
AUTHORIZATION - ENABLING THE ADOPTION OF PLANNING AND ZONING

K.S.A. 12-741 - 12-742 - 12-743 General legislation.

K.S.A. 12-741 - Enables cities and counties to enact and enforce planning and zoning laws and regulations.

Exceptions

- * All such laws and regulations are adopted for the protection of the **public health, safety, and welfare.**
- * Cities and counties are not prevented from enacting and enforcing additional laws on planning and zoning which are not in conflict with the enabling act.

K.S.A. 12-742 - Defines basic terminology of planning and zoning. See especially:

- * **A**[M]anufactured home means a structure which is subject to the federal manufactured home construction and safety standards established pursuant to 42 U.S.C. §5403.@
- * **S**ubdivision means the division of a lot, tract, or parcel of land into two or more parts for the purpose, whether or immediate or future, of sale or building development, including resubdivision.@

K.S.A. 12-743 - Prescribes adoption notice for enabling legislation.

Requirements

When a city adopts a comprehensive plan (or part thereof), subdivision regulations, zoning regulations, or building or setback line regulations, it must notify the **county commission and the area township** in writing if:

- * Any of the mentioned plans or regulations affect any property outside the city limits.
- * Timing: notification in writing 20 days prior to proposed action (conflicts with 12-715b). This is preceded by a 60 day prior written notification from the city to the county commission when there is the intent to adopt **any zoning** that would affect land outside the city boundary.

When a county adopts a comprehensive plan (or part thereof), subdivision regulations, zoning regulations, or building or setback lines, it must notify cities and townships in the following circumstances:

- * If the proposed plans, regulations, or ordinances affect any property within 3 miles of any city.
- * To all townships, if the county is not a county-unit system, for the adoption of comprehensive plans, subdivision regulations, or building and setback lines - zoning regulations excluded.
- * Timing - notification in writing 20 days prior to such adoption.

CREATION OF PLANNING COMMISSION - CITY/COUNTY

K.S.A. 12-744 - Enables the creation of a Planning Commission for a City or County, when:

Baseline Requirements

- * Created by governing body by ordinance/resolution.
- * Must have five (5) or more members - exact number set by ordinance/resolution.
- * No compensation to members allowed.

Requirements

- * City - no residency requirements, unless city adopts extra-territorial zoning or subdivision - then two (2) members must reside within three (3) miles of the city; term limits and vacancies provided by ordinance.
- * County - majority of members must reside outside corporate limits, term limits provided by resolution.

Joint Planning Commission - Requirements

K.S.A. 12-744 Enabling -- Permits joint planning commission between two or more counties and or cities.

- * Planning jurisdictions must adjoin.
- * Must be a written, interlocal agreement between all parties in accord with K.S.A. 2904 et seq.

* K.S.A. 12-2904 requirements: Interlocal agreement for joint commission must specify -

- ⇒Duration of the organization
- ⇒The precise organization, composition, and nature of board
- ⇒Powers delegated to the board and purpose.
- ⇒Manner of financing and budgeting
- ⇒Method of termination of the board - and disposal of property
- ⇒Other necessary and proper matters
- ⇒Submitted to and approved by Kansas Attorney General

* Members, terms and residency specified by inter-local agreement and by ordinance/ resolutions of respective member governments.

Types of Joint Planning Commissions

- * Joint planning commission in general - two or more cities and or counties.
- * Metropolitan planning commission - portions of areas within cities and counties.
- * Joint metropolitan planning commission - two or more metropolitan planning commissions.
- * Regional planning commission - described by inter-local agreement.

PLANNING COMMISSIONS - CITY/COUNTY - DETAILS, POWERS, DUTIES

K.S.A. 12-745 - Enables powers, functions, and details of operation - including finance.

- * Planning Commission must adopt a set of by-laws.
- * Meeting times fixed in by-laws; special meetings may be called by Chairperson or Vice-chairperson.
- * Must annually elect a Chairperson and Secretary - secretary need not be a member of the commission.
- * May annually elect a vice-chairperson.
- * Hearing procedures are specified in by-laws.
- * All actions must be taken by a majority of members - quorum constituted by a majority.
- * Planning commission must keep a record of all proceedings - type of record not specified -when planning commission serves as a quasi-judicial body, a Recording or transcript must be kept as specified by Kansas judicial decision.
- * Planning commission may appoint sub-committees, advisory committees or technical committees - governing body approval not required.
- * Governing body must (required) approve a budget for the planning commission in the amount the governing body deems appropriate - may include funds for staff.

Powers of the Planning Commission K.S.A. 12-747 - The Comprehensive Plan

* Planning Commission may make or cause to be made a comprehensive plan - the creation of a comprehensive plan in Kansas is optional. {required for the adoption of subdivision regulations}

Baseline Requirements - City/County

- ⇒City Planning Commission makes a plan for area within the city and any area outside the city deemed to form a coherent planning area - but within the same county as the city.
- ⇒City must notify county commissioners if plan encompasses non-incorporated area.
- ⇒County may make a plan for the coordinated development of the entire county, including references to cities; areas, references and coverage of the plan may be changed by interlocal agreement {county may extend plan into municipalities}.

- ⇒Plan may be adopted or amended in whole or in part by resolution
- ⇒Plan may be amended from time to time as necessary by resolution.

- ⇒Public hearing required before adoption - hearing is before the planning commission.
- ⇒Notice of public hearing published once in official paper at least 20 prior to hearing.
- ⇒Planning commission must certify an official copy of the adopted plan.

Contents of the Comprehensive Plan - Required Elements

- ⇒Comprehensive surveys and studies of the following elements:
 - ➔Land use, population, building intensity.
 - ➔Public facilities, transportation and transportation facilities.
 - ➔Economic conditions, natural resources.

⇒ Any other element deemed necessary.

⇒ Planning Commission recommendations/policies are required for the following:

➔ Development or re-development of planning area, which must include - the general location, extent and relationship of land used for:

- ➔ Agriculture and business
- ➔ Residence and industry
- ➔ Recreation and education
- ➔ Public buildings and other community facilities
- ➔ Public and private major utility facilities

➔ Any other element deemed necessary

➔ Recommendation and policies for:

- ➔ Population
- ➔ Building intensity standards and restrictions
- ➔ Public facilities and public or private transportation facilities
- ➔ Public improvement programming based on relative urgency
- ➔ Major sources and expenditure of public revenue; long range plans for financing public facilities; projection of fiscal activity.
- ➔ Utilization and conservation of natural resources

➔ Any other element or policy deemed necessary

Approval of the Comprehensive Plan

⇒ Approval by ordinance or resolution of the governing body.

⇒ No plan shall be effective unless approved by the governing body - requires:

- ➔ A certified copy of the plan adopted by the planning commission
- ➔ A certified copy of the minutes of the public hearing for plan adoption

⇒ Procedural action by the governing body - all action requires a written statement of reasons to the planning commission:

- ➔ Approve the plan by ordinance or resolution
- ➔ Override the planning commission resolution by 2/3 majority vote
- ➔ Return the plan for further consideration and study; return must be accompanied by a statement specifying basis for failure to approve or disapprove.

⇒ Further procedural action - When a plan is returned to the planning commission it may be changed to conform to the governing body's specific statements, or it may be returned to the governing body unchanged.

⇒ Further procedural action - Upon receipt of a plan returned by the planning commission, the governing body may adopt, revise, change, or amend the plan by a simple majority vote. As an alternative, it may take no action thereby disapproving all action and failing to adopt a plan.

⇒ Adoption - the governing body, if it adopts the plan, must publish the adoption resolution or ordinance - the plan is effective on the date of publication. The following steps must then be taken:

➔ An attested copy {by city or county clerk} must be sent to all other taxing subdivisions in the planning area - if requested. Implies informed consent.

➔ The plan must be reviewed annually under the supervision of the planning commission.

Approval of Amendments to the Plan

⇒ Amendment process the same as original approval process for the plan.

Meaning of an Adopted Plan

⇒ An adopted plan **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, welfare, moral, order, convenience, prosperity, and general welfare as well as wise use and efficient expenditure of public funds - denotes a basis of rational review of public action by the governing body.

⇒ When a plan has been adopted, no public improvement, public facility or utility {of the type embraced within the plan} shall be constructed without first being approved as being in conformity with the plan.

➔ Planning commission report on conformity of public facilities to the plan must be made to the governing body with 60 days - otherwise, it is deemed approved.

➔ A report by the planning commission indicating non-conformity of the public facility with the plan may be overridden by the governing body - an override automatically amends the plan without recourse to hearing and publication.

ZONING - CREATION AND ADOPTION OF BY CITY/COUNTY

K.S.A. 12-753 - Enables cities and counties to create and adopt zoning ordinances/resolutions.

K.S.A. 12-754 - Defines the jurisdiction of zoning ordinances/resolutions.

K.S.A. 12-755 - Allowable purposes of zoning.

K.S.A. 12-756 - Preparation of zoning ordinances and resolutions.

K.S.A. 12-757 - Procedures and amendments
K.S.A. 12-758 - Uniformity and agricultural exemptions.
K.S.A. 19-2901et seq. Enables zoning boards for townships.

Enabling

* Permits the governing body of any city of county to adopt zoning regulations.

Baseline Requirements

* A Land Use Plan {County only - see 19-2960 - Johnson County only}
* A Planning Commission's recommendation for the following: (Planning Commission mandatory)

- ⇒ Nature and number of zones
- ⇒ An official map fixing the boundaries of all districts
- ⇒ Regulations and restrictions
- ⇒ Any **special uses** with conditions

* A public hearing on the proposed zoning recommendations held before the Planning Commission.

- ⇒ Notice of public hearing to be published at least once, 20 days prior to hearing
- ⇒ Hearing may be adjourned from time to time

* An affirmative vote of a majority of the entire planning commission { implies that all members must be present and voting } and a written summary of the public hearing

* An ordinance or resolution passed by the governing body adopting the zoning regulations, together with the zoning map, **marked official copy**, and kept for public record in the office of the county or city clerk.

* Publication of the adoption resolution or ordinance.

Elements of Adoption

The governing body **may**:

* Adopt all recommendations of the Planning Commission

* Override the recommendations of the Planning Commission by 2/3 vote and disapprove all recommendations.

* Return the recommendations to the Planning Commission specifying the need for change or amendment.

- ⇒ Upon return of the recommendations, the Planning Commission may revise in accord with the specifications of the governing Body, or submit original recommendations - must be done at the next regular meeting

* Accept changed or unaltered recommendations of the Planning Commission; revise recommendations; or disapprove all recommendations.

Contents of Zoning Regulations and Recommendations - Optional

* Contents of regulations may include:

- ⇒ Provisions regulating height, number, stories and size of buildings
- ⇒ Number, shape and size of districts and use intensity
- ⇒ Lot size, open space, coverage, population density
- ⇒ Use **and appearance** of buildings
- ⇒ Conservation of natural resources - including agricultural land
- ⇒ Use of land in floodplains
- ⇒ Setbacks from streets and highways
- ⇒ Planned unit development and transferable development rights
- ⇒ Historic preservation of districts and buildings
- ⇒ Special use and conditional use permits; overlay zones

Exceptions

* Persons with a disability may not be excluded from single family zoning districts - with disability meaning **Aa** physical or mental impairment which substantially limits one or more of such persons major life activities, but, does not include a mentally ill person unless such person has been evaluated by a licensed provider and determined not be dangerous to others.

* No municipality (does not apply to counties) shall prohibit the location of a group home {see 12-736 (b) (1)} in any zone or district where single family homes are permitted - invalidates all such zoning provisions on their face {see also - K.S.A. 39-1504 **Adult Family Homes**}.

* No person shall contract through deed restrictions or covenants to restrict group homes in single family residential zoning districts.

* No regulation adopted under the authority of the enabling act shall apply to the existing use of any building or land.

⇒ Previously legally conforming uses of building and land shall not be altered or changed unless such alteration or change is in conformance with all existing zoning regulations

⇒ Previously legally conforming uses damaged by more than 50% of fair market value shall not be restored unless they conform to all provision of the zoning regulations.

* No zoning regulation {except for approved FEMA floodplain regulation and setback provisions} shall apply to land or buildings used for an agricultural purpose - **agricultural activity** {K.S.A. 2-3203} means - the growing or raising of agricultural and **horticultural** crops, hay, poultry, and livestock; **poultry and dairy products** for commercial purposes; also farm winery. See also: Opinions of the Attorney General 88-156; 90-68; 91-97; 92-92.

⇒ A residence used by a person(s) engaged in agricultural activities is a **building used for agricultural purposes**.

⇒ Dog kennels {canine operations} are not an agricultural purpose.

⇒ Land acquired by corporations {see 17-5904} are exempt from zoning regulations.

⇒ Operation of a farm winery constitutes an agricultural purpose {see 74-551}.

* No abatement of an agricultural activity through public or private nuisance, or through any zoning nuisance provision {K.S.A. 2-3202) when:

- ⇒ The agricultural activity is conducted on farmland.
- ⇒ If activity is consistent with good agricultural practices - meaning in conformity with all state, federal and local laws.
- ⇒ If the activity is established prior to surrounding non-agricultural uses.
- ⇒ Does not have a substantial impact on the public health and safety.

* The word **Farming Operation** includes tillage of the soil, dairy farming, ranching, production or raising crops, poultry or livestock, and production of poultry or livestock products in an unmanufactured state. The word **Farmer** means a person or family farm corporation which received more than 80% of their gross income during the taxable year from farming operations. {K.S.A. 2-3402}

Land devoted to agricultural use means land which is devoted to the production of plants, animals or horticultural products, including but not limited to: Forages; grains and feed crops; dairy animals and dairy products; poultry and poultry products; beef cattle; sheep; swine and horses; bees and apiary products; trees and forest products; fruits; nut and berries; vegetables; or nursery, floral, ornamental and greenhouse products. Land devoted to agricultural use shall not include those lands which are used for recreational purposes, suburban residential averages, rural home sites or farm home sites and yard plots whose primary purpose is for residential or recreational purposes even though such properties may produce or maintain some of those plants or animals listed in the foregoing section {K.S.A. 12-519, but see *Blauvet v. County of Leavenworth*}.

* No zoning regulation may be adopted which has the effect of excluding manufactured homes from the **entire zoning jurisdiction** of a city or county.

* No zoning regulation may be adopted which has the effect of excluding **residential design manufactured homes** from single family home residence districts **solely because they are manufactured homes**.

- ⇒ Architectural and/or aesthetic regulations may be established for manufactured homes.
- ⇒ Valid covenants may not be invalidated because they prohibit manufactured homes.

Amendments to Zoning Ordinance and Map

K.S.A. 12-757 - Enables amendment procedure.

* Ordinance and map may be amended from time to time as necessary.

Baseline Requirements

- ⇒ A set of guidelines or standards for reviewing zoning amendments given to the Planning Commission by the governing body.
- ⇒ Requires an adopted comprehensive plan if such amendment is to be presumed to be reasonable and in accord with the land use element of such plan.
- ⇒ All amendments considered first by the Plan Comm. for hearing and recommendation.
- ⇒ Notice must be given to the public in all zoning changes - such notice must be published at least 20 days in advance of a hearing date

⇒ If the change is not a general revision to the zoning regulations, notice to property owners is required - elements of notice:

- ➔ A property description and copy of legal notice must be mailed to all property owners located within (**at least**) 200 feet of the proposed change in a municipality; or 1,000 feet in a county (200 feet if location extends within a municipality). Notice must be made at least 20 days in advance of the hearing.
- ➔ Failure to receive a properly mailed notice does not constitute grounds for voiding subsequent action.

⇒ If the change is a general revision to the zoning regulations, or an amendment to the textual regulations, general notice must be given 20 days in advance of the hearing, in the official county or city newspaper. Notice shall fix the time and place for the hearing, and well as a description of the proposed change.

Hearings

⇒ A record hearing before the Planning Commission - amendments to the zoning map are presumed to be quasi-judicial (*Golden v. Overland Park*). Quasi-judicial hearings, at a minimum, imply:

- ➔ A transcription, recording, or verbatim minutes.
- ➔ A fair and impartial panel
- ➔ The right to legal representation
- ➔ The right to cross examine and rebuttal
- ➔ Hearing panel free from **ex parte contact**

⇒ General hearing procedures established under by-laws

Actions and Recommendations

⇒ Planning Commissions may recommend amendments which affect only a portion of the land described in the public notice. Recommendation of a lesser change than requested requires re-notice and rehearing unless the Planning Commission has established a table of **lesser changes**.

⇒ Powers, recommendations and procedures are the same as for the adoption of the original zoning regulations.

⇒ Approval, disapproval, or return of recommendations by the governing body are the same as for the adoption of the original zoning regulations.

Who May Initiate a Request for a Change or Amendment

- ⇒ The Governing Body - both regulatory, boundary, or maps changes.
- ⇒ The Planning Commission can initiate regulatory, boundary, and map changes.
- ⇒ A property owner may initiate a boundary/map amendment.

EXTRA-TERRITORIAL ZONING

K.S.A. 12-715a - repealed, 1992

K.S.A. 12-715b - Permits any municipality to adopt zoning regulations up to 3 miles from their boundaries. Area is not required to be equal and uniform in all directions from municipal boundaries.

Exceptions

- * Within the extra-territorial zone, land under one ownership cannot be regulated through a zoning scheme if it is three (3) acres or more in size **and** used only for agricultural purposes.
- * Floodplain regulations do pertain to single ownership tracts of 3 acres or more that are used only for agricultural purposes.

Baseline Requirements to Adopt Extra-Territorial Zoning

- * The extra-territorial area cannot be controlled by the city if the county has already adopted a **comprehensive plan OR zoning regulations** for this specific area; the county may, however, exclude this area from their existing plan or zoning ordinance - procedure for exclusion is the same for amendment of existing plans or ordinances.
- * City must establish a planning commission in accord with K.S.A. 12-744.
- * Planning commission must contain two members who reside in the extra-territorial area, or the planning commission must be constituted as a joint, metropolitan, or regional body in conjunction with the county.
- * A comprehensive plan must be prepared and adopted for the area lying with the extra-territorial zone.
- * City must notify county commission in writing 60 days before initiating any zoning ordinance for the extra-territorial area. This requirement conflicts with 12-743(a) which requires 20 days prior notification to the county commission.

Termination of Extra-Territorial Zoning (12-715d)

All authority of the municipality to plan and zone within 3 miles of municipal boundaries ceases when:

- * The county adopts a comprehensive plan and zoning regulations for the same area.

ZONING REGULATIONS RELATING TO FLOODPLAINS

K.S.A. 12-766 - Floodplain zoning: creation and approval

- * Enables the creation and enforcement of floodplain zoning
- * Optional adoption of floodplain zoning regulation for cities and counties not participating in the National Flood Insurance Act Program.
- * Mandatory adoption of floodplain zoning regulations for cities and counties participating in the National Flood Insurance Act Program. {see: 42 U.S.C. 4001 et seq.}

Baseline Requirements

- ⇒ All proposals for floodplain zoning control must be submitted to the Chief Engineer of the Kansas Division of Water Resources for final approval.
- ⇒ Proposals to be accompanied by necessary studies, maps, profiles, and textual materials.
- ⇒ Chief Engineer given 90 days from the date of submission to approve the resolution or ordinance, otherwise, the proposals shall be deemed approved.
- ⇒ Disapproval shall be made in writing stating specific reasons.
- ⇒ Adoption and hearing requirements the same as for cities and counties for zoning regulations.

CREATION OF THE BOARD OF ZONING APPEALS

K.S.A. 12-759 - Enables creation of the B.Z.A.

- * Board established by ordinance or resolution.
- * Resolution establishes a table of reasonable fees for appeals.

Members and Terms

- * Creation of the Board of Zoning Appeals is mandatory if a city or county has adopted zoning regulations.
- * Membership requirements established by enacting resolution or ordinance - not less than three (3) nor more than seven (7) members. However, the Planning Commission of any city or county may be designated, by resolution or ordinance, as the Board of Zoning Appeals.
- * For City B.Z.A. - one member must reside in the unincorporated area if city has adopted an extra-territorial zone.
- * Terms of members vary by appointment:

- ⇒ First members appointed serve terms of one, two and three years - divided equally among members - thereafter, terms of three or four years each.
- ⇒ Vacancies filled by appointing new members for unexpired terms.

Meetings, Officers and Procedures

- * The B.Z.A. adopts rules for hearings in accord with their enacting resolution or ordinance.
 - * Annually elect a chairperson and may appoint a secretary who need not be a member of the board.
- ⇒ Keeps **minutes** of proceedings
 - ⇒ Makes findings of fact, evidence, and a record of all votes

Appeals

- ⇒ Appeal meetings are scheduled at reasonable times at the call of the chairperson.
- ⇒ Notice of the appeal is published once, 20 days in advance of the hearing in the official county or city newspaper. A copy of the notice must be mailed to each party of the appeal and to the planning commission.

➔ Appeals may be brought by any person aggrieved, or by an officer of any city, county, or any governmental agency or body affected by any decision of the zoning administrator.

➔ B.Z.A. has the power to hear and decide appeals where it is alleged that there is an error in any order, requirement, decision or determination made by an administrative official in the enforcement of the zoning regulations.

⇒ B.Z.A. has the power to reverse, affirm, wholly, or in part, any order from whom the appeal is taken, may attach appropriate conditions, and may direct the issuance of any permit.

Variances

⇒ An authorization, in specific cases, to depart 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 - **provided that:**

- ➔ The spirit of the regulations are preserved
- ➔ Public safety and welfare are preserved
- ➔ Substantial justice is done
- ➔ Does not permit any use not permitted in the zoning regulations in such district

Variances - Criteria for Issuance

⇒ A variance may be granted upon a finding **that all of the following conditions are met:**

- ➔ Need for the variances arises from conditions unique to the property in question
- ➔ Need for the variance does not arise from an action(s) of the property owner
- ➔ Granting the variance does not adversely affect the rights of adjacent property owners
- ➔ Strict application of the zoning regulation constitutes an unnecessary hardship

Exceptions

⇒ The B.Z.A. may grant an exception to any specific zoning regulation or use when it is specifically listed as an exception in the zoning regulations.

- ➔ Under no circumstances may the exception be issued if the conditions attached by the zoning regulations are not found to be present

Specific Appeals from the Board of Zoning Appeals

⇒ Any person, official or governmental agency, if dissatisfied with a final decision of the B.Z.A., may, within 30 days, bring an action in the district court of the county to determine the reasonableness of such action.

SUBDIVISION REGULATION - CREATION BY CITY/COUNTY

K.S.A. 12-749 - Enables the creation of land subdivision regulations.

K.S.A. 12-750 - Enables joint exercise or extra-territorial control in land subdivision.

K.S.A. 12-752 - Enables approval procedures for plats

* A county or a city may adopt rules governing the subdivision of land within their jurisdiction; a city may adopt land subdivision regulations within three (3) miles to the **nearest point** of the city boundaries - if the county does not have in effect a set of subdivision regulations - no county commission approval required.

* Compliance with subdivision regulations may be required as a condition to issuing a building or zoning permit.

Baseline Provisions

* County or city must have adopted a comprehensive plan

* City or county must have created a planning commission

* A public hearing, notice published once, at least 20 days in advance of the meeting. Notice of hearing in official newspaper fixing the time and place and the proposals in general terms.

* Subdivision regulations may include the following provisions:

⇒ Efficient and orderly location of streets

⇒ Reduction of vehicular congestion

⇒ Reservation or dedication of open spaces

⇒ Recreational facilities - dedication of land for park purposes

⇒ Flood protection

⇒ Building lines; compatibility of design

⇒ Any other facilities, services, and improvements deemed necessary

⇒ Administrative changes to land elevations designated on a plat

⇒ Approval of plats conditioned on conformance to **Comprehensive Plan**

⇒ Regulations governing the assurance of development improvements by corporate surety bond, cashier's check, escrow account, letter of credit, or like security established in an amount and time period established by the governing body.

⇒ Payment of fees in lieu of public dedication of land

Special Provisions for Platting

⇒ {K.S.A. 12-512b} In any jurisdiction which has adopted subdivision regulations, and there is a planning commission, any new plat of replat of land shall vacate (without limitation) any existing street, alley, setback lines, or public reservation, whether established by earlier plats, condemnation, or other instruments.

Procedures for Adoption

⇒ Land subdivision regulations adopted by a majority vote of the entire membership of the Planning Commission. Procedure for adopting ordinance or amendment is the same as for the adoption of the zoning resolution by the governing body.

Adoption of Land Subdivision Regulations by City - Outside Municipal Boundaries

* City may adopt regulations for subdivision for unincorporated lands when the county already has in effect land subdivision regulations by doing the following:

- ⇒ A copy of the city's proposal must be certified (city clerk) to the board of county commissioners.
- ⇒ Within 60 days of the certified resolution, a joint subdivision board must be established - composed of three (3) members of the county Planning Commission and three (3) members of the City Planning Commission {appointed by Chairpersons of the Planning Commissions} and one person to be selected by the other six members- requires joint resolution of city/county.

* Regulation do not apply to joint, metropolitan, or regional planning commissions.

Joint and Extra-Jurisdictional Powers

⇒ A city may adopt building codes in conjunction with their exercise of subdivision control outside the city limits {within the extra-jurisdictional area}

Plats and Procedures

* Upon the adoption of subdivision regulations, the owner of any land who subdivides any lot, tract, or parcels, for the purpose of laying out any subdivisions, suburban tracts or lots, building lots, or establishing any street, alley, park, or other property intended for public use {or land fronting or adjacent to} shall have a plat drawn and submitted to the Planning Commission.

Required Contents of Plats

- ⇒ Accurate description of subdivision, lots, tracts, or parcels
- ⇒ Location and dimension of any streets or alleys
- ⇒ Any properties intend to be dedicated to the public
- ⇒ Verification of property owners

Actions by the Planning Commission

- ⇒ Planning Commission must determine if the plat conforms to the subdivision regulations
- ⇒ Determination must be made within 60 days after the first meeting reviewing the plat
- ⇒ Failure to take approval/disapproval within 60 days shall grant automatic approval
- ⇒ Disapproval of the plat requires notification to the applicant
- ⇒ Approval shall be indicated by endorsement of the Planning Commission on the plat

Role of the Governing Body

- ⇒ The governing body shall review all proposed public dedications
- ⇒ Governing body must accept or refuse dedications within 30 days after their first meeting following the date of the submission of the plat to the clerk
- ⇒ An extension of 30 days {upon motion of the governing body} may be granted to give the applicant the opportunity to comply with any requirements of dedication
- ⇒ The Planning Commission must be notified of a refusal by the governing body of any dedication.
- ⇒ The Register of Deeds shall not file any plat until it bears the endorsement of the Planning Commission and that the land proposed for public dedication has been accepted by the Governing Body.

Exceptions

- ⇒ Land subdivision regulations must provide for the mandatory issuance of a building permit on lots divided into **not more than two tracts** without recourse to subdivision/resubdivision.
- ⇒ Lots zoned for industrial purposes may divide **into two or more lots** without replatting such lot.
- ⇒ The subdivision regulations may contain a procedure for the issuance of building permits on divided lots to account for the need for adequate street widths, easements and public improvements.

{Note: these provisions conflict with minimum lot size requirements in the zoning regulations and sanitary regulations }

- ⇒ All county public road must be a minimum of 60 feet wide.

PROVISIONS FOR ENFORCEMENT AND PENALTIES AND APPEALS

K.S.A. 12-761 - Enables violations and penalties for zoning and subdivision regulations.

* Any city, county, **or person** - the value or use of whose property is or may be affect by a violation of the zoning or subdivision regulations - is authorized to bring suits or actions in any court of competent jurisdiction to enforce the regulations - and to abate nuisances maintained in violation thereof.

* Any violation of the zoning and subdivision regulations shall be a misdemeanor punishable by a fine not to exceed \$500.00 or by imprisonment not more than six (6) months. Each day=s violation shall constitute a separate offense.

Specific Violations

- ⇒ The Attorney General of Kansas and the Chief Engineer of the Kansas Division of the State Board of Water Resources may institute injunction, mandamus or other appropriate action to prevent the unlawful erection, construction, reconstruction, maintenance or use of any building or structure in violation of the floodplain regulations.

* Any person aggrieved by the final decision of any county or city official pursuant to the subdivision and zoning regulation may bring an action to determine the reasonableness of such action. Such action must be brought within 30 days of the final decision.

EMINENT DOMAIN - TAKINGS - SELECTED Referenced: K.S.A. 26-513

* Elements of **just compensation** - Required:

- ⇒ **Taking entire tract** - If the entire tract of land or interest therein is taken, the measure of compensation is the value of the property or interest at the time of the taking.
- ⇒ **Partial taking** - For partial takings, the compensation and measure of damages are the difference between the value of the entire property or interest immediately before the taking, and the value of that portion of the tract or interest remaining immediately after the taking.

- ⇒ **Factors** to be considered is obtaining the amount of compensation. Factors are not to be considered separately - but only as they affect the total compensation and damage to the property:
 - ➔ The most advantageous use to which the property is reasonably adaptable
 - ➔ Access to the property remaining
 - ➔ Appearance of the property remaining, if appearance is an element of the value in conjunction with any use for which the property is reasonably adaptable
 - ➔ Productivity, convenience, use to be made of the property taken, or use of the property remaining
 - ➔ View, ventilation and light, to the extent that they are beneficial attributes to the use of which the remaining property is devoted or to which it is reasonably adaptable
 - ➔ Severance or division of a tract - whether initial or is in aggravation of a previous severance; changes of grade and loss of impairment of access by means of underpass or overpass incidental to changing the character or design of an existing improvement being considered as in aggravation of a previous severance, if in connection with the taking of additional land and needed to make the change in the improvement

 - ➔ Loss of trees and shrubbery to the extent that they affect the value of the land taken - and to the extent that their loss impairs the value of the land remaining
 - ➔ Cost of new fences or loss of fences and the cost of replacing them with fences of like quality, to the extent that their loss impairs the value of the land remaining

 - ➔ **Destruction of a legal non-conforming use**
 - ➔ Damage to property abutting on a right-of-way due to change of grade where accompanied by a taking of land
 - ➔ Proximity of new improvement to improvements remaining on the condemnee's land
 - ➔ That the property could be or had been adapted to a use which was profitably carried on
 - ➔ Cost of new drains or loss of drains of like quality, to the extent that their loss impairs the value of the land remaining

➔Cost of new private roads or passageways or loss of private roads of passageways and the cost of replacing them with private roads or passageways of like quality, to the extent that their loss impairs the value of the land remaining

CERTAIN MISC. PROVISIONS RELATING TO PLANNING, ZONING/SUBDIVISION

Feedlots (Related to County Zoning)

* K.S.A. 47-1503 - Defines Feedlots - Agricultural Purpose

- ⇒ Feedlot means: A livestock feed yard having more than 1,000 head of livestock at any one time during the licensed year.
- ⇒ Livestock means: Cattle, sheep, swine, and horses.
- ⇒ Livestock commissioner means the person appointed by the Kansas Animal Health Board.
- ⇒ Feedlots must be licensed by the livestock commissioner.

* Feedlots and animal husbandry are agricultural pursuits - exempt from **County zoning regulations**, but are subject to **any city zoning regulation** {except in extra-territorial area}.

* The livestock commissioner (and review board) shall have the exclusive power to administer and enforce all regulations governing feedlots.

Animal Dealers

* K.S.A. 47-1701 - Defines Animal Dealers

* Selected definitions:

- ⇒ Animal means any live dog, cat, rabbit, rodent, nonhuman primate, bird or other warm blooded vertebrate, or any fish, snake or other cold blooded vertebrate.
- ⇒ Animal does not include horses, cattle, sheep, goats, swine or domestic fowl.
- ⇒ Animal dealer means any person who operates an animal dealer premises.
- ⇒ Animal dealer premises means any premises where dogs or cats, or both, are sold, or offered or maintained for sale, **primarily at wholesale for resale to another.**
- ⇒ Animal dealer does not include: (a) any pound or animal shelter; or (b) a hobby kennel.
- ⇒ Hobby kennel means any premises where only dogs and cats, or both, which are produced on such premises are sold or offered or maintained for sale, but only if the total number of dogs or cats, or both sold during the registration year is fewer than all or part of six litters of animals or 30 individual animals.
- ⇒ Animal shelter means a facility which is used or designated for use to house or contain any animal and which is owned, operated or maintained by a duly incorporated humane society, animal welfare society, society for the prevention of cruelty to animals, or other non-profit corporate organizations devoted to the welfare, protection and humane treatment of animals.

* It shall be unlawful for any city or the officials thereof to operate a pound or any corporate entity to operate an animal shelter as a pound, except a licensed veterinarian, unless a license for such pound or shelter has been obtained from the commissioner {yearly license}. Operating as a pound means:

⇒ A facility operated by the state, or any political subdivision, for the purpose of impounding or harboring any seized stray, homeless, or abandoned **animals**.

⇒ Or, operated for the above purposes under contract with any municipality or incorporated society for the prevention of cruelty to animals, or by another person under contract with such municipality.

⇒ No dog or cat may be released for adoption from any pound or animal shelter, or from any duly incorporated human society (except to its rightful owner) unless such animal has been spayed or neutered, or the adopting party deposits sufficient funds (must be refunded) to have the animal spayed or neutered at a later time.

* Presumed selling animals: {K.S.A. 47-1703 (v)} - Sale, sell, and sold include transfers by sale and exchange. Maintaining animals for sale **is presumed whenever 20 or more dogs or cats, or both, are maintained by any one person.**

EXEMPTION FROM ANTI-TRUST LIABILITY

K.S.A 12-205 - Generally

* Local jurisdictions are **empowered to regulate certain services and activities** to serve and protect the public's general health, safety, and welfare. Local jurisdiction that are specifically authorized by statute or through the exercise of home rule powers are **urged** to continued to provide and regulate such services and activities.

⇒ Local jurisdictions and their officers and employees shall be exempt for civil liability, except for injunctive relief, under the Anti-Trust laws of Kansas (Article 1, Chapter 50)

⇒ The prevailing party in any injunctive suit may be awarded attorney's fees

⇒ Bond requirements {K..S.A. 60-905} shall not be applicable to suits for injunctive relief against local jurisdictions for violation of the anti-trust laws of the state

⇒ Nothing may preclude the Attorney General of Kansas, or a county or district attorney, from bring suit against a local jurisdiction for violation of the anti-trust laws

MISC. PROVISIONS

* **Municipal Boundary Lines** {K.S.A. 12-517} Any city, which has added or excluded territory within the past year shall, by resolution, declare the entire boundary of the city before the last day of December. The City Clerk shall file a certified resolution with the County Clerk and Register of Deeds.

ADULT FAMILY HOMES

* **Adult family homes** {K.S.A. 39-1501}; definitions. As used in this act:

(a) "Adult family home" means a private residence in which care is provided for not less than 24 hours in any week for one or two adult clients who (1) are not related within the third degree of relationship to the owner or provider by blood or marriage, (2) by reason of aging, illness, disease or physical or mental infirmity are unable to live independently but are essentially capable of managing their own care and affairs. The home does not furnish skilled nursing care, supervised nursing care or personal care. Adult family home does not mean adult care home.

(b) "Skilled nursing care," "supervised nursing care" and "personal care" have the meanings respectively ascribed thereto in K.S.A. 39-923, and amendments thereto.

(c) "Physician" means any person licensed by the state board of healing arts to practice medicine and surgery.

(d) "Secretary" means the secretary of social and rehabilitation services.

⇒ Same; registration; forms. Any person maintaining an adult family home shall apply for registration of such home with the secretary on forms furnished by the secretary.

⇒ Same; registration; application for renewal; duties of secretary.

(a) Upon receipt of an application for registration of a private residence as an adult family home and upon certification by the applicant that no person residing therein has an infectious or communicable disease or health condition, the secretary shall determine the suitability of the residence for registration as an adult family home. If the secretary determines that the residence for which registration is sought, and the applicant therefor, can satisfactorily meet the requirements provided in K.S.A. 39-1504, the secretary shall register the residence as an adult family home annually from the date of such registration.

(b) Application for renewal of the registration shall be made to the secretary no later than 30 days prior to the annual expiration of that registration. The secretary, within 15 days of the receipt of such application, shall cause to be made an on-site investigation of the residence. If the secretary determines that the requirements of subsection (a) of this section are met, the secretary shall again register the residence as an adult family home.

⇒ 39-1504. Same; requirements for registration. The secretary shall administer the adult family home registration program in accordance with the following requirements:

⇒(1) The home shall meet health standards and safety regulations of the community and the provisions of chapter 20 of the national fire protection association, life safety code, pamphlet no. 101, 1981 edition.

⇒(2) The home shall have a written plan to get persons out of the home rapidly in case of fire, tornado or other emergency.

⇒(3) No more than two clients shall be in residence at any one time.

⇒(4) The home shall have adequate living and sleeping space for clients.

⇒(5) Each room shall have an operable outside window.

⇒(6) Electric fans shall be made available to reduce the temperature if there is no air conditioning. Rooms shall be heated, lighted, ventilated and available.

(7) Sleeping rooms shall have space for personal items.

(8) Each client shall have a bed which is clean and in good condition.

(9) Lavatory and toilet facilities shall be accessible, available and in working order.

(10) The kitchen shall be clean with appliances in good working order.

⇒(b)

(1) A healthy and safe environment shall be maintained for clients.

(2) There shall be a telephone in the home.

(3) The provider may assist a client with the taking of medications when the medication is in a labeled bottle which clearly shows a physician's orders and when the client requires assistance because of tremor, visual impairment, or similar reasons due to health conditions. The provider may assist or perform for the client such physical activities which do not require daily supervision such as assistance with eating, bathing and dressing, help with brace or walker and transferring from wheelchairs.

(4) There shall be no use of corporal punishment, restraints or punitive measures.

(5) The house shall be free from accumulated dirt, trash and vermin.

(6) Meals shall be planned and prepared for adequate nutrition, and for diets if directed by a physician.

⇒(c)

(1) The provider shall be at least 18 years of age and in good health at the time of initial application for registration. A written statement must be received from a physician, nurse practitioner, or physician's assistant stating that the applicant and the members of the applicant's household are free of any infectious or communicable disease or health condition and are physically and mentally healthy. Such statements shall be renewed every two years.

(2) The provider shall not be totally dependent on the income from the clients for support of the provider or the provider's family.

(3) A criminal conviction shall not necessarily exclude registration as an adult family home; but an investigation thereof will be made as part of the determination of the suitability of the home.

(4) The provider shall be responsible for supervision at all times and shall be in charge of the home and provision of care, or shall have a responsible person on call. Any such substitute responsible person shall meet the same requirements as the provider.

(5) The provider is responsible for encouraging the client to seek and utilize available services when needed.

(6) The provider shall comply with the requirements of state and federal regulations concerning civil rights and section 504 of the federal rehabilitation act of 1973.

(7) The provider shall assure that clients have the privilege of privacy as well as the right to see relatives, friends and participate in regular community activities.

(8) The provider shall keep client information confidential. The use or disclosure of any information concerning a client for any purpose is prohibited except on written consent of the client or upon order of the court.

(9) The provider shall maintain contact with an assigned social worker and shall allow the secretary and authorized representatives of the secretary access to the home and grounds and to the records related to clients in residence.

(10) The provider shall inform the social worker immediately of any unscheduled client absence from the home.

(11) The provider is responsible for helping clients maintain their clothing.

(12) The provider shall furnish or help clients arrange for transportation.

(13) The provider shall help a client arrange for emergency and regular medical care when necessary.

(14) The provider shall submit any information relating to the operation of the adult family home which is required by the secretary.

ADULT CARE HOMES - Does not contain amendments from SB-241 2-10, 1997

* Adult Care Homes {K.S.A. 39-923}. Definitions. (a) As used in this act:

(1) "Adult care home" means any nursing facility, nursing facility for mental health, intermediate care facility for the mentally retarded, assisted living facility, residential health care facility, home plus, boarding care home and adult day care facility, all of which classifications of adult care homes are required to be licensed by the secretary of health and environment.

(2) "Nursing facility" means any place or facility operating 24 hours a day, seven days a week, caring for six or more individuals not related within the third degree of relationship to the administrator or owner by blood or marriage and who, due to functional impairments, need skilled nursing care to compensate for activities of daily living limitations.

(3) "Nursing facility for mental health" means any place or facility operating 24 hours a day, seven days a week caring for six or more individuals not related within the third degree of relationship to the administrator or owner by blood or marriage and who, due to functional impairments, need skilled nursing care and special mental health services to compensate for activities of daily living limitations.

(4) "Intermediate care facility for the mentally retarded" means any place or facility operating 24 hours a day, seven days a week caring for six or more individuals not related within the third degree of relationship to the administrator or owner by blood or marriage and who, due to functional impairments caused by mental retardation or related conditions need services to compensate for activities of daily living limitations.

(5) "Assisted living facility" means any place or facility caring for six or more individuals not related within the third degree of relationship to the administrator, operator or owner by blood or marriage and who, by choice or due to functional impairments, may need personal care and may need supervised nursing care to compensate for activities of daily living limitations and in which the place or facility includes apartments for residents and provides or coordinates a range of services including personal care or supervised nursing care available 24 hours a day, seven days a week for the support of resident independence. The provision of skilled nursing procedures to a resident in an assisted living facility is not prohibited by this act. Generally, the skilled services provided in an assisted living facility shall be provided on an intermittent or limited term basis, or if limited in scope, a regular basis.

(6) "Residential health care facility" means any place or facility caring for six or more individuals not related within the third degree or relationship to the administrator, operator or owner by blood or marriage and who, by choice or due to functional impairments, may need personal care and may need supervised nursing care to compensate for activities of daily living limitations and in which the place or facility includes individual living units and provides or coordinates personal care or supervised nursing care available on a 24-hour, seven-day-a-week basis for the support of resident independence. The provision of skilled nursing procedures to a resident in a residential health care facility is not prohibited by this act. Generally, the skilled services provided in a residential health care facility shall be provided on an intermittent or limited term basis, or if limited in scope, a regular basis.

(7) "Home plus" means any residence or facility caring for not more than five individuals not related within the third degree of relationship to the operator or owner by blood or marriage unless the resident in need of care is approved for placement by the secretary of the department of social and rehabilitation services, and who, due to functional impairment, needs personal care and may need supervised nursing care to compensate for activities of daily living limitations. The level of care provided residents shall be determined by

- preparation of the operator and rules and regulations developed by the department of health and environment.
- (8) "Boarding care home" means any place or facility operating 24 hours a day, seven days a week, caring for not more than 10 individuals not related within the third degree of relationship to the operator or owner by blood or marriage and who, due to functional impairment, need supervision of activities of daily living but who are ambulatory and essentially capable of managing their own care and affairs.
- (9) "Adult day care" means any place or facility operating less than 24 hours a day caring for individuals not related within the third degree of relationship to the operator or owner by blood or marriage and who, due to functional impairment need supervision of or assistance with activities of daily living.
- (10) "Place or facility" means a building or any one or more complete floors of a building, or any one or more complete wings of a building, or any one or more complete wings and one or more complete floors of a building, and the term "place or facility" may include multiple buildings.
- (11) "Skilled nursing care" means services performed by or under the immediate supervision of a registered professional nurse and additional licensed nursing personnel. Skilled nursing includes administration of medications and treatments as prescribed by a licensed physician or dentist; and other nursing functions which require substantial nursing judgment and skill based on the knowledge and application of scientific principles.
- (12) "Supervised nursing care" means services provided by or under the guidance of a licensed nurse with initial direction for nursing procedures and periodic inspection of the actual act of accomplishing the procedures; administration of medications and treatments as prescribed by a licensed physician or dentist and assistance of residents with the performance of activities of daily living.
- (13) "Resident" means all individuals kept, cared for, treated, boarded or otherwise accommodated in any adult care home.
- (14) "Person" means any individual, firm, partnership, corporation, company, association or joint-stock association, and the legal successor thereof.
- (15) "Operate an adult care home" means to own, lease, establish, maintain, conduct the affairs of or manage an adult care home, except that for the purposes of this definition the word "own" and the word "lease" shall not include hospital districts, cities and counties which hold title to an adult care home purchased or constructed through the sale of bonds.
- (16) "Licensing agency" means the secretary of health and environment.
- (17) "Skilled nursing home" means a nursing facility.
- (18) "Intermediate nursing care home" means a nursing facility.
- (19) "Apartment" means a private unit which includes, but is not limited to, a toilet room with bathing facilities, a kitchen, sleeping, living and storage area and a lockable door.
- (20) "Individual living unit" means a private unit which includes, but is not limited to, a toilet room with bathing facilities, sleeping, living and storage area and a lockable door.
- (21) "Operator" means an individual who operates an assisted living facility or residential health care facility with fewer than 61 residents, a home plus or adult day care facility and has completed a course approved by the secretary of health and environment on principles of assisted living and has successfully passed an examination approved by the licensing agency on principles of assisted living and such other requirements as may be established by the licensing agency by rules and regulations.
- (22) "Activities of daily living" means those personal, functional activities required by an individual for continued well-being, including but not limited to eating, nutrition, dressing, personal hygiene, mobility, toileting.
- (23) "Personal care" means care provided by staff to assist an individual with, or to perform activities of daily living.
- (24) "Functional impairment" means an individual has experienced a decline in physical, mental and psychosocial well-being and as a result, is unable to compensate for the effects of the decline.

(25) "Kitchen" means a food preparation area that includes a sink, refrigerator and a microwave oven or stove.

(26) The term "intermediate personal care home" for purposes of those individuals applying for or receiving veterans' benefits means residential health care facility.

(b) The term "adult care home" shall not include institutions operated by federal or state governments, except institutions operated by the Kansas commission on veterans affairs, hospitals or institutions for the treatment and care of psychiatric patients, child care facilities, maternity centers, hotels, offices of physicians or hospices which are certified to participate in the medicare program under 42 code of federal regulations, chapter IV, section 418.1 et seq. and amendments thereto and which provide services only to hospice patients.

(c) Facilities licensed under K.S.A. 39-1501 et seq. and amendments thereto or K.S.A. 75-3307b and amendments thereto or K.S.A. 39-923 as an intermediate personal care home or with license applications on file with the licensing agency as intermediate personal care homes on or before January 1, 1995, shall have the option of becoming licensed as either an assisted living facility or a residential health care facility without being required to add kitchens or private baths.

(d) Nursing facilities in existence on the effective date of this act changing licensure categories to become residential health care facilities shall be required to provide private bathing facilities in a minimum of 20% of the individual living units.

(e) Facilities licensed under the adult care home licensure act on the day immediately preceding the effective date of this act shall continue to be licensed facilities until the annual renewal date of such license and may renew such license in the appropriate licensure category under the adult care home licensure act subject to the payment of fees and other conditions and limitations of such act.

(f) The licensing agency may by rule and regulation change the name of the different classes of homes when necessary to avoid confusion in terminology and the agency may further amend, substitute, change and in a manner consistent with the definitions established in this section, further define and identify the specific acts and services which shall fall within the respective categories of facilities so long as the above categories for adult care homes are used as guidelines to define and identify the specific acts.

⇒ 39-925. Administration of act. The administration of this act shall be under the secretary of health and environment as the licensing agency in conjunction with the state fire marshal, and shall have the assistance of the county, city-county or multicounty health departments, local fire and safety authorities and other agencies of government in this state.

⇒ 39-926. License required to operate home; compliance with regulations. It shall be unlawful for any person or persons acting jointly or severally to operate an adult care home within this state except upon license first had and obtained for that purpose from the secretary of health and environment as the licensing agency upon application made therefor as provided in this act, and compliance with the requirements, standards, rules and regulations, promulgated under its provisions.

⇒ 39-926a. Limitation on number of persons licensed to operate adult care home; application of section; section supplemental to adult care home licensure act. (a) Except as otherwise provided in this section, no more than three different persons shall be licensed to operate any one adult care home under the adult care home licensure act, and no license to operate any one adult care home shall be issued under that act to more than three different persons. The provisions of this section shall not apply to any license to operate an adult care home which is in effect on the effective date of this act and which is issued to more than three different persons, or the renewal of any such license, unless

subsequent to the effective date of this act three or fewer persons operate the adult care home or the license to operate the adult care home is denied or revoked.

MISC. RULES FOR SUBDIVISION PLATS

*. Monumentation of corners in boundaries of subdivisions before recording plat {K.S.A. 58-2001 }

⇒ All corners in the boundary of a subdivision of land shall be monumented prior to recording of the plat submitted for recording after the effective date of this section. This monument shall be a metallic bar or tube set rigidly in a concrete base.

⇒ Where any section corner, quarter section corner or section center is involved in the control establishing the location of a subdivision boundary, said point shall be clearly monumented and labeled before it is used in the subdivision control.

⇒ Recording measurements from visible objects to location of point; description; alternative. When any section corner, quarter section corner or section center is set or reset by a surveyor and when any such corner is located by a surveyor in the course of carrying out a public survey, there shall be recorded with the county register of deeds, reference measurements from permanent, visible objects to the location of the point as set, reset or located. These reference objects shall be described clearly: Provided, That in lieu of reference measurements from visible objects such reference measurements may be made from triangulation stations established by the United States coast and geodetic survey.

⇒ {K.S.A. 58-2004} Information required with plats. The following information shall be submitted with all plats for subdivisions of land:

⇒ (a) Exterior boundary plat showing: (1) Locations of the monuments, (2) bearings and distances between the monuments, (3) closure calculations.

⇒ (b) All horizontal lot calculations and street calculations.

⇒ {K.S.A.58-2005} Review by county surveyor before recordation; certification. Before a subdivision plat or plat of survey can be recorded, it shall be reviewed by the county surveyor or in the absence of the county surveyor, the county engineer shall be responsible for the enforcement of this act, and shall certify that such plat meets all the requirements of this act: Provided, however, That in the event that any such plat is required to be submitted to any planning commission for review and approval or disapproval that such review and approval duly certified upon the face of said plat shall constitute full compliance with the review required in this section.

CONSERVATION EASEMENTS

* Uniform conservation easement act; definitions 58-3810. As used in this act, unless the context otherwise requires:

⇒(a) "Conservation easement" means a nonpossessory interest of a holder in real property imposing limitations or affirmative obligations the purposes of which include retaining or protecting natural, scenic or open-space values of real property, assuring its availability for agricultural, forest, recreational or open-space use, protecting natural resources, maintaining or enhancing air or water quality, or preserving the historical, architectural, archaeological or cultural aspects of real property.

⇒(b) "Holder" means:

* (1) A governmental body empowered to hold an interest in real property under the laws of this state or the United States; or

* (2) a charitable corporation, charitable association or charitable trust, the purposes or powers of which include retaining or protecting the natural, scenic, or open-space values of real property, assuring the availability of real property for agricultural, forest, recreational or open-space use, protecting natural resources, maintaining or enhancing air or water quality, or preserving the historical, architectural, archaeological or cultural aspects of real property.

* (c) "Third-party right of enforcement" means a right provided in a conservation easement to enforce any of its terms granted to a governmental body, charitable corporation, charitable association or charitable trust, which, although eligible to be a holder, is not a holder.

⇒ (a) A conservation easement may be created only by the record owner of the surface of the land specifically stating the intention of the grantor to create such an easement under this act.

⇒(b) Except as otherwise provided in this act, a conservation easement may be created, conveyed, recorded, assigned, released, modified, terminated or otherwise altered or affected in the same manner as other easements.

⇒(c) No right or duty in favor of or against a holder and no right in favor of a person having a third-party right of enforcement arises under a conservation easement before its acceptance by the holder and a recordation of the acceptance.

⇒(d) Except as provided in subsection (b) of K.S.A. 58-3812 and unless the instrument creating it otherwise provides, a conservation easement shall be limited in duration to the lifetime of the grantor and may be revoked at grantor's request.

⇒(e) An interest in real property in existence at the time a conservation easement is created is not impaired by it unless the owner of the interest is a grantor of the conservation easement.

⇒(f) A conservation easement may not be conveyed or assigned by a holder to any entity or person other than a city or county of this state, an entity enumerated by subsection (b)(2) of K.S.A. 58-3810 or the grantor thereof or such grantor's heirs.

⇒Sec58-3812. Same; judicial actions; who may bring action affecting conservation easement; modification or termination by court.

⇒58-3812. Same; judicial actions; who may bring action affecting conservation easement; modification or termination by court. (a) An action affecting a conservation easement may be brought by:

(1) An owner of an interest in the real property burdened by the easement;

(2) a holder of the easement;

(3) a person having a third-party right of enforcement; or

(4) a person authorized by other law.

(b) This act does not affect the power of a court to modify or terminate a conservation easement.

- ⇒ A conservation easement is valid even though:
- ⇒ (a) It is not appurtenant to an interest in real property;
- ⇒ (b) it can be or has been assigned to another holder;
- ⇒ (c) it is not of a character that has been recognized traditionally at common law;
- ⇒ (d) it imposes a negative burden;
- ⇒ (e) it imposes affirmative obligations upon the owner of an interest in the burdened property or upon the holder;
- ⇒ (f) the benefit does not touch or concern real property; or
- ⇒ (g) there is no privity of estate or of contract.

OBSTRUCTION OF COUNTY-TOWNSHIP ROADS

* **Unlawful obstructions {K.S.A. 68-545}** , excavations, removal of materials, dumping trash or other materials or plowing of roads; penalty; payment of cost to restore. It shall be unlawful for any person or persons to obstruct any portion of a public highway, including any portion of the entire right-of-way, in any manner with intent to prevent the free use thereof, or to make any holes therein, or to remove any earth, gravel or rock therefrom or any part thereof, or in any manner to obstruct any ditch on the side of any such highway and thereby damage the same, to dump trash, debris, sewage, or any other material, on any highway or any ditch on the side of any highway, or to plow any public highway for the purpose of scouring plows, or for any other purpose except for the improvement of such highway and as directed in writing by the county engineer and the township board of highway commissioners acting jointly. Any person or persons violating the provisions of this section shall be guilty of a misdemeanor, and upon conviction before any court having competent jurisdiction shall be fined for each and every offense under this act in the sum of not more than \$200, and shall pay costs of the action and the cost of cleaning the public highway and restoring it to its prior condition.

EXEMPTIONS - STATE EXEMPTIONS FROM PERMITS AND FEES

*** Exemptions - {K.S.A. 75-3741c} From Permits and Certain Fees**

- ⇒ No state capital improvement shall be subject to any inspection or requirement to obtain a building permit. Includes: construction, reconstruction, improvement and repair - also any existing building.
- ⇒ No zoning fees permitted for state capital improvements, but state must reimburse local government for costs incurred in publication for zoning.
- ⇒ **Note:** Does not exempt state facilities from local zoning control.