

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 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.

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. A city may not change zoning or subdivision regulations from the regulations that applied before the extension unless the city has the approval of the governing body that had exercised zoning or subdivision jurisdiction before the extension.

b. Two miles [3.22 kilometers] if the city has a population of five thousand or more, but less than twenty-five thousand. A city may not change zoning or subdivision regulations from the regulations that applied before the extension unless the city has the approval of the governing body that had exercised zoning or subdivision jurisdiction before the extension.

c. Four miles [6.44 kilometers] if the city has a population of twenty-five thousand or more. A city may not change zoning or subdivision regulations from the regulations that applied before the extension unless the city has the

1                   approval of the governing body that had exercised zoning or subdivision  
2                   jurisdiction before the extension.

3           2.   The zoning and subdivision regulations of the city govern the entire extraterritorial  
4           area assumed by the city.

5           3.   Any change in zoning or subdivision regulation in the unincorporated territory must  
6           be approved by the governing body of the city and the governing body that had  
7           exercised zoning or subdivision regulation authority before the extension of  
8           extraterritorial zoning authority. If the governing bodies are unable to agree, either  
9           governing body may petition the office of administrative hearings to appoint an  
10          administrative law judge to determine whether the proposed regulation is  
11          substantially related to the purpose of the regulation and does not unnecessarily  
12          burden affected persons. A hearing may not be held until after at least two weeks'  
13          written notice has been given to the governing bodies of the jurisdictions involved  
14          in the dispute. At the hearing each governing body and any resident of, or person  
15          owning property in, the unincorporated territory or a representative of that resident  
16          or property owner may appear at the hearing and present evidence on any matter  
17          to be determined by the administrative law judge. A decision by the administrative  
18          law judge is binding on all jurisdictions involved in the dispute and remains  
19          effective until the governing bodies in the area of joint jurisdiction agree to change  
20          the zoning. Within ten years after the decision has become final, the governing  
21          body may request a review of a decision of an administrative law judge due to  
22          change in circumstances. An administrative law judge may consider any factor  
23          determined to be relevant by the administrative law judge, including the need of the  
24          city to plan for development of the city and the preferences of the residents or  
25          property owners in the unincorporated territory.

26          4.   If a quarter quarter section line divides a platted lot and the majority of that platted  
27          lot lies within the quarter quarter section, a city may apply its extraterritorial zoning  
28          authority to the remainder of that platted lot. If the majority of the platted lot lies  
29          outside the quarter quarter section, the city may not apply its extraterritorial zoning  
30          authority to any of that platted lot.

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

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

25       ~~5.~~ 7. If the mediation committee is unable to resolve the dispute to the satisfaction of the  
26                   governing bodies of all the cities involved, the governing body of any of the cities  
27                   may petition the office of administrative hearings to appoint an administrative law  
28                   judge to determine the extraterritorial zoning authority of the cities in the disputed  
29                   area. A hearing may not be held until after at least two weeks' written notice has  
30                   been given to the governing bodies of the cities involved in the dispute. At the  
31                   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 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-~~ 8. 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.

- 1        ~~7.~~ 9.    When a portion of the city is attached to the bulk of the city by a strip of land less  
2                    than one hundred feet [30.48 meters] wide, that portion and strip of land must be  
3                    disregarded when determining the extraterritorial zoning limits of the city. This  
4                    subsection does not affect the ability of a city to zone land within its city limits.
- 5        ~~8.~~ 10.    For the purposes of this section, a quarter quarter section ~~shall~~ must be  
6                    determined in the manner provided by 2 Stat. 313 [43 U.S.C. 752]. When  
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8                    government lot.