

LEGISLATIVE BILL 709

Approved by the Governor February 13, 2012

Introduced by Executive Board: Wightman, 36, Chairperson.

FOR AN ACT relating to zoning regulations; to amend sections 23-114, 23-114.03, and 23-114.05, Reissue Revised Statutes of Nebraska; to repeal sections governing temporary zoning regulations that expired July 1, 2001; to harmonize provisions; to repeal the original sections; and to outright repeal sections 23-115, 23-115.01, and 23-115.02, Reissue Revised Statutes of Nebraska.

Be it enacted by the people of the State of Nebraska,

Section 1. Section 23-114, Reissue Revised Statutes of Nebraska, is amended to read:

23-114 (1) The county board shall have power: (a) To ~~provide for temporary zoning as provided in sections 23-115 to 23-115.02;~~ ~~(b)~~ to create a planning commission with the powers and duties set forth in sections 23-114 to 23-114.05, 23-168.01 to 23-168.04, 23-172 to 23-174, 23-174.02, 23-373, and 23-376; ~~(e)~~ (b) to make, adopt, amend, extend, and implement a county comprehensive development plan; ~~(d)~~ (c) to adopt a zoning resolution, which shall have the force and effect of law; and ~~(e)~~ (d) to cede and transfer jurisdiction pursuant to section 13-327 over land otherwise subject to the authority of the county board pursuant to this section.

(2) The zoning resolution may regulate and restrict: (a) The location, height, bulk, number of stories, and size of buildings and other structures, including tents, cabins, house trailers, and automobile trailers; (b) the percentage of lot areas which may be occupied; (c) building setback lines; (d) sizes of yards, courts, and other open spaces; (e) the density of population; (f) the uses of buildings; and (g) the uses of land for agriculture, forestry, recreation, residence, industry, and trade, after considering factors relating to soil conservation, water supply conservation, surface water drainage and removal, or other uses in the unincorporated area of the county. If a zoning resolution or regulation affects the Niobrara scenic river corridor as defined in section 72-2006, the Niobrara Council shall act on the measure as provided in section 72-2010.

(3)(a) The county board shall not adopt or enforce any zoning resolution or regulation which prohibits the use of land for a proposed residential structure for the sole reason that the proposed structure is a manufactured home if such manufactured home bears an appropriate seal which indicates that it was constructed in accordance with the standards of the Uniform Standard Code for Manufactured Homes and Recreational Vehicles, the Nebraska Uniform Standards for Modular Housing Units Act, or the United States Department of Housing and Urban Development. The county board may require that a manufactured home be located and installed according to the same standards for foundation system, permanent utility connections, setback, and minimum square footage which would apply to a site-built, single-family dwelling on the same lot. The county board may also require that manufactured homes meet the following standards:

(i) The home shall have no less than nine hundred square feet of floor area;

(ii) The home shall have no less than an eighteen-foot exterior width;

(iii) The roof shall be pitched with a minimum vertical rise of two and one-half inches for each twelve inches of horizontal run;

(iv) The exterior material shall be of a color, material, and scale comparable with those existing in residential site-built, single-family construction;

(v) The home shall have a nonreflective roof material which is or simulates asphalt or wood shingles, tile, or rock; and

(vi) The home shall have wheels, axles, transporting lights, and removable towing apparatus removed.

(b) The county board may not require additional standards unless such standards are uniformly applied to all single-family dwellings in the zoning district.

(c) Nothing in this subsection shall be deemed to supersede any valid restrictive covenants of record.

(4) For purposes of this section, manufactured home shall mean (a) a factory-built structure which is to be used as a place for human habitation, which is not constructed or equipped with a permanent hitch or other device allowing it to be moved other than to a permanent site, which does not

have permanently attached to its body or frame any wheels or axles, and which bears a label certifying that it was built in compliance with National Manufactured Home Construction and Safety Standards, 24 C.F.R. 3280 et seq., promulgated by the United States Department of Housing and Urban Development, or (b) a modular housing unit as defined in section 71-1557 bearing a seal in accordance with the Nebraska Uniform Standards for Modular Housing Units Act.

(5) Special districts or zones may be established in those areas subject to seasonal or periodic flooding, and such regulations may be applied as will minimize danger to life and property.

(6) The powers conferred by this section shall not be exercised within the limits of any incorporated city or village nor within the area over which a city or village has been granted or ceded zoning jurisdiction and is exercising such jurisdiction. At such time as a city or village exercises control over an unincorporated area by the adoption or amendment of a zoning ordinance, the ordinance or amendment shall supersede any resolution or regulation of the county.

Sec. 2. Section 23-114.03, Reissue Revised Statutes of Nebraska, is amended to read:

23-114.03 Zoning regulations shall be adopted or amended by the county board only after the adoption of the county comprehensive development plan by the county board and the receipt of the planning commission's specific recommendations, ~~or by adopting temporary zoning as provided in sections 23-115 to 23-115.02.~~ Such zoning regulations shall be consistent with an adopted comprehensive development plan and designed for the purpose of promoting the health, safety, morals, convenience, order, prosperity, and welfare of the present and future inhabitants of Nebraska, including, among others, such specific purposes as:

- (1) Developing both urban and nonurban areas;
- (2) Lessening congestion in the streets or roads;
- (3) Reducing the waste of excessive amounts of roads;
- (4) Securing safety from fire and other dangers;
- (5) Lessening or avoiding the hazards to persons and damage to property resulting from the accumulation or runoff of storm or flood waters;
- (6) Providing adequate light and air;
- (7) Preventing excessive concentration of population and excessive and wasteful scattering of population or settlement;
- (8) Promoting such distribution of population, such classification of land uses, and such distribution of land development as will assure adequate provisions for transportation, water flowage, water supply, drainage, sanitation, recreation, soil fertility, food supply, and other public requirements;
- (9) Protecting the tax base;
- (10) Protecting property against blight and depreciation;
- (11) Securing economy in governmental expenditures;
- (12) Fostering the state's agriculture, recreation, and other industries;
- (13) Encouraging the most appropriate use of land in the county; and
- (14) Preserving, protecting, and enhancing historic buildings, places, and districts.

Within the area of jurisdiction and powers established by section 23-114, the county board may divide the county into districts of such number, shape, and area as may be best suited to carry out the purposes of this section and regulate, restrict, or prohibit the erection, construction, reconstruction, alteration, or use of nonfarm buildings or structures and the use, conditions of use, or occupancy of land. All such regulations shall be uniform for each class or kind of land or buildings throughout each district, but the regulations in one district may differ from those in other districts. An official map or maps indicating the districts and regulations shall be adopted, and within fifteen days after adoption of such regulations or maps, they shall be published in book or pamphlet form or once in a legal newspaper published in and of general circulation in the county or, if none is published in the county, in a legal newspaper of general circulation in the county. Such regulations shall also be spread in the minutes of the proceedings of the county board and such map or maps filed with the county clerk. The county board may decide whether buildings located on farmsteads used as residences shall be subject to such county's zoning regulations and permit requirements.

For purposes of this section and section 23-114.04, nonfarm buildings are all buildings except those buildings utilized for agricultural purposes on a farmstead of twenty acres or more which produces one thousand dollars or more of farm products each year.

Sec. 3. Section 23-114.05, Reissue Revised Statutes of Nebraska, is amended to read:

23-114.05 The erection, construction, reconstruction, alteration, repair, conversion, maintenance, or use of any building, structure, automobile trailer, or land in violation of sections 23-114 to ~~23-115.02~~, 23-114.04, 23-168.01 to 23-168.04, 23-172 to 23-174, 23-174.02, 23-373, and 23-376 or of any regulation made by the county board under such sections shall be a misdemeanor. Any person, partnership, limited liability company, association, club, or corporation violating such sections or any regulation of the county board or erecting, constructing, reconstructing, altering, or converting any structure without having first obtained a permit shall be guilty of a Class III misdemeanor. Each day such violation continues after notice of violation has been given to the offender may be considered a separate offense. In addition to other remedies, the county board or the proper local authorities of the county, as well as any owner or owners of real estate within the district affected by the regulations, may institute any appropriate action or proceedings to prevent such unlawful construction, erection, reconstruction, alteration, repair, conversion, maintenance, or use, to restrain, correct, or abate such violation, or to prevent the illegal act, conduct, business, or use in or about such premises. Any taxpayer or taxpayers of the county may institute proceedings to compel specific performance by the proper official or officials of any duty imposed by such sections or in resolutions adopted pursuant to such sections.

Sec. 4. Original sections 23-114, 23-114.03, and 23-114.05, Reissue Revised Statutes of Nebraska, are repealed.

Sec. 5. The following sections are outright repealed: Sections 23-115, 23-115.01, and 23-115.02, Reissue Revised Statutes of Nebraska.