

required the city zoning or planning commission to provide at least 14 days' notice of the meeting to the zoning board or boards of all political subdivisions losing their partial zoning authority. The bill also provided that 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. In 1999 a technical correction was made to the law in House Bill No. 1049.

Since 1981, there have been a number of Attorney General's opinions interpreting NDCC Section 40-47-01.1. These opinions included:

- A letter dated November 6, 1989, which stated a city's extraterritorial zoning authority preempts township zoning occurring within that same extraterritorial area. If a city's floodplain regulations, building permits, building code ordinances, and building code regulations are enacted under a city zoning authority, these regulations and permits will preempt township counterparts within the extraterritorial area. If a city chooses to enforce the State Building Code, including any amendments it enacts to that code, township enforcement of the same code is preempted within the extraterritorial area.
- A letter opinion in 1996, 96-L-188, which stated only a city may zone in the area affected by extraterritorial zoning authority, even if the city has not adopted zoning ordinances.
- An Attorney General's opinion in 1997, 97-F-10, which opined that the authority to license the retail sale of alcoholic beverages is granted to the county for all parts of the county outside the corporate limits of a city notwithstanding a city's extraterritorial police power jurisdiction granted by Section 40-06-01. Section 40-06-01 provides that except whereas otherwise provided by law, a city has jurisdiction over all places within one-half mile of city limits for the purposes of enforcing health ordinances and regulations, and police regulations and ordinances adopted to promote the peace, order, safety, and general welfare of the city. However, a city's zoning authority includes the power to regulate and restrict the location and use of a retail alcoholic beverage establishment and as such a city may effectively prohibit a person from engaging in the sale of alcoholic beverages at a particular location within the extraterritorial zoning jurisdiction of the city.
- An Attorney General's opinion in 1998, 98-F-18, which opined that a city may apply and enforce its fire prevention code in unincorporated territory within the city's extraterritorial zoning authority to the extent the city has adopted the fire prevention code under its zoning authority and extended the application of the zoning regulations by ordinance.

OTHER LAWS RELATING TO EXTRATERRITORIAL ZONING AUTHORITY

Zoning in General

Besides dealing with extraterritorial zoning authority, NDCC Chapter 40-47 relates to zoning in general. In addition to the provisions specifically addressed, the chapter contains provisions for creating, amending, enforcement, and repeals of zoning regulations.

Presently in the areas surrounding a city in which the city has not exercised jurisdiction, the county is the zoning authority, unless the township has exercised its zoning authority. Under NDCC Section 40-47-01, for the purpose of promoting health, safety, morals, or the general welfare of the community, the city may regulate the size of buildings, the size of lots and yards, the density of population, and the location of buildings based on the purpose of the buildings. This broad zoning regulation is limited by the provisions in state law relating to the State Building code. In particular, Section 54-21.3-03 requires a governing body of the city, township, or county that elects to administer and enforce a building code to enforce the State Building Code. However, the State Building Code may be amended by these political subdivisions to conform to local needs.

Under NDCC Section 40-47-02, the city may divide the city into districts for purposes of zoning. All regulations must be uniform for each class or kind of buildings throughout each district, but the regulations in one district may differ from another. Section 40-47-03 requires that regulations adopted for zoning ordinances must be part of a comprehensive plan and must be designed to:

1. Lessen congestion in the streets.
2. Provide for emergency management.
3. Promote health and the general welfare.
4. Provide adequate light and air.
5. Prevent the overcrowding of land.
6. Avoid undue concentration of population.
7. Facilitate adequate provisions of transportation, water, sewage, schools, parks, and other public requirements.

Under NDCC Section 40-47-06, the governing body of the city may give its zoning authority to a zoning commission. If extraterritorial zoning authority is exercised, the zoning commission must be made up of at least one person residing outside the corporate limits of a city having a population of fewer than 5,000, two persons residing outside the corporate limits of a city having a population between 5,000 and 24,999, or three persons residing outside the corporate limits of a city having a population of 25,000 or more. The persons to be on the zoning commission from outside the corporate limits of the city are appointed by the board of county commissioners within the area in which the zoning authority is exercised and must reside within the area in which zoning regulation authority is exercised by the city.