

# Extraterritorial Zoning Authority

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March 2006**

As zoning and other land use regulations first came into widespread use in North Carolina, this activity was almost exclusively a municipal concern. While most cities of any size were adopting zoning, only a few counties were doing so. As the post-World War II development boom took off, a good deal of the development occurred along the urban fringe, often in unregulated areas just outside of city corporate limits, and often in what was characterized at the time as "relatively chaotic fashion." The result in North Carolina, as in many states, was to authorize city "perimeter zoning," which is now known as municipal extraterritorial jurisdiction.

Authority to adopt zoning ordinances in the one-mile area surrounding the city was granted to Raleigh, Chapel Hill, Gastonia, and Tarboro in 1949. In succeeding years, a number of additional cities secured local legislation authorizing extraterritorial zoning. The legislature granted statewide authority for municipal extraterritorial land use regulation in 1959.

When a city adopts an extraterritorial boundary ordinance, the city acquires jurisdiction for all of its ordinances adopted under Article 19 of Chapter 160A of the General Statutes and the county loses its jurisdiction for the same range of ordinances. This includes not only zoning and subdivision ordinances, but also housing and building codes and regulations on historic districts and historic landmarks, open spaces, community development, erosion and sedimentation control, floodways, mountain ridges, and roadway corridors. The city does not acquire, nor does the county lose, jurisdiction for regulations adopted under the general ordinance-making power of G.S. 160A-174, such as junked car or noise ordinances. So, for example, if sign regulations are a section of a city zoning ordinance, they apply in the extraterritorial area; however, if they are part of a separate sign ordinance, they do not.

Most North Carolina cities, particularly those with populations greater than 2,500, have taken advantage of the statutory authority to exercise extraterritorial land use regulation. A survey completed by the School of Government in 2005 62 percent of responding municipalities had adopted extraterritorial zoning.

## **Geographic Area Covered**

The statute granting municipalities extraterritorial regulatory authority, G.S. 160A-360, defines the area within which a city may apply extraterritorial land development regulations. This statute includes specific standards for delineating the geographic area in which a city may exercise extraterritorial jurisdiction. A single boundary must be used for all of a city's extraterritorial land use powers.

The maximum size of a city's extraterritorial area is determined by its population. G.S. 160A-360(a) provides that the extraterritorial area may extend up to one mile from the city limits for cities with populations of less than 10,000. If county approval is secured, cities with populations of between 10,000 and 25,000 may extend their jurisdiction for up to two miles; cities with populations of more than 25,000, up to three miles. In addition, a city may choose to exercise only part of its potential jurisdiction. A 2005 survey by the Institute of Government indicated that most municipalities only exercise this jurisdiction within one mile of the city limits. Of 195 cities reporting use of extraterritorial land use jurisdiction, 85 percent had one mile or less of extraterritorial jurisdiction, 10 percent had up to two mile, and only five percent had up to three miles.

G.S. 160A-360(b) provides that the area chosen must be based on "existing or projected urban development and areas of critical concern to the city, as evidenced by officially adopted plans for its development." To the extent feasible, the boundaries of an area are to follow geographic features identifiable on the ground but without extending beyond the statutory mileage maximums. Boundaries typically follow property lines but are not required to do so. Cities have the option of excluding areas in another county, areas separated from the city by barriers to growth, or areas where growth will have minimal impact on the city. Neither the boundary ordinance nor the public notice for the hearing on the boundary ordinance needs to be based on a detailed legal survey. However, the boundary must be described with sufficient precision that landowners can tell whether or not their properties are covered without hiring a surveyor.

Regarding the annexation of areas that are not contiguous with the city (often referred to as satellite annexations), G.S. 160A-58.4 allows zoning to be applied therein as in all other parts of the city. The city may not extend extraterritorial zoning to the land adjacent to those areas, however, unless that land is within the extraterritorial area authorized for the city's primary corporate limits.

When the extraterritorial jurisdictions of two cities overlap, the boundary of each is set at the midway point unless the cities agree otherwise.

### **Process to Establish Extraterritorial Jurisdiction**

G.S. 160A-360 also includes a detailed process that must be followed by a city in establishing extraterritorial jurisdiction.

#### **Summary of Requirements for Extraterritorial Zoning**

1. Prepare adequate boundary description. Boundary may extend for up to three miles, depending on city's population.
2. Publish newspaper notice of public hearing; the notice must appear once a week for two successive weeks, the first time at least ten but not more than twenty-five days before hearing.
3. Mail notice to individual property owners in affected area. The notice must include information on the effect of extraterritorial jurisdiction, on the right to participate in the hearing

on the matter, and on the right to apply to serve on the city planning board and board of adjustment. The notice must be mailed four weeks prior to the hearing. Mailed notice is required also for application of zoning to area. However, because that mailing may not be made more than twenty-five days prior to the hearing, it is not possible to post a single mailing on both the extraterritorial extension and the new zoning, even if both are to be discussed at a single hearing.

4. Secure county agreement if county is exercising its zoning power, regulating subdivisions, and enforcing the building code in affected area. Secure county approval if area extends beyond one mile from city limits. Both processes require a written resolution adopted by the county commissioners.

5. Adopt ordinance by city governing board setting extraterritorial planning jurisdiction and delineating its boundary.

6. File copy of boundary map with city clerk and register of deeds.

7. Amend city zoning ordinance to add area to zoning maps. This action also must comply with the notice and hearing requirements for all zoning map amendments.

8. Appoint extraterritorial members to planning board and board of adjustment. The number of extraterritorial members must be proportional to the population of the extraterritorial area relative to the internal city population. The county board must hold a hearing on the appointments if they are made as a result of an extraterritorial area expansion.

G.S. 160A-360(b) requires that the extraterritorial area be set by an ordinance adopted by the city governing board. This boundary ordinance is subject to newspaper notice, mailed notice, and public hearing requirements.

In 1996 the statutes were amended to require mailed notice to affected property owners when zoning jurisdiction is being extended to an extraterritorial area. G.S. 160A-360(a1) dictates that a mailing be made four weeks prior to the hearing on the boundary ordinance. That notice must specify the effect of extension of city jurisdiction, advise the owners of the hearing on the proposal and their right to participate in the hearing, and advise owners of their right to seek appointment as extraterritorial members of the city's planning board and board of adjustment. A separate public hearing can be held but is not required when jurisdiction is actually extended and the city zoning map is amended to apply city zoning to the new territory. Prior published and mailed notice is required for the zoning amendment also, but because this notice cannot be mailed more than twenty-five days prior to the hearing, two separate mailings are required even if a single hearing is held.

In certain instances county approval must be given for a city to exercise its extraterritorial powers. G.S. 160A-360(a) requires county approval whenever a city with a population of more than 10,000 seeks to extend its extraterritorial jurisdiction beyond the one mile originally granted. G.S. 160A-360(e) requires that county approval be secured for the extension of city extraterritorial jurisdiction into any area wherein the county is enforcing zoning, subdivision regulations, and the building code. This includes the one-mile area adjacent to cities. County

ordinances for all three of these regulatory functions must be in place in the affected area to trigger the approval requirement. G.S. 160A-360(g) requires that county approval, as well as any other request, approval, or agreement on extraterritorial jurisdiction by a city or a county, be established by a formally adopted resolution of the governing board. The statute does not establish any standards for county approval or disapproval, so whether to allow a municipality to extend its extraterritorial area in these situations is left to the discretion of the county board of commissioners. The statute is silent as well on the timing of the required county approval; it can be secured at any time before the proposed effective date of adoption or amendment of the extraterritorial ordinance.

G.S. 160A-360(b) requires that the adopted boundary map be recorded with the register of deeds for any affected county and that the map be retained permanently in the office of the city clerk.

Where there has been substantial compliance with the notice provisions regarding establishment of an extraterritorial area, and those affected have received actual notice of the hearing, technical failures in the adoption process do not invalidate the ordinance. In *Potter v. City of Hamlet* the plaintiff challenged the adoption of extraterritorial jurisdiction some four years earlier on the grounds that the boundary map had not been filed with the county register of deeds. The court noted that there had been proper newspaper notice of the hearing, that the plaintiff's predecessor in title had received a mailed notice of the hearing, that several hearings were actually held, that the ordinance had a metes and bounds boundary description attached, and a map of the area was displayed in the city clerk's office. Thus the court found the city had substantially complied with the notice requirements and the failure to file a copy with the register of deeds did not invalidate adoption of the extraterritorial area.

Another important requirement for a city exercising extraterritorial authority is that the membership of both its planning board and its board of adjustment be expanded to include extraterritorial representation. G.S. 160A-362 requires the appointment of a proportional number of residents of the extraterritorial area to both bodies. For example, if a city with a population of 5,000 has a five-member planning board, one extraterritorial member is required for each 1,000 extraterritorial residents. If the number of residents of the extraterritorial area itself is insufficient, other county residents may be appointed. The board of county commissioners of each affected county makes the appointments. Where appointments are required as a result of an expansion of an extraterritorial area (as opposed to filling a seat where a term has expired), the county board must hold a duly advertised public hearing and must make its appointments from persons who have applied at or before the public hearing. If the board of county commissioners fails to make the appointments within ninety days of receiving a resolution from the city governing board requesting that the appointments be made, the city governing board may make the appointments.

Extraterritorial members act only on matters affecting the extraterritorial area unless the city ordinance specifically grants them equal authority on matters within the city. The overwhelming majority of cities in North Carolina with extraterritorial jurisdiction—over 90 percent—allow extraterritorial members to vote on all matters coming before the boards.

It is important to remember that there are two steps in the process of establishing extraterritorial zoning and that they can be accomplished concurrently or separately. The first step is the establishment of the extraterritorial jurisdiction as discussed above. The second step is the actual zoning of the extraterritorial area. This must be accomplished by amendment of the city's zoning map to include the extraterritorial jurisdiction. G.S. 160A-360(f) provides for a sixty-day transition period, during which prior county zoning remains in place and enforceable. Similarly, amendments to other land development ordinances being applied in an extraterritorial area need to be made to assure that their provisions regarding the geographic area covered include the extraterritorial area.

***For more detailed information on ETJ in North Carolina, see:***

David W. Owens, [The North Carolina Experience with Municipal Extraterritorial Planning Jurisdiction](#) [1] (Special Series No. 20, Jan. 2006)

David W. Owens, *Land Use Law in North Carolina* (2006) (Chapter 5)

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