

19-2960. Same; zoning regulations; zoning districts or classifications; notice; hearing; fees; amendments to regulations, rezoning or conditional uses, procedure; protest of rezoning or conditional use; existing uses; agricultural exemption; plans for streets and highways. (a) The board of county commissioners, by resolution, may provide for the adoption or amendment of zoning regulations for the unincorporated portion of the county in the manner, and for the purposes, provided by this act. Such regulations may (1) restrict and regulate the height, number of stories and size of buildings; (2) the percentage of lots that may be occupied; (3) the size of yards, courts and other open spaces; (4) the density of population, including minimum width, depth and area of lots; (5) the location and use of buildings, structures and land for industry, business, trade or residence; and (6) the use of land located in areas designated as floodplains. Such resolution shall define the boundaries of zoning classifications by description contained therein or by setting out such boundaries upon a map incorporated and published as a part of such resolution, or by providing for the incorporation by reference in such resolution of an official map upon which such boundaries shall be fixed. Such map shall be marked "official copy incorporated by resolution of the board of county commissioners the _____ day of _____, 19__," and filed in a public office designated by the board of county commissioners and shall be a public record.

(b) Except as provided in subsection (c), before the board of county commissioners creates any zone, district or zoning classification or regulates or restricts the use of buildings or land in the unincorporated portion of the county, the board shall require the planning commission to recommend to the board of county commissioners the nature and number of zoning classifications which the planning commission deems necessary, the boundaries of the same and appropriate regulations or restrictions to be enforced therein. All such regulations shall be uniform for each class or kind of buildings or land uses throughout each zoning classification, but the regulations in one zoning classification may differ from those in other zoning classifications, and the regulations may prescribe conditions under which conditional use permits may be issued providing exceptions to such uniform regulations. The issuance of any conditional use permit shall be considered a change or revision to the zoning map and shall be subject to the same notice, hearing and voting requirements prescribed herein for rezonings. The regulations shall be made in accordance with a land use plan and, in addition to the purposes provided in K.S.A. 19-2956, shall be designed to: (1) Lessen congestion in each district; (2) provide adequate light and air; (3) prevent the overcrowding of land; (4) avoid undue concentrations of population; and (5) to facilitate the adequate provisions of transportation, water, sewerage, schools, parks and other public requirements. Such regulations shall be made with reasonable consideration, among other things, to existing conditions, to the character of the district, its peculiar suitability for particular uses and with a view to conserving the values of buildings and encouraging the most appropriate use of land within the county.

The notice, hearing and voting procedures for adoption of the zoning regulations shall be the same as that required for adoption of the comprehensive plan as provided by K.S.A. 19-2958.

After adoption of the zoning resolution, the zoning regulations, the zoning classifications or the boundaries contained therein may from time to time be supplemented, changed or generally revised by amendment. The boundaries on the zoning map may from time to time be changed or revised by a rezoning or conditional use permit. A proposal for an amendment, rezoning or conditional use permit may be initiated by the board of county commissioners, the planning commission, any zoning board or upon application of the owner of property affected.

The board of county commissioners may establish reasonable fees to be paid in advance by the owner of any property at the time of making application for any amendment, rezoning or conditional use permit.

All such proposed amendments, rezonings or conditional use permits first shall be submitted to either the planning commission for recommendation regarding amendments or the appropriate zoning board for recommendation regarding rezonings or conditional use permits. All notice, hearing and voting procedures for consideration of proposed amendments, rezonings and conditional use permits shall be the same as that required for amendments, extensions or additions to the comprehensive plan as provided by K.S.A. 19-2958. Rezonings and conditional use permits shall be designated by legal description and general street location and, in addition to publication notice, written notice of such proposed rezoning or conditional use permit shall be mailed to all owners of record of lands located within 1,000 feet of the property affected by such rezoning or conditional use permit and an opportunity granted to interested parties to be heard, all as provided in the zoning regulations. Failure to receive such notice shall not invalidate any subsequent action taken.

On hearings concerning rezonings and conditional use permits, such notice is sufficient to permit the zoning board to make a recommendation which affects only a portion of the land described in the notice or which gives all or any part of the land described a zoning classification of lesser change than that set forth in the notice. Recommending a zoning classification of lesser change than that set forth in the notice shall not be valid without republication, remailing and a new public hearing unless the planning commission shall have previously established, with the approval of the board of county commissioners, a table or publication available to the public which designates what zoning classifications are lesser changes authorized within the adopted zoning resolution.

If such amendment, rezoning or conditional use permit affects the boundaries of any zoning classification, the resolution of the board of county commissioners shall describe the boundaries, as amended, or if the county has made provision for the fixing of the same upon an official map which has been incorporated by reference, the amending resolution shall define the change or the boundary, as amended, shall order the official map to be changed to reflect such amendment and shall reincorporate such map as amended.

Regardless whether a zoning board recommends to approve or disapprove a proposed rezoning or conditional use permit or "fails to recommend" if a protest against such rezoning or conditional use permit is filed in the office of the county clerk within 14 days after the date of the conclusion of the public hearing held pursuant to such publication notice, duly signed and acknowledged by the owners of 20% or more of any real property subject to the rezoning or conditional use permit or by the owners of 20% of the total area, except public streets and ways, located within 1,000 feet of the boundaries of the property subject to the rezoning or conditional use permit, the resolution adopting such rezoning or conditional use permit shall not be passed except by a favorable vote of at least 4/5 of all of the members of the board of county commissioners.

(c) A resolution adopting rezoning or a conditional use permit for mining operations subject to K.S.A. 49-601 et seq., and amendments thereto, regardless of a protest petition or a failure to recommend by the planning commission, shall only require approval by a majority of all members of the board of county commissioners.

(d) Regulations adopted under authority of this act shall not apply to the existing use of any buildings or land and shall not prevent the restoration of a building damaged not more than 50% of its assessed valuation by fire, explosion,

act of God, or the public enemy, or prevent the continuance of the use of such building or part thereof as such use existed at the time of such damage, but shall apply to any alteration, expansion or enlargement of a building or alteration of any land after the effective date of any such zoning resolution. No determination nor rule nor regulation shall be held to apply to the use of land for agricultural purposes, nor for the erection or maintenance of buildings thereon for such purposes so long as such land and buildings erected thereon are used for agricultural purposes and not otherwise.

No zoning regulations shall apply to the use of land for agricultural purposes nor for the erection or maintenance of agricultural buildings as long as such agricultural buildings are used for agricultural purposes and no other. Dwellings, garages and other similar accessory buildings shall not be considered as agricultural buildings. All buildings, including agricultural buildings, may be regulated as to setback requirements from public roads so as to protect the future use and improvement of such roads.

(e) Whenever the board of county commissioners has adopted, as a part of the comprehensive plan, a plan for its present or future street or highway system and such plan outlines the intentions of the county for improvements to existing streets or highways, for constructing new streets or highways or for establishing right-of-way needs for streets or highways, the board of county commissioners is hereby authorized, by resolution, to establish, further regulate and limit, and to change and amend, additional building or setback lines on such present or future streets or highways. The board of county commissioners is also authorized to prohibit any new building being located within such building or setback line outside the corporate limits of any city. The resolution may be adopted, and amended or changed, as a part of the zoning regulations.

History: L. 1984, ch. 96, § 5; L. 2009, ch. 79, § 3; July 1.