

**FIRST ENGROSSMENT
with Conference Committee Amendments**

ENGROSSED SENATE BILL NO. 2027

Introduced by

Legislative Council

(Advisory Commission on Intergovernmental Relations)

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 of the North Dakota Century Code is
5 amended and reenacted as follows:

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

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

- 1 subdivision that is exercising zoning authority within the territory to be
2 extraterritorially zoned.
- 3 3. 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 4. 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
12 partial zoning authority. The purpose of the zoning transition meeting is to review
13 existing zoning rules, regulations, and restrictions currently in place in the territory
14 to be extraterritorially zoned and to plan for an orderly transition. The zoning
15 transition meeting must take place before the city's adoption of an ordinance
16 exercising extraterritorial zoning.
- 17 5. If two or more cities have boundaries at a distance where there is an overlap of
18 extraterritorial zoning authority under this section, the governing bodies of the
19 cities may enter into an agreement regarding the extraterritorial zoning authority of
20 each city. The agreement must be for a specific term and is binding upon the
21 cities unless the governing bodies of the cities agree to amend or rescind the
22 agreement or unless determined otherwise by an administrative law judge in
23 accordance with this chapter. If a dispute arises concerning the extraterritorial
24 zoning authority of a city and the governing bodies of the cities involved fail to
25 resolve the dispute, the dispute must be submitted to a committee for mediation.
26 The committee must be comprised of one member appointed by the governor, one
27 member of the governing body of each city, and one member of the planning
28 commission of each city who resides outside the corporate city limits. The
29 governor's appointee shall arrange and preside over the meeting and act as
30 mediator at the meeting. A meeting may be continued until the dispute has been

- 1 resolved or until the mediator determines that continued mediation is no longer
2 worthwhile.
- 3 6. If the mediation committee is unable to resolve the dispute to the satisfaction of the
4 governing bodies of all the cities involved, the governing body of any of the cities
5 may petition the office of administrative hearings to appoint an administrative law
6 judge to determine the extraterritorial zoning authority of the cities in the disputed
7 area. A hearing may not be held until after at least two weeks' written notice has
8 been given to the governing bodies of the cities involved in the dispute. At the
9 hearing, the governor's appointee who mediated the meetings under subsection 4
10 shall provide information to the administrative law judge on the dispute between
11 the cities involved and any proposed resolutions or recommendations made by a
12 majority of the committee members. Any resident of, or person owning property in,
13 a city involved in the dispute or the unincorporated territory that is the subject of
14 the proposed extraterritorial zoning, a representative of such a resident or property
15 owner, and any representative of a city involved, may appear at the hearing and
16 present evidence on any matter to be determined by the administrative law judge.
17 A decision by the administrative law judge is binding upon all the cities involved in
18 the dispute and remains effective until the governing bodies of the cities agree to a
19 change in the zoning authority of the cities. The governing body of a city may
20 request a review of a decision of an administrative law judge due to changed
21 circumstances at any time ten years after the decision has become final. An
22 administrative law judge shall consider the following factors in making a decision
23 under this subsection:
- 24 a. The proportional extraterritorial zoning authority of the cities involved in the
25 dispute;
 - 26 b. The proximity of the land in dispute to the corporate limits of each city
27 involved;
 - 28 c. The proximity of the land in dispute to developed property in the cities
29 involved;
 - 30 d. Whether any of the cities has exercised extraterritorial zoning authority over
31 the disputed land;

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

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

- 18 1. a. A city may, by ordinance, extend the application of a city's zoning regulations
19 to any quarter quarter section of unincorporated territory if a majority of the
20 quarter quarter section is located within the following distance of the
21 corporate limits of the city:
- 22 a- (1) One mile [1.61 kilometers] if the city has a population of ~~less~~ fewer than
23 five thousand. A city that has exercised its authority under this
24 subdivision has joint zoning and subdivision regulation jurisdiction from
25 one-half mile [.80 kilometer] to one mile [1.61 kilometers] with the other
26 political subdivision.
- 27 b- (2) Two miles [3.22 kilometers] if the city has a population of five thousand
28 or more, but ~~less~~ fewer than twenty-five thousand. A city that has
29 exercised its authority under this subdivision has joint zoning and
30 subdivision regulation jurisdiction from one mile [1.61 kilometers] to two
31 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. Unincorporated territory within the area of joint zoning and subdivision
7 regulation jurisdiction in any extraterritorial area assumed by a city before the
8 effective date of this Act remains subject to the zoning designations and the
9 regulations in place on the effective date of this Act unless changed as
10 allowed under this section.
- 11 c. The extraterritorial zoning jurisdiction under this section may be changed by
12 written agreement between the city and the other political subdivision.
- 13 2. Joint jurisdiction is jurisdiction in which the other political subdivision has
14 jurisdiction to receive applications and issue permits and impose administrative
15 fees for applications and permits. In addition, under this jurisdiction the other
16 political subdivision may adopt, modify, and enforce any zoning designation or
17 regulation and approve any subdivision plat or regulation. For a decision to be
18 final, the other political subdivision shall give written notice to the city. The city
19 may request negotiation as to any decision made by the other political subdivision
20 under the other political subdivision's jurisdiction within thirty days of notice. If
21 negotiation is not requested, the decision of the other political subdivision is final.
22 If the governing body of the other political subdivision and the city do not come to
23 an agreement as to the disputed zone or subdivision regulation within thirty days of
24 request for negotiation, then the dispute must be submitted to a committee for
25 mediation. The committee must be comprised of one member appointed by the
26 governor and two members of the governing body of the other political subdivision
27 and two members of the governing body of the city. The governor's appointee
28 shall arrange and preside over the meeting and act as mediator at the meeting. A
29 meeting may be continued until the dispute has been resolved or until the mediator
30 determines that continued mediation is no longer worthwhile. If the mediation
31 committee is unable to resolve the dispute to the satisfaction of the governing

1 bodies, then if the dispute is between a city and a township and upon acceptance
2 the board of county commissioners for the area in dispute within that county, the
3 dispute must be resolved by that board of county commissioners. However, if the
4 board of county commissioners does not accept the dispute, either party may
5 petition the office of administrative hearings for a hearing by an administrative law
6 judge. In addition, either party may petition the office of administrative hearings for
7 a hearing by an administrative law judge before the board of county
8 commissioners holds a hearing on the dispute. If the disputed regulation is in an
9 area that does not have an organized township, the board of county
10 commissioners may not hear the dispute and either party may petition the office of
11 administrative hearings for a hearing by an administrative law judge. The party
12 that does not prevail is liable for the costs of the administrative law judge.
13 3. Notwithstanding subsection 2, in an area in which there would otherwise be joint
14 jurisdiction and in which the city has assumed zoning authority before the effective
15 date of this Act or under a written agreement, the city has jurisdiction to receive
16 applications and issue permits and impose administrative fees for applications and
17 permits relating to zoning and subdivision regulation. In addition, under this
18 jurisdiction the city adopts, modifies, and enforces any zoning designation or
19 regulation and approves any subdivision plat or regulation. For a decision of the
20 city made after the effective date of this Act to be final, the city shall give written
21 notice of the decision of the governing body of the political subdivision that would
22 otherwise have jurisdiction. The governing body may request negotiation as to any
23 decision made by the city under the city's jurisdiction within thirty days of notice. If
24 negotiation is not requested, the decision of the city is final. If the city and
25 governing body of the political subdivision that would otherwise have jurisdiction do
26 not come to an agreement as to the disputed zoning or subdivision regulation
27 within thirty days of the request for negotiation, then the dispute must be submitted
28 to a committee for mediation. The committee must be composed of one member
29 appointed by the governor and two members of the governing body of the city and
30 two members of the governing body of the political subdivision that would
31 otherwise have jurisdiction. The governor's appointee shall arrange and preside

1 over the meeting and act as mediator at the meeting. A meeting may be continued
2 until the dispute has been resolved or until the mediator determines that continued
3 mediation is no longer worthwhile. If the mediation committee is unable to resolve
4 the dispute to the satisfaction of the governing bodies, then if the dispute is
5 between a city and a township and upon acceptance the board of county
6 commissioners for the area in dispute within that county, the dispute must be
7 resolved by that board of county commissioners. However, if the board of county
8 commissioners does not accept the dispute, either party may petition the office of
9 administrative hearings for a hearing by an administrative law judge. In addition,
10 either party may petition the office of administrative hearings for a hearing by an
11 administrative law judge before the board of county commissioners holds a hearing
12 on the dispute. If the disputed regulation is in an area that does not have an
13 organized township, the board of county commissioners may not hear the dispute
14 and either party may petition the office of administrative hearings for a hearing by
15 an administrative law judge. The party that does not prevail is liable for the costs
16 of the administrative law judge.

17 4. Upon petition, the office of administrative hearings shall appoint an administrative
18 law judge to resolve the dispute. A hearing by an administrative law judge or the
19 board of county commissioners may not be held until after at least two weeks'
20 written notice has been given to the governing bodies of the jurisdictions involved
21 in the dispute. Each governing body and any person affected by the regulation
22 may appear at the hearing and present evidence on any matter to be determined
23 by the administrative law judge or the board of county commissioners. A decision
24 by the administrative law judge or board of county commissioners is binding on all
25 jurisdictions involved in the dispute and remains effective until the governing
26 bodies in the area of joint jurisdiction agree to change the zoning or subdivision
27 regulation. The administrative law judge or board of county commissioners shall
28 enter an order setting forth what the administrative law judge or board of county
29 commissioners determines to be fair and reasonable terms and conditions. In all
30 cases, the administrative law judge or board of county commissioners shall set
31 forth in writing a decision, including findings of fact, reasons for the decision, and

- 1 an order. The decision must include the factors upon which the decision is based.
2 Within thirty days after receipt of the administrative law judge's order or the board
3 of county commissioners' decision, any interested party dissatisfied with the
4 decision may appeal to district court under the procedures in section 28-34-01. In
5 making a decision under this subsection, the administrative law judge or board of
6 county commissioners shall consider the following factors and shall give
7 substantial weight to the factor described in subdivision a:
- 8 a. Whether the proposed change is consistent with a projected growth plan;
 - 9 b. The impact of the proposed change on the present and planned uses of the
10 area under review;
 - 11 c. The impact of the proposed change on the health and safety of the residents
12 of the area;
 - 13 d. The effect of the change on the ability of the affected jurisdiction to
14 adequately staff and enforce the change;
 - 15 e. The economic, physical, and social relationship of the inhabitants,
16 businesses, and industries in the area affected by the change and the effect
17 of the change on other political subdivisions;
 - 18 f. The economic impact of the proposed change on the property owners in the
19 area of the proposed change and the economic impact on the city of a
20 decision to deny the change; and
 - 21 g. Any other factor determined to be relevant by the administrative law judge or
22 board of county commissioners.
- 23 5. If a quarter quarter section line divides a platted lot and the majority of that platted
24 lot lies within the quarter quarter section, a city may apply its extraterritorial zoning
25 authority to the remainder of that platted lot. If the majority of the platted lot lies
26 outside the quarter quarter section, the city may not apply its extraterritorial zoning
27 authority to any of that platted lot.
- 28 ~~3.~~ 6. A city exercising its extraterritorial zoning authority shall hold a zoning transition
29 meeting if the territory to be extraterritorially zoned is currently zoned. The city's
30 zoning or planning commission shall provide at least fourteen days' notice of the
31 meeting to the zoning board or boards of all political subdivisions losing their

1 partial zoning authority. The purpose of the zoning transition meeting is to review
2 existing zoning rules, regulations, and restrictions currently in place in the territory
3 to be extraterritorially zoned and to plan for an orderly transition. The zoning
4 transition meeting must take place before the city's adoption of an ordinance
5 exercising extraterritorial zoning.

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

22 ~~5.~~ 8. If the mediation committee is unable to resolve the dispute to the satisfaction of the
23 governing bodies of all the cities involved, the governing body of any of the cities
24 may petition the office of administrative hearings to appoint an administrative law
25 judge to determine the extraterritorial zoning authority of the cities in the disputed
26 area. A hearing may not be held until after at least two weeks' written notice has
27 been given to the governing bodies of the cities involved in the dispute. At the
28 hearing, the governor's appointee who mediated the meetings under subsection ~~4~~
29 7 shall provide information to the administrative law judge on the dispute between
30 the cities involved and any proposed resolutions or recommendations made by a
31 majority of the committee members. Any resident of, or person owning property in,

1 a city involved in the dispute or the unincorporated territory that is the subject of
2 the proposed extraterritorial zoning, a representative of such a resident or property
3 owner, and any representative of a city involved, may appear at the hearing and
4 present evidence on any matter to be determined by the administrative law judge.
5 A decision by the administrative law judge is binding upon all the cities involved in
6 the dispute and remains effective until the governing bodies of the cities agree to a
7 change in the zoning authority of the cities. The governing body of a city may
8 request a review of a decision of an administrative law judge due to changed
9 circumstances at any time ten years after the decision has become final. An
10 administrative law judge shall consider the following factors in making a decision
11 under this subsection:

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

24 ~~6.~~ 9. For purposes of this section, the population of a city must be determined by the
25 last official regular or special federal census. If a city has incorporated after a
26 census, the population of the city must be determined by a census taken in
27 accordance with chapter 40-22.

28 ~~7.~~ 10. When a portion of the city is attached to the bulk of the city by a strip of land less
29 than one hundred feet [30.48 meters] wide, that portion and strip of land must be
30 disregarded when determining the extraterritorial zoning limits of the city. This
31 subsection does not affect the ability of a city to zone land within its city limits.

Sixty-first
Legislative Assembly

- 1 &. 11. For the purposes of this section, a quarter quarter section ~~shall be~~ is as
2 determined in the manner provided by 2 Stat. 313 [43 U.S.C. 752]. When
3 appropriate, the phrase "quarter quarter section" refers to the equivalent
4 government lot.
- 5 12. As used in this section, "other political subdivision" means a political subdivision,
6 not including another city, which would otherwise have zoning or subdivision
7 regulation jurisdiction.