

CHAPTER 79
SENATE BILL No. 253

AN ACT concerning zoning; relating to counties declared urban areas;
amending K.S.A. 12-757 and 19-2960 and repealing the existing sections.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 12-757 is hereby amended to read as follows: 12-757. (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) *Except as provided in subsection (g) and* 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 $\frac{2}{3}$ 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) *Except as provided in subsection (g),* 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 $\frac{3}{4}$ 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) *An ordinance or resolution adopting a zoning amendment for mining operations subject to K.S.A. 49-601 et seq., and amendments thereto,*

regardless of a protest petition or failure to recommend by the planning commission shall only require a majority vote of all members of the governing body.

(h) 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.

New Sec. 2. No city or county may establish procedures regarding the adoption of special use or conditional use permits for mining operations subject to K.S.A. 49-601 et seq., and amendments thereto, which require the approval of more than a majority of all members of the governing body.

Sec. 3. K.S.A. 19-2960 is hereby amended to read as follows: 19-2960. (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 $\frac{2}{3}$ 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 agri-

cultural buildings, may be regulated as to setback requirements from public roads so as to protect the future use and improvement of such roads.

~~(d)~~ (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.

Sec. 4. K.S.A. 12-757 and 19-2960 are hereby repealed.

Sec. 5. This act shall take effect and be in force from and after its publication in the statute book.

Approved April 10, 2009.
