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Sedgwick County

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Legislation Text

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DER2015-00005 - PROPOSED AMENDMENT TO THE WICHITA-SEDGWICK COUNTY UNIFIED ZONING CODE REGARDING ZONING AREA OF INFLUENCE JURISDICTION (ALL DISTRICTS).

Presented by: Dale Miller, Current Plans Manager, Metropolitan Area Planning Department.

RECOMMENDED ACTION: Adopt the findings of the Metropolitan Area Planning Commission, amend the unified zoning code as recommended by the MAPC, and authorize the Chairman to sign the resolution.

On Wednesday June 10, 2015, at its regularly scheduled meeting the Board of Sedgwick County Commissioners (BoCC) directed staff to process an amendment to the Wichita-Sedgwick County Unified Zoning Code (UZC) that would, if approved, eliminate "zoning area of influence" (ZAOI) review authority.

The Metropolitan Area Planning Commission (MAPC) held a hearing on July 23, 2015. Minutes of the meeting are attached. Comments made by speakers at the July 23, 2015, meeting are summarized in the following eight paragraphs.

Cheney requested that the ZAOI not be eliminated entirely, and noted that Cheney would agree to change the designation of the ZAOI to be the same as the city's "urban growth area" as shown on the comprehensive plan and would be willing to change the unanimous vote requirement associated with a recommendation of denial. If the existing procedure were to be changed Cheney would like to receive advanced notice.

Mount Hope indicated it opposed to the proposed amendment.

Goddard requested that the MAPC table the item in order to allow for more time to discuss the proposal.

Haysville indicated that it would be willing to use the "urban growth area" as the new ZAOI boundary, would not be opposed to changing the unanimous vote requirement to super majority vote, and is willing to allow the applications to be presented to the city after the MAPC hearing if that prevents a delay in obtaining a final answer.

Derby prefers for the ZAOI to remain. The cities need to be involved in development decisions that impact them and would like to have more time to discuss the proposal.

Maize was opposed to the proposal but would be willing to substitute the unanimous vote requirement with a two-thirds super majority requirement; reduce the land area included within a city's territory to one mile beyond its city limits, or to the future growth area as shown on the County's adopted comprehensive plan land use map; and allow the city ZAOI meeting to occur after the MAPC hearing but before BoCC hearing or final approval.

Colwich wanted the MAPC to delay any decision to provide more time to discuss the issue.

Mulvane noted that it has extra-territorial jurisdiction in Sumner County and would like to retain the same authority in Sedgwick County, and asked for the request to be tabled.

At the end of the July 23, 2015, public hearing, the MAPC deferred final action on the request to September 17, 2015, and requested that the cities submit comments in writing. Written comments have been received from the following cities: Haysville, Clearwater, Mount Hope, Bel Aire, Valley Center, Park City, Mulvane, Colwich and Derby. (The comments are attached.) In general, the comments express opposition to the proposal; however, several cities expressed an interest in a compromise proposal, such as: reducing the unanimous vote to a super-majority requirement; and changing the areas of influence boundaries to the urban growth areas.

The Wichita-Sedgwick County Unified Zoning Code (UZC) contains provisions that require certain development applications on properties located within specific geographic areas surrounding 17 of Sedgwick County's cities are to be presented to the specified cities' planning commissions prior the applications being presented for consideration by the Metropolitan Area Planning Commission (MAPC) and/or the BoCC. The defined geographic area surrounding the 17 cities that trigger review by a city's planning commission is known as the "zoning area of influence" (ZAOI). Seventeen of the County's cities have ZAOI authority. The cities of Viola, Wichita and Eastborough do not have ZAOI authority. A map of the current ZAOI boundaries is attached. Only zoning, conditional use, community unit plan and planned unit development applications fall under ZAOI review requirements. Other development applications such as: plats, dedications, administrative adjustments or lot splits are not subject to ZAOI review requirements. The UZC specifies that applications requiring ZAOI review must be presented to the city's planning commission having ZAOI authority prior to review by the MAPC or the BoCC. If the planning commission having ZAOI authority recommends denial the application can only be approved by a unanimous vote of the BoCC. The unanimous vote requirement to override a recommendation of denial by a city having ZAOI review authority is unique to ZAOI procedure. Applications not subject to ZAOI review can be approved with either a simple majority, two-thirds or three-fourths majority vote.

"Zoning area of influence" review was established in 1985 when Sedgwick County adopted county-wide zoning. Presumably the concept of ZAOI was intended as a substitute for those jurisdictions that had enacted "extra-territorial zoning authority." K.S.A. 12-715b allows cities to adopt zoning regulations affecting all or any designated portion of the land located outside the city but within three miles thereof under certain conditions, except that for floodplain regulations in areas designated as a floodplain.

K.S.A. 12-715b.(a) states a city may establish three mile ring zoning if: the city has established a planning commission per K.S.A. 12-702, and which provides for the appointment of two commission members who reside outside the city but within the area subject to the zoning regulations of the city or the city has a joint, metropolitan or regional planning commission in cooperation with the county in which the city is located; (b) the land outside the city has been included within a comprehensive plan recommended by either of such planning commissions and has been approved by the city governing body or the board of county commissioners and (c) the county has specifically excluded the land from county zoning regulations or the county does not have in effect zoning regulations for such area. The city wishing to initiate three mile ring zoning must notify the county commissioners in writing 60 days

before initiating zoning regulations.

It is also likely that ZAOI was included in the County zoning code as a vehicle to assure cities that county-wide zoning would not be detrimental to the cities' growth and development interests since it is likely that development located on the borders of a city will ultimately be annexed by a city. Once annexed, the city will have to deal with any residual issues associated with the development, such as, nonconforming uses created by different zoning, building or fire codes, or the conversion from on-site sewer or water services to municipal services. Attached is a summary of County applications from June 2010 to present, prepared by the County Counselor's office. The summary notes that there were a total of 86 County cases filed; 34 of which were in a ZAOI. Since October 1991, only four applications have received a recommendation of denial from one of the cities, and then overridden by a unanimous vote of the BoCC.

Since the 1990's there have been three or four reviews of the ZAOI requirements. Most of the reviews have been triggered by requests from one or more of the cities that have ZAOI authority to expand the area covered by a specific city's ZAOI. Some of the requests to enlarge a city's ZAOI have been approved; others have been denied.

Positions against having ZAOI review have traditionally been one of the following: 1) State law grants counties the senior authority to exercise zoning jurisdiction on unincorporated lands, and only provides cities the authority to establish extra-territorial zoning when the county has not established zoning in the area surrounding the city. 2) The unanimous vote requirement of the BoCC to override a recommendation of denial by a city with ZAOI authority is overly onerous. There are not any other development applications that require a unanimous vote to gain approval; therefore, development applications with a ZAOI have more risk than similar applications located outside of ZAOI territory. 3) The ZAOI review process can delay the final disposition of a development application because of the requirement that the cities ZAOI meeting occur before the MAPC can hear the request. Fifteen of the 17 cities with ZAOI authority meet only once a month; while the MAPC meets twice a month. Depending on when an application is filed relative to the meeting dates of the city with ZAOI review authority, an application can be delayed from a typical time frame. The delay can vary from one to three weeks. 4) Property owners living inside a ZAOI do not have an opportunity to vote for or against city council members who make appointments to a city's planning commissions that has ZAOI authority. 5) Courtesy notices could be provided to cities and a representative from a city could appear before the MAPC and/or the BoCC and provide comments.

In the past, the following suggestions to change the existing ZAOI process short of eliminating the procedure completely have been presented (not presented in any order of preference): 1) Modify the unanimous vote requirement to override a recommendation of denial to a simple majority or a two-thirds or three-fourths super majority vote. 2) Reduce the geographic area included in some or all ZAOI territory. 3) Eliminate the requirement that applications are required to go to the planning commission of a city with ZAOI jurisdiction prior to the MAPC hearing. Change the process to allow the case to be presented to the city after MAPC's hearing but before BoCC consideration, or if BoCC consideration is not required, before final approval.

Those opposed to eliminating ZAOI authority have indicated: 1) The process promotes collaboration on development applications between the County's less populace cities and County departments that will be responsible for issuing permits or conducting inspections. 2) The requirement for a hearing before a city's planning commission grants an opportunity for the city to provide an official, voted

upon, response, instead of an opinion offered by an individual city representative. 3) All of the planning commissions with ZAOI meet at night, which makes it more convenient for county residents to attend the planning commission meeting. 4) Compared to downtown Wichita, the cities with ZAOI are generally more centrally located to the citizens most impacted by an application and would wish to attend the zoning hearing.

The following UZC sections are proposed to be deleted.

Article I, Section I-G. ZONING AREAS OF INFLUENCE

In order to provide for review of zoning map amendment requests by the planning commissions in the second and third class cities of Sedgwick County, the Governing Body of the County has adopted and hereby maintains Zoning Areas of Influence around such communities.

1. Map adopted. The "Zoning Areas of Influence Map," originally adopted January 1, 1985, and amended from time to time, is hereby adopted as part of this Code.
2. Interpretation of boundaries. The rules for interpreting the boundaries of the Zoning Areas of Influence shall be the same as for interpreting the boundaries of zoning districts, as set forth in Sec. III-A.5.
3. Amendments. The procedures for changing Zoning Area of Influence boundaries are set out in Sec. V-K.

Article II, Section II-B.14.u. Zoning Areas of Influence means the area surrounding second and third class cities in Sedgwick County, as shown on a map originally adopted January 1, 1985, as amended from time to time. See Sec. I-G.

Article V, Section V-K. AMENDMENTS TO AREA OF INFLUENCE BOUNDARIES

1. Initiation of amendment request. Proposed changes to the boundaries of the areas of influence may be initiated through application filed with the Planning Director by any planning commission of a city of the second or third class within the County, by the Metropolitan Area Planning Commission or by the Board of County Commissioners.
2. Planning Commission hearing. The Planning Director will establish a time and date for a hearing before the Metropolitan Area Planning Commission and will notify the mayor and planning commission of any affected city, the Metropolitan Area Planning Commission and the Board of County Commissioners of the date, time and place of said hearing. After consideration of the evidence and arguments presented at the hearing, the Metropolitan Area Planning Commission shall recommend approval, approval with conditions or modifications, or disapproval of the proposed change.
3. Board of County Commissioners' hearing. The Planning Director shall forward the Planning Commission's recommendation to the Board of County Commissioners. The Board of County Commissioners may accept, modify or reject the recommendation of the Planning Commission. The action of the Board of County Commissioners on any proposed change to an area of influence boundary shall be final.

Article VI, Section VI-B.6. Amendments to Area of Influence boundaries. The Governing Body of Sedgwick County shall have the authority to approve, approve with conditions or

modifications, or deny applications for amendments to Zoning Area of Influence boundaries. The Governing Body's decision shall be the final local action on such an application.

Article VI, Section VI-C.6. Amendments to Area of Influence boundaries. The Planning Commission shall have the authority to review and recommend to the Governing Body approval, approval with conditions or modifications, or denial of applications to amend Area of Influence boundaries.

Article VI, Section VI-D.4. Amendments to Area of Influence boundaries. The planning commission of a second or third class city shall have the authority to initiate an application to amend the subject city's area of influence boundary.

Analysis: The proposal was heard by the Metropolitan Area Planning Commission (MAPC) on July 23, 2015, as described above. The MAPC considered the request again on September 17, 2015. Twelve cities responded to the MAPC's request for written comments. Seven cities responded that they did not want any change. Five cities stated they did not want any change, but if a change was made they would be willing to compromise on the supermajority voting requirement and the size of the ZAOI boundaries.

Representatives from three cities spoke to the MAPC. The focus of the city representative's comments was to retain some form of zoning review.

After additional discussion the following motion was made: to retain the process; change the boundaries to the "urban growth boundaries" as laid out in the Comprehensive Plan adopted by the Planning Commission, subject to the city's right to request an adjusted boundary; that the requirement of a unanimous vote be changed to a super majority vote; and that the cities in the affected area would have to respond to a request within 30 days of notification of a zoning application. If the city does not respond then the default position is that it is approved by that community.

Additional discussion followed. A substitute motion was made to eliminate zoning area of influence in its entirety. More discussion followed; however, the substitute motion failed by a vote of seven to five. The original motion was approved 11-1.

A simple majority of three votes is required to approve the request as recommended by the MAPC.

Alternatives:

1. Adopt the findings of the Metropolitan Area Planning Commission, amend the unified zoning code as recommended by the MAPC, and authorize the Chairman to sign the resolution (requires a simple majority of three votes).
2. Approve the amendment to the unified zoning code to eliminate zoning area of influence authority by making alternate findings and override the MAPC recommendation (requires a two-thirds majority of four votes).
3. Approve an amendment to the unified zoning code regarding zoning area of influence as determined appropriate by the BoCC (requires a two-thirds majority of four votes).
4. Return such recommendation to the MAPC with a statement specifying the basis for the BOCC's failure to approve or disapprove (requires a simple majority vote of three).

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

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

Legal Considerations: 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. The vote requirements for each of the potential actions are included within the "Alternatives" section above.

Outside Attendees: Representatives from cities with zoning area of influence.

Multimedia Presentation: PowerPoint