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# Sedgwick County

525 North Main Street 3rd  
Floor  
Wichita, KS 67203

## Legislation Text

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File #: 15-0452, Version: 1

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### **DER2015-00004 - AMENDMENT TO ARTICLE II, SECTION II-B.2.f OF THE WICHITA-SEDGWICK COUNTY UNIFIED ZONING CODE (UZY) - DEFINITION OF BOARD OF ZONING APPEALS (ALL DISTRICTS).**

Presented by: John L. Schlegel, Director, Metropolitan Area Planning Department.

#### **RECOMMENDED ACTION:** Do not amend the UZY.

Background: Kansas Statute (K.S.A.) 12-759 et seq. states that any governing body which has enacted a zoning ordinance or resolution shall create a board of zoning appeals (BZA). The Wichita-Sedgwick Unified Zoning Code (UZY), Article VI, Section VI-E, authorizes the BZA to hear "variances" and "appeals of zoning administrator's interpretations." Variances are requests that allow for deviation from the basic development standards specified by the zoning code, such as, a reduction in minimum building setback, lot area or maximum building height. Variances may be granted by the BZA only when certain circumstances are found to be present. An appeal is a request by an aggrieved party for the BZA to review a decision or interpretation made by the zoning administrator, such as, if an unregistered use, structure or lot is nonconforming or illegal.

The City of Wichita adopted a zoning code in 1923. In 1985, Sedgwick County adopted a zoning code for the unincorporated portions of Sedgwick County. Up until January of 2013 the two jurisdictions had separate BZAs. The two BZAs had separate membership, bylaws and meeting schedules. The City Council appointed seven individuals to serve on the City's BZA. The Board of County Commissioners appointed five individuals to serve on the County's BZA. In January of 2013, the two BZAs were combined into one joint board known as the Wichita-Sedgwick County Board of Zoning Appeals. Currently, the unified BZA has a membership of 14 individuals, seven individuals appointed by the City Council and seven by the Board of County Commissioners.

From 2005 through 2014 there were 22 County variances or appeals applications filed compared to 98 City variances or appeals applications. On a yearly average, there have been 2.2 County applications per year. The City has had an average of 9.8 cases filed per year.

On April 1, 2015, the Board of County Commissioners directed staff to take the necessary steps to dissolve the unified BZA and re-establish an independent Sedgwick County BZA.

To accomplish the intent of the Board of County Commissioners, an amendment to Article II, Section II-B.2.f of the UZY is needed. The proposed amendment would change the current zoning code's definition of the Board of Zoning Appeals to reflect two distinct BZAs. Currently the UZY defines the "board of zoning appeals" as "the Wichita-Sedgwick County Board of Zoning Appeals." The proposed amendment would modify Article II, Section II-B.2.f to read "Board of Zoning Appeals means the board or boards appointed by the governing body of the City or the County" instead of "Board of Zoning Appeals means the Wichita-Sedgwick County Board of Zoning Appeals."

**Analysis:** The proposed amendments were presented to the Metropolitan Area Planning Commission (MAPC) for its consideration on May 21, 2015. A range of viewpoints were offered, such as: the unified BZA provided a consistent and efficient response to BZA applications; it was inappropriate for City appointees to rule on matters dealing only with property located in unincorporated areas; citizens living within incorporated cities are still Sedgwick County citizens and pay the same County taxes as those citizens who live only in the County and that at least one planning commissioner never factors in who appointed him in rendering a decision. A motion was made to approve the proposed amendment, which failed by a vote of five to seven. A second motion was made to deny the proposed amendment, which failed by a vote of seven to five. Approval of amendments to the zoning code require a minimum of eight positive votes to pass.

Since the MAPC failed to pass either motion, the action of the MAPC is deemed to be a recommendation for denial; therefore, the County Commissioners will need to make its own findings. The following findings are proposed: 1) Approval of the request will comply with the Board of County Commissioner's action of April 1, 2015, to direct staff to amend the zoning code so that a separate Sedgwick County Board of Zoning Appeals can be re-established; 2) The requested action complies with state law requirements for the establishment of a board of zoning appeals if a zoning code has been adopted and 3) Approval of the request will not detrimentally impact the delivery of variance or appeals services to City or County property owners.

**Alternatives:**

1. Do not amend the UZC (requires a simple majority vote); or
2. Approve the proposed amendment to the Unified Zoning Code based upon the findings recommended above and authorize the chairman to sign the resolution (requires a two-thirds majority vote); or
3. Return the request to the MAPC for reconsideration (requires simple majority).

**Financial Considerations:** There are not any additional financial considerations to the County associated with this application.

**Legal Considerations:** Approved as to form and signed by County Counselor's Office: The City and County are authorized by K.S.A. 12-741, et seq. to adopt and amend a comprehensive plan, joint zoning code and official zoning map. The City and County have done so, and in that code have provided for the zoning of properties, including overlay districts, planned unit developments, protective overlays, conditional uses and community unit plans.

**Policy Considerations:** The MAPC recommendations are based upon the findings of fact stated in the MAPC minutes.

**Outside Attendees:** None

**Multimedia Presentation:** PowerPoint