

## Issue: Extraterritorial Jurisdiction (ETJ)

### BACKGROUND:

While municipal annexation authority was being attacked during the 2011 session of the General Assembly, so, too, was the ability of cities to exercise land use control beyond city limits. Significant changes were considered and/or made to the extraterritorial jurisdiction law during the 2011 legislative session. Most notably, *S.L. 2011-363* exempted land used for bona fide farm purposes from the exercise of extraterritorial jurisdiction powers. Reports have been received of landowners already inappropriately stretching the definition of “bona fide farm purpose” to skirt municipal land use regulation. Certain members of the farm community rally around the idea that municipal regulations target farms in order to cause harm to farmers’ livelihoods.

Additional legislation introduced, but not passed, in 2011 proposed eliminating the ETJ altogether, while yet another bill would have enabled citizens living in the ETJ to run for and vote in municipal elections. Additional legislative proposals aimed at eliminating or restricting the ETJ are expected during the 2012 legislative session, as a House Select Committee on Extraterritorial Jurisdiction was formed and is meeting. A subcommittee of that full committee is expected to develop recommendations that would be considered and recommended to the General Assembly in the 2012 short session.

Some of the members on the committee sponsored anti-ETJ legislation during the previous session.

### MESSAGE POINTS FOR YOUR USE:

#### *History*

- States have recognized municipalities’ need to regulate their extraterritorial areas to protect public health and safety since the 1800s. A form of extraterritorial jurisdiction authority has existed in North Carolina since 1949.
- The U.S. Supreme Court has upheld the right of municipalities to exercise ETJ authority on ETJ residents, despite their inability to vote in municipal elections.
- ETJ powers are necessary to ensure that development at the edge of cities: 1) is compatible with development within the city; 2) is orderly; and 3) promotes health and safety within the city limits. As was noted when ETJ authority was initially extended to all cities, “Health and safety problems arising outside the city do not always respect city limits as they spread.”

### *Benefits for Economic Development & Property Values*

- ETJ has many benefits for those looking to develop land near a city’s borders. Property owners looking to market a property for development save both time and money by being able to obtain a desired municipal zoning designation, rather than having to first voluntarily annex and pay municipal taxes during the period that zoning is being determined. Unilaterally eliminating ETJ authority and reverting all ETJ areas to county zoning standards, if in effect, could imperil ongoing large-scale developments and cost some developers hundreds of thousands of dollars.
- ETJ also eases the way for development on property that crosses municipal borders. Having ETJ allows developers to follow a consistent code for the entire property being developed and prevents them from dealing with two different development codes and going through two separate plan review processes. In this respect ETJ can also make it easier for owners of property near a city’s border to sell their land if they so desire.
- By allowing municipalities to maintain established zoning standards for areas just outside their borders — which are often indistinguishable from those inside their borders — the aesthetics of the greater municipal area are maintained and the entire area becomes a more attractive option for businesses and residents. This in turn raises residents’ property values.
- Residents of new developments in the ETJ benefit from the compatibility of the development’s infrastructure with that of the municipality’s. This can mean everything from the service stability of public water and sewer service as compared to well or septic systems to the consistency of road and sidewalk infrastructure throughout the development.
- ETJ protects the quality of life for residents living near to, but outside of, the city limits. It protects residents from noxious uses of land and keeps developers looking to locate near metropolitan areas, but seeking to implement uses that are not appropriate for an urban setting, from locating in these residents’ neighborhoods and decreasing the value of surrounding properties.

### *Local Decision-Making on a Local Issue*

- County commissioners already have a great deal of control over municipalities’ ETJ authority. The **only** instance in which a municipality can establish an ETJ without approval from the county is if the county is not enforcing a zoning ordinance, subdivision regulations, and the State Building Code, and the municipality wishes to extend its ETJ less than a mile from its boundaries. If the county is enforcing those

- regulations, or the municipality wishes to extend its ETJ beyond one mile, ETJs can **only** be established with permission from the county.
- Giving the county a great deal of say over ETJ authority ensures that the decision to create an ETJ is a joint decision that is made with the best interests of the local community in mind. Keeping these local decisions in the hands of locally elected officials who know the needs of their community should continue to be a guiding principle for issues like this.
  - By law, ETJ residents are represented on municipal planning boards and boards of adjustment in the same proportion as that of the ETJ population to the municipal population. In many municipalities, these representatives vote on every matter before the planning board and board of adjustment.
  - Municipal borders around the state are not uniform. Requests from property owners for voluntary annexation and the like have left municipalities with areas of their jurisdiction that are virtually or entirely surrounded by county land. Similarly, islands of county jurisdiction remain within the boundaries of some municipalities. The elimination of ETJ authority would lead to inconsistent zoning standards being applied in such areas.
  - An elimination or significant limitation on ETJ authority would require those county governments that are interested in land use planning to significantly ramp up staffing and “urban” expertise, and reexamine and/or bolster local ordinances.
  - It is constitutionally questionable whether ETJ residents can be allowed to vote in municipal elections. This may constitute “representation without taxation.”

**ACTION NEEDED:**

- **ACTION:** Talk with your legislators about real examples of why urban planning and zoning is important in your ETJ. Help them understand its positive impact on your community and economic development. Discuss what benefits it brings to residents in the ETJ in terms of property values, aesthetics and quality of life.
- **ACTION:** If you know of a business incompatible with the development in your ETJ that was prevented from locating there due to your ETJ authority, please let your legislator know.
- **ACTION:** Be sure your legislators understand that ETJ residents are represented (by law) on the city planning and zoning boards. Discuss what steps your town takes to ensure communication with ETJ residents.