

**Sixtieth Legislative Assembly of North Dakota
In Regular Session Commencing Wednesday, January 3, 2007**

HOUSE BILL NO. 1321
(Representatives Wrangham, Damschen, S. Meyer)
(Senators Heitkamp, O'Connell, Triplett)

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

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

40-47-01.1. 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~~ One-half mile [~~1.61 kilometers~~ .80 kilometer] if the city has a population of ~~less~~ fewer than five thousand.
 - b. ~~Two miles~~ [~~3.22 kilometers~~] One mile [1.61 kilometers] if the city has a population of five thousand or more, but ~~less~~ fewer than twenty-five thousand.
 - c. ~~Four miles~~ [~~6.44 kilometers~~] Two miles [3.22 kilometers] if the city has a population of twenty-five thousand or more.
2. Subject to subsections 5 and 6, a city, by ordinance, may extend the application of the city's zoning regulations to two times the distance allowed under subdivisions a, b, and c of subsection 1 if the extension is approved by at least five of six members of a committee established to review the proposed extension. The committee must consist of three members appointed by the governing body of the city and three members appointed, jointly, by the governing bodies of any political subdivision that is exercising zoning authority within the territory to be extraterritorially zoned.
3. 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.~~ 4. 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.~~ 5. 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.

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

- ~~8.~~ 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.

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

40-47-06. Zoning commission - Appointment - Duties - Preliminary and final report. The governing body of a city desiring to avail itself of the powers conferred by this chapter shall appoint a commission, to be known as the zoning commission, to recommend the boundaries of the various original districts and appropriate regulations to be enforced therein. ~~In addition to the members appointed by the city~~ If the city exercises extraterritorial zoning authority under section 40-47-01.1, the zoning commission shall must include at least one person individual residing outside of the corporate limits of a city having if the city has a population of less fewer than five thousand, two persons individuals residing outside the corporate limits of a the city having if the city has a population of five thousand or more, but less fewer than twenty-five thousand, or three persons individuals residing outside the corporate limits of a the city having if the city has a population of twenty-five thousand or more if zoning authority is exercised pursuant to section 40-47-01.1. Such persons shall. Those individuals must be appointed by the board or boards of county commissioners of the county or counties within which ~~such the~~ zoning authority is to be exercised and ~~shall must~~ reside within the territorial limits of the zoning regulation authority exercised by the city, if any such persons are individual is available and will serve on the zoning commission. Of the members of the commission appointed by a board or boards of county commissioners pursuant to this section, the first member appointed shall hold office for five years, the second member appointed shall hold office for three years, and the third member appointed shall hold office for one year. Thereafter, the members shall be appointed for terms of five years. ~~Such The~~ commission shall make a preliminary report and hold public hearings thereon before submitting its final report. The governing body ~~shall may~~ not hold its public hearings or take action until it has received the final report of the zoning commission. If a city has a planning commission, it may be appointed as the zoning commission.

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

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

SECTION 4. LEGISLATIVE COUNCIL STUDY - EXTRATERRITORIAL ZONING AUTHORITY. The legislative council shall consider studying, during the 2007-08 interim, the extraterritorial zoning authority of cities and the impact of that authority on other political subdivisions.

The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-first legislative assembly.

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

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

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Sixtieth Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1321.

House Vote: Yeas 70 Nays 16 Absent 8

Senate Vote: Yeas 36 Nays 11 Absent 0

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 2007.

Approved at _____ M. on _____, 2007.

Governor

Filed in this office this _____ day of _____, 2007,

at _____ o'clock _____ M.

Secretary of State