

General Overview

South Dakota Compiled Laws enable municipalities to adopt zoning regulations within their corporate jurisdictions. Similarly, the authority for zoning in the unincorporated areas is placed with the counties. Municipalities may also exercise zoning powers within three miles of their corporate limits subject to county approval. In this case, the city and county must mutually agree upon joint (extraterritorial) zoning regulations. The county may also relinquish zoning authority to a city within three miles of the corporate limits.

Municipalities also have authority over the platting of land within three miles of their corporate limits. Under state statutes, a city assumes this authority by preparing a major street plan and filing the plan with the county register of deeds. If a joint zoning jurisdiction does not exist, a city has exclusive platting jurisdiction beyond its corporate limits. Where joint zoning has been authorized, plats require approval of the county planning commission in addition to municipal approval.

Since joint zoning authority requires the concurrence of both governing bodies, the city in effect maintains veto power over county decisions. For example, if the county approves a rezoning or conditional use but the city denies the request, the county's action is negated.

State law fails to address the procedure necessary to terminate a previously agreed upon joint jurisdiction. It is assumed that this can be accomplished by mutual agreement of the county and city or the county can unilaterally terminate an existing extraterritorial jurisdiction on the basis that State law requires both entities to approve a substantially identical zoning ordinance. If the county does not agree with the city on a zoning ordinance, there can be no joint jurisdiction.

The origin of extraterritorial zoning in the United States can be traced back to the period following World War II when many of the nation's large cities were experiencing explosive growth into adjacent unincorporated areas previously untouched by urban development. While municipal zoning sought to promote a sound and efficient land use pattern inside corporate limits, counties were generally ill prepared to handle the land use problems and conflicts associated with this new expansion. Without such planning and control, numerous conflicts and haphazard uses contributed to the undermining of city zoning efforts.

State legislatures have approached the issue in different ways. In some instances, the size of the extraterritorial zoning jurisdiction is based on a city's population. Some states allow municipalities to zone outside corporate limits only if the county has no zoning. In other cases, the city is allowed to perform planning functions for the fringe areas and the county then zones those areas in accordance with the plan.

There are several arguments dealing with this issue which are worthy of discussion. Foremost is the argument that a serious impairment of the rights of property owners occurs when zoning regulations are extended beyond municipal boundaries without consent of the affected residents. Property becomes subject to decisions on land use restrictions and legislative matters over which the landowners have no voice.

The counter argument is that extraterritorial zoning is a more equitable alternative than annexation because of its single purpose intent. Annexation is premised on the idea of present land need,

while extraterritorial zoning is concerned with future need and development. Municipal officials argue that the latter concept is less burdensome than the former, but the opposing point of view indicates that extraterritorial zoning is more objectionable because it results in restriction without any immediate or tangible advantage. Annexation on the other hand results in immediate benefits to residents, including police and fire protection, utility services and of particular importance, a voice in the municipal government.

Annexation and zoning are different concepts, designed to accomplish different ends. But one common element is present in both concepts - the basis or justification required of a municipality prior to taking such action. South Dakota law requires a study as a prerequisite to annexation to determine the need for additional territory and to identify the resources necessary to extend municipal boundaries. This study must ensure that ample and suitable resources exist to accommodate the orderly growth of the annexed area, that there is a definite timetable upon which municipal services such as utilities and streets will be extended, and that the anticipated cost of improvements to residents is identified.

State law is not specific as to the scope of municipal planning and zoning authority outside city boundaries, only that the jurisdiction cannot extend more than three miles from the corporate limits. The only direction set forth in the law is that the city planning commission is responsible for proposing a plan for the physical development of the municipality, including any areas outside the corporate limits and within its planning jurisdiction which, in the commission's judgment, bear relation to the planning of the municipality.