

Introduced by

Senators Lee, Fischer, Kroeplin

Representatives Devlin, Koppang, Koppelman

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.

3 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

4 **SECTION 1. AMENDMENT.** Section 40-47-01.1 of the 1997 Supplement to the North
5 Dakota Century Code is amended and reenacted as follows:

6 **40-47-01.1. Extraterritorial zoning - Mediation - Determination by administrative**
7 **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 mile [1.61 kilometers] if the city has a population of less than five
13 thousand.
 - 14 b. Two miles [3.22 kilometers] if the city has a population of five thousand or
15 more, but less than twenty-five thousand.
 - 16 c. Four miles [6.44 kilometers] if the city has a population of twenty-five
17 thousand or more.
- 18 2. If a quarter quarter section line divides a platted lot and the majority of that platted
19 lot lies within the quarter quarter section, a city may apply its extraterritorial zoning
20 authority to the remainder of that platted lot. If the majority of the platted lot lies
21 outside the quarter quarter section, the city may not apply its extraterritorial zoning
22 authority to any of that platted lot.
- 23 3. A city exercising its extraterritorial zoning authority shall hold a zoning transition
24 meeting if the territory to be extraterritorially zoned is currently zoned. The city's

1 zoning or planning commission shall provide at least fourteen days' notice of the
2 meeting to the zoning board or boards of all political subdivisions losing their
3 partial zoning authority. The purpose of the zoning transition meeting is to review
4 existing zoning rules, regulations, and restrictions currently in place in the territory
5 to be extraterritorially zoned and to plan for an orderly transition. The zoning
6 transition meeting must take place before the city's adoption of an ordinance
7 exercising extraterritorial zoning.

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

24 4. 5. If the mediation committee is unable to resolve the dispute to the satisfaction of the
25 governing bodies of all the cities involved, the governing body of any of the cities
26 may petition the office of administrative hearings to appoint an administrative law
27 judge to determine the extraterritorial zoning authority of the cities in the disputed
28 area. A hearing may not be held until after at least two weeks' written notice has
29 been given to the governing bodies of the cities involved in the dispute. At the
30 hearing, the governor's appointee who mediated the meetings under subsection 3
31 shall provide information to the administrative law judge on the dispute between

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

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

26 ~~5-~~ 6. For purposes of this section, the population of a city must be determined by the
27 last official regular or special federal census. If a city has incorporated after a
28 census, the population of the city must be determined by a census taken in
29 accordance with chapter 40-22.

30 ~~6-~~ 7. When a portion of the city is attached to the bulk of the city by a strip of land less
31 than one hundred feet wide, that portion and strip of land must be disregarded

1 when determining the extraterritorial zoning limits of the city. This subsection does
2 not affect the ability of a city to zone land within its city limits.
3 ~~7.~~ 8. For the purposes of this section, a quarter quarter section shall be determined in
4 the manner provided by 2 Stat. 313 [43 U.S.C. 752]. When appropriate, the
5 phrase "quarter quarter section" refers to the equivalent government lot.