

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; 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 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 and the quarter quarter section is within the city's ten-year growth plan projection. 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 and the quarter quarter section is within the city's ten-year growth plan projection. 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 and the quarter quarter section is within the city's ten-year

1 growth plan projection. A city may not change zoning or subdivision
2 regulations from the regulations that applied before the extension unless the
3 city has the approval of the governing body that had exercised zoning or
4 subdivision jurisdiction before the extension.

5 2. For purposes of this section, a ten-year growth projection must be made by a
6 person that is independent of the city extending zoning or subdivision regulation
7 and which is approved by the board of county commissioners of the county in
8 which the area of the extension is predominantly located. The city shall
9 recommend a person to the county and the county may reject the person on the
10 sole factor of not being or not appearing to be independent of the city.

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

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

city to plan for development of the city and the preferences of the residents or property owners in the unincorporated territory.

5. 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.~~ 6. 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.~~ 7. 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.

- 1 ~~5-~~ 8. 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 7 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.

~~6.~~ 9. 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.~~ 10. 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.~~ 11. For the purposes of this section, a quarter quarter section ~~shall~~ must 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.

SECTION 2. APPLICATION. A city that has extended zoning or subdivision regulation beyond the ten-year growth projection on the effective date of this Act may not exercise extended zoning or subdivision regulation further than the ten-year growth projection by January 1, 2010.