

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 thousand
17 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

subdivision that is exercising zoning authority within the territory to be
extraterritorially zoned.

3. If a quarter quarter section line divides a platted lot and the majority of that platted lot lies within the quarter quarter section, a city may apply its extraterritorial zoning authority to the remainder of that platted lot. If the majority of the platted lot lies outside the quarter quarter section, the city may not apply its extraterritorial zoning authority to any of that platted lot.
4. A city exercising its extraterritorial zoning authority shall hold a zoning transition meeting if the territory to be extraterritorially zoned is currently zoned. The city's zoning or planning commission shall provide at least fourteen days' notice of the meeting to the zoning board or boards of all political subdivisions losing their partial zoning authority. The purpose of the zoning transition meeting is to review existing zoning rules, regulations, and restrictions currently in place in the territory to be extraterritorially zoned and to plan for an orderly transition. The zoning transition meeting must take place before the city's adoption of an ordinance exercising extraterritorial zoning.
5. If two or more cities have boundaries at a distance where there is an overlap of extraterritorial zoning authority under this section, the governing bodies of the cities may enter into an agreement regarding the extraterritorial zoning authority of each city. The agreement must be for a specific term and is binding upon the cities unless the governing bodies of the cities agree to amend or rescind the agreement or unless determined otherwise by an administrative law judge in accordance with this chapter. If a dispute arises concerning the extraterritorial zoning authority of a city and the governing bodies of the cities involved fail to resolve the dispute, the dispute must be submitted to a committee for mediation. The committee must be comprised of one member appointed by the governor, one member of the governing body of each city, and one member of the planning commission of each city who resides outside the corporate city limits. The governor's appointee shall arrange and preside over the meeting and act as mediator at the meeting. A meeting may be continued until the dispute has been resolved or until the mediator determines that continued mediation is no longer worthwhile.

6. If the mediation committee is unable to resolve the dispute to the satisfaction of the governing bodies of all the cities involved, the governing body of any of the cities may petition the office of administrative hearings to appoint an administrative law judge to determine the extraterritorial zoning authority of the cities in the disputed area. A hearing may not be held until after at least two weeks' written notice has been given to the governing bodies of the cities involved in the dispute. At the hearing, the governor's appointee who mediated the meetings under subsection 4 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.

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~~ fewer than five thousand.

b. Two miles [3.22 kilometers] if the city has a population of five thousand or more, but ~~less~~ fewer than twenty-five thousand.

c. Four miles [6.44 kilometers] if the city has a population of twenty-five thousand or more.

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

3. A city that has exercised its authority under subsection 1 has joint zoning and subdivision regulation jurisdiction with the entity that otherwise would have jurisdiction. Any zoning change or subdivision plat approved or any change in zoning or subdivision regulation in the area of joint jurisdiction must be approved

by both governing bodies before the change becomes effective. If the governing bodies are unable to agree, either governing body may petition the office of administrative hearings to appoint an administrative law judge to resolve the dispute. A hearing may not be held until after at least two weeks' written notice has been given to the governing bodies of the jurisdictions involved in the dispute. Each governing body and any person affected by the regulation 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 on all jurisdictions involved in the dispute and remains effective until the governing bodies in the area of joint jurisdiction agree to change the zoning or subdivision regulation. In making a decision under this subsection, the administrative law judge shall consider the following factors:

- a. Whether the proposed change is consistent with a projected growth plan;
- b. Whether the proposed change is substantially related to planning practices consistent with adopted comprehensive plans;
- c. The impact of the proposed change on the present and planned uses of the area under review;
- d. The impact of the proposed change on the health and safety of the residents of the area;
- e. The effect of the change on the ability of the affected jurisdiction to adequately staff and enforce the change;
- f. The economic, physical, and social relationship of the inhabitants, businesses, and industries in the area affected by the change and the effect of the change on other political subdivisions;
- g. The economic impact of the proposed change on the property owners in the area of the proposed change and the economic impact on the city of a decision to deny the change; and
- h. Any other factor determined to be relevant by the administrative law judge.

4. If a quarter quarter section line divides a platted lot and the majority of that platted lot lies within the quarter quarter section, a city may apply its extraterritorial zoning authority to the remainder of that platted lot. If the majority of the platted lot lies

outside the quarter quarter section, the city may not apply its extraterritorial zoning authority to any of that platted lot.

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

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

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

1 been given to the governing bodies of the cities involved in the dispute. At the
2 hearing, the governor's appointee who mediated the meetings under subsection 4
3 6 shall provide information to the administrative law judge on the dispute between
4 the cities involved and any proposed resolutions or recommendations made by a
5 majority of the committee members. Any resident of, or person owning property in,
6 a city involved in the dispute or the unincorporated territory that is the subject of the
7 proposed extraterritorial zoning, a representative of such a resident or property
8 owner, and any representative of a city involved, may appear at the hearing and
9 present evidence on any matter to be determined by the administrative law judge.
10 A decision by the administrative law judge is binding upon all the cities involved in
11 the dispute and remains effective until the governing bodies of the cities agree to a
12 change in the zoning authority of the cities. The governing body of a city may
13 request a review of a decision of an administrative law judge due to changed
14 circumstances at any time ten years after the decision has become final. An
15 administrative law judge shall consider the following factors in making a decision
16 under this subsection:

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

29 ~~6.~~ 8. For purposes of this section, the population of a city must be determined by the last
30 official regular or special federal census. If a city has incorporated after a census,

1 the population of the city must be determined by a census taken in accordance
2 with chapter 40-22.

3 ~~7.~~ 9. When a portion of the city is attached to the bulk of the city by a strip of land less
4 than one hundred feet [30.48 meters] wide, that portion and strip of land must be
5 disregarded when determining the extraterritorial zoning limits of the city. This
6 subsection does not affect the ability of a city to zone land within its city limits.

7 ~~8.~~ 10. For the purposes of this section, a quarter quarter section ~~shall be~~ is as determined
8 in the manner provided by 2 Stat. 313 [43 U.S.C. 752]. When appropriate, the
9 phrase "quarter quarter section" refers to the equivalent government lot.