

The Continuing Need for Extraterritorial Jurisdiction in North Dakota

North Dakota cities with healthy economies will continually face the need to expand their boundaries. Meeting the demands of growth requires careful planning. Transportation, water, sewer, and stormwater infrastructure must be provided in an efficient manner to keep costs as low as possible for existing and future taxpayers. Land uses should be compatible with each other and develop in a predictable manner. Cities across the state adopt plans through a robust public process to address the challenges and opportunities of future growth.

These plans are only as effective as a local government's authority to implement them. For example, a city may have a well-considered plan to extend a sewer main to support commercial urban growth in a certain direction. However, another jurisdiction's approval of even a single residential subdivision on private septic tanks along this pathway could effectively block this intended growth and lower property values for the entire area. Finding a less direct alternative for the pipeline could result in higher construction and maintenance costs to all residents for many years into the future. City Commissions and Planning Commission should be entrusted to understand and follow the plans they have adopted.

The North Dakota State Legislature has recognized this reality for nearly a century. The "Planning Act", Chapter 177 § 13 ND Session Laws 1929, granted subdivision authority for all lands within six miles of corporate limits to all cities in North Dakota. The approval process and distances have changed over the years, but North Dakota has consistently given cities the tools they need to manage outward growth.

The State Legislature has wisely included safeguards with extraterritorial authority to protect rural landowners and promote cooperation between cities, counties, and townships. City Planning Commissions must include representation from rural areas. Counties and townships retain certain authority over rights-of-

way and zoning. This legal basis encourages all political subdivisions to communicate and negotiate with each other in mutually beneficial ways.

Without the tool of extraterritorial authority, cities will face pressure to annex rural areas well in advance of development to provide room for growth. Annexation is a blunt instrument that could lead to significant public opposition, especially if rural property owners are expected to pay property tax for services they do not yet receive. Extraterritorial authority serves as a reasonable middle ground between full annexation and no city participation at all.

One may predict that if the loss of extraterritorial authority prevents outward expansion of cities, this will only encourage more inward growth to the benefit of all residents. However, evidence from other metropolitan areas suggests this is not the most probable outcome. Outward expansion will likely continue, but in a more disorganized and costly manner with urban development skipping over barriers and extending even further outward into rural areas.

Cities should be encouraged to justify the extraterritorial area they will need through their Comprehensive Plan, with rigorous analysis of growth projections and land capacity required to absorb growth. This can provide confidence to the public that the jurisdiction is no more or less than what is necessary to accommodate a reasonable time horizon of growth, such as 50 years. The boundaries would be uniquely tailored to each individual city based on demonstrated need.

The North Dakota Planning Association (NDPA) includes members from across the state, working for both cities and counties, with extensive experience with administering extraterritorial zoning and subdivision authority. The NDPA supports this critical growth management tool.

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