

**FIRST ENGROSSMENT
with Senate Amendments**

Sixtieth
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1321

Introduced by

Representatives Wrangham, Damschen, S. Meyer

Senators Heitkamp, O'Connell, Triplett

1 A BILL for an Act to amend and reenact sections 40-47-01.1, 40-47-06, and 40-48-03 of the
2 North Dakota Century Code, relating to extraterritorial zoning jurisdiction of cities; to provide for
3 a legislative council study; to provide for application; and to provide an expiration date.

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

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

7 **40-47-01.1. Extraterritorial zoning - Mediation - Determination by administrative**
8 **law judge.**

- 9 1. A city may, by ordinance, extend the application of a city's zoning regulations to
10 any quarter quarter section of unincorporated territory if a majority of the quarter
11 quarter section is located within the following distance of the corporate limits of the
12 city:
- 13 a. ~~One~~ One-half mile [~~1.61 kilometers~~ .80 kilometer] if the city has a population
14 of ~~less~~ fewer than five thousand.
- 15 b. ~~Two miles~~ [~~3.22 kilometers~~] One mile [1.61 kilometers] if the city has a
16 population of five thousand or more, but ~~less~~ fewer than twenty-five thousand.
- 17 c. ~~Four miles~~ [~~6.44 kilometers~~] Two miles [3.22 kilometers] if the city has a
18 population of twenty-five thousand or more.
- 19 2. Subject to subsections 5 and 6, a city, by ordinance, may extend the application of
20 the city's zoning regulations to two times the distance allowed under
21 subdivisions a, b, and c of subsection 1 if the extension is approved by at least five
22 of six members of a committee established to review the proposed extension. The
23 committee must consist of three members appointed by the governing body of the
24 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 ~~3.~~ 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 4. 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

1 resolved or until the mediator determines that continued mediation is no longer
2 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 subsection 4
10 shall provide information to the administrative law judge on the dispute between
11 the cities involved and any proposed resolutions or recommendations made by a
12 majority of the committee members. Any resident of, or person owning property in,
13 a city involved in the dispute or the unincorporated territory that is the subject of
14 the proposed extraterritorial zoning, a representative of such a resident or property
15 owner, and any representative of a city involved, may appear at the hearing and
16 present evidence on any matter to be determined by the administrative law judge.
17 A decision by the administrative law judge is binding upon all the cities involved in
18 the dispute and remains effective until the governing bodies of the cities agree to a
19 change in the zoning authority of the cities. The governing body of a city may
20 request a review of a decision of an administrative law judge due to changed
21 circumstances at any time ten years after the decision has become final. An
22 administrative law judge shall consider the following factors in making a decision
23 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
6 last official regular or special federal census. If a city has incorporated after a
7 census, the population of the city must be determined by a census taken in
8 accordance 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 determined in
14 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.

16 **SECTION 2. AMENDMENT.** Section 40-47-06 of the North Dakota Century Code is
17 amended and reenacted as follows:

18 **40-47-06. Zoning commission - Appointment - Duties - Preliminary and final**
19 **report.** The governing body of a city desiring to avail itself of the powers conferred by this
20 chapter shall appoint a commission, to be known as the zoning commission, to recommend the
21 boundaries of the various original districts and appropriate regulations to be enforced therein.
22 ~~In addition to the members appointed by the city~~ If the city exercises extraterritorial zoning
23 authority under section 40-47-01.1, the zoning commission ~~shall~~ must include at least one
24 ~~person~~ individual residing outside of the corporate limits of a city ~~having~~ if the city has a
25 population of ~~less~~ fewer than five thousand, two ~~persons~~ individuals residing outside the
26 corporate limits of a the city ~~having~~ if the city has a population of five thousand or more, but
27 ~~less~~ fewer than twenty-five thousand, or three ~~persons~~ individuals residing outside the
28 corporate limits of a the city ~~having~~ if the city has a population of twenty-five thousand or more
29 ~~if zoning authority is exercised pursuant to section 40-47-01.1. Such persons shall. Those~~
30 individuals must be appointed by the board or boards of county commissioners of the county or
31 counties within which ~~such~~ the zoning authority is to be exercised and ~~shall~~ must reside within

1 the territorial limits of the zoning regulation authority exercised by the city, if any such persons
2 ~~are~~ individual is available and will serve on the zoning commission. Of the members of the
3 commission appointed by a board or boards of county commissioners pursuant to this section,
4 the first member appointed shall hold office for five years, the second member appointed shall
5 hold office for three years, and the third member appointed shall hold office for one year.
6 Thereafter, the members shall be appointed for terms of five years. ~~Such~~ The commission
7 shall make a preliminary report and hold public hearings thereon before submitting its final
8 report. The governing body ~~shall~~ may not hold its public hearings or take action until it has
9 received the final report of the zoning commission. If a city has a planning commission, it may
10 be appointed as the zoning commission.

11 **SECTION 3. AMENDMENT.** Section 40-48-03 of the North Dakota Century Code is
12 amended and reenacted as follows:

13 **40-48-03. Planning commission - Creation - Members - Ex officio members.** The
14 governing body of any city may create, by ordinance, a planning commission to consist of not
15 more than ten members to be appointed by the executive officer of the city with the approval of
16 its governing body. ~~In addition to the members appointed by the city~~ If the city exercises
17 extraterritorial zoning authority under section 40-47-01.1, the planning commission ~~shall~~ must
18 include at least one ~~person~~ individual residing outside of the corporate limits of a the city
19 ~~having~~ if the city has a population of ~~less~~ fewer than five thousand, two ~~persons~~ individuals
20 residing outside the corporate limits ~~of a~~ if the city ~~having~~ has a population of five thousand or
21 more, but ~~less~~ fewer than twenty-five thousand, or three ~~persons~~ individuals residing outside
22 the corporate limits of a the city ~~having~~ if the city has a population of twenty-five thousand or
23 more ~~if zoning authority is exercised pursuant to section 40-47-01.1.~~ ~~Such persons shall.~~
24 Those individuals must be appointed by the board or boards of county commissioners of the
25 county or counties within which ~~such~~ the subdivision authority is to be exercised and ~~shall~~ must
26 reside within the territorial limits of the subdivision regulation authority exercised by the city, if
27 any such persons ~~are~~ individual is available and will serve on the planning commission. Of the
28 members of the commission appointed by a board or boards of county commissioners pursuant
29 to this section, the first member appointed shall hold office for five years, the second member
30 appointed shall hold office for three years, and the third member appointed shall hold office for
31 one year. Thereafter, the members shall be appointed for terms of five years. The executive

1 officer, the engineer, and the attorney of the city ~~shall be~~ are ex officio members of the
2 commission.

3 **SECTION 4. LEGISLATIVE COUNCIL STUDY - EXTRATERRITORIAL ZONING**

4 **AUTHORITY.** The legislative council shall consider studying, during the 2007-08 interim, the
5 extraterritorial zoning authority of cities and the impact of that authority on other political
6 subdivisions. The legislative council shall report its findings and recommendations, together
7 with any legislation required to implement the recommendations, to the sixty-first legislative
8 assembly.

9 **SECTION 5. APPLICATION.** Any extraterritorial zoning regulation in effect before
10 May 1, 2007, which extends beyond the extraterritorial zoning authority provided by this Act is
11 not affected by the reduction in the extraterritorial zoning limits in section 1 of this Act.

12 **SECTION 6. EXPIRATION DATE.** Sections 1 through 3 of this Act are effective
13 through July 31, 2009, and after that date are ineffective.