

LEGISLATIVE BILL 729

Approved by the Governor April 19, 2002

Introduced by Hartnett, 45

AN ACT relating to political subdivisions; to amend sections 16-901, 16-902, 17-301, 17-302, 17-303, 17-305, 17-1001, and 90-303, Reissue Revised Statutes of Nebraska, section 23-114, Revised Statutes Supplement, 2000, and section 17-1002, Revised Statutes Supplement, 2001; to authorize counties to cede and transfer extraterritorial jurisdiction to cities of the first and second classes as prescribed; to change provisions relating to the classification of cities of the first and second classes; to change specifications of the Nebraska State Capitol Environs District; to harmonize provisions; and to repeal the original sections.

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

Section 1. (1) The governing body of any city of the first class or city of the second class may, by majority vote of its members, request that the county board formally cede and transfer to the city extraterritorial jurisdiction over land outside the area extending two miles from the corporate boundaries of a city of the first class and one mile from the corporate boundaries of a city of the second class. In making its request, the city shall describe the territory over which jurisdiction is being sought by metes and bounds or by reference to an official map.

(2) Unless prohibited pursuant to section 2 of this act, the county board may, by majority vote of its members, grant the request with regard to some or all of the requested territory if:

(a) The county has formally adopted a comprehensive development plan and zoning resolution pursuant to section 23-114 not less than two years immediately preceding the date of the city's request;

(b) The city, on the date of the request, is exercising extraterritorial jurisdiction over territory within the boundaries of the county;

(c) The requested territory is within the projected growth pattern of the city and would be within the city's extraterritorial jurisdiction by reason of annexation within a reasonable period of years;

(d) Not more than a total of twenty-five percent of the territory of the county located outside the corporate boundaries of any city within the county shall be ceded to the jurisdiction of one city within ten years after the date upon which the initial request for the cession of territory to the city was approved by the governing body of the city; and

(e) No portion of the territory ceded to the city's jurisdiction by the county lies within an area extending one-half mile from the extraterritorial jurisdiction of any other city of the first or second class or village on the date the request is approved by the governing body of the city.

(3) If the county board approves the cession and transfer of extraterritorial jurisdiction to a city pursuant to this section, such transfer shall take effect on the effective date of the ordinance as provided for in subsection (1) of section 16-902 in the case of a city of the first class or as provided for in subsection (1) of section 17-1002 in the case of a city of the second class. Upon the effective date of such transfer, the transferred jurisdiction shall be treated for all purposes as if such land were located within two miles of the corporate boundaries of a city of the first class or within one mile of the corporate boundaries of a city of the second class.

Sec. 2. A county which encompasses a city of the metropolitan class or city of the primary class shall not cede or transfer extraterritorial jurisdiction over land to a city of the first class or city of the second class if, on the date the county receives a request pursuant to subsection (1) of section 1 of this act, such land lies within the area extending three miles from the extraterritorial jurisdiction boundaries of such city of the metropolitan class or city of the primary class.

Sec. 3. Section 16-901, Reissue Revised Statutes of Nebraska, is amended to read:

16-901. ~~Any~~ Except as provided in section 1 of this act, any city of the first class may apply by ordinance any existing or future zoning regulations, property use regulations, building ordinances, electrical ordinances, plumbing ordinances, and ordinances authorized by section 16-240

to the unincorporated area two miles beyond and adjacent to its corporate boundaries with the same force and effect as if such outlying area were within the corporate limits of such city, except that no such ordinance shall be extended or applied so as to prohibit, prevent, or interfere with the conduct of existing farming, livestock operations, businesses, or industry. For purposes of sections 70-1001 to 70-1020, the zoning area of a city of the first class shall be one mile beyond and adjacent to the corporate area. The fact that such unincorporated area is located in a different county or counties than some or all portions of the municipality shall not be construed as affecting the powers of the city to apply such ordinances.

Sec. 4. Section 16-902, Reissue Revised Statutes of Nebraska, is amended to read:

16-902. (1) Except as provided in section 1 of this act, a city of the first class may designate by ordinance the portion of the territory located within two miles of the corporate limits of the city and outside of any other organized city or village within which the designating city will exercise the powers and duties granted by sections 16-902 to 16-904.

(2) No owner of any real property located within the area designated by a city pursuant to subsection (1) of this section or section 1 of this act may subdivide, plat, or lay out such real property in building lots, streets, or other portions of the same intended to be dedicated for public use or for the use of the purchasers or owners of lots fronting thereon or adjacent thereto without first having obtained the approval of the city council of such city or its agent designated pursuant to section 19-916. The fact that such real property is located in a different county or counties than some or all portions of the city shall not be construed as affecting the necessity of obtaining the approval of the city council of such city or its designated agent.

(3) In counties that (a) have adopted a comprehensive development plan which meets the requirements of section 23-114.02 and (b) are enforcing subdivision regulations, the county planning commission shall be provided with all available materials on any proposed subdivision plat, contemplating public streets or improvements, which is filed with a municipality in that county, when such proposed plat lies partially or totally within the extraterritorial subdivision jurisdiction being exercised by that municipality in such county. The commission shall be given four weeks to officially comment on the appropriateness of the design and improvements proposed in the plat. The review period for the commission shall run concurrently with subdivision review activities of the municipality after the commission receives all available material for a proposed subdivision plat.

Sec. 5. Section 17-301, Reissue Revised Statutes of Nebraska, is amended to read:

17-301. (1) Whenever any city of the first class decreases in population until it has a population of less than five thousand inhabitants and more than eight hundred but not less than four thousand five hundred inhabitants, as ascertained and officially promulgated by the federal decennial census, enumeration, and return taken by the United States, by the State of Nebraska, or by the authority of the mayor and city council of any such city, the mayor of any such city shall certify such fact to the Secretary of State.

(2) Whenever any city of the first class decreases in population until it has a population of less than four thousand five hundred inhabitants but more than eight hundred inhabitants as ascertained and officially promulgated by the federal decennial census, the mayor of any such city shall certify such fact to the Secretary of State.

(3) Whenever the Secretary of State receives a certification pursuant to subsection (1) of this section from the same city after two consecutive federal decennial censuses, he or she of the State of Nebraska who, upon the filing of such a certificate, shall by proclamation so declare and shall declare such city to have become a city of the second class, except as provided in section 17-305. Thereafter

(4) Whenever the Secretary of State receives a certification pursuant to subsection (2) of this section, he or she shall declare such city to have become a city of the second class as provided in section 17-305.

(5) Beginning on the date upon which a city becomes a city of the second class pursuant to section 17-305, such city shall be governed by the provisions of the statutes of the State of Nebraska applicable to cities of the second class. Upon such proclamation being made by the Secretary of State, every officer of such city shall, within thirty days thereafter, qualify and give bond as provided by the statutes of the State of Nebraska in cases of cities of the second class. In any city which may hereafter become a city of the second class, having been a city of the first class, any council member whose term extends by reason of his or her prior election under the

~~provisions governing cities of the first class through another year or years shall continue to hold his or her office as council member from the ward in which he or she is a resident as if elected for the same term under the statutes of the State of Nebraska governing cities of the second class.~~

Sec. 6. Section 17-302, Reissue Revised Statutes of Nebraska, is amended to read:

17-302. The government of ~~such a~~ city shall continue, as organized at the date of ~~such proclamation~~ the declaration of the Secretary of State under section 17-301, until the reorganization of the same under section ~~17-301~~ 17-305.

Sec. 7. Section 17-303, Reissue Revised Statutes of Nebraska, is amended to read:

17-303. The mayor and council shall, within ~~thirty~~ ninety days after ~~such proclamation~~ the declaration of the Secretary of State under section 17-301, divide the city into not less than two nor more than six wards, as may be provided by ordinance of the mayor and city council thereof. Such wards shall contain, as nearly as practicable, an equal area and an equal number of legal voters. Such division and boundaries of ~~said~~ such wards, so to be defined by ordinance, shall take effect on the first day of the first succeeding municipal year following the next general city election after such reorganization. Any council member whose term continues, by reason of his or her prior election under the statutes governing cities of the first class, through another year or years beyond the date of the reorganization as a city of the second class shall continue to hold his or her office as council member from the ward in which he or she is a resident as if elected for the same term under the statutes governing cities of the second class.

Sec. 8. Section 17-305, Reissue Revised Statutes of Nebraska, is amended to read:

17-305. (1) Upon the expiration of one year after the date of the declaration of the Secretary of State under section 17-301, the city shall be, as of that date, incorporated as a city of the second class. All ordinances, bylaws, acts, regulations, obligations, rules, and proclamations existing and in force in or with respect to any such city at the time of its incorporation as a city of the second class the declaration of the Secretary of State under section 17-301 shall be and remain in full force and effect after such incorporation as a city of the second class until repealed or modified by such city within one year from the date of the proclamation by the Secretary of State that such city is for a period of one year and may be enacted, altered, or amended during such period in a manner consistent with the statutes governing cities of the first class, except that any such acts, alterations, or amendments shall not be effective beyond the date upon which the city is incorporated as a city of the second class. a city of the second class.

(2) Notwithstanding the provisions of subsection (1) of this section, a city shall amend, repeal, or modify all ordinances, bylaws, acts, regulations, obligations, rules, and proclamations which are existing and in force in or with respect to such city at the time of the declaration of the Secretary of State under section 17-301 and which are inconsistent with the statutes governing cities of the second class in a manner which is in conformance and consistent with the statutes governing cities of the second class to take effect upon the effective date of the city's incorporation as a city of the second class.

Sec. 9. Sections 17-301 to 17-305 apply to cities of the first class whose population has decreased to less than five thousand inhabitants but more than eight hundred inhabitants according to the federal decennial census in the year 2000 and in each subsequent federal decennial census.

Sec. 10. Section 17-1001, Reissue Revised Statutes of Nebraska, is amended to read:

17-1001. Cities Except as provided in section 1 of this act, any city of the second class and villages or village may apply by ordinance any existing or future zoning ordinances, property use regulation ordinances, building ordinances, electrical ordinances, and plumbing ordinances, to an area within one mile of the corporate limits of such municipalities, with the same force and effect as if such area were within their corporate limits. No such ordinance shall be extended or applied so as to prohibit, prevent, or interfere with the conduct of existing farming, livestock operations, businesses, or industry. For purposes of sections 70-1001 to 70-1020, the zoning area of a city of the second class or village shall be one-half mile from the corporate limits of such municipalities. The fact that the zoning area or part thereof is located in a different county or counties than some or all portions of the municipality shall not be construed as affecting the necessity of obtaining the approval of the city council or board of trustees of such municipality or its agent designated pursuant to section 19-916.

Sec. 11. Section 17-1002, Revised Statutes Supplement, 2001, is amended to read:

17-1002. (1) ~~Any~~ Except as provided in section 1 of this act, any city of the second class or village may designate by ordinance the portion of the territory located within one mile of the corporate limits of such city or village and outside of any other organized city or village within which the designating city or village will exercise the powers and duties granted by this section and section 17-1003 or section 19-2402.

(2) No owner of any real property located within the area designated by a city or village pursuant to subsection (1) of this section may subdivide, plat, or lay out such real property in building lots, streets, or other portions of the same intended to be dedicated for public use or for the use of the purchasers or owners of lots fronting thereon or adjacent thereto without first having obtained the approval of the city council or board of trustees of such municipality or its agent designated pursuant to section 19-916. The fact that such real property is located in a different county or counties than some or all portions of the municipality shall not be construed as affecting the necessity of obtaining the approval of the city council or board of trustees of such municipality or its designated agent.

(3) No plat of such real property shall be recorded or have any force or effect unless approved by the city council or board of trustees of such municipality or its designated agent.

(4) In counties that have adopted a comprehensive development plan which meets the requirements of section 23-114.02 and are enforcing subdivision regulations, the county planning commission shall be provided with all available materials on any proposed subdivision plat, contemplating public streets or improvements, which is filed with a municipality in that county, when such proposed plat lies partially or totally within the extraterritorial subdivision jurisdiction being exercised by that municipality in such county. The commission shall be given four weeks to officially comment on the appropriateness of the design and improvements proposed in the plat. The review period for the commission shall run concurrently with subdivision review activities of the municipality after the commission receives all available material for a proposed subdivision plat.

Sec. 12. Section 23-114, Revised Statutes Supplement, 2000, 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; (c) to make, adopt, amend, extend, and implement a county comprehensive development plan; ~~and~~ (d) to adopt a zoning resolution, which shall have the force and effect of law; and (e) to cede and transfer jurisdiction pursuant to section 1 of this act 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. 13. Section 90-303, Reissue Revised Statutes of Nebraska, is amended to read:

90-303. (1) The maximum height of any buildings and structures built after March 8, 1977, shall be restricted as follows:

(a) The maximum height of buildings and structures shall be forty-five feet or National Geodetic Survey elevation 1235.0 feet, whichever is lower, within an area bounded on the west by Seventeenth Street, on the north by K Street, on the east by ~~Capitol Parkway~~ a boundary formed by a line extending in a true south direction as an extension of the east property line of Twenty-fourth Street, and on the south by a boundary formed by a line extending directly in a true east direction to ~~Capitol Parkway~~ the east property line of Twenty-fourth Street from the centerpoint of the intersection of Seventeenth and H Streets, all streets in the city of Lincoln, Lancaster County, Nebraska;

(b) The maximum height of buildings and structures shall be forty-five feet or National Geodetic Survey elevation 1235.0 feet, whichever is lower, within an area bounded on the west by Fourteenth Street, on the north by G Street, on the east by Sixteenth Street, and on the south by Washington Street, all streets in the city of Lincoln, Lancaster County, Nebraska;

(c) The maximum height of the buildings and structures shall be fifty-seven feet or National Geodetic Survey elevation 1247.0 feet, whichever is lower, within an area bounded on the west by Thirteenth Street, on the north by L Street, on the east by Seventeenth Street, and on the south by G Street, all streets in the city of Lincoln, Lancaster County, Nebraska;

(d) The maximum height of the buildings and structures shall be fifty-seven feet or National Geodetic Survey elevation 1247.0 feet, whichever is lower, within an area bounded on the west by Fourteenth Street, on the north by ~~R S~~ Street, on the east by Sixteenth Street, and on the south by L Street, all streets in the city of Lincoln, Lancaster County, Nebraska; and

(e) The maximum height of the buildings and structures shall be fifty-seven feet or National Geodetic Survey elevation 1247.0 feet, whichever is lower, within an area bounded on the west by Tenth Street, on the north by K Street, on the east by Thirteenth Street, and on the south by H Street, all streets in the city of Lincoln, Lancaster County, Nebraska.

(2) For the purposes of the Nebraska State Capitol Environs Act, the

~~five~~ areas and the full width of the right-of-way boundary streets described in ~~subsection~~ subsections (1) and (3) of this section shall together constitute and be defined as the Nebraska State Capitol Environs District.

(3) Design approval shall be required for all aboveground utility, construction, and landscape improvements in the public right-of-way bounded on the north and south by the property lines of J Street, on the west by a boundary formed by a line extending in a true south direction as an extension of the east property line of Twenty-fourth Street, and on the east by a line extending in a true north direction as an extension of the east property line of Thirty-fifth Street.

(4) The city of Lincoln shall insure, through its inspection and permit procedures, that the maximum height restrictions and design review process prescribed by this section for the Nebraska State Capitol Environs District are enforced.

~~(4)~~ (5) The height restrictions and design review process required by this section shall apply, within the Nebraska State Capitol Environs District, to all real estate in private or quasi-public ownership and to real estate owned by the State of Nebraska and local governmental units of all types.

~~(5)~~ (6) The following appurtenances shall be exempt from the height restrictions required by this section, but such appurtenances shall not exceed twenty feet in height above the maximum height permitted in subsection (1) of this section and shall be set back a minimum of fifteen feet from all faces of a building when such faces are adjacent to a street: Church spires, cooling towers with approved screening, elevator bulkheads, fire towers, monuments, stage towers or scenery lofts, ornamental towers, and spires.

~~(6)~~ (7) Nothing in the act shall be construed as limiting the authority of the city of Lincoln to impose lower height restrictions than those maximum height limits established by subsection (1) of this section or in establishing lower height restrictions for appurtenances than those required by subsection ~~(5)~~ (6) of this section.

~~(7)~~ (8) The city of Lincoln shall review and approve or disapprove plans and proposals for demolition, exterior alteration, and construction of structures and other improvements in the Nebraska State Capitol Environs District. The city of Lincoln shall adopt regulations within its zoning code vesting responsibility for review, approval, and disapproval of projects with the Nebraska State Capitol Environs Commission established by the city of Lincoln.

~~(8)~~ (9) The regulations of the city of Lincoln for design review in the Nebraska State Capitol Environs District shall emphasize the long-term enhancement of the State Capitol's setting and of enjoyment of the State Capitol by the citizens while respecting the interests of property owners, including economic interests and the desirability of predictable, expeditious review.

Sec. 14. Original sections 16-901, 16-902, 17-301, 17-302, 17-303, 17-305, 17-1001, and 90-303, Reissue Revised Statutes of Nebraska, section 23-114, Revised Statutes Supplement, 2000, and section 17-1002, Revised Statutes Supplement, 2001, are repealed.