

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; 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
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 - Definition.**

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 from one-half mile [.80 kilometer] to one mile [1.61 kilometers] with the other political subdivision.
 - 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 from one mile [1.61 kilometers] to two miles [3.22 kilometers] with the other political subdivision.

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 from two
4 miles [3.22 kilometers] to four miles [6.44 kilometers] with the other political
5 subdivision.

6 2. Joint jurisdiction is jurisdiction in which the other political subdivision has
7 jurisdiction to receive applications and issue permits and impose administrative
8 fees for applications and permits. In addition, under this jurisdiction the other
9 political subdivision may adopt, modify, and enforce any zoning designation or
10 regulation and approve any subdivision plat or regulation. For a decision to be
11 final, the other political subdivision shall give written notice to the city. The city
12 may request negotiation as to any decision made by the other political subdivision
13 under the other political subdivision's jurisdiction within thirty days of notice. If
14 negotiation is not requested, the decision of the other political subdivision is final.
15 If the governing body of the other political subdivision and the city do not come to
16 an agreement as to the disputed zone or subdivision regulation within thirty days of
17 request for negotiation, then the dispute must be submitted to a committee for
18 mediation. The committee must be comprised of one member appointed by the
19 governor and two members of the governing body of the other political subdivision
20 and two members of the governing body of the city. The governor's appointee
21 shall arrange and preside over the meeting and act as mediator at the meeting. A
22 meeting may be continued until the dispute has been resolved or until the mediator
23 determines that continued mediation is no longer worthwhile. If the mediation
24 committee is unable to resolve the dispute to the satisfaction of the governing
25 bodies, then if the dispute is between a city and a township and upon acceptance
26 the board of county commissioners for the area in dispute within that county, the
27 dispute must be resolved by that board of county commissioners. However, if the
28 board of county commissioners does not accept the dispute, either party may
29 petition the office of administrative hearings for a hearing by an administrative law
30 judge. In addition, either party may petition the office of administrative hearings for
31 a hearing by an administrative law judge before the board of county

commissioners holds a hearing on the dispute. If the disputed regulation is in an area that does not have an organized township, the board of county commissioners may not hear the dispute and either party may petition the office of administrative hearings for a hearing by an administrative law judge. The party that does not prevail is liable for the costs of the administrative law judge.

3. Notwithstanding subsection 2, in an area in which there would otherwise be joint jurisdiction and in which the city has presented a plat or site plan application before the effective date of this Act, the city has jurisdiction to receive applications and issue permits and impose administrative fees for applications and permits relating to zoning and subdivision regulation. In addition, under this jurisdiction the city adopts, modifies, and enforces any zoning designation or regulation and approves any subdivision plat or regulation. For a decision of the city to be final, the city shall give written notice of the decision of the governing body of the political subdivision that would otherwise have jurisdiction. The governing body may request negotiation as to any decision made by the city under the city's jurisdiction within thirty days of notice. If negotiation is not requested, the decision of the city is final. If the city and governing body of the political subdivision that would otherwise have jurisdiction do not come to an agreement as to the disputed zoning or subdivision regulation within thirty days of the request for negotiation, then the dispute must be submitted to a committee for mediation. The committee must be composed of one member appointed by the governor and two members of the governing body of the city and two members of the governing body of the political subdivision that would otherwise have jurisdiction. 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. If the mediation committee is unable to resolve the dispute to the satisfaction of the governing bodies, then if the dispute is between a city and a township and upon acceptance the board of county commissioners for the area in dispute within that county, the dispute must be resolved by that board of county commissioners. However, if the board of county commissioners does not accept the dispute, either party may

petition the office of administrative hearings for a hearing by an administrative law judge. In addition, either party may petition the office of administrative hearings for a hearing by an administrative law judge before the board of county commissioners holds a hearing on the dispute. If the disputed regulation is in an area that does not have an organized township, the board of county commissioners may not hear the dispute and either party may petition the office of administrative hearings for a hearing by an administrative law judge. The party that does not prevail is liable for the costs of the administrative law judge.

4. Upon petition, the office of administrative hearings shall appoint an administrative law judge to resolve the dispute. A hearing by an administrative law judge or the board of county commissioners 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 or the board of county commissioners. A decision by the administrative law judge or board of county commissioners 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. The administrative law judge or board of county commissioners shall enter an order setting forth what the administrative law judge or board of county commissioners determines to be fair and reasonable terms and conditions. In all cases, the administrative law judge or board of county commissioners shall set forth in writing a decision, including findings of fact, reasons for the decision, and an order. The decision must include the factors upon which the decision is based. Within thirty days after receipt of the administrative law judge's order or the board of county commissioners' decision, any interested party dissatisfied with the decision may appeal to district court under the procedures in section 28-34-01. In making a decision under this subsection, the administrative law judge or board of county commissioners shall consider the following factors and shall give substantial weight to the factor described in subdivision a:

a. Whether the proposed change is consistent with a projected growth plan;

- b. The impact of the proposed change on the present and planned uses of the area under review;
- c. The impact of the proposed change on the health and safety of the residents of the area;
- d. The effect of the change on the liability of the affected jurisdiction to adequately staff and enforce the change;
- e. 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;
- f. 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
- g. Any other factor determined to be relevant by the administrative law judge or board of county commissioners.

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.

6. Where two or more contiguous cities with populations of two thousand or more have boundaries at a distance where there would be an overlap of zoning authority under this section, the cities' zoning authority is divided along a line equidistant between or among the cities.

7. Where two or more cities, each having a population of two thousand or more, have city limits that are contiguous, and one city is larger than the other, based upon the classification in subsection 1, the larger city shall exercise the same authority as the smaller city where the cities are contiguous under this section.

8. Where two or more cities, each having a population of two thousand or more, have city limits that are contiguous, an annexation of property by one of the cities does not affect the zoning authority previously established under this section.

1 ~~3.~~ 9. 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
5 partial zoning authority. The purpose of the zoning transition meeting is to review
6 existing zoning rules, regulations, and restrictions currently in place in the territory
7 to be extraterritorially zoned and to plan for an orderly transition. The zoning
8 transition meeting must take place before the city's adoption of an ordinance
9 exercising extraterritorial zoning.

10 ~~4.~~ 10. 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
12 cities may enter into an agreement regarding the extraterritorial zoning authority of
13 each city. The agreement must be for a specific term and is binding upon the
14 cities unless the governing bodies of the cities agree to amend or rescind the
15 agreement or unless determined otherwise by an administrative law judge in
16 accordance with this chapter. If a dispute arises concerning the extraterritorial
17 zoning authority of a city and the governing bodies of the cities involved fail to
18 resolve the dispute, the dispute must be submitted to a committee for mediation.
19 The committee must be comprised of one member appointed by the governor, one
20 member of the governing body of each city, and one member of the planning
21 commission of each city who resides outside the corporate city limits. The
22 governor's appointee shall arrange and preside over the meeting and act as
23 mediator at the meeting. A meeting may be continued until the dispute has been
24 resolved or until the mediator determines that continued mediation is no longer
25 worthwhile.

26 ~~5.~~ 11. If the mediation committee is unable to resolve the dispute to the satisfaction of the
27 governing bodies of all the cities involved, the governing body of any of the cities
28 may petition the office of administrative hearings to appoint an administrative law
29 judge to determine the extraterritorial zoning authority of the cities in the disputed
30 area. A hearing may not be held until after at least two weeks' written notice has
31 been given to the governing bodies of the cities involved in the dispute. At the

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

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

28 ~~6.~~ 12. For purposes of this section, the population of a city must be determined by the
29 last official regular or special federal census. If a city has incorporated after a
30 census, the population of the city must be determined by a census taken in
31 accordance with chapter 40-22.

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

9 15. As used in this section, "other political subdivision" means a political subdivision,
10 not including another city, which would otherwise have zoning or subdivision
11 regulation jurisdiction.

12 **SECTION 2. APPLICATION.** This Act applies to the exercise of extended zoning and
13 subdivision regulation by a city before the effective date of this Act except the city continues
14 extended zoning and subdivision regulation for areas for which a plat or site plan application
15 was presented to the city before the effective date of this Act. The zoning districts and
16 regulation of those districts of the city remain in effect and are the districts and regulations in an
17 area of joint jurisdiction until modified or different districts and regulations are adopted by
18 another political subdivision under this Act.