

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.

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.

1           7. For purposes of this section, the population of a city must be determined by the last  
2           official regular or special federal census. If a city has incorporated after a census,  
3           the population of the city must be determined by a census taken in accordance  
4           with chapter 40-22.

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

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

12           **(Effective after July 31, 2009) Extraterritorial zoning - Mediation - Determination by**  
13   **administrative law judge.**

14          1. A city may, by ordinance, extend the application of a city's zoning regulations to  
15          any quarter quarter section of unincorporated territory if a majority of the quarter  
16          quarter section is located within the following distance of the corporate limits of the  
17          city:

18           a. One mile [1.61 kilometers] if the city has a population of ~~less~~ fewer than five  
19           thousand. A city that has used the authority allowed under this subdivision  
20           has joint zoning and subdivision regulation jurisdiction beyond one-half mile  
21           [.80 kilometer] with the entity that would otherwise have jurisdiction.

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

27           c. Four miles [6.44 kilometers] if the city has a population of twenty-five  
28           thousand or more. A city that has used the authority allowed under this  
29           subdivision has joint zoning and subdivision regulation jurisdiction beyond two  
30           miles [3.22 kilometers] with the entity that would otherwise have jurisdiction.

- 1           2.   Any zoning or subdivision regulation change in the area of joint jurisdiction must be  
2                   approved by both governing bodies before the change becomes effective as a city  
3                   regulation, otherwise the regulation in place at the time of the extension is deemed  
4                   the regulation of the city.
- 5           3.   If a quarter quarter section line divides a platted lot and the majority of that platted  
6                   lot lies within the quarter quarter section, a city may apply its extraterritorial zoning  
7                   authority to the remainder of that platted lot. If the majority of the platted lot lies  
8                   outside the quarter quarter section, the city may not apply its extraterritorial zoning  
9                   authority to any of that platted lot.
- 10       ~~3.~~ 4.   A city exercising its extraterritorial zoning authority shall hold a zoning transition  
11                   meeting if the territory to be extraterritorially zoned is currently zoned. The city's  
12                   zoning or planning commission shall provide at least fourteen days' notice of the  
13                   meeting to the zoning board or boards of all political subdivisions losing their partial  
14                   zoning authority. The purpose of the zoning transition meeting is to review existing  
15                   zoning rules, regulations, and restrictions currently in place in the territory to be  
16                   extraterritorially zoned and to plan for an orderly transition. The zoning transition  
17                   meeting must take place before the city's adoption of an ordinance exercising  
18                   extraterritorial zoning.
- 19       4. 5.   If two or more cities have boundaries at a distance where there is an overlap of  
20                   extraterritorial zoning authority under this section, the governing bodies of the cities  
21                   may enter into an agreement regarding the extraterritorial zoning authority of each  
22                   city. The agreement must be for a specific term and is binding upon the cities  
23                   unless the governing bodies of the cities agree to amend or rescind the agreement  
24                   or unless determined otherwise by an administrative law judge in accordance with  
25                   this chapter. If a dispute arises concerning the extraterritorial zoning authority of a  
26                   city and the governing bodies of the cities involved fail to resolve the dispute, the  
27                   dispute must be submitted to a committee for mediation. The committee must be  
28                   comprised of one member appointed by the governor, one member of the  
29                   governing body of each city, and one member of the planning commission of each  
30                   city who resides outside the corporate city limits. The governor's appointee shall  
31                   arrange and preside over the meeting and act as mediator at the meeting. A

1 meeting may be continued until the dispute has been resolved or until the mediator  
2 determines that continued mediation is no longer worthwhile.

3 ~~5.~~ 6. If the mediation committee is unable to resolve the dispute to the satisfaction of the  
4 governing bodies of all the cities involved, the governing body of any of the cities  
5 may petition the office of administrative hearings to appoint an administrative law  
6 judge to determine the extraterritorial zoning authority of the cities in the disputed  
7 area. A hearing may not be held until after at least two weeks' written notice has  
8 been given to the governing bodies of the cities involved in the dispute. At the  
9 hearing, the governor's appointee who mediated the meetings under  
10 subsection ~~4~~ 5 shall provide information to the administrative law judge on the  
11 dispute between the cities involved and any proposed resolutions or  
12 recommendations made by a majority of the committee members. Any resident of,  
13 or person owning property in, a city involved in the dispute or the unincorporated  
14 territory that is the subject of the proposed extraterritorial zoning, a representative  
15 of such a resident or property owner, and any representative of a city involved,  
16 may appear at the hearing and present evidence on any matter to be determined  
17 by the administrative law judge. A decision by the administrative law judge is  
18 binding upon all the cities involved in the dispute and remains effective until the  
19 governing bodies of the cities agree to a change in the zoning authority of the  
20 cities. The governing body of a city may request a review of a decision of an  
21 administrative law judge due to changed circumstances at any time ten years after  
22 the decision has become final. An administrative law judge shall consider the  
23 following factors in making a decision under this subsection:

- 24 a. The proportional extraterritorial zoning authority of the cities involved in the  
25 dispute;
- 26 b. The proximity of the land in dispute to the corporate limits of each city  
27 involved;
- 28 c. The proximity of the land in dispute to developed property in the cities  
29 involved;
- 30 d. Whether any of the cities has exercised extraterritorial zoning authority over  
31 the disputed land;

- 1 e. Whether natural boundaries such as rivers, lakes, highways, or other physical  
2 characteristics affecting the land are present;
- 3 f. The growth pattern of the cities involved in the dispute; and
- 4 g. Any other factor determined to be relevant by the administrative law judge.
- 5 ~~6.~~ 7. For purposes of this section, the population of a city must be determined by the last  
6 official regular or special federal census. If a city has incorporated after a census,  
7 the population of the city must be determined by a census taken in accordance  
8 with chapter 40-22.
- 9 ~~7.~~ 8. When a portion of the city is attached to the bulk of the city by a strip of land less  
10 than one hundred feet [30.48 meters] wide, that portion and strip of land must be  
11 disregarded when determining the extraterritorial zoning limits of the city. This  
12 subsection does not affect the ability of a city to zone land within its city limits.
- 13 ~~8.~~ 9. For the purposes of this section, a quarter quarter section ~~shall be~~ is as determined  
14 in the manner provided by 2 Stat. 313 [43 U.S.C. 752]. When appropriate, the  
15 phrase "quarter quarter section" refers to the equivalent government lot.