



# ZONING AND LAND USE ON THE PERIPHERY OF MANCHESTER

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UNIVERSITY OF IOWA | COMMUNITY EMPOWERMENT LAW PROJECT

# Zoning and Land Use on the Periphery of Manchester

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## *I. Introduction*

Manchester is a city located in Delaware County, Iowa. As with many other cities in Iowa, Manchester wants to ensure economic growth, control geographical growth, prevent nuisance industries from establishing near the city, and keep the population stable. Manchester, and other similarly situated cities, can achieve these goals by implementing extraterritorial zoning, annexation, restrictive covenants, or fringe area agreements. Extraterritorial zoning is governed by Iowa Code § 414.23 which allows cities to zone up to two miles beyond its city limits. Annexation is the act of incorporating new territory into a city, county, or state. A restrictive covenant is an agreement between landowners that prevents them from taking a certain action. Fringe area agreements are made between cities and counties to encourage growth, sustainability, and resilience among incorporated cities in their region.

## *II. Background*

Manchester is located in Delaware County and has a population of roughly five thousand people and an area of 4.14 square miles. Manchester itself has some zoning ordinances, but Delaware County does not. Under Iowa Code § 414.23, Manchester can zone up to two miles beyond its city limits and the city wishes to use this authority to ensure that economic and

geographic growth is intentional, well-planned, and community driven.<sup>1</sup> The land within the two-mile buffer zone outside of the city limits is primarily agricultural land with small pockets of commercial, residential, and industrial. One of the city's primary concerns is that concentrated animal feeding operations (CAFOs) have been established in the two-mile zone. CAFOs have numerous negative externalities associated with them, including groundwater pollution, air pollution, odors, and negative impacts on property values, among other issues.<sup>2</sup>

### *III. Roadmap for How to Implement Extraterritorial Zoning*

Iowa Code § 414.23 allows cities to zone up to two miles beyond their city limits, known as extraterritorial zoning.<sup>3</sup> Under the Iowa Code, the lawful exercise of extraterritorial zoning requires cities to complete a process of six steps:

**Step One: Confer with County:** Step one of implementing extraterritorial zoning is to determine if the county has implemented their own zoning ordinances, potentially by contacting the County Board of Supervisors. This is important because Iowa Code § 414.23(1) establishes that a city can extend two miles beyond their city limits except for areas where a county ordinance exists.<sup>4</sup> It is also important to note that if at any point the county decides to implement a zoning ordinance, the city has three months to terminate their extraterritorial zoning as provided in § 414.23(4).<sup>5</sup>

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<sup>1</sup> IOWA CODE § 414.23 (2020).

<sup>2</sup> Carrie Hribar, Understanding Concentrated Animal Feeding Operations and Their Impact on Communities, National Association of Local Boards of Health 2-11 (2010), [https://www.cdc.gov/nceh/ehs/docs/understanding\\_cafos\\_nalboh.pdf](https://www.cdc.gov/nceh/ehs/docs/understanding_cafos_nalboh.pdf).

<sup>3</sup> IOWA CODE, *supra* note 1.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

**Step Two: Appoint New Board and Commission Members:** The next step in the process is to coordinate with the County Board of Supervisors to expand *both* the City Board of Adjustments and the City Planning and Zoning Commission. The Board of Adjustments and the City Planning and Zoning Commission must both be increased by two members.<sup>6</sup> The County Board of Supervisors will appoint all four additional members. Based on Iowa Code § 414.23(2), the County Board of Supervisors will appoint one of their own members or a designee to serve on the Planning and Zoning Commission.<sup>7</sup> If a designee is chosen by the County Board of Supervisors, they must live in the County. The second member will be a resident of the two-mile area outside of the city limits. Both of the members of the Board of Adjustments must be residents of the two-mile zone outside of the city limits. We have found that the process by which cities appoint these positions varies. For example, some cities have only appointed one member to the board of adjustments even though Iowa Code states that two members should be appointed. Also, some cities have these positions appointed by city council. Appointing these additional members in the way stated above seems to be most compliant with Iowa Code and the least likely to be challenged. These new appointments must comply with Iowa Code § 69.16A which mandates that all Iowa boards, commissions, committees, and councils shall be gender balanced.<sup>8</sup> At any moment, a committee with an even number of members must be half one gender, and half the other; a committee with an odd number of members must be half one gender, and half plus one the other gender.<sup>9</sup> Consequently, in Manchester, the new appointees to the City Board of Adjustments

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<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> IOWA CODE § 69.16A (2020).

<sup>9</sup> *Id.* “All appointive boards, commissions, committees, and councils of the state established by the Code, if not otherwise provided by law, shall be gender balanced. No person shall be appointed or reappointed to any board, commission, committee, or council established by the Code if that appointment or reappointment would cause the number of members of the board, commission, committee, or council of one gender to be greater than one-half the membership of the board, commission, committee, or council plus one if the board, commission, committee, or council is composed of an odd number of members.”

must be one male and one female or two females because it appears that at this moment there is one more male than female on the City Board of Adjustments. The new appointees for the Planning and Zoning Commission will also have to be either one male and one female or two female commissioners to maintain a balanced board compliant with Iowa Code 69.16A.

**Step Three: Establish Limits with Neighboring Cities:** The third step required by statute is that the city confer with any cities within four miles of Manchester's city limits to establish a halfway point for future zoning endeavors.<sup>10</sup> If a neighboring city's boundary is four miles from Manchester's boundary, the halfway point – two miles – defines the limit of the city's extraterritorial zoning. However, if a neighboring city has a boundary that is less than four miles from Manchester's city limits, the halfway point will be the limit of the city's extraterritorial zoning authority, even though it is less than two miles.<sup>11</sup> The cities that we spoke to stated that they often were able to agree on a midway point with neighboring cities even if it is not necessarily the exact halfway point if another point makes sense. This often happens if there is a large highway or body of water that would make a better boundary than the exact halfway point. However, if this point cannot be agreed upon then the midway point will be used.

For Manchester to lawfully exercise its extraterritorial zoning authority, the city must confer with Delaware, Iowa, because they are within four miles of Manchester's city limits. Delaware is roughly two miles away from Manchester's city limits so a halfway point should be established that is roughly one mile from Manchester's city limit.

**Step Four: Draft an Ordinance for the Extraterritorial Zone and Update Maps:** Next the city must draft a zoning ordinance and update the zoning map to include areas beyond the city

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<sup>10</sup> Iowa Code 414.23 states that, "If the limits of any such city are at any place less than four miles distant from the limits of any other city which has extended or thereafter extends its zoning jurisdiction under this section, then at such time the powers herein granted shall extend to a line equidistant between the limits of said cities".

<sup>11</sup> IOWA CODE, *supra* note 1.

limits that the city will zone. At a minimum, the ordinance must contain the scope of the zoning. City ordinances on extraterritorial zoning vary greatly from city to city, which is discussed below. The ordinance can be as simple as stating that the city is extending their extraterritorial zoning rights to two miles beyond the city limits as expressed in Iowa Code § 414.23.<sup>12</sup> It could also be more detailed and give exact metes and bounds descriptions for the areas in which the city wishes to exert authority.<sup>13</sup>

**Step Five: Give Notice to Affected Property Owners:** After the ordinance is drafted, notice must be given to the property owners within the area regulated by the new proposed ordinance. Notice regarding zoning changes is typically done by publication. Iowa Code § 362.3 also states that notice must be printed in a newspaper published at least once weekly and having general circulation in the city.<sup>14</sup> If the city has a population of less than 200 or if the city has no newspaper then the publication may be posted in three public places in the city that have been permanently designated by ordinance.<sup>15</sup>

The notice should indicate that a public hearing will be conducted regarding the zoning ordinance. According to Iowa Code § 414.4, the notice must include the time and place of the hearing.<sup>16</sup> Iowa Code § 362.3 also requires that notice must be published between four and twenty days prior to the public hearing.<sup>17</sup> However, Manchester's zoning ordinance requires that the notice be published between seven and twenty days prior to the public hearing and requires that a tentative agenda of the meeting is included in the notice.<sup>18</sup> While it is only required that the notice be

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<sup>12</sup> See, CENTERVILLE'S ZONING ORDINANCE § 17.02.020

<sup>13</sup> See, *Dysart's Zoning Ordinance*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> IOWA CODE § 414.4 (2020).

<sup>17</sup> IOWA CODE § 362.3 (2020).

<sup>18</sup> MANCHESTER, IOWA, ORDINANCE NO. 004-2015 (2015), <http://www.manchester-ia.org/wp-content/uploads/Zoning-Ordinance-2015.pdf>.

published in the newspaper, notice can also be given through other media such as social media or the city's website if there is a fear that publication in the newspaper will not reach everyone. It is also important to note that property owners within the two-mile extraterritorial zone have the same rights of hearing, protest, and appeal as those within city limits.<sup>19</sup>

Because Manchester has a population of nearly 5,000 and the *Manchester Press* is published weekly, publication in the newspaper of the time and place of the public hearing would be sufficient to satisfy the notice requirement.

**Step Six: City Council Holds a Public Hearing and Passes the Ordinance:** After notice is given to those impacted by the zoning ordinance, the City Council of Manchester must conduct a public hearing. At this public hearing a draft or summary of the ordinance must be presented. Zoning ordinances must receive a majority vote of the City Council to pass.<sup>20</sup> According to Iowa Code § 380.3 the proposed ordinance must be considered and voted on for passage at two council meetings prior to the meeting at which it is to be finally passed.<sup>21</sup> However if three fourths of the council members vote to pass the ordinance there is no need for the additional two meetings before passage.

#### *IV. How CAFOs Impact This Ordinance*

In the state of Iowa, county zoning is restricted by Iowa Code § 335.2 which exempts any land, farmhouses, farm barns, or any building or structure which is used for agricultural purposes from any ordinance which the county may implement with regard to zoning.<sup>22</sup> While Iowa Code

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<sup>19</sup> IOWA CODE, *supra* note 1.

<sup>20</sup> IOWA CODE § 380.3 (2020).

<sup>21</sup> IOWA CODE § 380.3 (2020).

<sup>22</sup> IOWA CODE § 335.2 (2020).

§ 414.23 allows cities to implement their own zoning within two miles of their city limits, this zoning is still subject to the exemption granted by 335.2.

The Iowa Supreme Court held in *Thompson v. Hancock County* that a hog confinement facility fell within the statutory exemption to county ordinance granted by 335.2. This decision further clarified that the agricultural purposes which are exempt from regulation at the county level include the cultivation of the ground, the harvesting of crops, and the rearing and managing of livestock.<sup>23</sup> This decision also distinguished a hog confinement facility, which consisted of five buildings housing 900 pigs each, from the statutory definition of a “feedlot,”<sup>24</sup> which is subject to city and county zoning requirements under Iowa Code § 172D.4(1).<sup>25</sup>

Based on the Supreme Court’s interpretation, and the plain language, of section 335.2, Manchester is not able to directly prevent CAFOs. However, Manchester can still prevent feed lots and as discussed below, can limit agricultural activities in floodplains.

## *V. Sample Ordinance Options*

### Option 1: Dysart Approach

Dysart implemented extraterritorial zoning in April of 2020.<sup>26</sup> The ordinance is provided below and is broken into six sections with the first section establishing the powers granted. Section 1(b) of the ordinance mistakenly references Iowa Code § 158, which is about the licensing of

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<sup>23</sup> *Thompson v. Hancock Cty.*, 539 N.W.2d 181, 183 (Iowa 1995).

<sup>24</sup> *Id.* at 184.

<sup>25</sup> Since this was enacted after Iowa Code 335.2 the state legislature clearly intended for 172D.4(1) to override and supersede the general exemption. However, the statute defines a feedlot as “a lot, yard, corral or other area in which livestock are confined” for the purpose of feeding and growth prior to slaughter. (see IOWA CODE ANN. § 172D.1(6) (West).) The Iowa Supreme Court explicitly concluded that a confinement facility was not an “other area” which would fall within the definition of a feedlot. (see *Thompson v. Hancock Cty.*, 539 N.W.2d at 184.)

<sup>26</sup> Dysart, Iowa, Code Ordinances § 109-27 (2020), [https://library.municode.com/ia/dysart/codes/code\\_of\\_ordinances?nodeId=PTIILADEOR\\_CH109ZO\\_S109-27GEEXZOPOSURE](https://library.municode.com/ia/dysart/codes/code_of_ordinances?nodeId=PTIILADEOR_CH109ZO_S109-27GEEXZOPOSURE).



barbers. If Manchester models their ordinance on the Dysart ordinance, this error will need to be corrected to reference Iowa Code § 354.9.<sup>27</sup> Part two of this ordinance provides that they have updated their zoning map to include the unincorporated area outside of the city limits.

Section three of Dysart’s ordinance is beneficial because it explicitly provides that the city can regulate agriculture in or on the floodplains of any river or stream, as is allowed under Iowa Code § 335.2.<sup>28</sup> Based on the Iowa Flood Center maps it appears that there are floodplains on the north, east, and south sides of Manchester’s proposed extraterritorial zone.<sup>29</sup> Manchester would have the ability to prevent certain agricultural structures from being built in areas that are considered a floodplain, effectively preventing certain industries such as CAFOs from establishing in those areas.

The ordinance also expresses a clear intent to comply with the requirements of Iowa Code Chapter 414 by stating that additional members need to be added to the commission and board and reaffirming the right of appeals that the landowners in the two-mile zone have as provided in 414.23. Also mirroring the statutory language, the last section of the ordinance states that if a county zoning ordinance is adopted, it terminates the city’s extraterritorial zoning.

#### Option 2: Centerville Approach:

Centerville amended their current zoning ordinance and added minimal language that states that they are exercising their extraterritorial zoning rights. They did this in section 17.02.020 of their zoning ordinance by stating, “The provisions of this chapter shall be applicable to all property

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<sup>27</sup> IOWA CODE § 354.9 (2020).

<sup>28</sup> IOWA CODE § 335.2 (2020).

<sup>29</sup> Iowa Flood Maps, <https://ifis.iowafloodcenter.org/ifis/maps/hazard/> (last visited Dec. 14, 2020).

within the corporate limits of the city and its extra-territorial jurisdiction, as provided by Chapter 414, Code of Iowa.”<sup>30</sup>

It is also important to note that their zoning ordinance explicitly bans commercial feedlots in all of their zoning districts and while it does not explicitly state that this ban applies to the extraterritorial zone outside of their city limits, this provision is part of the ordinance that extends in its entirety to the two-mile zone.<sup>31</sup>

## *VI. Alternative Options Other Than Extraterritorial Zoning to Achieve Manchester’s Goals*

### *a. Annexation*

Annexation is the act of incorporating new territory into a city, county, or state. Cities often annex areas in order to be able to exercise control over the area and landowners also get benefits such as road maintenance and other city utilities such as waste management. Annexation is regulated by Iowa Code § 368.<sup>32</sup> There are three different forms of annexation in Iowa: voluntary or unanimous annexation, 80/20 annexation, and involuntary annexation. As provided by Iowa Code § 368.7, a truly voluntary annexation is one in which all of the property owners petition or consent to be annexed by the city.<sup>33</sup> The 80/20 annexation procedure is also considered voluntary when the owner(s) of 80% or more of the land are agreeable to the proposed annexation.<sup>34</sup> If ten landowners are affected by possible annexation but one landowner consents who owns 80% of the

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<sup>30</sup> Centerville, Iowa, Municipal Code § 17 (2019), [https://www.centerville-ia.org/sites/g/files/vyh1if2916/f/uploads/centerville\\_code8a.pdf](https://www.centerville-ia.org/sites/g/files/vyh1if2916/f/uploads/centerville_code8a.pdf) (309).

<sup>31</sup> *Id.* at 343.

<sup>32</sup> IOWA CODE § 368.7 (2020).

<sup>33</sup> IOWA CODE § 368.7(1)(a) (2020).

<sup>34</sup> IOWA CODE § 368.7(1)(b)(ii)(f) (2020).

proposed land, the entire area could be annexed with or without the consent of the other nine landowners. Under involuntary annexation, the owners of less than 80% of the total acreage of the affected area are agreeable to having their land being annexed.<sup>35</sup>

Manchester has expressed interest in information relating to involuntary annexation. Involuntary annexations are governed by Iowa Code § 368.11 which provides that, “a petition for incorporation, discontinuance, or boundary adjustment may be filed with the city development board by a city council, a county board of supervisors, a regional planning authority, or five percent of the registered voters of a city or territory involved in the proposal”.<sup>36</sup> What must be included in the petition is listed in the appendix under Iowa Code § 368.11(3). The petition can be filed with the City Development Board by city council, the county board of supervisors, a regional planning authority, or five percent of the registered voters of the city involved in the proposal.<sup>37</sup> Additionally, we have outlined the steps required to implement involuntary annexation below:

**Step One: Express intent to the affected parties:** At least fourteen business days before the petition is filed, notice must be given by certified mail with the information about the public meeting for the annexation.<sup>38</sup> This notice must be sent to the council of each city whose urbanized area contains a portion of the territory, the board of supervisors of each county which contains a portion of the territory, the regional planning authority of the territory involved, each affected public utility, and to each property owner listed in the petition.<sup>39</sup>

**Step Two: Conduct public meeting:** The city must hold a public meeting on the petition and notice of this must be published in an official county newspaper at least five days

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<sup>35</sup> IOWA CODE § 368.11 (2020).

<sup>36</sup> IOWA CODE § 368.11(1) (2020).

<sup>37</sup> IOWA CODE § 368.11(1) (2020).

<sup>38</sup> IOWA CODE § 368.11(4) (2020).

<sup>39</sup> *Id.*

before the meeting.<sup>40</sup> The mayor of Manchester, or their designee, shall serve as chairperson of the public meeting. It is also important to note that any person attending the meeting may submit written comments that may be heard on the petition.<sup>41</sup>

**Step Three: File the petition:** The complete petition must be filed with the City Development board, which is a state agency.

**Step Four: County Board of Supervisors assent:** Within thirty days of receiving notice that the petition was filed, the County Board of Supervisors must state whether it supports the petition or takes no position in support or against the petition.<sup>42</sup> This will be done via resolution which must be immediately filed with the annexing city and the City Development Board.<sup>43</sup> It is important to note that failure of the board of supervisors to adopt a resolution shall not delay the proceedings on the petition and should not be considered a deficiency in the petition.<sup>44</sup>

**Step Five: City Development Board decision:** The City Development Board must initiate the proceedings or dismiss the petition within ninety days of receipt of the petition.<sup>45</sup>

Once a city overcomes these obstacles to annex land outside their city limits, they have authority to impose restrictions that can go beyond what they are able to regulate through extraterritorial zoning. In particular, land that is within city limits is not subject to the farming exemption provided by Iowa Code § 335.2 thus allowing Manchester to impose restrictions on land that is used for agricultural purposes.

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<sup>40</sup> IOWA CODE § 368.11(5) (2020).

<sup>41</sup> *Id.*

<sup>42</sup> IOWA CODE § 368.11(6) (2020).

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

<sup>45</sup> IOWA CODE § 368.11(2) (2020).

### *b. Restrictive Covenants*

Restrictive covenants are an alternative option that could be beneficial for Manchester in order to prevent the establishment of CAFOs near the city limits. A restrictive covenant is an agreement between landowners that prevents them from taking a certain action: In this case that action would be operating or facilitating the operation of certain nuisance industries. Restrictive covenants are divided into two types: personal covenants and those that “run with the land.”<sup>46</sup> For Manchester it is important that the restrictive covenant runs with the land to ensure that they last from one landowner to the next and don’t terminate upon the transfer of land.

If the landowner desires to impose restrictions upon the use of the property, the restriction should be drafted very carefully and listed at the end of the description of their deed, or a reference should be made to the instrument containing the restrictions if one has been drafted and recorded.<sup>47</sup> The latter is usually the practice followed where the restrictions apply to a number of lots.<sup>48</sup> In addition, to increase the likelihood that the restriction is enforceable, the restriction must be reasonable and “it is a good practice to state (1) the purpose of the restrictions and (2) that the covenants are intended to run with the land.”<sup>49</sup> It is also important to note that any covenant would only be in effect for 21 years as expressed in Iowa Code § 614.24 and thus would need to be re-implemented once the restriction is no longer in effect to preserve the desired arrangement with the property owner.<sup>50</sup>

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<sup>46</sup> 34 Am. Jur. Proof of Facts 3d 339 (Originally published in 1995).

<sup>47</sup> § 7:28.Restrictions, 1 Ia. Prac., Methods of Practice § 7:28.

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> IOWA CODE § 614.24 (2020).

Groups of landowners in Iowa have used two provisions to prevent Confined Animal Feeding Operations from establishing near their land. The first provision of the restrictive covenant is relinquishing the right to build a confinement facility on one's own land.<sup>51</sup> This provision would prevent the landowner from establishing a confinement facility or other structure that violated the terms of the covenant. The second provision prevents the property owner from accepting the liquid manure from any nearby confinements.<sup>52</sup> This provision can be a significant deterrent on the establishment of CAFOs since confinements larger than 1250 animals require manure management plans to dispose of animal waste.<sup>53</sup> These facilities can usually only afford to haul the manure five to seven miles away so making it more difficult to offload waste on surrounding farms can have a meaningful effect on where these operations establish themselves.<sup>54</sup> However, even this restriction will only be effective if a significant number of property owners consent to relinquishing their property rights to prevent these facilities from building in their community.

### *c. Fringe Area Agreement*

A fringe area agreement is a cooperative agreement in which a city and the county agree to “provide for orderly and efficient development” in the county land two miles around a city.<sup>55</sup> Iowa Code Section 354.9 allows cities to create a two-mile fringe area for purposes of approving and reviewing subdivisions.<sup>56</sup> The agreement allows the city and the county to address

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<sup>51</sup> How Neighbors Can Stop Hog Confinements from Spreading, DES MOINES REGISTER, <https://www.desmoinesregister.com/story/opinion/editorials/2017/10/19/pork-iowa-neighbors-ban-hog-confinements-cafo-livestock/781504001/>.

<sup>52</sup> *Id.*

<sup>53</sup> Iowa Landowners Unite Against Animal Confinements, THE GAZETTE, <https://www.thegazette.com/subject/news/iowa-landowners-unite-against-animal-confinements-20171014>.

<sup>54</sup> *Id.*

<sup>55</sup> Coralville, Iowa, Fringe Area Policy Agreement Between Johnson County and Coralville, Sec. 1 (1999).

<sup>56</sup> IOWA CODE §354 (2020).

development issues which cross, and affect, more than one municipality. For example, Johnson and Linn Counties have used these Fringe Area Plans to support growing cities and encourage growth, sustainability, and resilience among incorporated cities in their region.<sup>57</sup> A fringe area agreement, enabled by Iowa Code 28E, must state: the duration, parties involved, the purpose, manner of financing, how to terminate the agreement, and any other necessary and proper matters.<sup>58</sup>

Most fringe area agreements involve contributions from the cities but tend to be driven and managed primarily by the county to gain insight from cities about where and how developments should occur. It is possible that these plans may be used to deter nuisance industries. However, this seems incidental to their creation and would require significant support and cooperation with multiple affected parties to be an effective strategy.

For example Cedar Rapids, Swisher, and Johnson County entered into a fringe area agreement in 2004.<sup>59</sup> Like many fringe area agreements, this one includes a section titled Protecting Agricultural Operations, which states that the “fringe area agreement will not interfere with the Right to Farm as contained in the Code of Iowa Chapter 335.2”.<sup>60</sup> Yet, the intent of the agreement includes “the protection of environmentally sensitive land” and the agreement explains that the “recommended land uses for the area are office, commercial and light industry.”<sup>61</sup> These specifications do not explicitly ban nuisance industries but suggests that development related to a

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<sup>57</sup> Coralville, Iowa, Fringe Area Policy Agreement Between Johnson County and Coralville, Sec. 1(A)-(C) (1999), [https://www.johnsoncountyiowa.gov/dept\\_zoning.aspx?id=487](https://www.johnsoncountyiowa.gov/dept_zoning.aspx?id=487) ; Johnson County, Iowa, Fringe-Area Policy Agreement between the City of Cedar Rapids, Iowa, the City of Swisher, Iowa and Johnson County, Iowa, Sec. 2 (2004), [https://www.johnsoncountyiowa.gov/dept\\_zoning.aspx?id=4871](https://www.johnsoncountyiowa.gov/dept_zoning.aspx?id=4871) ; Bertram, Iowa, Strategic Growth Plan and Agreement, Chapter 2 (2003), <https://www.linncounty.org/302/Fringe-Area-Village-Plans>.

<sup>58</sup> IOWA CODE § 28E.5 (2020).

<sup>59</sup> Johnson County, Iowa, Fringe-Area Policy Agreement between the City of Cedar Rapids, Iowa, the City of Swisher, Iowa and Johnson County, Iowa, Sec. 2 (2004), [https://www.johnsoncountyiowa.gov/dept\\_zoning.aspx?id=4871](https://www.johnsoncountyiowa.gov/dept_zoning.aspx?id=4871).

<sup>60</sup> *Id.* at Sec. 3.

<sup>61</sup> *Id.* at Sec. 1, Sec. 2(4).

nuisance industry would not meet the requirements of the agreement and likely wouldn't be approved. In addition, the agreement specifies "growth in this [fringe] area should be carefully integrated with any existing city development by utilizing Cedar Rapids or Swisher standards of conditions".<sup>62</sup>

While prevention would be preferable to deterrence, our concern is that an agreement with the county to explicitly prevent agricultural nuisances within the fringe area would not survive judicial review. Iowa Code § 28E.7 states that no fringe area agreement "shall relieve any public agency of any obligation or responsibility imposed upon it by law".<sup>63</sup> While it may be argued that the exemption to farms from county zoning ordinances is neither an obligation nor a responsibility, and there is no elaboration by the legislature or the courts as to how broadly or narrowly an "obligation" or "responsibility" may be interpreted, it is unlikely that the courts would allow this to contradict the "right to farm" statute.

Based on our interpretation, 335.2 would still apply even if a fringe area agreement was established between Manchester and Delaware County. We think it could be beneficial to look into this further as an option to ensure that the county does not implement a zoning scheme that conflicts with Manchester's extraterritorial zoning, however, we do not think this can be used to prevent nuisance industries from forming within the two-mile zone but it does have the potential to be used to deter them.

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<sup>62</sup> *Id.* at Sec. 3.

<sup>63</sup> IOWA CODE, *supra* note 22.



## Appendix

### City of Dysart §109-27

#### Sec. 1 Geographical extension of the zoning powers and subdivision regulations

This section is adopted by the council to provide for the extension of the zoning and subdivision regulation powers vested in the city to include unincorporated areas not more than two miles beyond the limits of the city, that the use, growth and development of that area surrounding the city be orderly and reasonable, and these restrictions are adopted to promote and facilitate that intention and purpose.

#### (1) Powers granted.

- a. The municipal zoning powers granted to the city by chapter 414 of the Code of Iowa (I.C.A. ch. 414) are hereby extended to those unincorporated areas surrounding the city as hereinafter described.
- b. The land subdivision regulation powers granted to the city by chapter 158 of the Code of Iowa (I.C.A. ch. 158) are hereby extended to those unincorporated areas surrounding the city as hereinafter described. *(this section should be updated with Iowa Code § 354.9)*
- c. A parcel of land described as follows, to-wit:

*[This is where a metes and bounds of the land should be included for which you wish to extend zoning power.]*

(2) Official zoning map. The official zoning map of the city is amended to include the unincorporated territory designated within two miles of the corporate limits of the city. The territory shall be divided into districts as designated on the official zoning map, which together with the explanatory material thereon, is hereby adopted and by this reference made a part hereof.

(3) Exemption of farms. No regulations or requirements adopted under the provisions of this section which permits extension of the city's zoning regulations outside the corporate limits shall be construed to apply to land, farm houses, farm barns, farm outbuildings or other structures, or erections which are primarily adopted, by reason of nature and area, for use for agricultural purposes while so used; provided, however, that such regulations or ordinances which relate to any structure, building, dam, obstruction, deposit, or excavation in or on the floodplains of any river or stream, which may be contained herein, or which may be subsequently adopted, shall apply equally to agricultural and non-agricultural lands, buildings and structures. This agricultural exemption shall not be construed to include:

- a. Commercial grain elevators;
- b. Commercial fertilizer manufacturing or storage buildings and structures;
- c. Hatcheries;
- d. Commercial feed lots; or
- e. Other buildings and structures for the manufacture, storage, or sale of agriculturally related products which are not intended primarily for use on the premises.

(4) Commission and board. Upon the adoption and final approval of this chapter, the size of the commission and board shall be increased by two members each. The additional members shall be residents from outside the city limits and from that area over which the city's jurisdiction is extended. The board of supervisors of Benton County shall appoint the two non-resident members for each body for overlapping four-year terms. All members shall have the same rights, privileges and duties regardless of residency.

(5) Appeals. Property owners affected by such extraterritorial zoning and subdivision regulations shall have the same rights of hearing, protest and appeal as those within the city.

(6) Termination of extraterritorial zoning. At such time when Benton County adopts a county zoning ordinance, the powers exercised under this chapter shall be terminated within three months of the establishment of the administrative authority for county zoning, or at such date as mutually agreed upon by the council and the Benton County board of supervisors.

Iowa Code § 368.11(3)

This section provides that the petition (for involuntary annexation) must include substantially the following information as applicable:

- a. A general statement of the proposal.
- b. A map of the territory, city or cities involved.
- c. Assessed valuation of platted and unplatted land.
- d. Names of property owners.
- e. Population density.
- f. Description of topography.
- g. Plans for disposal of assets and assumption of liabilities.
- h. Description of existing municipal services, including but not limited to water supply, sewage disposal, and fire and police protection.
- i. Plans for agreements with any existing special service districts.
- j. In a case of annexation or incorporation, the petition must state that none of the territory is within a city.
- K. In a case of incorporation or consolidation, the petition must state the name of the proposed city.
- l. Plans shall include a formal agreement between affected municipal corporations and counties for the maintenance, improvement, and traffic control of any shared roads involved in an incorporation or boundary adjustment.
- m. (1) In the discretion of a city council, a provision for a transition for the imposition of city taxes against property within an annexation area. The provision shall allow for an exemption from taxation of the following percentages of

assessed valuation according to the following schedule:

- (a) For the first and second years, seventy-five percent.
  - (b) For the third and fourth years, sixty percent.
  - (c) For the fifth and sixth years, forty-five percent.
  - (d) For the seventh and eighth years, thirty percent.
  - (e) For the ninth and tenth years, fifteen percent.
- (2) An alternative schedule may be adopted by the city council as provided by 368.11(2)n.

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