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TO: Board of County Commissioners
Kelly Dunkerley
Karen Keith
Stan Sallee

DATE: August 8, 2024

RE: Referral of Proposed Amendments to the Tulsa County Zoning Code to TMAPC

Attached are proposed amendments to the Tulsa County Zoning Code. Pursuant to 19 O.S. § 863.17, proposed changes or amendments to existing zoning regulations must be referred to the Tulsa Metropolitan Area Planning Commission ("TMAPC") for report and recommendation prior to their approval. The changes or amendments shall also be subject to public notice and hearing.

Accordingly, if the BOCC would like to amend Tulsa County's Zoning Code to include the proposed provisions, it is my office's recommendation that the BOCC refer the attached to the TMAPC for review, report, recommendation, and public hearing. Please set this matter for approval on the BOCC's agenda for the regular meeting on August 12, 2024.

Respectfully,

Mike Shouse
Assistant District Attorney

14.100-K Amendments

A request for changes in the specific nature of the approved variance or changes to any conditions attached to an approved variance must be processed as a new variance application, including all requirements for fees, notices and public hearings.

14.100-L Appeals

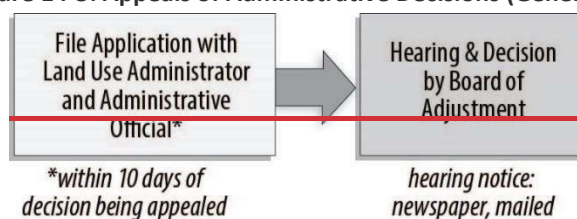
Board of adjustment decisions on variances may be appealed to District Court in accordance with §15.010-K.

Sec. 14.110 Appeals of Administrative Decisions

14.110-A Authority

Appeals of administrative (staff-level) decisions on site plans go to the planning commission (See §14.050-C14.050-€). The board of adjustment is authorized to hear and decide all other appeals where it is alleged there has been an error in any order, requirement, decision or determination made by the land use administrator, the county inspector or any other administrative official in the administration, interpretation or enforcement of these zoning regulations.

Figure 14-5: Appeals of Administrative Decisions (Generally)



14.110-B Right to Appeal

Appeals of administrative decisions may be filed by any person aggrieved by the land use administrator's, the county inspector's or other administrative official's decision or action. The board of adjustment is authorized to make determinations about whether individuals filing appeals are "aggrieved" by the decision or action.

14.110-C Application Filing

1. Complete applications for appeals of administrative decisions must be filed with the board of adjustment and duplicate copies delivered to the county inspector and the land use administrator~~and land use administrator and the administrative official who made the decision being appealed.~~
2. Appeals of administrative decisions must be filed within 10 days of the date of the decision being appealed.

14.110-D Effect of Filing

The filing of a complete notice of appeal stays all proceedings in furtherance of the action appealed, unless ~~the land use administrator or~~ the administrative official who made the decision being appealed certifies to the board of adjustment, after the appeal is filed, that, because of facts stated in the certification, a stay would cause immediate peril to life or property, ~~in which case the proceedings will not be stayed unless by a restraining order, which may be granted by the board of adjustment or by a court of record based on due cause shown.~~

14.110-E Record of Decision

Upon receipt of a complete application of appeal, the land use administrator or other administrative official whose decision is being appealed must transmit to the board of adjustment all papers constituting the record related to decision being appealed.

14.110-F Notice of Hearing

Notice of the board of adjustment's required public hearing must be provided as follows (see §14.010-E1 for additional information on required newspaper and mail notices).

1. **Newspaper Notice**
Notice must be published in ~~the~~ a newspaper of general circulation at least 150 days before the scheduled public hearing.

2. Mailed Notice

When an appeal affects a specific property, notice must be mailed to the owner of the subject property and all owners of property within a minimum of 300 feet of the subject property at least 10 days before the scheduled public hearing.

14.110-G Hearing and Final Decision

1. The board of adjustment must hold a public hearing on the appeal.
2. Following the close of the public hearing, the board of adjustment must make its findings and take action on the appeal.
- ~~3. In exercising the appeal power, the board of adjustment has all the powers of the administrative official from whom the appeal is taken. The board of adjustment may affirm or may, upon the concurring vote of at least 3 members, reverse, wholly or in part, or modify the decision being appealed.~~
- ~~4. In acting on the appeal, the board of adjustment must grant to the official's decision a presumption of correctness, placing the burden of persuasion of error on the appellant.~~

14.110-H Review Criteria

In exercising its appellate powers, the board of adjustment may, in conformity with the provisions of 19 O.S. §§ 863.1-863.43, affirm or reverse, upon the concurring vote of at least 3 members, wholly or partly, or may modify the order, requirement, decision or determination appealed from and may make such order, requirement, decision or determination as ought to be made, and to that end shall have all the powers of the officer from whom the appeal is taken. In acting upon any appeal, such board of adjustment shall, in its consideration of and decision thereon, apply the principles, standards and objectives set forth and contained in these zoning regulations and the master plan, and all other applicable regulations, ordinances and resolutions. The decision being appealed may be reversed or wholly or partly modified only if the board of adjustment finds that the land use administrator, the county inspector or other administrative official erred.

14.110-I Appeals

Board of adjustment decisions may be appealed to District Court in accordance with [§15.010-K](#).



Chapter 15 Administration

Sec. 15.010	Board of Adjustment.....	15-1
Sec. 15.020	Code of Ethics.....	15-2

Sec. 15.010 Board of Adjustment

15.010-A Composition

The board of adjustment must consist of 5 members.

15.010-B Appointments

Board of adjustment members must be appointed by the county commission.

15.010-C Terms

Members of the board of adjustment serve 3-year terms.

15.010-D Vacancies

In the event of a vacancy occurring in the membership of the board of adjustment for any reason, an appointment for the remainder of the vacant term must be made in the same manner as regular appointments.

15.010-E Removal

A board of adjustment member may be removed for cause by the county commission after notice, written charges and public hearing.

15.010-F Compensation

Members of the board of adjustment serve without compensation.

15.010-G Officers

The board of adjustment must elect a chairperson, vice chairperson and secretary.

15.010-H Rules of Procedure

The board of adjustment must adopt rules necessary for the conduct of its affairs.

15.010-I Meetings

Meetings are held at the call of the chairperson and at other times as the board of adjustment may determine. The chairperson, or in the chairperson's absence, the acting chairperson, may administer oaths and compel attendance of witnesses. All meetings of the board of adjustment must be conducted in compliance with the Oklahoma *Open Meeting Act*. The board of adjustment must keep records of its proceedings and official actions, all of which must be open to the public in compliance with the Oklahoma *Open Records Act*. Except as stated in [§14.010-K](#), the board of adjustment must decide all matters within 90 days after the filing of a complete application.

15.010-J Powers and Duties

The board of adjustment has the powers and duties that are expressly identified in these zoning regulations, including hearing and acting on applications for variances, special exceptions, and appeals of administrative decisions.

15.010-K Appeals to District Court for Unnecessary Hardship, Substantial Harm, or Loss

1. Procedure

- a. A petition for judicial review of any board of adjustment decision may be filed in the Tulsa County District Court regarding any ruling, regulation, interpretation, order, requirement, refusal, permit, approval, or decision made under 19 O.S. §§ 863.1-863.43, when such action is alleged to be



~~arbitrary, unreasonable or capricious, and that by reason thereof such action has worked or, if enforced, will work an unnecessary hardship on or create substantial harm or loss to the complaining party. An appeal to the District Court from any decision, ruling, judgment, or order of the board of adjustment may be taken to District Court by any person, firm or corporation, jointly or severally, aggrieved thereby, or any department, board or official of government.~~

- ~~b. A petition for judicial review in District Court must be filed within 30 days of the date that a copy of the decision is mailed to the appellant, as shown by the certificate of mailing attached to the decision.~~
- ~~c. Appellant shall transmit to the clerk of the District Court the originals or certified copies of all the papers constituting the record in the case, together with the decision of the board of adjustment. Upon motion showing that the record submitted is incomplete, the record may be supplemented as directed by the District Court.~~
- ~~b. Notice of appeal to District Court must be filed with the clerk of the board of adjustment within 10 days of the date of the action being appealed. No bond or deposit for costs is required for such appeal, but costs may be required in the District Court as in other cases such as, but not limited to, filing fees, administrative fees and other such statutory fees.~~
- ~~c. Upon filing of a notice of appeal, the clerk of the board of adjustment must transmit to the clerk of the District Court the originals or certified copies of all the papers constituting the record in the case, together with the order, judgment, or decision of the board of adjustment.~~
- ~~d. The appeal to District Court is limited to the District Court's review of the record of the proceedings before the board of adjustment. The judicial review of any action of the board of adjustment will be to determine if said action was arbitrary, unreasonable or capricious, and that by reason thereof such action has worked or, if enforced, will work as unnecessary hardship on or create substantial harm or loss to the complaining party based upon the record of the proceedings held before the board of adjustment as set out in 19 O.S., §863.22.~~
- ~~e. An appeal to the Supreme Court from the decision of the District Court is allowed as in other cases.~~

2. Stay of Proceedings

~~A petition for judicial review filed with the District Court stays all proceedings in furtherance of the action appealed from unless such a stay would cause imminent peril to life or property as certified by administrative official from whom the appeal was taken. An appeal to the district court stays all proceedings in furtherance of the action appealed from unless the chairperson of the board of adjustment certifies to the court clerk, after a notice of appeal has been filed, that by reason of facts stated in the certificate, a stay would cause imminent peril of life or property. In such case, proceedings shall not be stayed other than by a restraining order granted by the district court.~~

Sec. 15.020 Code of Ethics

Any administrative official or member of the county commission, planning commission, or board of adjustment to whom some private benefit, direct or indirect, financial, or otherwise, may come as a result of an action concerning these zoning regulations should not be a participant in that action. The possibility, not the actuality, of a conflict should govern. The individual experiencing a conflict of interest should declare their interest, abstain from voting on the matter, and refrain from any deliberations, voting, or decision-making on the matter. The individual should not discuss the matter with a fellow official for the purpose of influencing a decision thereon.



Chapter 17 Violations, Penalties, and Enforcement

Sec. 17.010	Responsibility for Enforcement	17-1
Sec. 17.020	Violations.....	17-1
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Sec. 17.010 Responsibility for Enforcement

The county inspector ~~shall and other officials or agencies designated by the chairman of the board of county commissioners~~ have responsibility for enforcing these zoning regulations. ~~All departments, officials, agencies, and employees vested with the authority to review, recommend or issue development approvals, permits or licenses must act in accordance with the provisions of these zoning regulations.~~

Sec. 17.020 Violations

Unless otherwise expressly allowed by these zoning regulations or state law, any violation of a provision of these zoning regulations—including any of the following—~~is~~ subject to the remedies and penalties provided for in these zoning regulations.

17.020-A To use land, buildings or other structures in any way that is not consistent with the requirements of these zoning regulations;

17.020-B To erect a building or other structure in any way not consistent with the requirements of these zoning regulations;

17.020-C To install or use a sign in any way not consistent with the requirements of these zoning regulations;

17.020-D To engage in the use of a building, structure or land, the use or installation of a sign, or any other activity requiring one or more permits or approvals under these zoning regulations without obtaining such required permits or approvals;

17.020-E To engage in the use of a building, structure or land, the use or installation of a sign, or any other activity for which a permit or approval has been granted under these zoning regulations or under previous zoning regulations of the county in any way inconsistent with such permit or approval or any conditions imposed on the permit or approval;

17.020-F To violate the terms of any permit or approval granted under these zoning regulations or under previous zoning regulations of the county or any condition imposed on the permit or approval;

17.020-G To obscure, obstruct or destroy any notice required to be posted under these zoning regulations;

17.020-H To violate any lawful order issued by any authorized public official; or

17.020-I To continue any violation after receipt of notice of a violation.

~~Sec. 17.030~~ Continuing Violations

~~Each day that a violation continues constitutes a separate violation of these zoning regulations.~~

~~Sec. 17.040~~ Sec. 17.030 Remedies and Enforcement Powers

The county has all remedies and enforcement powers allowed by law, including, without limitation, all of the following:



17.040-A17.030-A Fines

Any person violating any provisions of these zoning regulations or failing to comply with any of its requirements may be deemed guilty of an offense punishable by a fine in an amount not to exceed the maximum allowed under Oklahoma law.

17.030-B Citations

The county inspector may issue citations to anyone found to be in violation of these zoning regulations. Any person who fails to correct a violation for which a citation has been issued within the period permitted for its correction shall be assessed the fine or penalty designated in the citation for each ensuing day during which such failure or violation continues.

17.040-B17.030-C Withhold Permit

1. The county inspector may deny or withhold all permits, certificates, or other forms of authorization on any land or structure or improvements upon which there is an uncorrected violation of a provision of these zoning regulations or of a condition or qualification of a permit, certificate, approval, or other authorization previously granted by the county. This enforcement provision may be used regardless of whether the current owner or applicant is responsible for the violation in question.
2. ~~The county inspector may deny or withhold all permits, certificates, or other forms of authorization on any land where an uncorrected violation exists.~~ The county inspector may also withhold all permits, certificates, or other forms of authorization on any other land owned by the owner of land on which an uncorrected violation exists. This enforcement provision may be used regardless of whether the property for which the permit or other approval is sought is the property in violation.
3. Instead of withholding or denying a permit or other authorization, the county inspector may grant such authorization subject to the condition that the violation be corrected.

17.040-C17.030-D Revoke Permits

1. A permit, certificate or other form of authorization required under these zoning regulations may be revoked by the county inspector when such official determines:
 - a. That there are unapproved significant, material departures from approved plans or permits;
 - b. That the development permit was procured by false representation; or
 - c. That any of the provisions of these zoning regulations or approval previously granted by the county are being violated.
2. Written notice of revocation must be served upon the owner, the owner's agent or contractor, or upon any person employed on the building or structure for which such permit was issued. If no persons can reasonably be served with notice, the notice must be posted in a prominent location on the premises of the property with the violation.

17.040-D17.030-E Stop Work

With or without revoking permits, the county inspector may stop work on any building or structure on any land on which there is an uncorrected violation of a provision of these zoning regulations or of a permit or other form of authorization issued under this or previous zoning regulations.

17.040-E17.030-F Injunctive Relief

The county may seek an injunction or other equitable relief in court to stop any violation of these zoning regulations or of a permit, certificate or other form of authorization granted under this or previous zoning regulations.

17.040-F17.030-G Forfeiture and Confiscation of Unauthorized Structures or Signs on Public Property

Any sign or structure installed or placed on public property, except in compliance with ~~the regulations of~~ these zoning regulations will be considered forfeited to the public and subject to confiscation. In addition to other remedies and penalties of this chapter, the county has the right to recover from the sign or structure owner or person who placed the sign or structure, the full costs of ~~sign~~ removal and disposal.



~~17.040-G~~ **17.030-H Abatement**

~~The county may bring a civil action in the nature of a mandatory injunction, abatement, or other appropriate proceeding against the owner(s), occupant(s), or both, to abate or remove a violation or to otherwise restore the premises in question to the condition in which it existed prior to the violation. The county may seek a court order in the nature of mandamus, abatement, injunction or other action or proceeding to abate or remove a violation or to otherwise restore the premises in question to the condition in which they existed prior to the violation.~~

~~17.040-H~~ **17.030-I Other Penalties, Remedies and Powers**

~~In addition to other enforcement provisions contained in this section, the county may exercise any and all enforcement powers and pursue any and all remedies granted to it or allowed by state or federal statute, or by common law. The county may seek such other penalties and remedies as are provided by law.~~

~~17.040-I~~ **17.030-J Continuation of Previous Enforcement Actions**

Nothing in these zoning regulations prohibits the continuation of previous enforcement actions, undertaken by the county pursuant to previous valid ordinances and laws.

17.030-K Attorney's Fees and Costs

In every action to enforce these zoning regulations, the county shall be entitled its reasonable attorney's fees, and reasonable litigation, abatement, and environmental remediation costs.

~~Sec. 17.050~~ **Sec. 17.040 Remedies Cumulative**

~~The remedies and enforcement powers established in these zoning regulations shall be cumulative and in addition to any other remedy or enforcement power provided by law, and may be exercised in any order or combination.~~

~~The remedies and enforcement powers established in these zoning regulations are cumulative, and the county may exercise them in any combination or order.~~

~~Sec. 17.060~~ **Sec. 17.050 Persons Subject to Penalties**

The owner or tenant of any building, structure, premises, or part thereof, and any architect, builder, contractor, or agent, or other person who commits, participates in, assists in, or maintains such violations may each be found guilty of a separate offense and be subject to penalties, remedies, and enforcement actions.

~~Sec. 17.070~~ **Sec. 17.060 Enforcement Procedures**

~~17.070-A~~ **17.060-A Non-Emergency Matters**

In the case of violations of these zoning regulations that do not constitute an emergency or require immediate attention, the county inspector must give notice of the nature of the violation to the property owner by personal service, U.S. first class mail to the property owner's address as set forth by the most recent tax rolls of the Tulsa County Treasurer, or by posting notice on the premises. Notices of violation must state the nature of the violation and the timeframe for compliance and may state the corrective steps necessary and the nature of subsequent penalties and enforcement actions should the situation not be corrected.

~~17.070-B~~ **17.060-B Emergency Matters**

In cases where the county inspector determines that a violation of these zoning regulations endangers public health and safety if not remedied immediately, In the case of violations of these zoning regulations that constitute an emergency situation as a result of public health or safety concerns if not remedied immediately, the county may use the enforcement powers available under these zoning regulations without prior notice, but the county inspector must attempt to give notice to the property owner simultaneously with beginning enforcement action.

~~Sec. 17.080~~ **Sec. 17.070 Appeals**

A determination made by the county inspector or other administrative officials that violation of these zoning regulations has occurred may be appealed by the affected party in accordance with Sec. 14.110.

