

KSA Planning Statutes

12-741

Chapter 12.--CITIES AND MUNICIPALITIES

Article 7.--PLANNING AND ZONING

12-741. Planning and zoning in cities and counties; authorization. (a) This act is enabling legislation for the enactment of planning and zoning laws and regulations by cities and counties for the protection of the public health, safety and welfare, and is not intended to prevent the enactment or enforcement of additional laws and regulations on the same subject which are not in conflict with the provisions of this act.

(b) The provisions of this section shall become effective on and after January 1, 1992.

History: L. 1991, ch. 56, § 1; July 1.

12-742

Chapter 12.--CITIES AND MUNICIPALITIES

Article 7.--PLANNING AND ZONING

12-742. Same; definitions. (a) When used in this act:

(1) "Base flood" means a flood having a 1% chance of being equaled or exceeded in any one year;

(2) "floodway fringe" means those portions of a flood plain outside of the boundaries of a regulatory floodway and within stream reaches where such a floodway has been established;

(3) "flood plain" means land adjacent to a watercourse subject to inundation from a flood having a chance occurrence in any one year of 1%;

(4) "governing body" means the governing body of a city in the case of cities and the board of county commissioners in the case of counties;

(5) "manufactured home" means a structure which is subject to the federal manufactured home construction and safety standards established pursuant to 42 U.S.C. § 5403;

(6) "planning commission" means a city, county, regional or metropolitan planning commission;

(7) "residential-design manufactured home" means a manufactured home on permanent foundation which has (A) minimum dimensions of 22 body feet in width, (B) a pitched roof and (C) siding and roofing materials which are customarily used on site-built homes;

(8) "subdivision" means the division of a lot, tract or parcel of land into two or more parts for the purpose, whether immediate or future, of sale or building development, including resubdivision;

(9) "subdivision regulations" mean the lawfully adopted subdivision ordinances of a city and the lawfully adopted subdivision resolutions of a county;

(10) "zoning" means the regulation or restriction of the location and uses of buildings and uses of land;

(11) "zoning regulations" mean the lawfully adopted zoning ordinances of a city and the lawfully adopted zoning resolutions of a county.

(b) The provisions of this section shall become effective on and after January 1, 1992.

History: L. 1991, ch. 56, § 2; July 1.

12-743

Chapter 12.--CITIES AND MUNICIPALITIES Article 7.--PLANNING AND ZONING

12-743. Same; notice to other units of government. (a) Before any city adopts a comprehensive plan or part thereof, subdivision regulations, zoning regulations or building or setback lines affecting property located outside the corporate limits of such city, written notice of such proposed action shall be given to the board of county commissioners of the county in which such property is located. Such notice also shall be given to the township board of the township in which such property is located if the township is located in a county not operating under the county unit road system. Such notice shall be given at least 20 days prior to the proposed action.

(b) Before any county adopts a comprehensive plan or part thereof, subdivision regulations, zoning regulations or building or setback lines affecting property located within three miles of the corporate limits of a city, written notice of such proposed action shall be given to the governing body of such city. In any county not operating under the county unit road system, before any county adopts a comprehensive plan or part thereof, subdivision regulations or building or setback lines, written notice of such proposed action shall be given to the township board of such township in which the affected property is located. The notice required by this subsection shall be given at least 20 days prior to the proposed action.

(c) The provisions of this section shall become effective on and after January 1, 1992.

History: L. 1991, ch. 56, § 3; July 1.

12-744

Chapter 12.--CITIES AND MUNICIPALITIES Article 7.--PLANNING AND ZONING

12-744. Same; planning commission; creation; membership; vacancies; interlocal agreements; metropolitan or regional planning. (a) The governing body of any city, by adoption of an ordinance, may create a planning commission for such city and the board of county commissioners of any county, by adoption of a resolution, may create a planning commission for the county. Any such planning commission shall be composed of not less than five members. The number of members of a planning commission may be determined by ordinance or resolution. If a city planning commission plans, zones or administers subdivision regulations outside the city limits, at least two members of such commission shall reside outside of but within three miles of the corporate limits of the city. A majority of the members of a county planning commission shall reside outside the corporate limits of any incorporated city in the county. A county, metropolitan or regional planning commission may serve as the planning commission for a city.

(b) The governing body shall provide by ordinance or resolution for the term of the members of the planning commission and for the filling of vacancies. Members of the commission shall serve without compensation. The governing body may adopt rules and regulations providing for removal of members of the planning commission.

(c) Any two or more cities or counties of this state may cooperate, pursuant to written agreement, in the exercise and performance of planning powers, duties and functions. Any city or county of this state may cooperate, pursuant to written agreement, with any city or county of any other state having adjoining planning jurisdiction in the exercise and performance of any planning powers, duties and functions provided by state law for cities and counties of this state and to the extent

that the laws of such other state permit such joint cooperation. Any agreement entered pursuant to this subsection shall be subject to the provisions of K.S.A. 12-2901 et seq., and amendments thereto. If such agreement provides for the adoption of a comprehensive plan, the agreement shall include a provision concerning the approval of the comprehensive plan which is consistent with the provisions of K.S.A. 12-747.

When two or more of such cities or counties, by ordinance of each city and by resolutions of the boards of county commissioners enter into agreements providing for such joint planning cooperation, there may be established a joint planning commission for the metropolitan area or region comprising that portion of the areas of planning jurisdiction of the cities or counties cooperating jointly as shall be designated by the joint ordinances and resolutions. Such a joint planning commission for the metropolitan area or region may be empowered to carry into effect such provisions of state law relating to planning which are authorized for such joining cities or counties and which each may under existing laws separately exercise and perform.

Any city or county, whenever the governing body of the city or the board of commissioners of the county deems necessary, may join and cooperate in two or more metropolitan area or regional planning commissions. Any regional or metropolitan planning commission in existence on the effective date of this act shall continue in existence, but shall be governed by the provisions of this act.

(d) The provisions of this section shall become effective on and after January 1, 1992.

History: L. 1991, ch. 56, § 4; July 1.

12-745

Chapter 12.--CITIES AND MUNICIPALITIES

Article 7.--PLANNING AND ZONING

12-745. Same; planning commission; meetings; officers; powers. The members of the planning commission shall meet at such time and place as may be fixed in the commission's bylaws. The commission shall elect one member as chairperson and one member as vice-chairperson who shall serve one year and until their successors have been elected. A secretary also shall be elected who may or may not be a member of the commission. Special meetings may be called at any time by the chairperson or in the chairperson's absence by the vice-chairperson. The commission shall adopt bylaws for the transaction of business and hearing procedures. The bylaws may provide for and establish conditions and procedures under which subcommittees of the commission which are authorized to approve plats and make recommendations to the governing body on amendments to the zoning regulations affecting specific properties. Unless otherwise provided by this act or by ordinance of the governing body of a city or by a resolution of the governing body of a county, no action by the planning commission shall be taken except by a majority vote of the members present and voting. A record of all proceedings of the planning commission shall be kept. The commission may employ such persons deemed necessary and may contract for such services as the commission requires. The commission, from time to time, may establish subcommittees, advisory committees or technical committees to advise or assist in the activities of the commission.

History: L. 1991, ch. 56, § 5; L. 1997, ch. 147, § 3; May 1.

12-746

Chapter 12.--CITIES AND MUNICIPALITIES

Article 7.--PLANNING AND ZONING

12-746. Same; planning commission budget. (a) The governing body shall approve a planning commission budget and make such allowances to the planning commission as it deems proper, including funds for the employment of such employees or consultants as the governing body may authorize and provide and shall add the same to the general budget. Prior to the time that moneys are available under the budget, the governing body may appropriate moneys for such purposes from the general fund. The governing body may enter into such contracts as it deems necessary for the purposes of this act and may receive and expend funds and moneys from the state or federal government or from any other source for such purposes.

(b) The provisions of this section shall become effective on and after January 1, 1992.

History: L. 1991, ch. 56, § 6; July 1.

12-747

Chapter 12.--CITIES AND MUNICIPALITIES

Article 7.--PLANNING AND ZONING

12-747. Same; comprehensive plan; contents; procedure for adoption; annual review of plan. (a) A city planning commission is hereby authorized to make or cause to be made a comprehensive plan for the development of such city and any unincorporated territory lying outside of the city but within the same county in which such city is located, which in the opinion of the planning commission, forms the total community of which the city is a part. The city shall notify the board of county commissioners in writing of its intent to extend the planning area into the county. A county planning commission is authorized to make or cause to be made a comprehensive plan for the coordinated development of the county, including references to planning for cities as deemed appropriate. The provisions of this subsection may be varied through interlocal agreements.

(b) The planning commission may adopt and amend a comprehensive plan as a whole by a single resolution, or by successive resolutions, the planning commission may adopt or amend parts of the plan. Such resolution shall identify specifically any written presentations, maps, plats, charts or other materials made a part of such plan. In the preparation of such plan, the planning commission shall make or cause to be made comprehensive surveys and studies of past and present conditions and trends relating to land use, population and building intensity, public facilities, transportation and transportation facilities, economic conditions, natural resources and may include any other element deemed necessary to the comprehensive plan. Such proposed plan shall show the commission's recommendations for the development or redevelopment of the territory including: (a) The general location, extent and relationship of the use of land for agriculture, residence, business, industry, recreation, education, public buildings and other community facilities, major utility facilities both public and private and any other use deemed necessary; (b) population and building intensity standards and restrictions and the application of the same; (c) public facilities including transportation facilities of all types whether publicly or privately owned which relate to the transportation of persons or goods; (d) public improvement programming based upon a determination of relative urgency; (e) the major sources and expenditure of public revenue including long range financial plans for the financing of public facilities and capital improvements, based upon a projection

of the economic and fiscal activity of the community, both public and private; (f) utilization and conservation of natural resources; and (g) any other element deemed necessary to the proper development or redevelopment of the area. Before adopting or amending any such plan or part thereof, the planning commission shall hold a public hearing thereon, notice of which shall be published at least once in the official city newspaper in the case of a city or in the official county newspaper in the case of a county. Such notice shall be published at least 20 days prior to the date of the hearing. Upon the adoption or amendment of any such plan or part thereof by adoption of the appropriate resolution by a majority vote of all members of the planning commission, a certified copy of the plan or part thereof, together with a written summary of the hearing thereon, shall be submitted to the governing body. No comprehensive plan shall be effective unless approved by the governing body as provided by this section. The governing body either may: (1) Approve such recommendations by ordinance in a city or resolution in a county; (2) override the planning commission's recommendations by a 2/3 majority vote; or (3) may return the same to the planning commission for further consideration, together with a statement specifying the basis for the governing body's failure to approve or disapprove. If the governing body returns the planning commission's recommendations, the planning commission, after considering the same, may resubmit its original recommendations giving the reasons therefor or submit new and amended recommendations. Upon the receipt of such recommendations, the governing body, by a simple majority thereof, may adopt or may revise or amend and adopt such recommendations by the respective ordinance or resolution, or it need take no further action thereon. If the planning commission fails to deliver its recommendations to the governing body following the planning commission's next regular meeting after receipt of the governing body's report, the governing body shall consider such course of inaction on the part of the planning commission as a resubmission of the original recommendations and proceed accordingly. The comprehensive plan and any amendments thereto shall become effective upon publication of the respective adopting ordinance or resolution.

(c) An attested copy of the comprehensive plan and any amendments thereto shall be sent to all other taxing subdivisions in the planning area which request a copy of such plan. Such plan or part thereof shall constitute the basis or guide for public action to insure a coordinated and harmonious development or redevelopment which will best promote the health, safety, morals, order, convenience, prosperity and general welfare as well as wise and efficient expenditure of public funds.

(d) At least once each year, the planning commission shall review or reconsider the plan or any part thereof and may propose amendments, extensions or additions to the same. The procedure for the adoption of any such amendment, extension or addition to any plan or part thereof shall be the same as that required for the adoption of the original plan or part thereof.

History: L. 1991, ch. 56, § 7; L. 1997, ch. 147, § 4; May 1.

12-748

Chapter 12.--CITIES AND MUNICIPALITIES

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12-748. Same; construction of public facility or utility in conformance with comprehensive plan. (a) Except as provided in subsection (b), whenever the planning commission has adopted and certified the comprehensive plan for one or more major sections or functional subdivisions thereof, no public improvement, public facility or public utility of a type embraced within the recommendations of the

comprehensive plan or portion thereof shall be constructed without first being submitted to and being approved by the planning commission as being in conformity with the plan. If the planning commission does not make a report within 60 days, the project shall be deemed to have been approved by the planning commission. If the planning commission finds that any such proposed public improvement, facility or utility does not conform to the plan, the commission shall submit, in writing to the governing body, the manner in which such proposed improvement, facility or utility does not conform. The governing body may override the plan and the report of the planning commission, and the plan for the area concerned shall be deemed to have been amended.

(b) Whenever the planning commission has reviewed a capital improvement program and found that a specific public improvement, public facility or public utility of a type embraced within the recommendations of the comprehensive plan or portion thereof is in conformity with such plan, no further approval by the planning commission is necessary under this section.

(c) The provisions of this section shall become effective on and after January 1, 1992.

History: L. 1991, ch. 56, § 8; July 1.

12-749

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12-749. Same; subdivision regulations; adoption and amendment; notice and hearing. (a) Following adoption of a comprehensive plan, a city planning commission may adopt and amend regulations governing the subdivision of land. A city planning commission shall apply subdivision regulations to all land located within the city and may apply such regulations to land outside of but within three miles of the nearest point of the city limits provided such land is within the same county in which the city is located and does not extend more than 1/2 the distance between such city and another city which has adopted regulations under this section. A county planning commission may establish subdivision regulations for all or for parts of the unincorporated areas of the county.

(b) Subdivision regulations may include, but not be limited to, provisions for: (1) Efficient and orderly location of streets; (2) reduction of vehicular congestion; (3) reservation or dedication of land for open spaces; (4) off-site and on-site public improvements; (5) recreational facilities which may include, but are not limited to, the dedication of land area for park purposes; (6) flood protection; (7) building lines; (8) compatibility of design; (9) stormwater runoff, including consideration of historic and anticipated 100-year rain and snowfall precipitation records and patterns; and (10) any other services, facilities and improvements deemed appropriate.

(c) Subdivision regulations may provide for administrative changes to land elevations designated on a plat. Such regulations may provide for plat approval conditional upon conformance with the comprehensive plan. Such regulations may provide for the payment of a fee in lieu of dedication of land. Such regulations may provide that in lieu of the completion of any work or improvements prior to the final approval of the plat, the governing body may accept a corporate surety bond, cashier's check, escrow account, letter of credit or other like security in an amount to be fixed by the governing body and conditioned upon the actual completion of such work or improvements within a specified period, in accordance with such regulations, and the governing body may enforce such bond by all equitable remedies.

(d) Before adopting or amending any subdivision regulations, the planning commission shall call and hold a hearing on such regulations or amendments thereto. Notice of such hearing shall be published at least once in the official city newspaper in the case of a city or in the official county newspaper in the case of a county. Such notice shall be published at least 20 days prior to the hearing. Such notice shall fix the time and place for such hearing and shall describe such proposal in general terms. In the case of a joint committee on subdivision regulations, such notice shall be published in the official city and official county newspapers. The hearing may be adjourned from time to time and at the conclusion of the same, the planning commission shall prepare its recommendations and by an affirmative vote of a majority of the entire membership of the commission adopt the same in the form of proposed subdivision regulations and shall submit the same, together with the written summary of the hearing thereon, to the governing body. The governing body either may: (1) Approve such recommendations by ordinance in a city or resolution in a county; (2) override the planning commission's recommendations by a 2/3 majority vote; or (3) may return the same to the planning commission for further consideration, together with a statement specifying the basis for the governing body's failure to approve or disapprove. If the governing body returns the planning commission's recommendations, the planning commission, after considering the same, may resubmit its original recommendations giving the reasons therefor or submit new and amended recommendations. Upon the receipt of such recommendations, the governing body, by a simple majority thereof, may adopt or may revise or amend and adopt such recommendations by the respective ordinance or resolution, or it need take no further action thereon. If the planning commission fails to deliver its recommendations to the governing body following the planning commission's next regular meeting after receipt of the governing body's report, the governing body shall consider such course of inaction on the part of the planning commission as a resubmission of the original recommendations and proceed accordingly. The proposed subdivision regulations and any amendments thereto shall become effective upon publication of the respective adopting ordinance or resolution.

History: L. 1991, ch. 56, § 9; L. 1997, ch. 72, § 2; July 1.

12-750

Chapter 12.--CITIES AND MUNICIPALITIES

Article 7.--PLANNING AND ZONING

12-750. Same; subdivision regulations affecting property outside the city; joint committee; membership; authority. (a) If the governing body of a city proposes to adopt subdivision regulations affecting property lying outside of the city and governed by subdivision regulations of the county, a copy of the city's proposal shall be certified to the board of county commissioners or if at any time subsequent to the adoption of regulations governing the subdivision of land by the city planning commission, the board of county commissioners shall designate an area for such purposes which shall include lands lying within the area governed by subdivision regulations of the city, the board of county commissioners shall certify a copy of such resolution to the governing body of the city and regulations governing the subdivision of land within the area designated by the city shall be adopted and administered in the manner hereinafter provided. Within 60 days after the date of the certification of the resolution by the board of county commissioners or the governing body of the city, there shall be established by joint resolution of the board of commissioners and governing body, a joint committee for subdivision regulation which shall be composed of three members of the county planning commission to be appointed by the

chairperson of the county planning commission and three members of the city planning commission to be appointed by the chairperson of the city planning commission and one member to be selected by the other six members. Such joint committee shall have such authority as provided by law for county planning and city planning commissions relating to the adoption and administration of regulations governing the subdivision of land within the area of joint regulation. Regulations adopted by the county or city and in effect at the time of the certification of such resolution by the board of county commissioners or the governing body of the city shall remain in effect until new regulations shall have been adopted by the joint committee or for a period not exceeding six months from and after the date of the certification of such resolution. The provisions of this section shall not apply to any city and county jointly cooperating in the exercise of planning and zoning under the provisions of this act.

(b) The provisions of this section shall become effective on and after January 1, 1992.

History: L. 1991, ch. 56, § 10; July 1.

12-751

Chapter 12.--CITIES AND MUNICIPALITIES

Article 7.--PLANNING AND ZONING

12-751. Same; building or zoning permits; building codes outside the city.

(a) Compliance with subdivision regulations may be required as the condition of an issuance of a building or zoning permit when so specified in the subdivision regulations.

(b) In conjunction with subdivision or zoning regulations, the governing body of any city may adopt and enforce building codes outside the city limits.

(c) The provisions of this section shall become effective on and after January 1, 1992.

History: L. 1991, ch. 56, § 11; July 1.

12-751a

Chapter 12.--CITIES AND MUNICIPALITIES

Article 7.--PLANNING AND ZONING

12-751a. Same; election, when. (a) When used in this section:

(1) "City" means any city which has adopted an ordinance which provides for the enforcement of a building code outside the corporate limits of such city as authorized by K.S.A. 12-751, and amendments thereto.

(2) "Ordinance" means an ordinance adopted by a city which provides for the enforcement of a building code outside the corporate limits of a city as authorized by K.S.A. 12-751, and amendments thereto.

(3) "Qualified elector" means any registered voter required to comply with an ordinance, who resides within the unincorporated area lying within three miles of the corporate limits of a city.

(b) Within 30 days of the adoption of an ordinance, the city clerk shall certify to the county election officer a legal description and a map of the area outside the corporate limits of the city governed by the provisions of such ordinance and the street addresses of all real estate located therein.

(c) Within 90 days after the effective date of this act or within 90 days after a city has adopted an ordinance, a petition signed by at least 20% of the qualified electors protesting the enforcement of such ordinance outside the corporate limits of the city may be submitted to the county election officer. If a sufficient petition is filed, the county election officer shall notify the board of county commissioners of the county in

which such city is located. Unless the governing body of the city modifies the ordinance to remove the provision from the ordinance relating to the enforcement of such building code outside the corporate limits of the city, the board of county commissioners shall submit the proposition of modifying the ordinance to remove the provisions from the ordinance relating to enforcement of such building code outside the corporate limits of the city. Such resolution shall be submitted to the qualified electors at the next regular primary or general county election. Such election shall be called and held in the manner provided by the general bond law. The county election officer shall certify the results of such election to the governing body of the city. If a majority of the qualified electors voting on the question vote in favor thereof, the governing body of the city shall modify such ordinance to remove the provisions from the ordinance relating to the enforcement of such building code outside the corporate limits of the city. Such ordinance shall be adopted within 30 days following the canvass of such election. Such ordinance shall be adopted in the manner provided by K.S.A. 12-3001, and amendments thereto.

(d) If an election is held pursuant to subsection (c) and a majority of the qualified electors vote in favor of removing the building code, the governing body of the city shall not adopt any such ordinance for at least four years following the date of the election held pursuant to subsection (c).

History: L. 1998, ch. 128, § 1; Apr. 30.

12-752

Chapter 12.--CITIES AND MUNICIPALITIES

Article 7.--PLANNING AND ZONING

12-752. Same; plats; approval procedure; fees; dedication of land for public purposes; filing of plat; replatting required, when. (a) The owner or owners of any land located within an area governed by regulations subdividing the same into lots and blocks or tracts or parcels, for the purpose of laying out any subdivisions, suburban lots, building lots, tracts or parcels or any owner of any land establishing any street, alley, park or other property intended for public use or for the use of purchasers or owners of lots, tracts or parcels of land fronting thereon or adjacent thereto, shall have a plat drawn as may be required by the subdivision regulations. Such plat shall accurately describe the subdivision, lots, tracts or parcels of land giving the location and dimensions thereof and the location and dimensions of all streets, alleys, parks or other properties intended to be dedicated to public use or for the use of purchasers or owners of lots, tracts or parcels of land fronting thereon or adjacent thereto. All plats shall be verified by the owner or owners thereof. All such plats shall be submitted to the planning commission or to the joint committee for subdivision regulation.

(b) The planning commission or the joint committee shall determine if the plat conforms to the provisions of the subdivision regulations. If such determination is not made within 60 days after the first meeting of such commission or committee following the date of the submission of the plat to the secretary thereof, such plat shall be deemed to have been approved and a certificate shall be issued by the secretary of the planning commission or joint committee upon demand. If the planning commission or joint committee finds that the plat does not conform to the requirements of the subdivision regulations, the planning commission or joint committee shall notify the owner or owners of such fact. If the plat conforms to the requirements of such regulations, there shall be endorsed thereon the fact that the plat has been submitted to and approved by the planning commission or joint committee.

(c) The governing body shall accept or refuse the dedication of land for public purposes within 30 days after the first meeting of the governing body following the date of the submission of the plat to the clerk thereof. The governing body may defer action for an additional 30 days for the purpose of allowing for modifications to comply with the requirements established by the governing body. No additional filing fees shall be assessed during that period. If the governing body defers or refuses such dedication, it shall advise the planning commission or joint committee of the reasons therefor.

(d) The governing body may establish a scale of reasonable fees to be paid to the secretary of the planning commission or joint committee by the applicant for approval for each plat filed with the planning commission or joint committee.

(e) No building or zoning permit shall be issued for the use or construction of any structure upon any lot, tract or parcel of land located within the area governed by the subdivision regulations that has been subdivided, resubdivided or replatted after the date of the adoption of such regulations by the governing body or governing bodies but which has not been approved in the manner provided by this act.

(f) Any regulations adopted by a governing body with reference to subdividing lots shall provide for the issuance of building permits on platted lots divided into not more than two tracts without having to replat such lots. Such regulations also may authorize and establish conditions for the issuance of building permits on lots divided into three or more tracts without having to replat such lots. Such regulations shall provide that lots zoned for industrial purposes may be divided into two or more tracts without replatting such lot. Such regulations shall contain a procedure for issuance of building or zoning permits on divided lots which shall take into account the need for adequate street rights-of-way, easements, improvement of public facilities, and zoning regulations if in existence.

(g) The regulations shall provide for a procedure which specifies a time limit within which action shall be taken, and shall further provide, where applicable, for the final decision on the issuance of such building permit to be made by the governing body, except as may be provided by law.

(h) The register of deeds shall not file any plat until such plat shall bear the endorsement hereinbefore provided and the land dedicated for public purposes has been accepted by the governing body.

History: L. 1991, ch. 56, § 12; L. 1997, ch. 147, § 5; May 1.

12-753

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12-753. Same; zoning regulations; districts; restrictions. (a) The governing body of any city, by adoption of an ordinance, and the board of county commissioners of any county, by adoption of a resolution, may provide for the adoption or amendment of zoning regulations in the manner provided by this act. The governing body may divide the territory subject to its jurisdiction into districts of such number, shape, area and of such different classes, according to the use of land and buildings and the intensity of such use, as may be deemed suited to carry out the purposes of this act. Such regulations may include, but not be limited to, provisions restricting and regulating the height, number of stories and size of buildings; the percentage of each lot that may be occupied; the size of yards, courts and other open spaces; the density of population; the location, use and appearance of buildings, structures and land for residential, commercial, industrial and other purposes; the conservation of natural resources, including agricultural land; and the use of land located in areas designated

as flood plains and other areas, including the distance of any buildings and structures from a street or highway. Such regulations shall define the boundaries of zoning districts by description contained therein or by setting out such boundaries upon a map or maps incorporated and published as part of such regulations or by providing for the incorporation by reference in such regulations of an official map or maps upon which such boundaries shall be fixed. For a county, such map or maps shall be marked "official copy of zoning district map incorporated into zoning regulations by adoption of a resolution of the board of county commissioners on the _____ day of _____, 19____" and filed in the office of the county clerk or such other public office as may be designated by the board of county commissioners. For a city, such map or maps shall be marked "official copy of zoning district map incorporated into zoning regulations by adoption of an ordinance by the governing body of the city on the _____ day of _____, 19____" and filed in the office of the city clerk or such other public office as may be designated by the governing body. Such regulations and accompanying map or maps shall be public records.

(b) The provisions of this section shall become effective on and after January 1, 1992.

History: L. 1991, ch. 56, § 13; July 1.

12-754

Chapter 12.--CITIES AND MUNICIPALITIES

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12-754. Same; zoning jurisdictions; inclusion of land in flood plain zone.

(a) The zoning regulations for a county shall define the area of zoning jurisdiction as all or any portion of the unincorporated area. The zoning regulations for a city shall define the zoning jurisdiction as including the area within the city limits and may also include land located outside the city which is not currently subject to county zoning regulations and is within three miles of the city limits, but in no case shall it include land which is located more than 1/2 the distance to another city. The governing body of the city shall notify the board of county commissioners in writing of the city's intention at least 60 days before adopting zoning regulations affecting such an area outside the city limits.

Any flood plain zone or district shall include the flood plain area within the incorporated area of the city and may include any extraterritorial jurisdiction lying outside, but within three miles, of the nearest point on the contiguous city limits when such jurisdiction has not otherwise been designated a flood plain zone or district by any other governmental unit or subdivision.

(b) The provisions of this section shall become effective on and after January 1, 1992.

History: L. 1991, ch. 56, § 14; July 1.

12-755

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12-755. Same; zoning regulations; authority. (a) The governing body may adopt zoning regulations which may include, but not be limited to, provisions which:

- (1) Provide for planned unit developments;
- (2) permit the transfer of development rights;
- (3) preserve structures and districts listed on the local, state or national historic register;
- (4) control the aesthetics of redevelopment or new development;
- (5) provide for the issuance of special use or conditional use permits; and

- (6) establish overlay zones.
- (b) The provisions of this section shall become effective on and after January 1, 1992.

History: L. 1991, ch. 56, § 15; July 1.

12-756

Chapter 12.--CITIES AND MUNICIPALITIES

Article 7.--PLANNING AND ZONING

12-756. Same; zoning; zones or districts; procedure to establish; notice and hearing. (a) Before any city or county establishes any zone or district or regulates or restricts the use of buildings or land therein, the governing body shall require the planning commission to recommend the nature and number of zones or districts which it deems necessary and the boundaries of the same and appropriate regulations or restrictions to be enforced therein. Except as provided in the zoning regulations, all such regulations shall be uniform for each class or kind of building or land uses throughout each district, but the regulations in one district may differ from those in other districts and special uses may be designated within each district with conditions attached.

(b) Upon the development of proposed zoning regulations, the planning commission shall hold a public hearing thereon. Notice of such public hearing shall be published at least once in the official city newspaper in the case of a city or in the official county newspaper in the case of a county at least 20 days prior to the date of the hearing. In the case of a joint zoning board, notice of such hearing shall be published in the official city and official county newspapers. Such notice shall fix the time and place for such hearing and shall describe such proposal in general terms. The hearing may be adjourned from time to time and at the conclusion of the same, the planning commission shall prepare its recommendations and by an affirmative vote of a majority of the entire membership of the commission adopt the same in the form of proposed zoning regulations and shall submit the same, together with the written summary of the hearing thereon, to the governing body. The governing body either may: (1) Approve such recommendations by the adoption of the same by ordinance in a city or resolution in a county; (2) override the planning commission's recommendations by a 2/3 majority vote of the membership of the governing body; or (3) may return the same to the planning commission for further consideration, together with a statement specifying the basis for the governing body's failure to approve or disapprove. If the governing body returns the planning commission's recommendations, the planning commission, after considering the same, may resubmit its original recommendations giving the reasons therefor or submit new and amended recommendations. Upon the receipt of such recommendations, the governing body, by a simple majority thereof, may adopt or may revise or amend and adopt such recommendations by the respective ordinance or resolution, or the governing body need take no further action thereon. If the planning commission fails to deliver its recommendations to the governing body following the planning commission's next regular meeting after receipt of the governing body's report, the governing body shall consider such course of inaction on the part of the planning commission as a resubmission of the original recommendations and proceed accordingly. The proposed zoning regulations and any amendments thereto shall become effective upon publication of the respective adopting ordinance or resolution.

- (c) The provisions of this section shall become effective on and after January 1, 1992.

History: L. 1991, ch. 56, § 16; July 1.

12-757

Chapter 12.--CITIES AND MUNICIPALITIES

Article 7.--PLANNING AND ZONING

12-757. Same; zoning; downzoning or rezoning, amendments and revisions; procedure; notice and hearing; protest petition; signs to notify of proposed rezoning. (a) The governing body, from time to time, may supplement, change or generally revise the boundaries or regulations contained in zoning regulations by amendment. A proposal for such amendment may be initiated by the governing body or the planning commission. If such proposed amendment is not a general revision of the existing regulations and affects specific property, the amendment may be initiated by application of the owner of property affected. Any such amendment, if in accordance with the land use plan or the land use element of a comprehensive plan, shall be presumed to be reasonable. The governing body shall establish in its zoning regulations the matters to be considered when approving or disapproving a rezoning request. The governing body may establish reasonable fees to be paid in advance by the owner of any property at the time of making application for a zoning amendment.

(b) All such proposed amendments first shall be submitted to the planning commission for recommendation. The planning commission shall hold a public hearing thereon, shall cause an accurate written summary to be made of the proceedings, and shall give notice in like manner as that required for recommendations on the original proposed zoning regulations provided in K.S.A. 12-756, and amendments thereto. Such notice shall fix the time and place for such hearing and contain a statement regarding the proposed changes in regulations or restrictions or in the boundary or classification of any zone or district. If such proposed amendment is not a general revision of the existing regulations and affects specific property, the property shall be designated by legal description or a general description sufficient to identify the property under consideration. In addition to such publication notice, written notice of such proposed amendment shall be mailed at least 20 days before the hearing to all owners of record of real property within the area to be altered and to all owners of record of real property located within at least 200 feet of the area proposed to be altered for regulations of a city and to all owners of record of real property located within at least 1,000 feet of the area proposed to be altered for regulations of a county. If a city proposes a zoning amendment to property located adjacent to or outside the city's limits, the area of notification of the city's action shall be extended to at least 1,000 feet in the unincorporated area. Notice of a county's action shall extend 200 feet in those areas where the notification area extends within the corporate limits of a city. All notices shall include a statement that a complete legal description is available for public inspection and shall indicate where such information is available. When the notice has been properly addressed and deposited in the mail, failure of a party to receive such notice shall not invalidate any subsequent action taken by the planning commission or the governing body. Such notice is sufficient to permit the planning commission to recommend amendments to zoning regulations which affect only a portion of the land described in the notice or which give all or any part of the land described a zoning classification of lesser change than that set forth in the notice. A recommendation of a zoning classification of lesser change than that set forth in the notice shall not be valid without republication and, where necessary, remailing, unless the planning commission has previously established a table or publication available to the public which designates what zoning classifications are lesser changes authorized within the published zoning

classifications. At any public hearing held to consider a proposed rezoning, an opportunity shall be granted to interested parties to be heard.

(c) (1) Whenever five or more property owners of record owning 10 or more contiguous or noncontiguous lots, tracts or parcels of the same zoning classification initiate a rezoning of their property from a less restrictive to a more restrictive zoning classification, such amendment shall require notice by publication and hearing in like manner as required in subsection (b) of this section. Such zoning amendment shall not require written notice and shall not be subject to the protest petition provision of subsection (f) of this section.

(2) Whenever a city or county initiates a rezoning from a less restrictive to a more restrictive zoning classification of 10 or more contiguous or noncontiguous lots, tracts or parcels of the same zoning classification having five or more owners of record, such amendment shall require notice by publication and hearing in like manner as that required by subsection (b) of this section. In addition, written notice shall be required to be mailed to only owners of record of the properties to be rezoned and only such owners shall be eligible to initiate a protest petition under subsection (f) of this section.

(d) Unless otherwise provided by this act, the procedure for the consideration and adoption of any such proposed amendment shall be in the same manner as that required for the consideration and adoption of the original zoning regulations. A majority of the members of the planning commission present and voting at the hearing shall be required to recommend approval or denial of the amendment to the governing body. If the planning commission fails to make a recommendation on a rezoning request, the planning commission shall be deemed to have made a recommendation of disapproval. When the planning commission submits a recommendation of approval or disapproval of such amendment and the reasons therefor, the governing body may: (1) Adopt such recommendation by ordinance in a city or by resolution in a county; (2) override the planning commission's recommendation by a 2/3 majority vote of the membership of the governing body; or (3) return such recommendation to the planning commission with a statement specifying the basis for the governing body's failure to approve or disapprove. If the governing body returns the planning commission's recommendation, the planning commission, after considering the same, may resubmit its original recommendation giving the reasons therefor or submit new and amended recommendation. Upon the receipt of such recommendation, the governing body, by a simple majority thereof, may adopt or may revise or amend and adopt such recommendation by the respective ordinance or resolution, or it need take no further action thereon. If the planning commission fails to deliver its recommendation to the governing body following the planning commission's next regular meeting after receipt of the governing body's report, the governing body shall consider such course of inaction on the part of the planning commission as a resubmission of the original recommendation and proceed accordingly. The proposed rezoning shall become effective upon publication of the respective adopting ordinance or resolution.

(e) If such amendment affects the boundaries of any zone or district, the respective ordinance or resolution shall describe the boundaries as amended, or if provision is made for the fixing of the same upon an official map which has been incorporated by reference, the amending ordinance or resolution shall define the change or the boundary as amended, shall order the official map to be changed to reflect such amendment, shall amend the section of the ordinance or resolution incorporating the same and shall reincorporate such map as amended.

(f) (1) Whether or not the planning commission approves or disapproves a zoning amendment, if a protest petition against such amendment is filed in the office of the city clerk or the county clerk within 14 days after the date of the conclusion of the public hearing pursuant to the publication notice, signed by the owners of record of 20% or more of any real property proposed to be rezoned or by the owners of record of 20% or more of the total real property within the area required to be notified by this act of the proposed rezoning of a specific property, excluding streets and public ways and property excluded pursuant to paragraph (2) of this subsection, the ordinance or resolution adopting such amendment shall not be passed except by at least a 3/4 vote of all of the members of the governing body.

(2) For the purpose of determining the sufficiency of a protest petition, if the proposed rezoning was requested by the owner of the specific property subject to the rezoning or the owner of the specific property subject to the rezoning does not oppose in writing such rezoning, such property also shall be excluded when calculating the "total real property within the area required to be notified" as that phrase is used in paragraph (1) of this subsection.

(g) Zoning regulations may provide additional notice by providing for the posting of signs on land which is the subject of a proposed rezoning, for the purpose of providing notice of such proposed rezoning.

History: L. 1991, ch. 56, § 17; L. 1995, ch. 211, § 1; L. 1995, ch. 249, § 1; L. 2000, ch. 75, § 1; Apr. 20.

12-758

Chapter 12.--CITIES AND MUNICIPALITIES

Article 7.--PLANNING AND ZONING

12-758. Same; existing uses; alterations; agricultural land exempted, exception. (a) Except as otherwise provided by this section and K.S.A. 12-770 and 12-771, and amendments thereto, regulations adopted under authority of this act shall not apply to the existing use of any building or land, but shall apply to any alteration of a building to provide for a change in use or a change in the use of any building or land after the effective date of any regulations adopted under this act. If a building is damaged by more than 50% of its fair market value such building shall not be restored if the use of such building is not in conformance with the regulations adopted under this act.

(b) Except for flood plain regulations in areas designated as a flood plain, regulations adopted by a city pursuant to K.S.A. 12-715b, and amendments thereto, or a county pursuant to this act shall not 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 are used for agricultural purposes and not otherwise.

History: L. 1991, ch. 56, § 18; L. 1997, ch. 147, § 9; May 1.

12-759

Chapter 12.--CITIES AND MUNICIPALITIES

Article 7.--PLANNING AND ZONING

12-759. Same; board of zoning appeals; membership; vacancies; powers; fees; variances; exceptions. (a) Any governing body which has enacted a zoning ordinance or resolution shall create a board of zoning appeals by adoption of the appropriate ordinance or resolution. Such board shall consist of not less than three nor more than seven members. If a city enacts zoning regulations which affect land outside the corporate limits of such city, at least one member of the board shall be a resident of the area outside the city's limits. The members first appointed shall serve

respectively for terms of one, two and three years, divided equally or as nearly equally as possible among the members. Thereafter the terms of the members may be changed to either three or four years, whichever is deemed to be in the best interest of the city or county. Vacancies shall be filled by appointment for the unexpired terms. The members of such board shall serve without compensation. The board annually shall elect one of its members as chairperson, and shall appoint a secretary who may be an officer or an employee of the city or county. The board shall adopt rules in accordance with the provisions of the ordinance or resolution creating the board. Meetings of the board shall be held at the call of the chairperson and at such other times as the board may determine. The board shall keep minutes of its proceedings, showing evidence presented, findings of fact by the board, decisions of the board and the vote upon each question. Records of all official actions of the board shall be filed in its office and shall be a public record. The governing body, in the ordinance or resolution creating such board, may establish a scale of reasonable fees to be paid in advance by the party appealing. Any two or more cities or counties which have established a joint planning commission may establish a joint board of zoning appeals.

(b) Any board of zoning appeals in existence on the effective date of this act shall continue in existence, but shall be governed by the provisions of this act.

(c) The board of zoning appeals shall administer the details of appeals from or other matters referred to it regarding the application of the zoning ordinance or resolution as hereinafter provided. The board shall fix a reasonable time for the hearing of an appeal or any other matter referred to it. Notice of the time, place and subject of such hearing shall be published once in the official city newspaper in the case of a city and in the official county newspaper in the case of a county at least 20 days prior to the date fixed for hearing. A copy of the notice shall be mailed to each party to the appeal and to the appropriate planning commission.

(d) Appeals to the board of zoning appeals may be taken by any person aggrieved, or by any officer of the city, county or any governmental agency or body affected by any decision of the officer administering the provisions of the zoning ordinance or resolution. Such appeal shall be taken within a reasonable time as provided by the rules of the board, by filing a notice of appeal specifying the grounds thereof and the payment of the fee required therefor. The officer from whom the appeal is taken, when notified by the board or its agent, shall transmit to the board all the papers constituting the record upon which the action appealed from was taken. The board shall have power to hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by an administrative official in the enforcement of the zoning ordinance or resolution. In exercising the foregoing powers, the board, in conformity with the provisions of this act, may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination, and to that end shall have all the powers of the officer from whom the appeal is taken, may attach appropriate conditions, and may issue or direct the issuance of a permit.

(e) When deemed necessary by the board of zoning appeals, the board may grant variances and exceptions from the zoning regulations on the basis and in the manner hereinafter provided: (1) To authorize in specific cases a variance from the specific terms of the regulations which will not be contrary to the public interest and where, due to special conditions, a literal enforcement of the provisions of the regulations, in an individual case, results in unnecessary hardship, and provided that the spirit of the regulations shall be observed, public safety and welfare secured, and substantial justice done. Such variance shall not permit any use not permitted by the

zoning regulations in such district. A request for a variance may be granted in such case, upon a finding by the board that all of the following conditions have been met: (A) That the variance requested arises from such condition which is unique to the property in question and which is not ordinarily found in the same zone or district; and is not created by an action or actions of the property owner or the applicant; (B) that the granting of the permit for the variance will not adversely affect the rights of adjacent property owners or residents; (C) that the strict application of the provisions of the zoning regulations of which variance is requested will constitute unnecessary hardship upon the property owner represented in the application; (D) that the variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare; and (E) that granting the variance desired will not be opposed to the general spirit and intent of the zoning regulations; and (2) to grant exceptions to the provisions of the zoning regulation in those instances where the board is specifically authorized to grant such exceptions and only under the terms of the zoning regulation. In no event shall exceptions to the provisions of the zoning regulation be granted where the use or exception contemplated is not specifically listed as an exception in the zoning regulation. Further, under no conditions shall the board of zoning appeals have the power to grant an exception when conditions of this exception, as established in the zoning regulation by the governing body, are not found to be present.

(f) Any person, official or governmental agency dissatisfied with any order or determination of the board may bring an action in the district court of the county to determine the reasonableness of any such order or determination. Such appeal shall be filed within 30 days of the final decision of the board.

(g) A planning commission also may be designated as a board of zoning appeals under this section.

(h) The provisions of this section shall become effective on and after January 1, 1992.

History: L. 1991, ch. 56, § 20; July 1.

12-760

Chapter 12.--CITIES AND MUNICIPALITIES

Article 7.--PLANNING AND ZONING

12-760. Same; appeals to district court. (a) Within 30 days of the final decision of the city or county, any person aggrieved thereby may maintain an action in the district court of the county to determine the reasonableness of such final decision.

(b) The provisions of this section shall become effective on and after January 1, 1992.

History: L. 1991, ch. 56, § 23; July 1.

12-761

Chapter 12.--CITIES AND MUNICIPALITIES

Article 7.--PLANNING AND ZONING

12-761. Same; violations; penalties; actions. (a) Any violation of any regulation adopted under the authority of this act shall be a misdemeanor and shall be punishable by a fine of not to exceed \$500 or by imprisonment for not more than six months for each offense or by both such fine and imprisonment. Each day's violation shall constitute a separate offense.

(b) Any city or county, and any person the value or use of whose property is or may be affected by such violation, shall have the authority to maintain suits or actions

in any court of competent jurisdiction to enforce the adopted zoning regulations and to abate nuisances maintained in violation thereof.

(c) Whenever any building or structure is or is proposed to be erected, constructed, altered, converted or maintained or any building, structure or land is or is proposed to be, used in violation of any zoning regulations, the city or county, or in the event the violation relates to a provision concerning flood plain zoning, the attorney general and the chief engineer of the division of water resources of the Kansas department of agriculture, in addition to other remedies, may institute injunction, mandamus, or other appropriate action or proceeding to prevent such unlawful erection, construction, reconstruction, alteration, conversion, maintenance or use or to correct or abate such violation or to prevent the occupancy of such building, structure or land.

(d) Any person, company, corporation, institution, municipality or agency of the state who violates any provision of any regulation relating to flood plain zoning shall be subject to the penalties and remedies provided for herein.

(e) The provisions of this section shall become effective on and after January 1, 1992.

History: L. 1991, ch. 56, § 24; L. 2004, ch. 101, § 62; July 1.

12-762

Chapter 12.--CITIES AND MUNICIPALITIES

Article 7.--PLANNING AND ZONING

12-762. Same; existing plans effective until changed pursuant to this act.

(a) Any comprehensive plan or part thereof, subdivision regulations, zoning regulations or building or setback lines adopted by the governing body or planning commission of any city or county adopted prior to January 1, 1992, and which are consistent with the provisions of this act shall continue in force and effect the same as though adopted under the provisions of this act, until the same is modified or a new comprehensive plan or part thereof, subdivision or zoning regulations or building or setback lines are adopted as provided in this act.

(b) Any comprehensive plan or part thereof, subdivision regulations, zoning regulations or building or setback lines adopted by a township zoning board prior to January 1, 1992, shall continue in force and effect until the county in which the township is located, or the city if land in such township is annexed, adopts and places in effect a plan or part thereof, subdivision or zoning regulations or building or setback lines affecting land and buildings located within such township. Such regulations or building or setback lines shall be enforced by the board of county commissioners.

History: L. 1991, ch. 56, § 25; L. 1993, ch. 85, § 1; July 1.

12-763

Chapter 12.--CITIES AND MUNICIPALITIES

Article 7.--PLANNING AND ZONING

12-763. Same; exclusion of manufactured homes prohibited, when. (a) The governing body shall not adopt or enforce zoning regulations which have the effect of excluding manufactured homes from the entire zoning jurisdiction of the governing body. In addition, the governing body shall not adopt or enforce zoning regulations which have the effect of excluding residential-design manufactured homes from single-family residential districts solely because they are manufactured homes.

(b) Nothing in this section shall be construed as precluding the establishment of architectural or aesthetic standards applicable to manufactured homes so as to ensure its compatibility with site-built housing in the same zoning district.

(c) Nothing in this section shall be construed to preempt or supersede valid restrictive covenants running with the land.

(d) The provisions of this section shall become effective on and after January 1, 1992.

History: L. 1991, ch. 56, § 19; July 1.

12-764

Chapter 12.--CITIES AND MUNICIPALITIES

Article 7.--PLANNING AND ZONING

12-764. Same; development rights, vesting of. (a) For the purpose of single-family residential developments, development rights in such land use shall vest upon recording of a plat of such land. If construction is not commenced on such land within five years of recording a plat, the development rights in such shall expire.

(b) For all purposes other than single-family developments, the right to use land for a particular purpose shall vest upon the issuance of all permits required for such use by a city or county and construction has begun and substantial amounts of work have been completed under a validly issued permit.

(c) The governing body may provide in zoning regulations for earlier vesting of development rights, however, vesting shall occur in the same manner for all uses of land within a land-use classification under the adopted zoning regulations.

(d) The provisions of this section shall become effective on and after January 1, 1992.

History: L. 1991, ch. 56, § 21; July 1.

12-765

Chapter 12.--CITIES AND MUNICIPALITIES

Article 7.--PLANNING AND ZONING

12-765. Same; setback lines on streets and highways; modifications or variances, when; notice and hearing. (a) Whenever any city or county has as a part of a comprehensive plan adopted a plan for its major street or highway system, after consultation with the secretary of transportation and the county engineer and any planning commission of the county or counties within which such system lies, the governing body is hereby authorized and empowered, to establish by the appropriate ordinance or resolution building or setback lines on such existing and proposed major streets or highways and to prohibit any new building being located within such building or setback lines on property within the plat approval jurisdiction of the city. Such ordinance or resolution may incorporate by reference an official map, which may include supplementary documents, setting forth such plan which shall show with reasonable survey accuracy the location and width of existing or proposed major streets or highways and any building or setback lines. The governing body shall provide for the method by which this section shall be enforced. Such official map shall not be enforced until after a certified copy of such map and adopting ordinance or resolution has been filed with the register of deeds of the county or counties in which such system lies. The board of zoning appeals shall have the power to modify or vary the building restrictions herein authorized in specific cases, in order that unwarranted hardship, which constitutes a complete deprivation of use as distinguished from merely granting a privilege, may be avoided, yet the intended purpose of the regulations shall be strictly observed and the public welfare and public safety protected. The setback ordinance, resolution or official map shall not be adopted, changed or amended by the governing body until a public hearing has been held thereon by the governing body. A notice of the time and place of such hearing shall be published in the official city newspaper in the case of a city or the official county

newspaper in the case of a county. Such notice shall be published at least 20 days prior to the date of the hearing. The powers of this section shall not be exercised so as to deprive the owner of any existing property or of its use or maintenance for the purpose to which such property is then lawfully devoted.

(b) The provisions of this section shall become effective on and after January 1, 1992.

History: L. 1991, ch. 56, § 22; July 1.

12-766

Chapter 12.--CITIES AND MUNICIPALITIES

Article 7.--PLANNING AND ZONING

12-766. Same; flood plain zones; requirements; approval by chief engineer.

(a) The governing body may establish flood plain zones and districts and restrict the use of land therein and may restrict the application thereof to lands, adjacent to watercourses, subject to floods of a lesser magnitude than that having a chance occurrence in any one year of 1%. Any flood plain regulations shall comply with the minimum requirements of the national flood insurance act of 1968, as amended (42 U.S.C. §4001 *et seq.*) or any rules and regulations adopted pursuant thereto.

(b) Prior to the adoption thereof, the governing body shall submit to the chief engineer of the division of water resources of the Kansas department of agriculture any ordinance, resolution, regulation or plan that proposes to create or to effect any change in a flood plain zone or district, or that proposes to regulate or restrict the location and use of structures, encroachments, and uses of land within such an area. The chief engineer may require, pursuant to rules and regulations, each submission hereunder to be accompanied by complete maps, plans, profiles, specifications and textual matter. The chief engineer shall approve or disapprove any such ordinance, resolution, regulation or plan or changes thereof within 90 days of the date of receipt of all such data required by the chief engineer as specified in rules and regulations adopted thereby. If the chief engineer fails to approve or disapprove within the 90 day period required by this section, such ordinance, resolution, regulation or plan or change thereof shall be deemed approved. The chief engineer shall provide, in writing, specific reasons for any disapproval.

(c) The chief engineer shall adopt such rules and regulations deemed necessary to administer and enforce the provisions of this section.

History: L. 1991, ch. 56, § 26; L. 2004, ch. 101, § 63; July 1.

12-767

Chapter 12.--CITIES AND MUNICIPALITIES

Article 7.--PLANNING AND ZONING

12-767. Same; flood plain requirements; city building codes. The governing body of any city located in an area designated as a flood plain shall not authorize, pursuant to its building codes, the construction, reconstruction or renovation of any building, facility or structure which does not comply with the minimum requirements of the national flood insurance act of 1968, as amended, (42 U.S.C. §4001 *et seq.*) or any rules and regulations adopted pursuant thereto.

History: L. 1991, ch. 63, § 6; July 1.

12-768

Chapter 12.--CITIES AND MUNICIPALITIES

Article 7.--PLANNING AND ZONING

12-768. Same; flood plain requirements; county building codes. The board of county commissioners of any county located in an area designated as a flood plain

shall not authorize, pursuant to its building codes, the construction, reconstruction or renovation of any building, facility or structure which does not comply with the minimum requirements of the national flood insurance act of 1968, as amended, (42 U.S.C. §4001 *et seq.*) or any rules and regulations adopted pursuant thereto.

History: L. 1991, ch. 63, § 7; July 1.

12-769

Chapter 12.--CITIES AND MUNICIPALITIES

Article 7.--PLANNING AND ZONING

12-769. Same; transfer of certain moneys to county. Any unexpended moneys from a levy made pursuant to K.S.A. 19-2911, and amendments thereto, prior to January 1, 1992, shall be transferred by the township board to the county in which such township is located. Such money shall be deposited in the county general fund or other appropriate fund and shall be used for planning and zoning purposes in the county.

History: L. 1993, ch. 86, § 1; July 1.

12-770

Chapter 12.--CITIES AND MUNICIPALITIES

Article 7.--PLANNING AND ZONING

12-770. Nonconforming uses; sexually oriented businesses; definitions. (a) When used in this section:

(1) The words and phrases used in this section shall have the same meaning ascribed thereto by K.S.A. 12-742, and amendments thereto;

(2) "adult arcade" means any place to which the public is permitted or invited in which coin-operated, slug-operated or for any form of consideration, electronically, electrically or mechanically controlled still or motion picture machines, projectors, video or laser disc players or other image-producing devices are maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by the depicting or describing of specified sexual activities or specified anatomical areas.

(3) "adult bookstore", adult novelty store" or "adult video store" means a commercial establishment which, as one of its principal purposes, offers for sale or rental for any form of consideration any one or more of the following:

(A) Books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes or video reproductions, slides or other visual representations which are characterized by the depiction or description of specified sexual activities or specified anatomical areas; or

(B) instruments, devices or paraphernalia which are designed for use in connection with specified sexual activities;

(4) "adult cabaret" means a nightclub, bar, restaurant or similar commercial establishment which regularly features:

(A) Persons who appear in a state of nudity or semi-nudity; or

(B) live performances which are characterized by the exposure of specified anatomical areas or by specified sexual activities; or

(C) films, motion pictures, video cassettes, slides or other photographic reproductions which are characterized by the depiction or description of specified sexual activities or specified anatomical areas;

(5) "adult motel" means a hotel, motel or similar commercial establishment which:

(A) offers accommodations to the public for any form of consideration; provides patrons with closed-circuit television transmissions, films, motion pictures, video

cassettes, slides or other photographic reproductions which are characterized by the depiction or description of specified sexual activities or specified anatomical areas and has a sign visible from the public right-of-way which advertises the availability of this adult type of photographic reproductions; or

(B) offers a sleeping room for rent for a period of time that is less than 10 hours; or

(C) allows a tenant or occupant of a sleeping room to subrent the room for a period of time that is less than 10 hours;

(6) "adult motion picture theater" means a commercial establishment where, for any form of consideration, films, motion pictures, video cassettes, slides or similar photographic reproductions are regularly shown which are characterized by the depiction or description of specified sexual activities or specified anatomical areas;

(7) "adult theater" means a theater, concert hall, auditorium or similar commercial establishment which regularly features persons who appear in a state of nudity or semi-nudity, or live performances which are characterized by the exposure of specified anatomical areas or by specified sexual activities;

(8) "escort" means a person who, for consideration, agrees or offers to act as a companion, guide, or date for another person, or who agrees or offers to privately model lingerie or to privately perform a striptease for another person;

(9) "escort agency" means a person or business association who furnishes, offers to furnish or advertises to furnish escorts as one of its primary business purposes for a fee, tip or other consideration;

(10) "nude model studio" means any place where a person who appears semi-nude, in a state of nudity, or who displays specified anatomical areas and is provided to be observed, sketched, drawn, painted, sculptured, photographed or similarly depicted by other persons who pay money or any form of consideration. Nude model studio shall not include a college, community college or university supported entirely or in part by public money; a private college or university which maintains and operates educational programs in which credits are transferable to a college, community college or university supported entirely, partly by public money or in a structure or private studio:

(A) That has no sign visible from the exterior of the structure and no other advertising that indicates a nude or semi-nude person is available for viewing;

(B) where, in order to participate in a class, a student must enroll at least three days in advance of the class; and

(C) where no more than one nude or semi-nude model is on the premises at any one time;

(11) "nudity" or a "state of nudity" means the showing of the human male or female genitals, pubic area, vulva, anus, anal cleft or cleavage with less than a fully opaque covering, the showing of the female breast with less than a fully opaque covering of any part of the nipple or the showing of the covered male genitals in a discernibly turgid state.

(12) "sexual encounter center" means a business or commercial enterprise that, as one of its principal business purposes, offers for any form of consideration:

(A) Physical contact in the form of wrestling or tumbling between persons of the opposite sex; or

(B) activities between either male and female persons or persons of the same sex, or both, when one or more of the persons is in a state of nudity or semi-nude;

(13) "semi-nude" or in a "semi-nude condition" means the showing of the female breast below a horizontal line across the top of the areola at its highest point or the showing of the male or female buttocks. Such term shall include the lower portion of

the human female breast, but shall not include any portion of the cleavage of the human female breast, exhibited by a dress, blouse, skirt, leotard, bathing suit or other wearing apparel provided the areola is not exposed in whole or in part;

(14) "sexually oriented business" means an adult arcade, adult bookstore, adult novelty store, adult video store, adult cabaret, adult motel, adult motion picture theater, adult theater, escort agency, nude model studio or sexual encounter center;

(15) "specified anatomical areas" means:

(A) The human male genitals in a discernibly turgid state, even if completely and opaquely covered; or

(B) less than completely and opaquely covered human genitals, pubic region, buttocks or a female breast below a point immediately above the top of the areola.

(b) The governing body may adopt, in the manner provided by K.S.A. 12-741 et seq., and amendments thereto, reasonable regulations for the gradual elimination of sexually oriented businesses which constitute nonconforming uses.

History: L. 1997, ch. 147, § 10; May 1.

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Chapter 12.--CITIES AND MUNICIPALITIES

Article 7.--PLANNING AND ZONING

12-771. Same; nonconforming uses; elimination of. Nothing in this act is intended to prevent cities or counties from enforcing local laws, enacted under other legal authority, for the gradual elimination of nonconforming uses.

History: L. 1997, ch. 147, § 11; May 1.