

HOUSE BILL NO. 1554

Introduced by

Representatives Damschen, D. Johnson, Wrangham

Senator Klein

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; and to provide for application.

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

- 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;

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~~ authority to any quarter quarter section of unincorporated territory if a majority of the quarter quarter section is located within ~~the following distance~~ one-half mile [.80 kilometer] of the corporate limits of the city:

a. ~~One mile [1.61 kilometers] if the city has a population of less than five thousand.~~

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

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

2. 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.

- 1 3. A city exercising its extraterritorial subdivision or zoning authority ~~shall hold a~~
2 ~~zoning transition meeting if the territory to be extraterritorially zoned is currently~~
3 ~~zoned. The city's zoning or planning commission shall provide at least fourteen~~
4 ~~days' notice of the meeting to the zoning board or boards of all political~~
5 ~~subdivisions losing their partial zoning authority. The purpose of the zoning~~
6 ~~transition meeting is to review existing zoning rules, regulations, and restrictions~~
7 ~~currently in place in the territory to be extraterritorially zoned and to plan for an~~
8 ~~orderly transition. The zoning transition meeting must take place before the city's~~
9 ~~adoption of an ordinance exercising extraterritorial zoning~~ cannot adopt any
10 regulation other than a regulation adopted by the governmental entity exercising
11 subdivision or zoning authority in the area before extension of the city's authority.
12 A governmental entity exercising subdivision or zoning authority in the area before
13 extension of the city's extraterritorial subdivision or zoning authority may continue
14 to exercise that authority in the area of extension and the city shall adopt and
15 enforce those regulations for that area.
- 16 4. If two or more cities have boundaries at a distance where there is an overlap of
17 extraterritorial zoning authority under this section, the governing bodies of the cities
18 may enter into an agreement regarding the extraterritorial zoning authority of each
19 city. The agreement must be for a specific term and is binding upon the cities
20 unless the governing bodies of the cities agree to amend or rescind the agreement
21 or unless determined otherwise by an administrative law judge in accordance with
22 this chapter. If a dispute arises concerning the extraterritorial zoning authority of a
23 city and the governing bodies of the cities involved fail to resolve the dispute, the
24 dispute must be submitted to a committee for mediation. The committee must be
25 comprised of one member appointed by the governor, one member of the
26 governing body of each city, and one member of the planning commission of each
27 city who resides outside the corporate city limits. The governor's appointee shall
28 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.

- 1 5. 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 6. 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 7. 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 8. For the purposes of this section, a quarter quarter section ~~shall~~ must be
12 determined in the manner provided by 2 Stat. 313 [43 U.S.C. 752]. When
13 appropriate, the phrase "quarter quarter section" refers to the equivalent
14 government lot.

15 **SECTION 2. APPLICATION.** Any extraterritorial zoning or subdivision regulation
16 beyond one-half mile [.80 kilometer] in effect before the effective date of this Act is void and if
17 another governmental entity has or had at the time of extension any regulation of similar subject
18 matter that is not the same as a city regulation, the city regulation is void.