



# CITY OF TOPEKA

Legal Department  
215 SE 7<sup>th</sup> Street, Room 353  
Topeka, KS 66603

Amanda Stanley, City Attorney  
Tel: (785) 368-3883  
[www.topeka.org](http://www.topeka.org)

## MEMORANDUM

To: House Committee on Local Government  
From: Amanda Stanley, City Attorney  
Dan Warner, Planning Division Director  
Re: HB 2150 Opposition Testimony  
Date: 2/8/2023

Thank you, Chairman Bergquist, for allowing the City of Topeka to speak in opposition to HB 2150.

Subdivision regulation is a principal method of controlling land use. Those uses include: street location, location of public improvements, parks, recreational facilities and flood protection. Currently, state law regulates the ability of cities and counties to enact these regulations in the area within three miles of a city's boundaries, commonly known as the "ETJ" (extraterritorial jurisdiction).

The concept of extraterritorial zoning really began to develop in the 1950s following an uptick in development after World War II. As cities began to expand across the nation, the public was faced with a choice, (1) the annexation of large sections of undeveloped land in order to provide for orderly future development, (2) the haphazard development with a myriad of nonconforming uses, non-strategically planned roads, utilities, etc., or (3) something else. The something else that developed was the concept of extraterritorial zoning. Extraterritorial zoning was developed to provide a middle ground. State legislatures across the United States began extending to municipalities the power to extraterritorial zone in the 1950s and 1960s. In Kansas, cities were given the power to extraterritorial zone in 1969 in KSA 12-715b. This has only been modified once to deal with floodplains in 1991.

In Kansas, a city that would like to adopt subdivision regulations in the ETJ must notify the county at least 20 days prior to taking action, the statute gives the county (as the county commissioners are the duly elected representatives for the citizens in the area) the unilateral ability to stop a city from acting in the ETJ. City planning commissions that regulate subdivisions within the ETJ must have at least two members that reside in the ETJ. (K.S.A. 12-744). There are limits on types of zoning to protect agriculture. The current system allows cities and counties to work together in a collaborative way to plan for future growth. The division of land outside the city has a direct impact on the ability of a city to grow compactly and cost effectively.

The 3-mile ETJ is especially important when the county's platting exemption regulations are incongruous with the city's growth policies. The City of Topeka updated its Land Use and Growth Management Plan in 2015 to align the City's platting authority outside the City with the City's growth policies. Subdivision regulations were updated as well to change the way property could be exempt from platting. City platting exemptions are more stringent than Shawnee County's.

If counties have zoning and platting authority solely outside the city, it becomes easier to develop the kind of development outside the city that could directly compete with the City of Topeka's tax dollars if cities can't control the division of land. Counties were never designed to support urban level development. Counties do not have the public safety, code enforcement, and other utility infrastructure in place for full sized urban development. This can result in increasing numbers of non-city residents driving on city streets and utilizing city resources without contributing to the tax base. If cities are not able to plan for orderly growth, it is possible that aggressive annexations could end up being the default growth management strategy for cities.

If a county resident is upset with the current regulations in the three mile ETJ, there is a remedy in current law through their elected representatives on the county commission. We would ask that the legislature not upend a system that has worked relatively well for over fifty years.

Attachments:

cc: