

## **CHAPTER 11-33 COUNTY ZONING**

### **11-33-01. County power to regulate property.**

For the purpose of promoting health, safety, morals, public convenience, general prosperity, and public welfare, the board of county commissioners of any county may regulate and restrict within the county, subject to chapter 54-21.3, the location and the use of buildings and structures and the use, condition of use, or occupancy of lands for residence, recreation, and other purposes. The board of county commissioners and a county zoning commission shall state the grounds upon which any request for a zoning amendment or variance is approved or disapproved, and written findings upon which the decision is based must be included within the records of the board or commission. The board of county commissioners shall establish zoning requirements for solid waste disposal and incineration facilities before July 1, 1994. The board of county commissioners may impose tipping or other fees on solid waste management and incineration facilities. The board of county commissioners may not impose any fee under this section on an energy conversion facility or coal mining operation that disposes of its waste onsite. The board of county commissioners may establish institutional controls that address environmental concerns with the department of environmental quality as provided in section 23.1-10-16.

### **11-33-02. Board of county commissioners to designate districts - Uniformity.**

For any or all of the purposes designated in section 11-33-01, the board of county commissioners may divide by resolution all or any parts of the county, subject to section 11-33-02.1 into districts of such number, shape, and area as may be determined necessary, and likewise may enact suitable regulations to carry out the purposes of this chapter. These regulations must be uniform in each district, but the regulations in one district may differ from those in other districts.

#### **11-33-02.1. Farming and ranching regulations - Requirements - Limitations - Definitions.**

1. For purposes of this section:

- a. "Animal feeding operation" means a lot or facility, other than normal wintering operations for cattle and an aquatic animal production facility, where the following conditions are met:
  - (1) Animals, other than aquatic animals, have been, are, or will be stabled or confined and fed or maintained for at least forty-five days in a twelve-month period; and
  - (2) Crops, vegetation, forage growth, or postharvest residues are not sustained in the normal growing season over any portion of the lot or facility.
- b. "Farming or ranching" means cultivating land for the production of agricultural crops or livestock, or raising, feeding, or producing livestock, poultry, milk, or fruit. The term does not include:
  - (1) The production of timber or forest products; or
  - (2) The provision of grain harvesting or other farm services by a processor or distributor of farm products or supplies in accordance with the terms of a contract.
- c. "Livestock" includes beef cattle, dairy cattle, sheep, swine, poultry, horses, bison, elk, fur animals raised for their pelts, and any other animals that are raised, fed, or produced as a part of farming or ranching activities.
- d. "Location" means the setback distance between a structure, fence, or other boundary enclosing an animal feeding operation, including its animal waste collection system, and the nearest occupied residence, the nearest buildings used for nonfarm or nonranch purposes, or the nearest land zoned for residential, recreational, or commercial purposes. The term does not include the setback distance for the application of manure or for the application of other recycled

- agricultural material under a nutrient management plan approved by the department of environmental quality.
2. For purposes of this section, animal units are determined as provided in subdivision c of subsection 7 of section 23.1-06-15.
  3. A board of county commissioners may not prohibit or prevent the use of land or buildings for farming or ranching and may not prohibit or prevent any of the normal incidents of farming or ranching.
  4. A board of county commissioners may not preclude the development of an animal feeding operation in the county.
  5. A board of county commissioners may not prohibit the reasonable diversification or expansion of a farming or ranching operation.
  6. A board of county commissioners may adopt regulations that establish different standards for the location of animal feeding operations based on the size of the operation and the species and type being fed.
  7. If a regulation would impose a substantial economic burden on an animal feeding operation in existence before the effective date of the regulation, the board of county commissioners shall declare that the regulation is ineffective with respect to any animal feeding operation in existence before the effective date of the regulation.
  8.
    - a. A board of county commissioners may establish high-density agricultural production districts in which setback distances for animal feeding operations and related agricultural operations are less than those in other districts.
    - b. A board of county commissioners may establish, around areas zoned for residential, recreational, or nonagricultural commercial uses, low-density agricultural production districts in which setback distances for animal feeding operations and related agricultural operations are greater than those in other districts; provided, the low-density agricultural production districts may not extend more than one and one-half miles [2.40 kilometers] from the edge of the area zoned for residential, recreational, or nonagricultural commercial uses.
    - c. A board of county commissioners may not adopt or enforce setbacks applicable to animal feeding operations that exceed the setback distances provided in subsection 7 of section 23.1-06-15.
    - d. For purposes of this subsection, a "related agricultural operation" means a facility that produces a product or byproduct used by an animal feeding operation.
  9. A person intending to construct an animal feeding operation may petition the board of county commissioners for a determination whether the animal feeding operation would comply with zoning regulations adopted under this section and filed with the department of environmental quality under section 11-33-22 before the date the petition was received by the county. The petition must contain a description of the nature, scope, and location of the proposed animal feeding operation and a site map showing road access, the location of any structure, and the distance from each structure to the nearest section line. If the board of county commissioners does not validly object to the petition within sixty days of receipt, the animal feeding operation is deemed in compliance with the county zoning regulations. If the county allows animal feeding operations as a conditional use, the conditional use regulations must be limited to the board's authority under this section, and the approval process must comply with this section. The county shall make a valid determination on the application within sixty days of the receipt of a complete conditional use permit application. If the board of county commissioners determines the animal feeding operation would comply with zoning regulations or fails to object under this section, the county may not impose additional zoning regulations relating to the nature, scope, or location of the animal feeding operation later, provided an application is submitted promptly to the department of environmental equality, the department issues a final permit, and construction of the animal feeding operation commences within three years from the date the department issues its final permit and any permit appeals are exhausted. Any objection or determination that subsequently is reversed, set aside, or invalidated by a court of this state, is not a valid objection or decision for the purpose

of calculating a procedural timeline under this section. A procedural timeline imposed by this section continues to be in effect during the pendency of any appeal of a county action or determination. A board of county commissioners may not:

- a. Regulate or impose zoning restrictions or requirements on animal feeding operations or other agricultural operations except as expressly permitted under this section;
  - b. Impose water quality, closure, site security, lagoon, or nutrient plan regulations or requirements on animal feeding operations;
  - c. Charge fees or expenses of any kind totaling, in the aggregate, more than five hundred dollars in connection with any permit, petition, application, or other request relating to animal feeding operations; or
  - d. Require an existing animal feeding operation to have a permit for improvements or other modifications of an operation that is in current compliance with state and federal regulations or require an existing operation to have a permit for improvements or other modifications that bring the operation into compliance with state or federal regulations, if the modifications or improvements do not cause the operation to exceed animal numbers of the setback requirement.
10. If a party challenges the validity of a county ordinance, determination, decision, or objection related to animal feeding operations, the court shall award the prevailing party actual attorney's fees, costs, and expenses.

#### **11-33-03. Object of regulations.**

These regulations shall be made in accordance with a comprehensive plan and designed for any or all of the following purposes:

1. To protect and guide the development of nonurban areas.
2. To provide for emergency management. "Emergency management" means a comprehensive integrated system at all levels of government and in the private sector which provides for the development and maintenance of an effective capability to mitigate, prepare for, respond to, and recover from known and unforeseen hazards or situations, caused by an act of nature or man, which may threaten, injure, damage, or destroy lives, property, or our environment.
3. To regulate and restrict the erection, construction, reconstruction, alteration, repair, or use of buildings and structures, the height, number of stories, and size of buildings and structures, the percentage of lot that may be occupied, the size of courts, yards, and other open spaces, the density of population, and the location and use of buildings, structures, and land for trade, industry, residence, or other purposes.
4. To lessen governmental expenditures.
5. To conserve and develop natural resources.

These regulations shall be made with a reasonable consideration, among other things, to the character of the district and its peculiar suitability for particular uses. The comprehensive plan shall be a statement in documented text setting forth explicit goals, objectives, policies, and standards of the jurisdiction to guide public and private development within its control.

#### **11-33-04. County planning commissions authorized - Membership.**

The board of county commissioners of any county desiring to avail itself of the powers conferred by this chapter shall establish, by resolution, a county planning commission to recommend the boundaries of the various county zoning districts and appropriate regulations and restrictions to be established therein. In counties with three-member boards of county commissioners, the planning commission consists of seven members, of whom at least one must be appointed from the governing body of the city that is the county seat, and of whom at most one may be appointed from the board of county commissioners. In counties with five-member boards of county commissioners the planning commission consists of nine members, of whom at least two must be appointed from the governing body of the city that is the county seat, and of whom at most two may be appointed from the board of county commissioners. The term of an ex officio member is coterminous with the member's term in the underlying office. The remaining members shall be appointed from the county at large. In

counties that elect county commissioners from districts, at least one at large member of the planning commission must be appointed from each district. When appointments to said commission are first made, three members at large shall be appointed for a two-year term and two members at large for a four-year term, after which all subsequent appointments for members at large shall be for a four-year term. Appointments to fill vacancies shall be for the unexpired portion of the term. All appointments to the county planning commission shall be made by the board of county commissioners.

**11-33-05. Meetings - Officers.**

The commission shall meet within thirty days after its appointment and elect a chairman and other necessary officers from its membership. The commission may adopt rules and bylaws not inconsistent with the provisions of this chapter. A majority of the members of the commission constitutes a quorum. The appointing authority shall establish the rate of compensation for commissioners and actual expenses incurred by commissioners may be reimbursed at the official reimbursement rates of the appointing authority. The county auditor shall serve as secretary to the commission and shall keep all of the records and accounts of the commission.

**11-33-06. Investigations.**

The county planning commission in conjunction with the township boards of the affected areas shall investigate and determine the necessity of establishing districts and prescribing regulations therefor, as herein provided; and, for that purpose, shall consult with residents of affected areas, and with federal, state, and other agencies concerned. State, county, township, and city officials, departments, or agencies are hereby required to make available, upon request of the county planning commission, such pertinent information as they may possess, to render technical assistance, and to cooperate in assembling and compiling pertinent information.

**11-33-07. County planning commission to prepare plan.**

After investigation, as herein provided, the county planning commission shall prepare a proposed resolution to be submitted to the board of county commissioners establishing districts and prescribing regulations therefor, as herein provided, which shall be filed in the office of the county auditor.

**11-33-08. Hearings.**

After the filing of the proposed resolution, the county planning commission shall hold a public hearing thereon, at which the proposed resolution shall be submitted for discussion, and parties in interest and citizens shall have an opportunity to be heard. Notice of the time, place, and purpose of the hearing shall be published once each week for two consecutive weeks in the official newspaper of the county, and in such other newspapers published in the county as the county planning commission may deem necessary. Said notice shall describe the nature, scope, and purpose of the proposed resolution, and shall state the times at which it will be available to the public for inspection and copying at the office of the county auditor.

**11-33-09. Publication of resolutions - Effective date.**

Following the public hearing, the board of county commissioners may adopt the proposed resolutions or any amendments thereto, with such changes as it may deem advisable. Upon adoption of any resolution or any amendment thereto, the county auditor shall file a certified copy thereof with the recorder. Immediately after the adoption of any such resolution or any amendment thereto, the county auditor shall cause notice of the same to be published for two successive weeks in the official newspaper of the county and in such other newspapers published in the county as the board of county commissioners may deem necessary. Said notice shall describe the nature, scope, and purpose of the adopted resolution, and shall state the times at which it will be available to the public for inspection and copying at the office of the recorder. Proof of such publication shall be filed in the office of the county auditor. If no petition for a separate hearing is filed pursuant to section 11-33-10, the resolution or amendment thereto shall take effect upon the expiration of the time for filing said petition. If a petition for a separate

hearing is filed pursuant to section 11-33-10, the resolution shall not take effect until the board of county commissioners has affirmed such resolution or amendment in accordance with the procedures of section 11-33-10. Any such resolution may, from time to time, be amended or repealed by the board of county commissioners upon like proceedings as in case of the adoption of a resolution.

**11-33-10. Separate hearings.**

Any person aggrieved by any provision of a resolution adopted hereunder, or any amendment thereto may, within thirty days after the first publication of such resolution or amendment, petition for a separate hearing thereon before the board of county commissioners. The petition shall be in writing and shall specify in detail the ground of the objections. The petition shall be filed with the county auditor. A hearing thereon shall be held by the board no sooner than seven days, nor later than thirty days after the filing of the petition with the county auditor, who shall notify the petitioner of the time and place of the hearing. At this hearing, the board of county commissioners shall consider the matter complained of and shall notify the petitioner, by registered or certified mail, what action, if any, it proposes to take thereon. The board of county commissioners, at its next regular meeting, shall either rescind or affirm such resolution or amendment. The provisions of this section shall not operate to curtail or exclude the exercise of any other rights or powers of the board of county commissioners or any citizen.

**11-33-11. May adjust enforcement.**

The board of county commissioners is authorized to adjust the application or enforcement of any provision of a resolution hereunder in any specific case when a literal enforcement of such provision would result in great practical difficulties, unnecessary hardship, or injustice, so as to avoid such consequences, provided such action shall not be contrary to the public interest or the general purposes hereof.

**11-33-12. Appeals to district court.**

Any person, or persons, jointly or severally, aggrieved by a decision of the board of county commissioners under this chapter, may appeal to the district court in the manner provided in section 28-34-01.

**11-33-13. Not to affect use.**

The lawful use or occupation of land or premises existing at the time of the adoption of a resolution hereunder may be continued, although such use or occupation does not conform to the provisions thereof, but if such nonconforming use or occupancy is discontinued for a period of more than two years, any subsequent use or occupancy of the land or premises shall be a conforming use or occupancy. If the state acquires title to any land or premises, all further use or occupancy thereof shall be a conforming use or occupancy.

**11-33-14. Nonconforming uses regulated.**

The board of county commissioners, may, by resolutions, as herein provided, prescribe such reasonable regulations, not contrary to law, as it deems desirable or necessary to regulate and control nonconforming uses and occupancies.

**11-33-15. Board of county commissioners to make complete list.**

Repealed by S.L. 1969, ch. 138, § 2.

**11-33-16. Enforcement.**

The board of county commissioners shall provide for the enforcement of this chapter and of resolutions and regulations made thereunder and may impose enforcement duties on any officer, department, agency, or employee of the county.

**11-33-17. Violation of zoning regulations and restrictions - Remedies.**

If any building or structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained, or if any building, structure, or land is used in violation of this chapter, the proper county authorities or any affected citizen or property owner, in addition to other remedies, may institute any appropriate action or proceedings:

1. To prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance, or use.
2. To restrain, correct, or abate such violations.
3. To prevent the occupancy of the building, structure, or land.
4. To prevent any illegal act, conduct, business, or use in or about such premises.

**11-33-18. Power of board of county commissioners to issue permits - Notification of director of the department of transportation - Power of board to appropriate money.**

1. The board of county commissioners may authorize and provide for the issuance of permits as a prerequisite to construction, erection, reconstruction, alteration, repair, or enlargement of any building or structure otherwise subject to this chapter.
2. If a board of county commissioners provides for the issuance of permits, the board shall require the applicant to state whether the structure is reasonably anticipated to have a significant impact on the transportation system. A structure is deemed to have significant impact on the transportation system if, over a period of one year, it will have an average daily usage of at least twenty-five motor vehicles whose gross weight exceeds sixty thousand pounds [27215.54 kilograms]. The board shall require that, if the structure will have a significant impact on the transportation system, the director of the department of transportation be notified and be given an opportunity to comment on the application. However, approval of the director of the department of transportation of the proposed structure is not required.
3. The board may establish and collect reasonable fees for permits issued under this section. The fees so collected must be credited to the general fund of the county.
4. The board of county commissioners may appropriate, out of the general funds of the county, such moneys as may be necessary for the purposes of this chapter.

**11-33-19. Joint planning commission may be established.**

If the area to be regulated and restricted is situated in two or more counties, a joint planning commission may be established. Membership of such a joint planning commission shall consist of five members from each county planning commission to be appointed by the chairman of the respective county planning commissions. Each joint commission shall make a preliminary report and hold public hearings thereon as is provided in the case of county planning commissions before submitting its final report and recommendations to the respective county planning commissions of each county concerned.

**11-33-20. Township zoning not affected - Township and city may relinquish powers - Joint zoning authority over solid waste disposal facilities.**

Repealed by S.L. 2015, ch. 422, § 2.

**11-33-21. General penalties for violation of zoning regulations and restrictions.**

A violation of any provision of this chapter or the regulations and restrictions made thereunder shall constitute the maintenance of a public nuisance and shall be a class B misdemeanor.

**11-33-22. Regulation of animal feeding operations - Central repository.**

Any zoning regulation that pertains to an animal feeding operation, as defined in section 11-33-02.1, is not effective until filed with the department of environmental quality for inclusion in the central repository established under section 23.1-01-10.

**11-33-23. Highways - Roads.**

This chapter does not include any power relating to the role of the board of county commissioners in the establishment, repair, or maintenance of highways or roads.