

1 STATE OF OKLAHOMA

2 1st Session of the 59th Legislature (2023)

3 HOUSE BILL 2089

By: Echols

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6 AS INTRODUCED

7 An Act relating to cities and towns; amending 11 O.S.
8 2021, Section 43-105, which relates to amendments or
changes of regulations, restrictions, and boundaries;
9 establishing requirements for legislative municipal
10 procedures; limiting power to interfere with property
owner rights by zoning and regulations; restricting
11 the denial of applications; clarifying purpose of
notice and hearing; directing governing body to
12 identify basis of denial; providing for award of
reasonable costs in appeals proceedings; amending 11
13 O.S. 2021, Section 45-104, which relates to public
improvements and plats of land, planning commission
14 review, and subdivision regulations; establishing
requirements for preliminary or final plats and
15 subdivisions; designating determinations as quasi-
judicial; establishing basis of determinations;
16 clarifying purpose of notice and hearing; providing
for award of reasonable costs in appeals proceedings;
and providing an effective date.

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

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

22 Section 43-105. A. Regulations, restrictions and district
23 boundaries of municipalities may be amended, supplemented, changed,
24 modified or repealed. The requirements of Section 43-104 of this

1 title on public hearings and notice shall apply to all proposed
2 amendments or changes to regulations, restrictions or district
3 boundaries.

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

7 1. The owners of twenty percent (20%) or more of the area of
8 the lots included in a proposed change~~r~~i or

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

18 C. Decisions as to comprehensive and master plans, zoning
19 classifications, and planned unit developments, and as to
20 applications for amendments, changes, modifications, revisions, or
21 applications relating to such, shall be legislative municipal
22 procedures, in which the municipal governing body shall refrain from
23 arbitrary and unreasonable exercises of its police powers, and shall
24 conform to the following requirements:

1 1. Municipal power to interfere by zoning or land use
2 regulations with the general rights of property owners is limited,
3 and the municipal governing body's decisions must be strictly bound
4 by the limits of police power, and based upon the objective facts
5 and ascertainable standards being relevant to determine whether the
6 proposed zoning or land use application, if approved, would be
7 harmful to the health, safety, and welfare of the public. Decisions
8 on rezoning or land use applications shall be based upon the
9 objective, relevant, and basic physical facts of the property and
10 surrounding area;

11 2. Rezoning or land use applications shall not be denied on the
12 sole basis of noncompliance with a comprehensive plan or master
13 plan. When a rezoning or land use application conforms to the
14 property's land use designation under a comprehensive plan or master
15 plan, it shall be presumed that the proposed zoning land use is an
16 appropriate classification for the property, unless the objective,
17 relevant, and basic physical facts pertaining to the property and
18 surrounding area indicate that the proposed zoning land use change
19 would be harmful to the health, safety, and welfare of the public;

20 3. The notice and hearing provisions in Sections 43-104 through
21 43-106 of this title, or otherwise as may be applicable, are
22 intended to provide members of the public with a right to be heard
23 and explain how they think their interests are affected, and to
24 bring to the attention of the governing body any objective,

1 relevant, and basic physical facts that may have been overlooked.
2 However, decisions on land use applications shall not be based upon
3 the presence, numbers, or magnitude of opposition or protests to
4 such applications;

5 4. In the case of denial of an application subject to the
6 provisions of this section, the governing body shall identify on the
7 record its basis for the denial, including at a minimum all of the
8 objective, relevant, and basic physical facts and standards upon
9 which the governing body's decision of denial is based.

10 5. Where appeal through a legal or equitable proceeding is
11 instituted by the applicant related to a zoning or land use
12 application denial subject to the provisions of this section, and
13 the court, in rendering a judgment for the plaintiff in such
14 proceeding, determines there to be insufficient evidence supporting
15 the municipal body's purported basis for the denial, the court shall
16 determine an award to such plaintiff, as a part of such judgment;
17 such sum as will, in the opinion of the court, reimburse such
18 plaintiff for all plaintiff's reasonable costs, disbursements, and
19 expenses, including but not limited to reasonable attorney,
20 consultant, and engineering fees, actually incurred because of such
21 proceeding.

22 SECTION 2. AMENDATORY 11 O.S. 2021, Section 45-104, is
23 amended to read as follows:
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1 Section 45-104. A. Before final action may be taken by any
2 municipality or department thereof on the location, construction, or
3 design of any public building, statue, memorial, park, parkway,
4 boulevard, street, alley, playground, public ground, or bridge, or
5 the change in the location or grade of any street or alley, the
6 question shall be submitted to the planning commission for
7 investigation and report. Counties and school districts may be
8 exempted from the payment of a fee to obtain any license or permit
9 required by a zoning, building, or similar ordinance of a
10 municipality.

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

1 the municipal governing body shall be deemed a refusal of the
2 proposed dedication shown thereon.

3 C. The municipal planning commission may exercise jurisdiction
4 over subdivision of land and adopt regulations governing the
5 subdivision of land within its jurisdiction. Any such regulations,
6 before they become effective, shall be approved by the municipal
7 governing body and shall be published as provided by law for the
8 publication of ordinances. Such regulations may include provisions
9 as to the extent to which streets and other ways shall be graded and
10 improved and to which water, sewer, and other utility mains, piping,
11 or other facilities shall be installed as a condition precedent to
12 the approval of the plat. The regulations may provide for a
13 tentative approval of the plat before such installation. Any such
14 tentative approval shall be revocable for failure to comply with
15 commitments upon which the tentative approval was based and shall
16 not be entered on the plat. In lieu of the completion of any
17 improvements or utilities prior to the final approval of the plat,
18 the commission may accept an adequate bond with surety, satisfactory
19 to the commission, to secure for the municipality the actual
20 construction and installation of the improvements or utilities at a
21 time and according to specifications fixed by or in accordance with
22 the regulations of the commission, and further conditioned that the
23 developer will pay for all material and labor relating to the
24 construction of the improvements. The municipality may enforce said

1 bond by all appropriate legal and equitable remedies. Nothing in
2 this section shall be construed as granting to any municipality or
3 planning commission the power to direct any public utility to extend
4 its services to any particular area.

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

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

3 1. The private roadway easement shall be at least fifty (50)
4 feet in width; and

5 2. The property abutting upon the private roadway shall contain
6 not less than two (2) acres; provided, however, if the covenants of
7 the subdivision allow for Evapotranspiration Absorption Systems or
8 an Aerobic Wastewater Treatment System, the property abutting upon
9 the private roadway may contain not less than one (1) acre; and

10 3. The property shall be more than one-fourth (1/4) mile from
11 sewer and water facilities furnished by the municipality; and

12 4. The private roadway shall not be dedicated to the public but
13 reserved for future dedication and, until such future dedication,
14 shall be the private roadway of the owners of the abutting property;
15 and

16 5. The private roadway shall be maintained by the owners of the
17 property within the subdivision; and

18 6. The municipality shall have no responsibility for the
19 maintenance or repair of the private roadway; and

20 7. If the property is platted, there shall be emblemized on
21 the face of the plat, clearly conspicuous, a notice that the streets
22 and drives have not been dedicated to the public and that the
23 streets shall be maintained by the private property owners within
24 the subdivision. Said streets shall always be open to police, fire,

1 and other official vehicles of all state, federal, county, and
2 municipal agencies; and

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

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

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

18 F. As to preliminary or final plats and subdivisions, in
19 considering applications, or applications for amendments, changes,
20 modifications, revisions, or applications relating to such, a
21 municipal governing body shall conform to the following
22 requirements:

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1 1. Determinations on preliminary or final plats and
2 subdivisions shall be considered administrative municipal procedures
3 being quasi-judicial in nature;

4 2. Determinations on preliminary or final plats and
5 subdivisions shall be based upon the objective and clearly
6 ascertainable standards which are expressly set forth in the
7 subdivision regulations and zoning codes, and shall not be denied on
8 the basis of noncompliance with a comprehensive plan or master plan.

9 If the municipal governing body determines the proposed plat is in
10 compliance with the subdivision regulations and zoning codes, and
11 the municipal governing body accepts any proposed dedications, if
12 applicable, the preliminary or final plat, as applicable, shall be
13 approved. In the case of denial of an application subject to the
14 provisions of this section, the municipal body shall identify on the
15 record its basis for the denial, including at a minimum all of the
16 objective, relevant, and basic physical facts, and clearly
17 ascertainable standards upon which the denial is based;

18 3. The notice and hearing provisions in Sections 43-104 through
19 43-106 of this title, or otherwise as may be applicable, are
20 intended to provide members of the public with a right to be heard
21 and explain how they think their interests are affected and to bring
22 to the attention of the governing body any objective and relevant
23 basic physical facts that may have been overlooked. However,
24 decisions on preliminary plats and subdivisions shall not be based

1 upon the presence, numbers, or magnitude of opposition or protests
2 to such applications;

3 4. Where appeal through a legal or equitable proceeding is
4 instituted by the applicant related to a preliminary or final plat
5 denial subject to the provisions of this section, and the court, in
6 rendering a judgment for the plaintiff in such proceeding,
7 determines there to be insufficient evidence supporting the
8 municipal body's purported basis for the denial, the court shall
9 determine an award to such plaintiff, as a part of such judgment;
10 such sum as will, in the opinion of the court, reimburse such
11 plaintiff for all plaintiff's reasonable costs, disbursements, and
12 expenses, including but not limited to reasonable attorney,
13 consultant, and engineering fees, actually incurred because of such
14 proceeding.

15 SECTION 3. This act shall become effective November 1, 2023.

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17 59-1-6069 MJ 12/20/22

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