearings to appoint an administrative law judge to determine whether the proposed  
8                   regulation is substantially related to planning practices consistent with the city's  
9                   comprehensive plan and do not unnecessarily limit appropriate land use by  
10                  affected persons. A hearing may not be held until after at least two weeks' written  
11                  notice has been given to the governing bodies of the jurisdictions involved in the  
12                  dispute. Each governing body and any person affected by the regulation may  
13                  appear at the hearing and present evidence on any matter to be determined by the  
14                  administrative law judge. A decision by the administrative law judge is binding on  
15                  all jurisdictions involved in the dispute and remains effective until the governing  
16                  bodies in the area of joint jurisdiction agree to change the zoning or subdivision  
17                  regulation.
- 18           4.   If a quarter quarter section line divides a platted lot and the majority of that platted  
19                  lot lies within the quarter quarter section, a city may apply its extraterritorial zoning  
20                  authority to the remainder of that platted lot. If the majority of the platted lot lies  
21                  outside the quarter quarter section, the city may not apply its extraterritorial zoning  
22                  authority to any of that platted lot.
- 23           ~~3.~~ 5.   A city exercising its extraterritorial zoning authority shall hold a zoning transition  
24                  meeting if the territory to be extraterritorially zoned is currently zoned. The city's  
25                  zoning or planning commission shall provide at least fourteen days' notice of the  
26                  meeting to the zoning board or boards of all political subdivisions losing their partial  
27                  zoning authority. The purpose of the zoning transition meeting is to review existing  
28                  zoning rules, regulations, and restrictions currently in place in the territory to be  
29                  extraterritorially zoned and to plan for an orderly transition. The zoning transition  
30                  meeting must take place before the city's adoption of an ordinance exercising  
31                  extraterritorial zoning.

1       4- 6. If two or more cities have boundaries at a distance where there is an overlap of  
2           extraterritorial zoning authority under this section, the governing bodies of the cities  
3           may enter into an agreement regarding the extraterritorial zoning authority of each  
4           city. The agreement must be for a specific term and is binding upon the cities  
5           unless the governing bodies of the cities agree to amend or rescind the agreement  
6           or unless determined otherwise by an administrative law judge in accordance with  
7           this chapter. If a dispute arises concerning the extraterritorial zoning authority of a  
8           city and the governing bodies of the cities involved fail to resolve the dispute, the  
9           dispute must be submitted to a committee for mediation. The committee must be  
10          comprised of one member appointed by the governor, one member of the  
11          governing body of each city, and one member of the planning commission of each  
12          city who resides outside the corporate city limits. The governor's appointee shall  
13          arrange and preside over the meeting and act as mediator at the meeting. A  
14          meeting may be continued until the dispute has been resolved or until the mediator  
15          determines that continued mediation is no longer worthwhile.

16       5- 7. If the mediation committee is unable to resolve the dispute to the satisfaction of the  
17          governing bodies of all the cities involved, the governing body of any of the cities  
18          may petition the office of administrative hearings to appoint an administrative law  
19          judge to determine the extraterritorial zoning authority of the cities in the disputed  
20          area. A hearing may not be held until after at least two weeks' written notice has  
21          been given to the governing bodies of the cities involved in the dispute. At the  
22          hearing, the governor's appointee who mediated the meetings under subsection 4  
23          6 shall provide information to the administrative law judge on the dispute between  
24          the cities involved and any proposed resolutions or recommendations made by a  
25          majority of the committee members. Any resident of, or person owning property in,  
26          a city involved in the dispute or the unincorporated territory that is the subject of the  
27          proposed extraterritorial zoning, a representative of such a resident or property  
28          owner, and any representative of a city involved, may appear at the hearing and  
29          present evidence on any matter to be determined by the administrative law judge.  
30          A decision by the administrative law judge is binding upon all the cities involved in  
31          the dispute and remains effective until the governing bodies of the cities agree to a

1 change in the zoning authority of the cities. The governing body of a city may  
2 request a review of a decision of an administrative law judge due to changed  
3 circumstances at any time ten years after the decision has become final. An  
4 administrative law judge shall consider the following factors in making a decision  
5 under this subsection:

- 6 a. The proportional extraterritorial zoning authority of the cities involved in the  
7 dispute;
- 8 b. The proximity of the land in dispute to the corporate limits of each city  
9 involved;
- 10 c. The proximity of the land in dispute to developed property in the cities  
11 involved;
- 12 d. Whether any of the cities has exercised extraterritorial zoning authority over  
13 the disputed land;
- 14 e. Whether natural boundaries such as rivers, lakes, highways, or other physical  
15 characteristics affecting the land are present;
- 16 f. The growth pattern of the cities involved in the dispute; and
- 17 g. Any other factor determined to be relevant by the administrative law judge.

18 ~~6.~~ 8. For purposes of this section, the population of a city must be determined by the last  
19 official regular or special federal census. If a city has incorporated after a census,  
20 the population of the city must be determined by a census taken in accordance  
21 with chapter 40-22.

22 ~~7.~~ 9. When a portion of the city is attached to the bulk of the city by a strip of land less  
23 than one hundred feet [30.48 meters] wide, that portion and strip of land must be  
24 disregarded when determining the extraterritorial zoning limits of the city. This  
25 subsection does not affect the ability of a city to zone land within its city limits.

26 ~~8.~~ 10. For the purposes of this section, a quarter quarter section ~~shall be~~ is as determined  
27 in the manner provided by 2 Stat. 313 [43 U.S.C. 752]. When appropriate, the  
28 phrase "quarter quarter section" refers to the equivalent government lot.