

**FIRST ENGROSSMENT
with Senate Amendments**

Sixty-first
Legislative Assembly
of North Dakota

ENGROSSED 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 an expiration date.

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

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. A city that has exercised its authority under this subdivision has joint zoning and subdivision regulation jurisdiction beyond one-half mile [.80 kilometer] with the political subdivision that would otherwise have jurisdiction.

b. Two miles [3.22 kilometers] if the city has a population of five thousand or more, but ~~less~~ fewer than twenty-five thousand. A city that has exercised its authority under this subdivision has joint zoning and subdivision regulation jurisdiction beyond one mile [1.61 kilometers] with the political subdivision that would otherwise have jurisdiction.

1 c. 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 beyond two
4 miles [3.22 kilometers] with the political subdivision that would otherwise have
5 jurisdiction.

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

8 3. An application for a zoning change or subdivision plat or any change in zoning or
9 subdivision regulation in an area of joint jurisdiction must be submitted to the
10 governing body of the city. Upon receipt of the application, the governing body of
11 the city shall notify the governing body that would otherwise have jurisdiction and
12 provide that body with a copy of the application. After the governing body of the
13 city takes action on the application, the governing body that would otherwise have
14 jurisdiction has fifteen days to object to the city's decision or the decision becomes
15 final. If the governing body that would otherwise have jurisdiction objects, the
16 governing body of the city shall submit the issue to the board of county
17 commissioners for a final decision. The board of county commissioners shall
18 make a final decision and issue findings based on the record and the
19 comprehensive plans on file from the city, township, and county.

20 4. If a quarter quarter section line divides a platted lot and the majority of that platted
21 lot lies within the quarter quarter section, a city may apply its extraterritorial zoning
22 authority to the remainder of that platted lot. If the majority of the platted lot lies
23 outside the quarter quarter section, the city may not apply its extraterritorial zoning
24 authority to any of that platted lot.

25 ~~3.~~ 5. A city exercising its extraterritorial zoning authority shall hold a zoning transition
26 meeting if the territory to be extraterritorially zoned is currently zoned. The city's
27 zoning or planning commission shall provide at least fourteen days' notice of the
28 meeting to the zoning board or boards of all political subdivisions losing their
29 partial zoning authority. The purpose of the zoning transition meeting is to review
30 existing zoning rules, regulations, and restrictions currently in place in the territory
31 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 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~~ 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.

~~7.~~ 9. 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.

~~8.~~ 10. For the purposes of this section, a quarter quarter section ~~shall be~~ is as determined in the manner provided by 2 Stat. 313 [43 U.S.C. 752]. When

- 1 appropriate, the phrase "quarter quarter section" refers to the equivalent
2 government lot.
- 3 **SECTION 2. EXPIRATION DATE.** This Act is effective through July 31, 2011, and
4 after that date is ineffective.