A JOINT SHAWNEE COUNTY RESOLUTION AND CITY OF TOPEKA ORDINANCE
introduced by Mayor Felker relating to zoning regulations and specifically
amending City of Topeka Code §§ 48-27.01, 48-33.01, and 48-33.06 and
specifically repealing said original sections.

BE IT RESOLVED by the Board of County Commissioners of the County of
Shawnee, Kansas, on this 22nd day of September, 2003.

BE IT ORDAINED by the Council of the City of Topeka, Kansas, on this 9th day
of Sept., 2003, as follows:

Section 1. That City of Topeka Code § 48-27.01, General Lot Requirements,
is hereby amended to read as follows:

General lot requirements.

(a) Existing lots of record: An individual lot (platted or unplatted) of record in
the office of the Shawnee County register of deeds on the effective date of this chapter
which has less than the minimum required lot area, lot width, or lot depth, and where no
adjoining undeveloped land fronting on the same street was under the same ownership
on said effective date, may be occupied according to the permitted uses of the district
on which the lot is located, provided, all front, side and rear yard requirements are met
and all other requirements of this chapter are complied with.

(b) Street frontage and access required: No lot shall hereafter be created nor
shall any principal building be constructed or placed on any lot unless such lot has
frontage on either a public street or on a private street which has been approved as part
of a planned unit development. In order to be approved such street shall provide
permanent and unobstructed vehicular access, have a roadway of adequate width and
surface, and meet all other applicable standards and requirements established by the
applicable city or county engineer.

(c) Number of structures per zoning lot: Every building or structure hereafter
erected, enlarged or structurally altered shall be located on a lot as herein defined, and
in no case shall there be more than one principal building or structure located upon
such lot or zoning lot except as may be provided herein as proposed in conjunction with
submission of a site plan. Site plans shall be submitted to the Planning Department for
review and approval in accordance with City of Topeka Ordinance 17913 and Shawnee
County Resolution 2002-272. The site plan shall state the intended purpose, design
and character of the proposed development along with the arrangements to be made
with respect to common area maintenance, access drives, parking, and, any other
common amenities. All other requirements of this chapter shall be met except for
internal adjustments which may be approved by the Planning Director consistent with
the stated design, purpose and character of the project.

(d) Lots held in common ownership: Where two or more contiguous
substandard recorded lots are in common ownership and are of a size as together
constitute at least one conforming zoning lot, such lots or portions thereof shall be
joined, developed, and used for the purpose of forming an effective and conforming
zoning lot or lots.

(e) Public improvement projects: Where a public improvement project results
in the creation of a setback, yard or other deviation from the requirements of this
chapter, the same shall be deemed to be in accordance with the requirements of this chapter.

(f) Administrative variances to minimum lot size requirements: An individual lot (platted or unplatted) of record in the office of the Shawnee County Register of Deeds, for which application for zoning reclassification of said lot has been filed with the Topeka-Shawnee County Metropolitan Planning Department and which does not comply with the minimum lot size requirements as set forth for the desired zoning classification may be granted an administrative variance by the Director of the Planning Department provided that:

1. The individual lot of record comprises 90 percent or greater of the minimum lot size requirement of the desired zoning district;
2. The use group of the desired zoning district will be comparable to that of surrounding properties in the neighborhood;
3. The proposed zoning reclassification of the individual lot does not conflict with, or alternatively, promotes the policies or objectives as stated in the adopted Metropolitan Comprehensive Plan.

Section 2. That City of Topeka Code § 48-33.01, Procedure, is hereby amended to read as follows:

Procedure.

Amendments to this chapter may be made to either the specific provisions or text of this chapter, or to the district map. Any amendment shall be adopted by the governing body by ordinance (applicable to the jurisdiction of the City of Topeka, Kansas) and resolution (applicable to the jurisdiction of unincorporated Shawnee
County, Kansas); and said documents shall be published in the official newspaper as
required by law.

(a) The procedure for amending the textual provisions of this chapter shall be
in accordance with state statutes and specifically provide for the order set forth below:

(1) All proposed amendments shall be referred to the planning
commission for a public hearing and recommendation.

(2) The proposed amendment shall be published setting forth the
existing provision and the purpose and extent of the proposed amendment, in the
official newspaper at least twenty (20) days prior to the date of the public hearing
when the matter will be considered. Such notice shall fix the time and place for
such hearing.

(3) The hearing may be adjourned from time to time and at the
conclusion of the same, a majority of the members of the entire planning
commission shall be required to recommend approval or denial of the
amendment to the governing body. An individual motion to approve or to deny
which receives less than a majority vote of the members of the planning
commission shall be deemed a failed motion and no further action by the
planning commission is required. In such instances, the matter shall not be
transmitted to the governing body for consideration.

(4) Upon receipt of the recommendation and written summary of the
hearing, the governing body either may:

a. Approve such recommendations by the adoption of the same
by ordinance in a city or resolution in a county;
b. Override the planning commission’s recommendations by a two-thirds (2/3) majority vote of the membership of the governing body;

c. May return the same to the planning commission for further consideration, together with a statement specifying the basis for the governing body's failure to approve or disapprove.

(5) If the governing body returns the planning commission’s recommendations, the planning commission, after considering the same, may resubmit its original recommendations giving the reasons therefore or submit new and amended recommendations. Upon the receipt of such recommendations, the governing body, by a simple majority thereof, may adopt or may revise or amend and adopt such recommendations by the respective ordinance or resolution, or the governing body need take no further action thereon.

(6) If the planning commission fails to deliver its recommendations to the governing body following the planning commission’s next regular meeting after receipt of the governing body’s report, the governing body shall consider such course of inaction on the part of the planning commission as a resubmission of the original recommendations and proceed accordingly.

(b) The procedure for amending the district map shall be in accordance with state statutes and specifically provide for the order set forth below:

(1) All proposed amendments to the district map shall be referred to the planning commission as initiated by the governing body or the commission; or upon a property owner by filing the request with the planning agency.
The planning director shall have the authority and responsibility to establish the processing schedule and administrative procedures to consider the request, as well as determine required basic information and data relative to the proposal in respect to processing of any proposed amendment or conditional use permits.

Any proposed district map amendment initiated by a property owner of the property affected, shall be processed as follows:

a. Prior to filing an application, the applicant is encouraged to request a preapplication conference with the planning agency staff. The purpose of the conference is to provide the owner an opportunity to explain the general development concept and site conditions, and for the planning staff to explain this chapter, and regulations, standards, policies, alternatives and constraints applicable to the proposal and site, as well as the comprehensive plan or other adopted plans, programs, or development policies.

b. At the time of the preapplication conference, the owner shall provide the following general information:

1. A legal description and area of subject property.
2. The present or existing use of the site.
3. The use of adjacent properties.
4. Relationship to supporting public or community facilities including utility services.
5. A statement as to the schedule or timeframe for
intended use and development.

c. The owner shall file an official application for an amendment, which shall consist of:

1. Filing fee.
2. Official application and justification.
3. Certificate of ownership as prepared by a land title insurance company of properties within the required notification area and of the subject property proposed for a zoning amendment.

43. Supporting information, including the following:
   • The location and relationship of the property to the surrounding area.
   • Legal description of the property.
   • The proposed district.
   • The circulation or transportation network serving the property.
   • Surface drainage and limitations.
   • Sewer, water, and other utility availability and capacity limitations.
   • Other unique or special site conditions.
   • All public easements of record.
   • Traffic analysis impact study, if deemed necessary by the planning director.
• The planning director may require the subject property to be platted or replatted simultaneously with consideration of a zoning amendment on the subject property.

64. Petitioners of the planned unit development district shall submit for review processing and adoption, the plan of development in accordance with provisions set forth in the "PUD" district.

65. Proof that all real property taxes including any special assessments are paid to date and are current for the subject property. In the event real property taxes including any special assessments are delinquent, the application for amendment shall not be scheduled for public hearing until such time as the taxes, including any special assessments are paid or satisfactory escrow arrangements for the payment of such taxes or special assessments have been made and presented to the city attorney's office and/or Shawnee County counselor's office for approval.

d. The proposed amendment shall be published in the official newspaper at least twenty (20) days prior to the public hearing.

e. In addition to such publication notice, written notice of such proposed amendment shall be mailed at least twenty (20) days before the hearing to all owners of record of lands located within at least two hundred (200) feet of the area proposed to be altered for regulations of the city and
to all owners of record of lands located within at least one thousand (1,000) feet of the area proposed to be altered for regulations of the county. The notice shall fix the time and place of the public hearing to consider a proposed rezoning, and of an opportunity granted to interested parties to be heard. All notices shall include a statement that a complete legal description is available for public inspection and shall indicate where such information is available. When the notice has been properly addressed and deposited in the mail, failure of a party to receive such notice shall not invalidate any subsequent action taken by the planning commission or the governing body.

f. If the city proposes a zoning amendment to property located adjacent to the city's limits, the area of notification of the city's action shall be extended to at least one thousand (1,000) feet in the unincorporated area. Notice of the county's action shall extend two hundred (200) feet in those areas where the notification area extends within the corporate limits of a city.

g. Notice requirements as set forth in this article are sufficient to permit the planning commission to recommend amendments to zoning regulations which affect only a portion of the land described in the notice of which give all or any part of the land described a zoning classification of lesser change than that set forth in the notice. A recommendation of a zoning classification of lesser change than that set forth in the notice shall not be valid without republication and, where necessary, remailing, unless
the planning commission has previously established a table or publication
available to the public which designates what zoning classifications are
lesser changes authorized within the published zoning classifications.

h. The planning staff shall examine the application with respect
to the comprehensive plan, policies and other development requirements,
existing infrastructure and capacities with respect to essential public
improvements, and shall make a report to the planning commission.

i. The planning commission shall hold a public hearing and act
in a quasijudicial capacity to hear testimony; weigh the facts and
conditions; and make findings and conclusions with respect to:

1. The character of the neighborhood.
2. The zoning and use of properties nearby.
3. The suitability of the subject property for the uses of
   which it has been restricted.
4. The extent to which removal of the restrictions will
detrimentally affect nearby properties.
5. The length of time the subject property has remained
   vacant (or unused) as zoned.
6. The relative gain to the public health, safety and
   welfare by the destruction of the value of affected property as
   compared to the hardship imposed upon the individual landowner.
7. Recommendation of professional staff.
8. Conformance to adopted or recognized
comprehensive plan.

j. The planning commission members shall publicly disclose any ex parte contacts prior to receiving testimony at the time of the public hearing.

k. For action on an amendment, a quorum of the planning commission is more than one-half (1/2) of all the members. A majority of the members of the planning commission present and voting at the hearing shall be required to recommend approval or denial of the amendment to the governing body. If the planning commission fails to make a recommendation on a rezoning request, the planning commission shall be deemed to have made a recommendation of disapproval. The adoption of an amendment to the district map shall conform to all provisions pertaining to legal protest as set forth elsewhere in this chapter.

l. Upon receipt of a recommendation of approval or disapproval of such proposed amendment and the reasons, therefor the governing body may:

1. Adopt such recommendation by ordinance in a city or by resolution in a county;

2. Override the planning commission's recommendation by a two-thirds majority vote of the membership of the governing body; or

3. Return such recommendation to the planning commission with a statement specifying the basis for the governing
body's failure to approve or disapprove.

m. If the governing body returns the planning commission's recommendation, the planning commission, after considering the same, may resubmit its original recommendation giving the reason therefor or submit new and amended recommendation. Upon the receipt of such recommendation, the governing body, by a simple majority thereof, may adopt or may revise or amend and adopt such recommendation by the respective ordinance or resolution, or it need take no further action thereon.

n. If the planning commission fails to deliver its recommendation to the governing body following the planning commission's next regular meeting after receipt of the governing body's report, the governing body shall consider such course of inaction on the part of the planning commission as a resubmission of the original recommendation and proceed accordingly.

o. All such actions by the governing body shall be based upon findings, conclusions, with respect to the factors contained in paragraph "i" above and the same shall be entered into the official record.

p. All proposed amendments to the district map which the governing body approves, shall be adopted by an ordinance (City of Topeka) or resolution (Shawnee County) to complete the amendment to the district map. The proposed rezoning shall become effective upon publication of the respective adopting ordinance or resolution.
q. If such amendment affects the boundaries of any zone or district, the respective ordinance or resolution shall describe the boundaries as amended, or if a provision is made for the fixing of the same upon an official map which has been incorporated by reference, the amending ordinance or resolution shall define the change or the boundary as amended, shall order the official map to be changed to reflect such amendment, shall amend the section of the ordinance or resolution incorporating the same and shall reincorporate such map as amended.

r. Development permits may then be issued in accordance with the appropriate district regulations as well as in compliance with other ordinances, resolutions, regulations, and policies of the subject jurisdiction. Except for the planned unit development district, site development plans and construction plans shall be required only in conjunction with an application of a construction permit.

(c) (1) Whenever five (5) or more property owners of record owning ten (10) or more contiguous or noncontiguous lots, tracts, or parcels of the same zoning classification initiate a rezoning of their property from a less restrictive to a more restrictive zoning classification by the submission of a petition bearing the signatures of such owners to the governing body, then such petition shall be referred to the planning commission and Staff for study, consideration, hearing, recommendation and report back. Such amendments to the district map under this provision shall require notice by publication in the official newspaper twenty (20) days prior to the date of hearing and shall be considered at a public hearing
by the planning commission. Provided further, written notice to any property
owners shall not be required and the proposal shall not be subject to a protest
petition provision. A filing fee under this provision shall not be required.

(2) Whenever a governing body initiates a rezoning from a less
restrictive to a more restrictive zoning classification of ten (10) or more
contiguous or noncontiguous lots, tracts or parcels of the same zoning
clarification having five (5) or more owners of record, such amendments to the
district map under this provision shall require notice by publication in the official
newspaper twenty (20) days prior to the date of hearing and shall be considered
at a public hearing by the planning commission. Provided further, written notice
shall only be required to be mailed to the owners of record of the properties to be
rezoned and only such owners shall be eligible to file a protest petition. A filing
fee under this provision shall not be required.

Section 3. That City of Topeka Code § 48-33.06, Filing fees, is hereby
amended to read as follows:

Filing fees.

All applications for amendments to the district map, and conditional use permit
shall be accompanied by the appropriate filing fee as herein set forth. In the event, an
application may be withdrawn prior to the consideration of either the planning
commission or governing body, the applicant may recover the filing fee less the actual
expenses incurred by the planning staff.

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<th>District</th>
<th>Fee</th>
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<td>(a) RA-1; RR-1; R-1; R-2; R-3; and R-4 districts</td>
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<td>Type</td>
<td>Range</td>
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<td>(b) M-1; M-1a; M-2; M-3; and M-4 districts, per acre</td>
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<td>20.1 + acres</td>
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<td>(c) O&amp;I-1; O&amp;I-2; and O&amp;I-3 districts</td>
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<td>10.1--120 acres</td>
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<td>(i) Conditional use permits</td>
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<td>Revisions</td>
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<td>Site plan amendment</td>
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<td>(j) Revision of conditional use</td>
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perms or special use permits or former planned districts Other modifications

(k) Board of appeals $130.00
(l) "H" Historic landmark overlay
Single property $25.00
Historic district $10.00 per property: $100.00 maximum

Section 4. Said City of Topeka Code §§ 48-27.01, 48-33.01, and 48-33.06 are hereby specifically repealed.

Section 5. This Ordinance/Resolution shall take effect and be in force from and after its passage, approval and publication in the official City and County newspaper.

PASSED and APPROVED by the Board of County Commissioners, Shawnee County, Kansas SEP 22 2003

BOARD OF COUNTY COMMISSIONERS
Shawnee County, Kansas

Victor Miller, Chairman
Théodore Ensley, Vice Chair

Marice Kane, Member

ATTEST:
Cynthia Beck, County Clerk
PASSED and APPROVED by the City Council SEP 09 2003

Harry Fieker, Mayor

ATTEST:

Iris E. Walker, City Clerk

APPROVED AS TO FORM AND LEGALITY
DATE 8/24/03 BY
TO BE CODIFIED X
NOT TO BE CODIFIED