

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

- 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 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  
14 extraterritorially zoned and to plan for an orderly transition. The zoning transition  
15 meeting must take place before the city's adoption of an ordinance exercising  
16 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 cities  
19 may enter into an agreement regarding the extraterritorial zoning authority of each  
20 city. The agreement must be for a specific term and is binding upon the cities  
21 unless the governing bodies of the cities agree to amend or rescind the agreement  
22 or unless determined otherwise by an administrative law judge in accordance with  
23 this chapter. If a dispute arises concerning the extraterritorial zoning authority of a  
24 city and the governing bodies of the cities involved fail to resolve the dispute, the  
25 dispute must be submitted to a committee for mediation. The committee must be  
26 comprised of one member appointed by the governor, one member of the  
27 governing body of each city, and one member of the planning commission of each  
28 city who resides outside the corporate city limits. The governor's appointee shall  
29 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.

- 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;

- 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 7. 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 8. 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 9. For the purposes of this section, a quarter quarter section shall be determined in  
12 the manner provided by 2 Stat. 313 [43 U.S.C. 752]. When appropriate, the phrase  
13 "quarter quarter section" refers to the equivalent government lot.

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

- 16 1. A city may, by ordinance, extend the application of a city's zoning regulations to  
17 any quarter quarter section of unincorporated territory if a majority of the quarter  
18 quarter section is located within the following distance of the corporate limits of the  
19 city:
- 20 a. One mile [1.61 kilometers] if the city has a population of less than five  
21 thousand and the quarter quarter section is within the city's twenty-year  
22 projected growth plan.
- 23 b. Two miles [3.22 kilometers] if the city has a population of five thousand or  
24 more, but less than twenty-five thousand and the quarter quarter section is  
25 within the city's twenty-year projected growth plan.
- 26 c. Four miles [6.44 kilometers] if the city has a population of twenty-five  
27 thousand or more and the quarter quarter section is within the city's  
28 twenty-year projected growth plan.
- 29 2. A projected growth plan must be a border of reasonable growth of a city delineated  
30 by the type of growth which includes present growth and expectations of future  
31 growth based primarily on past growth. A projected growth plan may adjust the

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

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

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

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

- 1           party and any person affected by the designation, regulation, or decision may  
2           appear at the hearing and present evidence on any matter to be determined by the  
3           administrative law judge. The decision by the administrative law judge is binding  
4           on all jurisdictions involved in the dispute and any appeal must be made within  
5           thirty days of the decision. In making a decision under this section, the  
6           administrative law judge shall consider the following factors:
- 7           a. Whether the proposed change is consistent with a projected growth plan;
  - 8           b. Whether the proposed change is substantially related to planning practices  
9           consistent with adopted comprehensive plans;
  - 10          c. The impact of the proposed change on the present and planned uses of the  
11          area under review;
  - 12          d. The impact of the proposed change on the health and safety of the residents  
13          of the area;
  - 14          e. The effect of the change on the ability of the affected jurisdiction to adequately  
15          staff and fairly enforce the change;
  - 16          f. The economic, physical, and social relationship of the inhabitants,  
17          businesses, and industries in the area affected by the change and the effect  
18          of the change on other political subdivisions;
  - 19          g. The economic impact of the proposed change on the property owners in the  
20          area of the proposed change and the economic impact on the city of a  
21          decision to deny the change; and
  - 22          h. Any other factor determined to be relevant by the administrative law judge.
- 23          6. The zoning regulations or subdivision regulations of the extraterritorial area  
24          assumed by the city are enforced solely by the city.
- 25          7. If a quarter quarter section line divides a platted lot and the majority of that platted  
26          lot lies within the quarter quarter section, a city may apply its extraterritorial zoning  
27          authority to the remainder of that platted lot. If the majority of the platted lot lies  
28          outside the quarter quarter section, the city may not apply its extraterritorial zoning  
29          authority to any of that platted lot.
- 30          ~~3.~~ 8. A city exercising its extraterritorial zoning authority shall hold a zoning transition  
31          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

- 1 majority of the committee members. Any resident of, or person owning property in,  
2 a city involved in the dispute or the unincorporated territory that is the subject of the  
3 proposed extraterritorial zoning, a representative of such a resident or property  
4 owner, and any representative of a city involved, may appear at the hearing and  
5 present evidence on any matter to be determined by the administrative law judge.  
6 A decision by the administrative law judge is binding upon all the cities involved in  
7 the dispute and remains effective until the governing bodies of the cities agree to a  
8 change in the zoning authority of the cities. The governing body of a city may  
9 request a review of a decision of an administrative law judge due to changed  
10 circumstances at any time ten years after the decision has become final. An  
11 administrative law judge shall consider the following factors in making a decision  
12 under this subsection:
- 13 a. The proportional extraterritorial zoning authority of the cities involved in the  
14 dispute;
  - 15 b. The proximity of the land in dispute to the corporate limits of each city  
16 involved;
  - 17 c. The proximity of the land in dispute to developed property in the cities  
18 involved;
  - 19 d. Whether any of the cities has exercised extraterritorial zoning authority over  
20 the disputed land;
  - 21 e. Whether natural boundaries such as rivers, lakes, highways, or other physical  
22 characteristics affecting the land are present;
  - 23 f. The growth pattern of the cities involved in the dispute; and
  - 24 g. Any other factor determined to be relevant by the administrative law judge.
- 25 ~~6.~~ 11. For purposes of this section, the population of a city must be determined by the last  
26 official regular or special federal census. If a city has incorporated after a census,  
27 the population of the city must be determined by a census taken in accordance  
28 with chapter 40-22.
- 29 ~~7.~~ 12. When a portion of the city is attached to the bulk of the city by a strip of land less  
30 than one hundred feet [30.48 meters] wide, that portion and strip of land must be

1 disregarded when determining the extraterritorial zoning limits of the city. This  
2 subsection does not affect the ability of a city to zone land within its city limits.

3 & 13. For the purposes of this section, a quarter quarter section ~~shall~~ must be  
4 determined in the manner provided by 2 Stat. 313 [43 U.S.C. 752]. When  
5 appropriate, the phrase "quarter quarter section" refers to the equivalent  
6 government lot.

7 **SECTION 2. AMENDMENT.** Section 40-48-18 of the North Dakota Century Code is  
8 amended and reenacted as follows:

9 **40-48-18. Extraterritorial subdivision regulation - Mediation - Determination by**  
10 **administrative law judge.**

11 1. A city may, by ordinance, extend its regulation of subdivisions beyond its corporate  
12 limits to the same extent and in the same manner as a city is authorized to extend  
13 its zoning authority under section 40-47-01.1.

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

30 3. 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 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.