

1 STATE OF OKLAHOMA

2 2nd Session of the 59th Legislature (2024)

3 2ND CONFERENCE COMMITTEE

4 SUBSTITUTE

5 FOR ENGROSSED

6 HOUSE BILL NO. 1599

By: Echols of the House

and

Paxton of the Senate

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8
9 2ND CONFERENCE COMMITTEE SUBSTITUTE

10 An Act relating to cities and towns; amending 11 O.S.
11 2021, Section 43-105, which relates to amendments or
12 changes of regulations, restrictions, and boundaries;
13 establishing requirements for legislative municipal
14 procedures; limiting power to interfere with property
15 owner rights by zoning and regulations; restricting
16 the denial of applications; clarifying purpose of
17 notice and hearing; directing governing body to
18 identify basis of denial; providing for award of
19 reasonable costs in appeals proceedings; amending 11
20 O.S. 2021, Section 45-104, which relates to public
21 improvements and plats of land, planning commission
22 review, and subdivision regulations; establishing
23 requirements for preliminary or final plats and
24 subdivisions; designating determinations as quasi-
judicial; establishing basis of determinations;
clarifying purpose of notice and hearing; providing
for award of reasonable costs in appeals proceedings;
amending 11 O.S. 2021, Section 44-110, which relates
to appeals from the board of adjustment; permitting
municipalities to adopt certain appeals procedures;
and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

1 SECTION 1. AMENDATORY 11 O.S. 2021, Section 43-105, is
2 amended to read as follows:

3 Section 43-105. A. Regulations, restrictions and district
4 boundaries of municipalities may be amended, supplemented, changed,
5 modified or repealed. The requirements of Section 43-104 of this
6 title on public hearings and notice shall apply to all proposed
7 amendments or changes to regulations, restrictions or district
8 boundaries.

9 B. Protests against proposed changes shall be filed at least
10 three (3) days before the date of the public hearings. If protests
11 are filed by:

12 1. The owners of twenty percent (20%) or more of the area of
13 the lots included in a proposed change~~r;~~ or

14 2. The owners of fifty percent (50%) or more of the area of the
15 lots within a three hundred (300) foot radius of the exterior
16 boundary of the territory included in a proposed change~~r;~~
17 then the proposed change or amendment shall not become effective
18 except by the favorable vote of three-fourths (3/4) of all the
19 members of the municipal governing body where there are more than
20 seven members in the governing body, and by three-fifths (3/5)
21 favorable vote where there are seven or less members in the
22 governing body.

23 C. Municipal zoning decisions are legislative in nature and
24 valid unless the challenging party proves the ordinance lacks a

1 substantial relation to the public health, safety, or general
2 welfare of the public in light of objective and relevant facts, or
3 if the decision constitutes an unreasonable, arbitrary exercise of
4 police power.

5 D. If the validity of a challenged zoning ordinance or zoning
6 decision is fairly debatable, in light of objective and relevant
7 facts, the legislative judgment of the municipality must stand.

8 E. Comprehensive plans may be utilized as a guide in the
9 decision making process, however determinations must be made in
10 light of objective and relevant facts as well as utilizing
11 processes and requirements outlined in the municipal code.

12 F. The notice and hearing provisions in Sections 43-104
13 through 43-106 of this title, or otherwise as may be applicable,
14 are intended to provide members of the public with a right to be
15 heard, explain how they think their interests are affected, and to
16 bring to the attention of the governing body objective and relevant
17 facts. However, decisions on land use applications shall not be
18 based solely upon the presence, numbers, or magnitude of opposition
19 or protests in the absence of objective and relevant facts.

20 SECTION 2. AMENDATORY 11 O.S. 2021, Section 45-104, is
21 amended to read as follows:

22 Section 45-104. A. Before final action may be taken by any
23 municipality or department thereof on the location, construction, or
24 design of any public building, statue, memorial, park, parkway,

1 boulevard, street, alley, playground, public ground, or bridge, or
2 the change in the location or grade of any street or alley, the
3 question shall be submitted to the planning commission for
4 investigation and report. Counties and school districts may be
5 exempted from the payment of a fee to obtain any license or permit
6 required by a zoning, building, or similar ordinance of a
7 municipality.

8 B. All plans, plats, or replats of land laid out in lots or
9 blocks, and the streets, alleys, or other portions of the same,
10 intended to be dedicated to public or private use, within the
11 corporate limits of a municipality, shall first be submitted to the
12 municipal planning commission for its approval or rejection. Before
13 said plans, plats, or replats shall be entitled to be recorded in
14 the office of the county clerk, they shall be approved by the
15 municipal governing body. It shall be unlawful to offer and cause
16 to be recorded any such plan, plat, or replat in any public office
17 unless the same shall bear thereon, by endorsement or otherwise, the
18 approval of the municipal governing body. Any plat filed without
19 the endorsed approval of the municipal governing body shall not
20 import notice nor impose any obligation or duties on the
21 municipality. The disapproval of any such plan, plat, or replat by
22 the municipal governing body shall be deemed a refusal of the
23 proposed dedication shown thereon.

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1 C. The municipal planning commission may exercise jurisdiction
2 over subdivision of land and adopt regulations governing the
3 subdivision of land within its jurisdiction. Any such regulations,
4 before they become effective, shall be approved by the municipal
5 governing body and shall be published as provided by law for the
6 publication of ordinances. Such regulations may include provisions
7 as to the extent to which streets and other ways shall be graded and
8 improved and to which water, sewer, and other utility mains, piping,
9 or other facilities shall be installed as a condition precedent to
10 the approval of the plat. The regulations may provide for a
11 tentative approval of the plat before such installation. Any such
12 tentative approval shall be revocable for failure to comply with
13 commitments upon which the tentative approval was based and shall
14 not be entered on the plat. In lieu of the completion of any
15 improvements or utilities prior to the final approval of the plat,
16 the commission may accept an adequate bond with surety, satisfactory
17 to the commission, to secure for the municipality the actual
18 construction and installation of the improvements or utilities at a
19 time and according to specifications fixed by or in accordance with
20 the regulations of the commission, and further conditioned that the
21 developer will pay for all material and labor relating to the
22 construction of the improvements. The municipality may enforce said
23 bond by all appropriate legal and equitable remedies. Nothing in
24 this section shall be construed as granting to any municipality or

1 planning commission the power to direct any public utility to extend
2 its services to any particular area.

3 D. Upon adoption of the regulations governing the subdivision
4 of land as provided in subsection C of this section, no plat or deed
5 or other instrument concerning the subdivision of land within the
6 corporate limits of a municipality shall be filed with the county
7 clerk until it has been approved by the municipal planning
8 commission of that municipality in accordance with the officially
9 adopted regulations of subdivisions of that commission. If such
10 approval is needed, the approval shall be endorsed on the face of
11 the plat, or in the case of a deed or other instrument, in the form
12 of a special subdivision certificate. If the adopted regulations
13 exempt a certain subdivision of land from the approval requirement,
14 the municipal planning commission shall provide to the county clerk
15 an exemption statement to accompany the deed or instrument to be
16 filed.

17 E. A municipality which contains large areas of rural land not
18 served by water and sewer facilities by the municipality shall
19 authorize the use of private roadways in either platted or unplatted
20 areas and shall issue building permits to property owners whose
21 property is abutting upon the private roadways, without complying
22 with standards as provided for dedicated streets, subject to the
23 following conditions:

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- 1 1. The private roadway easement shall be at least fifty (50)
2 feet in width; and
- 3 2. The property abutting upon the private roadway shall contain
4 not less than two (2) acres; provided, however, if the covenants of
5 the subdivision allow for Evapotranspiration Absorption Systems or
6 an Aerobic Wastewater Treatment System, the property abutting upon
7 the private roadway may contain not less than one (1) acre; and
- 8 3. The property shall be more than one-fourth (1/4) mile from
9 sewer and water facilities furnished by the municipality; and
- 10 4. The private roadway shall not be dedicated to the public but
11 reserved for future dedication and, until such future dedication,
12 shall be the private roadway of the owners of the abutting property;
13 and
- 14 5. The private roadway shall be maintained by the owners of the
15 property within the subdivision; and
- 16 6. The municipality shall have no responsibility for the
17 maintenance or repair of the private roadway; and
- 18 7. If the property is platted, there shall be emblemized on
19 the face of the plat, clearly conspicuous, a notice that the streets
20 and drives have not been dedicated to the public and that the
21 streets shall be maintained by the private property owners within
22 the subdivision. Said streets shall always be open to police, fire,
23 and other official vehicles of all state, federal, county, and
24 municipal agencies; and

1 8. Every deed shall clearly acknowledge that the roadway is
2 private and not maintained by the municipality; and

3 9. Prior to the sale of any parcel of land in the subdivision,
4 a conspicuous sign shall be posted at the entrance to the
5 subdivision: "Private roadway not maintained by _____ (the
6 municipality)". At any time after the municipality permits the use
7 of said private roadway, a petition of the owners of at least sixty
8 percent (60%) of the area of the land to improve and dedicate the
9 street shall bind all of the owners thereby to permanently improve
10 the street or roadway in compliance with the requirements of the
11 municipality; and

12 10. The planning commission may require the developer of such
13 property to reserve appropriate utility easements for water, sewer,
14 and any other utility installations as may be required for present
15 and future development.

16 F. Municipal platting decisions are quasi-judicial in nature.
17 The respective Planning Commission and City Council of a
18 municipality shall have reasonable discretion to determine the
19 compliance of preliminary and final plats with the municipality's
20 adopted subdivision regulations and all applicable codes and
21 ordinances. If the Council and Planning Commission determines the
22 proposed plat is in compliance with the adopted subdivision code,
23 and meets all applicable ordinances, and the Council and Planning

1 Commission accept any proposed dedications, if applicable, the plat
2 shall be approved.

3 G. Comprehensive plans may be utilized as a guide in the
4 decision making process, however determinations must be made in
5 light of applicable objective and relevant facts as to proposed
6 plats as well as utilizing processes, standards, and requirements
7 outlined in the municipal code. Compliance with comprehensive plans
8 shall not be a requirement for a plat approval.

9 H. The notice and hearing provisions in Sections 43-104 through
10 43-106 of this title, or otherwise as may be applicable, are
11 intended to provide members of the public with a right to be heard,
12 explain how they think their interests are affected, and to bring to
13 the attention of the governing body objective and relevant facts.
14 However, decisions on land use applications shall not be based
15 solely upon the presence, numbers, or magnitude of opposition or
16 protests in the absence of objective and relevant facts.

17 I. In the case of a preliminary or final plat denial, if
18 requested by the applicant at the meeting on the vote, the city
19 attorney shall identify on the record their basis for the denial,
20 including at a minimum all of the applicable objective and relevant
21 facts upon which the denial is based.

22 SECTION 3. AMENDATORY 11 O.S. 2021, Section 44-110, is
23 amended to read as follows:

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1 Section 44-110. A. An appeal from any action, decision,
2 ruling, judgment or order of the board of adjustment may be taken by
3 any person or persons who were entitled, pursuant to Section 44-108
4 of this title, to mailed notice of the public hearing before the
5 board of adjustment, by any person or persons whose property
6 interests are directly affected by such action, decision, ruling,
7 judgment or order of the board of adjustment, or by the governing
8 body of the municipality to the district court in the county in
9 which the situs of the municipality is located.

10 B. The appeal shall be taken by filing with the municipal clerk
11 and with the clerk of the board of adjustment, within the time
12 limits which may be fixed by ordinance, a notice of appeal. The
13 notice shall specify the grounds for the appeal. No bond or deposit
14 for costs shall be required for such appeal.

15 C. Upon filing the notice of appeal, the board of adjustment
16 shall forthwith transmit to the court clerk the original, or
17 certified copies, of all papers constituting the record in the case,
18 together with the order, decision or ruling of the board.

19 D. The appeal shall be heard and tried de novo in the district
20 court. All issues in any proceedings under this section shall have
21 preference over all other civil actions and proceedings.

22 E. During the pendency of such an appeal, the effectiveness of
23 a decision of the board of adjustment shall not be suspended unless
24 a party applies to the district court for a stay pending the

1 district court's determination of the merits of the appeal. Notice
2 of such application shall be given by first class mail to all
3 parties, to the district court appeal and to any applicant before
4 the board of adjustment. Upon filing of an application for stay in
5 the district court, all proceedings in furtherance of the action
6 appealed from shall be temporarily stayed pending the outcome of a
7 hearing regarding the stay, which shall be conducted within thirty
8 (30) days of application. The Court shall determine whether to
9 impose a stay by considering the following factors: (i) the
10 likelihood of success on the merits by the party seeking to impose
11 the stay, (ii) irreparable harm to the property interests of the
12 party seeking to impose the stay if the stay is not imposed, (iii)
13 relative effect on the other interested parties, and (iv) public
14 policy concerns arising out of the imposition of the stay. If the
15 court determines to impose a stay, the court shall require a bond or
16 other security and such other terms as it deems proper to secure the
17 rights of the parties and compensate for costs of delay. A bond or
18 other security shall be posted within ten (10) business days of the
19 court's determination; provided, that a municipal governing body
20 shall not be required to post a bond. Subject to subsection A of
21 Section 990.3 of Title 12 of the Oklahoma Statutes, a stay pursuant
22 to this subsection shall automatically dissolve after a judgment,
23 decree or final order resolving the merits of the appeal is filed
24 with the court clerk. Notwithstanding any provision of law to the

1 contrary, stays in appeals from the board of adjustment to the
2 district court shall be obtained only as set forth in this section.

3 F. The district court may reverse or affirm, wholly or partly,
4 or modify the decision brought up for review. Costs shall not be
5 allowed against the board of adjustment unless it shall appear to
6 the district court that the board acted with gross negligence or in
7 bad faith or with malice in making the decision appealed from. An
8 appeal shall lie from the action of the district court as in all
9 other civil actions. A party may obtain a stay of the enforcement
10 of the district court's judgment, decree or final order as provided
11 by Section 990.4 of Title 12 of the Oklahoma Statutes.

12 G. In any municipality where the city council does not serve as
13 the board of adjustment, the governing body may, except as otherwise
14 provided by that municipality's charter, provide that the decisions
15 of the board on matters within its jurisdiction are final subject to
16 judicial review or are final subject to appeal to the city council
17 and the right of later judicial review or are advisory to the city
18 council.

19 SECTION 4. This act shall become effective November 1, 2024.

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