

ORDINANCE NO. 1641

AN ORDINANCE AMENDING THE CODE OF THE CITY OF COLBY, KANSAS, 2017 CHAPTER XVI, ARTICLE 1 TO DESIGNATE THE COLBY/THOMAS COUNTY METROPOLITAN PLANNING COMMISSION AS THE PLANNING COMMISSION AND BOARD OF ZONING APPEALS AND REPEALING CHAPTER XVI, ARTICLE 2: BOARD OF ZONING APPEALS.

WHEREAS, IT IS THE DESIRE OF THE GOVERNING BODY OF THE CITY OF COLBY, KANSAS TO MAKE THE MOST EFFICIENT USE OF LOCAL RESOURCES; AND

WHEREAS, THE GOVERNING BODY FINDS THAT THE BOARD OF ZONING APPEALS HAS HISTORICALLY MET SO INFREQUENTLY THAT ITS DUTIES AND FUNCTIONS MAY MOST EFFICIENTLY BE ACCOMPLISHED BY THE COLBY/THOMAS COUNTY METROPOLITAN AREA PLANNING COMMISSION; AND

WHEREAS, THE GOVERNING BODY FINDS THAT THE RESPECTIVE POWERS, DUTIES, AND FUNCTIONS OF THE BOARD OF ZONING APPEALS AND THE COLBY/THOMAS COUNTY METROPOLITAN AREA PLANNING COMMISSION ARE NOT DISSIMILAR, INCOMPATIBLE, OR REDUNDANT AND MAY BE PERFORMED BY ONE ENTITY WITHOUT CONFLICT; AND

WHEREAS, THE INTENT OF THE GOVERNING BODY OF THE CITY OF COLBY, KANSAS MAY BE ACCOMPLISHED BY AMENDING CHAPTER XVI, ARTICLE 1: PLANNING COMMISSION, AND REPEALING CHAPTER XVI, ARTICLE 2: BOARD OF ZONING APPEALS AS SET FORTH IN THIS ORDINANCE; AND

WHEREAS, THE GOVERNING BODY OF THE CITY OF COLBY, KANSAS FINDS THAT IT HAS THE AUTHORITY TO AMEND CHAPTER XVI, ARTICLE 1: PLANNING COMMISSION TO DESIGNATE THE COLBY/THOMAS COUNTY METROPOLITAN AREA PLANNING COMMISSION AS THE BOARD OF ZONING APPEALS PURSUANT TO K.S.A. 12-759(g);

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF COLBY, KANSAS:

**SECTION 1.** Chapter XVI, Article 1, Section 16-101 is hereby amended and restated to read as follows:

**§ 16-101 COMMISSION ESTABLISHED.**

There is hereby created the Colby/Thomas County Metropolitan Area Planning Commission as authorized by K.S.A. 12-744 and any amendments thereto.

Further, the Colby/Thomas County Metropolitan Area Planning Commission is hereby designated as the Board of Zoning Appeals as authorized by K.S.A. 12-759(g) and any amendments thereto.

**SECTION 2.** Chapter XVI, Article 1, Section 16-102 is hereby amended and restated to read as follows:

**§ 16-102 MEMBERS; APPOINTMENTS, TERM QUALIFICATIONS.**

The Colby/Thomas County Metropolitan Area Planning Commission and Board of Zoning Appeals (hereinafter "Commission") shall consist of nine members, six of whom shall be appointed by the Mayor of the City of Colby with the consent of the majority of the City Council, and three of whom shall be appointed by the Chairperson of the Board of County Commissioners of Thomas County, Kansas, by and with the consent of the Board of County Commissioners of Thomas County, Kansas. All terms shall commence on January 1 and expire on December 31. All terms of office shall be for three years; provided, however, in the event any member shall miss three consecutive meetings of the Commission, said member's term may be declared expired, and a new member may be appointed by the Commission. In case of death, incapacity, resignation, or disqualification of any member, the Commission shall appoint another member to the unexpired term of such decease, incapacitated, resigned, or disqualified member. Any person who is a qualified voter shall be eligible for appointment if that person resides and owns real property within a belt three miles wide measured from the corporate limits of the city, or resides within the corporate limits of the city. No person shall be disqualified from continuing to serve on such Commission by reason of changing his or her residence provided such person continues to reside within Thomas County, Kansas. Members of the Colby/Thomas County Metropolitan Area Planning Commission and Board of Zoning Appeals shall serve without compensation, but may be reimbursed for expenses actually incurred in the performance of their duties as members of the said Commission.

**SECTION 3.** Chapter XVI, Article 1, Section 16-103 is hereby amended and restated to read as follows:

**§16-103 MEETINGS; ORGANIZATIONS.**

The Commission shall convene for its first meeting at such time and place as shall be fixed by the Chairperson of the Board of County Commissioners and the Mayor of the city, and shall thereupon proceed to organize and elect officers and fix and determine times and places of future meetings, which said meetings shall be not less frequent than once every two months. Said Commission shall elect one member as Chairperson and one member as Vice-Chairperson. The terms of the Chairperson and Vice-Chairperson shall be for one year or until successors shall have been elected and qualified. Special meetings of the Commission may be called by the Chairperson, or in his or her absence, by the Vice-Chairperson. A quorum for the Commission shall consist of five members. The Commission shall designate a

Secretary and may also designate an Assistant Secretary, neither of whom need be members of the Commission. The Secretary shall cause a proper record to be kept of all the proceedings of the Commission.

**SECTION 4.** Chapter XVI, Article 1, Section 16-104 is hereby amended and restated to read as follows:

**§ 16-104 POWERS AND DUTIES.**

The said Planning Commission and Board of Zoning Appeals shall have such powers and duties as may be prescribed by law from time to time.

A. Powers and Duties when acting as the Planning Commission

As a primary function, the Planning Commission shall have the responsibility for the preparation, adoption and recommendation of a long-range comprehensive plan to guide the future physical development of the Colby/Thomas County Metropolitan Area. Such general plan shall consist of a land use element, a circulation element and a public facilities element. The plan shall provide a statement of population distribution and density and proposed building intensities and other uses of land. The Commission shall recommend development plans for specific public works projects. Such development plans shall be related to the general plan and shall ensure the integration of proposed land uses and for matters of access and relationship to the neighborhood within which such development plans provide for construction. Development plans shall also provide and contain analysis of methods of financing proposed public works. The Planning Commission shall cause to be prepared zoning studies and shall recommend the zoning of all land within their jurisdiction. The Planning Commission shall cause to be prepared recommendations governing the control of subdivisions within the area of their jurisdiction. The Commission shall cause to be prepared annually for the jurisdictions that it represents a statement of the current and past growth and development trends and anticipated growth for the succeeding year and for the succeeding five years. Such annual statement of anticipated growth and development shall also contain an annual review of the status of the general plan and recommended adjustment in such plan. Such annual statement shall be transmitted to the administrative heads of the political jurisdictions involved on or before the first Monday in March of each year for the use by the respective jurisdictions in the preparation of their annual capital improvement budget. The Planning Commission shall cause to have reviewed annually the proposed capital improvement budgets of the respective jurisdictions and shall comment upon the proposed budget in terms of its conformity to the furtherance of the general plan.

B. Powers and Duties when acting as the Board of Zoning Appeals

The Colby/Thomas County Metropolitan Area Planning Commission, as the Board of Zoning Appeals, shall have and perform the following powers, duties, and functions:

- (a) To hear and decide appeals where it is alleged there is error of law in any order, requirement, decision, or determination made by the Building Official in enforcement of this article;
- (b) To permit the following exceptions to the district regulations set forth in this article by issuance of a permit maintaining conditions governing design, construction or operation of the exception so as to adequately safeguard the health, safety, and welfare of the occupants of adjoining and surrounding property;
  - (1) The erection or use of a building or the use of a premise for public utility purposes only which the Board finds to be reasonably necessary for the public convenience or welfare; and
  - (2) The reconstruction of a nonconforming building which has been damaged by explosion, fire, act of God, or public enemy to the extent of more than 50% of its assessed value, where the Board finds some compelling necessity requiring a continuance of the non-conforming use and the primary purpose of continuing the non-conforming use is not to continue a monopoly.
- (c) To grant variances and exceptions from the zoning regulations which will not be contrary to the public interest where, due to special conditions, a literal enforcement of the provisions of the regulations will result in unnecessary hardship. Such variance shall not permit any use not permitted by the zoning regulations in such district. Such variance may be granted by the Board upon a finding that all of the following conditions have been met:
  - (1) The variance arises from a condition that is unique to the property in question and is not ordinarily found in the same district, and is not created by an action of the property owner or applicant;
  - (2) The granting of the variance will not adversely affect the rights of adjacent property owners or residents;
  - (3) The strict application of the provisions of the regulations will constitute an unnecessary hardship upon the property owner;
  - (4) The variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare; and
  - (5) The granting of the variance will not be opposed to the general spirit and intent of these regulations.

- (d) To permit the use of land located not more than 200 feet from the boundary of any neighborhood shopping, commercial or business district for off-street parking purposes in connection with any commercial development in such districts, but only when standards regarding the surfacing, screening and entrances are imposed which will protect the character of the surrounding development and avoid excessive traffic congestion.

In exercising the above powers, the Board of Zoning Appeals may reverse, affirm wholly or partly, or may modify the determination of the Building Official from whom the appeal is taken. Every variance granted or denied by the Board shall be accompanied by a written finding of fact, based on testimony and evidence and specifying the reason for granting or denying the variance.

**SECTION 5.** Chapter XVI, Article 1, Section 16-105 is hereby amended and restated to read as follows:

**§ 16-105 FEE.**

The fee for an application for appeal to the Commission as the Board of Zoning Appeals shall be \$100, no part of which shall be refundable. The fee shall be used to compensate the city for costs associated with the appeal. The City Clerk shall be responsible for the collection of the application fee.

**SECTION 6.** Chapter XVI, Article 1, Section 16-106 is hereby amended and restated to read as follows:

**§ 16-106 BUDGET.**

On or before the first Monday in June of each year, the Colby/Thomas County Metropolitan Area Planning Commission and Board of Zoning Appeals ("Commission") may submit to the Board of County Commissioners and the City Manager of the city a budget of the income and expenditures for the ensuing fiscal year on forms provided by the respective jurisdictions. Thereupon, such budget shall be considered by the Board of County Commissioners and the governing body of the city, and such budget as submitted, or as the same may be amended, shall be approved and adopted by both of said governing bodies. The division of funds to be furnished to the Commission in said budget shall be as may be agreed upon by the County Commissioners and the governing body of the city. The City Treasurer of the city is hereby designated as the custodian and disbursing agent for the total budget, and the Board of County Commissioners shall direct the County Treasurer to pay over direct to the City Treasurer the county's portion, if any, of such budget as well as the city's portion of such budget.

**SECTION 7.** Chapter XVI, Article 1, Section 16-107 is hereby amended and restated to read as follows:

**§ 16-107 EMPLOYMENT OF PERSONNEL.**

The Colby/Thomas County Metropolitan Area Planning Commission and Board of Zoning Appeals (“Commission”) may hire and provide such professional and clerical personnel as it shall deem necessary, and all employees of the Commission shall serve at the pleasure of the said Commission.

**SECTION 8.** The code of the City of Colby Chapter XVI, Article 1 is hereby further amended by adding Section 16-108 which reads as follows:

**§ 16-108 SAVINGS CLAUSE.**

If this article, or any part thereof, shall be held or determined to be unconstitutional, illegal, ultra vires or void, the same shall not be held or construed to change or annul any provision hereof which may be legal or lawful. In the event this article, or any part thereof, shall be held unconstitutional, illegal, ultra vires or void, the same shall not affect any action heretofore taken by the City Planning Commission or Board of Zoning Appeals as heretofore established and construed.

**SECTION 9.** Chapter XVI, Article 1: Planning Commission, as it existed before the enactment of this ordinance, is hereby repealed.

**SECTION 10.** Article 2: Board of Zoning Appeals of Chapter XVI: Zoning and Planning of the Code of the City of Colby, Kansas is hereby repealed.

**SECTION 11.** This ordinance is adopted by authority of and under the provisions of K.S.A. 12-759(g).

**SECTION 12.** This ordinance shall take effect after publication in the official City Newspaper.

**PASSED** by the Governing Body and approved by the Mayor this 21st day of December, 2021.

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Gary L. Adrian, Mayor

ATTEST:

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Joni L. Ketchum, City Clerk

SEAL

