

ORDINANCE NO. 7560

AN ORDINANCE REPEALING THE MANHATTAN ZONING REGULATIONS AND THE MANHATTAN URBAN AREA SUBDIVISION REGULATIONS, AND ADOPTING A UNIFIED SET OF REGULATIONS AS CHAPTER 26 OF THE CODE OF ORDINANCES OF THE CITY OF MANHATTAN, TITLED THE “MANHATTAN DEVELOPMENT CODE”

WHEREAS, the Governing Body, based on recommendations of the Manhattan Urban Area Planning Board, has, by the adoption of Ordinance No. 7470, adopted by reference the thirty-fifth revised publication known as the “Manhattan Zoning Regulations”; and

WHEREAS, the Governing Body, based on recommendations of the Manhattan Urban Area Planning Board, has, by adoption of Ordinance No. 6357, adopted by reference the publication known as the “Manhattan Urban Area Subdivision Regulations”; and

WHEREAS, the Governing Body has, by adoption of Ordinance No. 6065, included a chapter in the Code of Ordinances concerning historic preservation purposes, definitions, and regulations, and creating the Historic Resources Board; and

WHEREAS, the City of Manhattan completed a comprehensive revision of its development regulations, unifying the separate zoning, subdivision, and historic preservation purposes, definitions, and regulations into a unified development code, titled the “Manhattan Development Code”, that embodies the goals and principles outlined in the Manhattan Urban Area Comprehensive Plan and its companion plans; and

WHEREAS, the Manhattan Development Code will be codified as Chapter 26 of the Code of Ordinances of the City of Manhattan, Kansas, which will result in the displacement the existing sections and articles of that Chapter; and

WHEREAS, the Big Lakes Regional Planning Commission is a defunct body, and therefore Article III of Chapter 26 of the Code should be repealed; and

WHEREAS, the existing Code provisions that constitute the Manhattan Urban Area Planning Board, which are in Article II of Chapter 26 of the Code of Ordinances, should be repealed and recodified into Article VI of Chapter 2 of the Code; and

WHEREAS, the existing Code provisions that constitute the Historic Resources Board in Chapter 17.5 of the Code of Ordinances, should be repealed and recodified into Article VI of Chapter 2 of the Code; and

WHEREAS, the existing Code provisions approving and adopting the subdivision regulations, currently found in Chapter 26, Art. 1, Sec. 26-2, of the Code of Ordinances, are obviated by the adoption of the Manhattan Development Code and therefore should be repealed; and

WHEREAS, the Manhattan Urban Area Planning Board, on the 1st day of November,

2021, has recommended adoption of the Manhattan Development Code; and

WHEREAS, the Governing Body desires to replace the separate zoning, subdivision, and historic preservation regulations with the unified Manhattan Development Code; and

WHEREAS, shortly after the Planning Board made its recommendation, Community Development staff were informed of standardized regulatory text requirements of the Kansas Department of Agriculture, Division of Water Resources, for floodplain development regulations; and

WHEREAS, all actions of the Manhattan Urban Area Planning Board and the Governing Body have been pursuant to, and in compliance with, K.S.A. 12-741, *et seq.*, and specifically K.S.A. 12-757.

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

Section 1. The publication known as “Manhattan Development Code”, as approved by the Governing Body of the City of Manhattan, Kansas, on the 7th day of December, 2021, is hereby adopted by reference and shall be attached to this ordinance and filed with the City Clerk and open for inspection and available to the public at all reasonable hours.

Section 2. Chapter 26 of the Code of Ordinances of the City of Manhattan is hereby amended by striking the existing chapter in its entirety and inserting the Manhattan Development Code as Chapter 26 of the Code of Ordinances of the City of Manhattan.

Section 3. Ordinance Nos. 7470 and 6357 are hereby repealed.

Section 4. The Code of Ordinances of the City of Manhattan is hereby amended by striking Chapter 17.5 in its entirety.

Section 5. The Code of Ordinances of the City of Manhattan is hereby amended by inserting Division 5 of Chapter 2, Article VI, to read as follows:

Division 5 – Historic Resources Board

Sec. 2-241. - Creation and composition.

(a) *Generally.* There is hereby created the Manhattan Historic Resources Board which shall consist of seven members, residents of the city, all of whom shall be appointed by the mayor with the advice and consent of the city commission. The mayor shall make every reasonable effort to appoint persons with a demonstrated interest, knowledge, or training in fields closely related to historic preservation, such as history, architecture, landscape architecture, architectural history, archeology, planning, engineering, real estate, law, finance, building trades, urban design, and geography. At least three members shall be preservation-related professionals, such as an architect, architectural historian, archeologist, historian, landscape architect, planner, or engineer.

(b) *Terms.* The terms of office of the members of the historic resources board shall be for three years, except that of the initial seven members, two shall be appointed for terms of one year, two shall be appointed for terms of two years and three shall be appointed for terms of three years. A member may serve only two consecutive full terms. Members may be removed with or without cause by an affirmative vote of a majority of the city commission. Vacancies shall be filled for the unexpired term only.

(c) *Officers.* Officers shall consist of a chair and a vice-chair elected by the historic resources board who shall each serve a term of one year and shall be eligible for re-election; but no member shall serve as chair for more than two consecutive years. The chair shall preside over meetings. In the absence of the chair, the vice-chair shall perform the duties of the chair. If both are absent, a temporary chair shall be elected by those present. The city administration in the form of a staff liaison, shall serve as the secretary of the board.

(d) *Meetings.* The quorum for the board shall be four. All decisions or actions of the historic resources board shall be made by a majority vote of those members present and voting at any meeting where a quorum exists. The historic resources board may meet at such times as it deems appropriate and may establish regular meetings. The secretary of the historic resources board shall keep minutes of its proceedings, showing the vote, and shall keep records of its examinations and other official actions, all of which shall be filed in the office of the historic resources board and shall be a public record.

(e) *Continuing education.* The board shall participate in continuing education as required by the city commission.

(f) *Powers and duties.* All of the powers and duties enumerated herein are subject to the approval, denial, or modification by the city commission. Further, all funds necessary to carry out the purpose of this chapter shall be approved and appropriated by the city commission.

In addition to other responsibilities specified in this chapter, the historic resources board may:

(1) Adopt its own bylaws and procedures related to the conduct of meetings subject to the laws of the State of Kansas and the policies and ordinances of the City of Manhattan.

(2) Recommend to the city commission that the city conduct an ongoing survey to identify historically and architecturally significant properties, structures, and areas that exemplify the cultural, social, economic, political, or architectural history of the nation, state, or city.

(3) Identify historic structures, historic sites, and historic districts that are eligible for listing in the Manhattan Register of Historic Places.

(4) Make recommendations to the city commission on applications for designation and the adoption of ordinances designating properties having historic, community, or architectural value as historic structures, historic sites, or historic districts.

(5) Research and recommend to the city commission an appropriate system of markers for designated historic structures, historic sites, and historic districts.

(6) Upon request of the mayor or city commission, provide advice and information to allow the city commission to comment on any nominations to the Register of Historic Kansas Places or the National Register of Historic Places submitted to the city for comment.

(7) Recommend that the city commission inform and educate the citizens of Manhattan concerning the historic and architectural heritage of the city and advise and assist owners of designated historic structures, historic sites, or historic districts of physical and financial aspects of preservation, rehabilitation, and restoration by publishing appropriate maps, newsletters, brochures, and pamphlets, and by holding programs, workshops, and seminars.

(8) Review applications for certificates of appropriateness pursuant to this chapter.

(9) Make recommendations to the city commission regarding funding for the purpose of carrying out the duties and powers of the historic resources board and the purposes of this chapter.

(10) Make recommendations to the city commission regarding retaining such specialists or consultants or recommend appointing such citizen advisory committees as may be required from time to time.

(11) Make comments to other city boards and commissions on any matter affecting significant historic structures, historic sites, and historic districts.

(12) Periodically make recommendations to the city commission regarding actions it deems appropriate for the protection and continued use of significant historic structures, historic sites, and historic districts.

(13) Recommend to the city commission that board members be encouraged to participate in an historic preservation-related educational program each year.

(14) Undertake any other action or activity necessary or appropriate to the implementation of its powers and duties or to the implementation of the purpose of this chapter.

Section 6. The Code of Ordinances of the City of Manhattan is hereby amended by striking Chapter 26, Article II, and inserting Division 6 of Chapter 2, Article VI, to read as follows:

Division 6 – Manhattan Urban Area Planning Board

Section 2-242. - Creation; agreement between county and city.

Pursuant to K.S.A. 12-744, the City does hereby adopt, approve and make effective, the Agreement, dated the sixth day of February, 2001, set forth hereinafter, between Riley County and the City of Manhattan, related to joint cooperation in area planning and zoning. An original of such Agreement, along with Exhibit A attached thereto, after it has been signed by all parties, and has been approved by the Attorney General, shall be placed on file with the City Clerk. The body of such Agreement reads, as follows:

“AGREEMENT BETWEEN THE CITY OF MANHATTAN, KANSAS, AND RILEY COUNTY, KANSAS, RELATING TO JOINT COOPERATION IN PLANNING AND ZONING

“THIS AGREEMENT is hereby entered into, pursuant to K.S.A. 12-744, this 6th day of February, 2001, by and between the City of Manhattan, Kansas, a Municipal Corporation, hereinafter sometimes referred to as the “City”; and the Board of County Commissioners of Riley County, Kansas, hereinafter sometimes referred to as the “County”.

“WHEREAS, the City and the County have previously entered into an agreement (the “Original Agreement”), pursuant to K.S.A. 12-716, which was effective on May 1, 1976; and,

“WHEREAS, the Original Agreement created a Joint Planning Commission (The Manhattan Urban Area Planning Board, hereinafter sometimes referred to as “MUAPB”), to exercise planning functions, both within the corporate limits of the City, and within a designated area outside the City, but within Riley County; and,

“WHEREAS, the Original Agreement was amended by the parties several different times, including, on November 6, 1979, to modify the designated area outside the City; and,

“WHEREAS, the Original Agreement was again amended by the parties in 1981 to provide for a different method of appointing members of MUAPB; and,

“WHEREAS, the City and the County have adopted the Original Agreement and the amendments thereto, by ordinance and resolution respectively; and,

“WHEREAS, the Kansas Legislature has repealed K.S.A. 12-716 and replaced it with K.S.A. 12-744, which now provides the authority for cities and counties to cooperate, by written agreement, in the exercise and performance of planning

powers, duties and functions and to establish a joint planning commission; and,

“WHEREAS, the parties hereto desire to amend, and replace, in their entirety, the Original Agreement and the amendments thereto.

“NOW THEREFORE, in consideration of the mutual promises contained herein, the parties hereto agree as follows:

“1. That the Original Agreement, and all amendments thereto, are hereby amended and replaced, in their entirety, by the provisions set forth hereinafter.

“2. The City and the County hereby agree to cooperate in the exercise and performance of planning powers, duties and functions within the Urban Area, all as more specifically set forth hereinafter.

“3. That the Joint Planning Commission known as the MUAPB, as created by the Original Agreement, and amendments thereto, is hereby continued, as more specifically set forth hereinafter. The MUAPB shall consist of seven (7) members, with three (3) being appointed by the City, pursuant to its own adopted procedure governing the appointment of members to its Boards, and three (3) being appointed by the County, pursuant to its adopted procedures governing the appointment of members to its boards, and one (1) being alternately appointed by the County and the City, again pursuant to the procedures of the appointing body. The members of the MUAPB shall be appointed for three (3) year terms and the members previously appointed pursuant to the Original Agreement shall continue to serve, and their term shall expire at the same time as it would have expired under their original appointment. The alternating appointment between the City and the County shall continue in the same order as it was previously established under the Original Agreement. The members of the MUAPB, while appointed for a term for the convenience of the jurisdiction appointing them, shall serve in that term at the pleasure of the governing body of the jurisdiction appointing them. In order to qualify for service as a member of the MUAPB, a person must reside within the area of the jurisdiction of the MUAPB.

“4. The MUAPB is hereby empowered to carry into effect the provisions of Kansas law delegated to planning commissions, all as set forth in K.S.A. 12-741, et seq., pertaining to matters within the corporate limits of the City of Manhattan, Kansas, and also pertaining to matters within the Urban Area. For the purposes of this Agreement, the Urban Area shall consist of an area lying outside the corporate limits of the City of Manhattan, but within Riley County, the boundaries of which shall be specifically agreed to, in writing, by the governing bodies of the City of Manhattan and Riley County. At the outset of this Agreement, and until modified by written agreement of the parties, the boundaries of the Urban Area are set forth on Exhibit A, attached hereto. The parties hereto agree to review, and modify if necessary, such boundaries on an annual basis, or more frequently, when events occur that cause the administrative staffs of either, or both, governing bodies, to recommend such review and/or modification.

“5. (a) The parties hereto agree to cooperate with each other, and with the MUAPB, in the creation of a single Comprehensive Plan for the City and surrounding Urban Area that is consistent with the City’s growth policies and plans.

“(b) The parties further agree to cooperate with each other, and the MUAPB, in the creation, and maintenance, of sub-division regulations that are consistent for both the Urban Area and the City of Manhattan.

“(c) Any Comprehensive Plan created pursuant to this Agreement shall not be effective until it has been adopted by the MUAPB, pursuant to K.S.A. 12-747, and approved by the governing body of the City, and the Board of the Riley County Commissioners, also pursuant to K.S.A. 12-747.

“6. In addition to those duties **prescribed** by K.S.A. 12-741, et seq., the MUAPB shall continually, when time and priorities permit, make specific recommendations to the governing bodies regarding any matters that might facilitate cooperation between the parties in the providing of governmental services within the Urban Area. Such matters include, by way of example, but are not limited to, the following:

“(a) The adoption of codes relating to minimum standards of housing, building, electrical work, plumbing work, and other related areas.

“(b) The staffing for administration, inspection and enforcement of all of such codes, as well as sub-division regulations and zoning regulations within the Board’s jurisdiction.

“(c) The division of cost between the City and the County related to such cooperation.

“7. Until such time as plans or regulations provided for herein, or recommendations by the MUAPB, are adopted by the City and the County, the separate regulations of the City shall apply within the corporate limits of the City, and the separate regulations of the County shall apply in the unincorporated area. Further, until the City and the County have adopted joint regulations which provide otherwise, the City and the County shall continue to have separate administrative staffs and personnel for administration, inspection and enforcement; however, these separate staffs are directed to work diligently, and cooperatively, in connection with the efforts of the MUAPB and in furtherance of the purposes of this Agreement.

“8. The duration of this Agreement is perpetual unless terminated on January 1 of any given year, by either the City or the County. The party desiring termination shall provide written notice to the other party on, or before, March 1 of the year preceding the effective date of termination.

“9. The parties agree to adopt this Agreement, by official action of

their governing bodies, pursuant to law.”

Sec. 2-243. - Appointed to function as municipal airport zoning commission.

Pursuant to K.S.A. 3-705(2) the governing body appoints the urban area planning board to be the municipal airport zoning commission and to carry out the functions and duties of the same as set out in K.S.A. 3-701 et seq.

Section 7. The following transition standards will apply to development and approvals made before the effective date of this ordinance. Citations in the following standards refer to the Manhattan Development Code (MDC).

A. General Provisions

1. Applicability. Approved development and building plans may be carried out within the scope of the approved plans, including applicable standards and codes in effect at the time of approval, if:
 - A. Construction or development complies with Sec. 26-1A-6, *Vesting*.
 - B. The approval is valid.
 - C. The plans have not expired as set out in the regulations governing the approval in Article 26-9, *Land Development Review* (including Sec. 26-8D-3, *Inactive and Expired Applications*) or any condition of approval.
2. Generally. Except as provided in the follow paragraph, each application for development approval will be evaluated by the regulations that were in effect at the time the application was submitted.
3. Pending Applications. Applications pending on the effective date of this ordinance will be decided in accordance with the law in effect on the date the application was filed, except as specifically provided in Sec. 26-1A-6, *Vesting*. Applications that are not pursued with due diligence may expire pursuant to Sec. 26-1A-6, *Vesting*.
4. Modification. Each applicant having an application pending on the effective date of this ordinance may modify the application in accordance with the standards, procedures, and regulatory provisions of the MDC. Any modification or re-filing of an application is permitted at any time prior to the final disposition of the application, and without payment of any additional application fees.
5. Right to Complete Construction. This ordinance does not require any change in the plans, construction, or designated use of any structure if:
 - A. A building permit for the structure was lawfully issued prior to the effective date of this ordinance.
 - B. The building permit had not by its own terms expired prior to the effective date of this ordinance, or as set out in Sec. 26-8D-3, *Inactive and Expired Applications*.
 - C. Construction pursuant to the building permit was commenced prior to the expiration of the permit and within 90 days of the effective date of

this ordinance, or an amendment to the MDC, and was thereafter diligently pursued to completion.

6. Right to Occupy. Upon completion pursuant to Para. 5, Right to Complete Construction, above, a structure may be occupied by, and a certificate of occupancy may be issued for, the use designated on the building permit, subject to Division 26-8E, *Nonconformities*.
 7. Duration of Approvals. Development approvals that are valid on the effective date of this ordinance are valid for the duration specified in or at the time of approval. If no duration is in effect at the time of the approval, the approval expires in accordance with Sec. 26-8D-3, *Inactive and Expired Applications*, or Sec. 26-1A-6, *Vesting*.
 8. Scope of Approvals. This Section will not be interpreted to confer rights upon an applicant that are not set out within the approved documents associated with each permit.
- B. Variances and Limited and Conditional Use Permits
1. Variances, appeals, exceptions, certificate of occupancy, and conditional use permits approved before the effective date of this Ordinance.
 - A. Any variance, appeal, exception, occupancy permit, or conditional use permit lawfully issued for a lot or parcel of land prior to the effective date of this ordinance, which could be lawfully issued pursuant to the provisions of the MDC, is valid.
 - B. Any structure or use of land lawfully authorized by any variance, appeal, exception, occupancy permit, or conditional use permit, which could not be issued after the effective date of this ordinance may continue subject to Division 26-8E, *Nonconformities*. Except as otherwise established by the Board of Zoning Appeals, variances, occupancy permits, and conditional uses run with the land, not an applicant or owner.
 2. Existing uses of right now changed to a conditional or limited use.
 - A. Any existing structure or use of land established as of right for a lot or parcel of land under any previous zoning regulations, that is changed to a conditional or limited use in the MDC, is a lawful conditional or limited use of land upon the effective date of this ordinance.
 - B. Any existing structure or use recognized as valid in Paragraph 1, above, that is abandoned becomes null and void. The conditional or limited use status is subject to the provisions of Division 26-8E, *Nonconformities*.
 - C. The modification or expansion of a use permitted by right under a prior zoning regulation, and that is now authorized as a conditional or limited use, must comply with all standards for a conditional or limited use approval.
- C. Prior Conditions of Approval
1. Conditions of development approvals that were granted prior to the effective

date of this ordinance remain in force, regardless of the standards of the MDC.

2. Conditions of approvals that were imposed prior to the effective date may be modified or eliminated pursuant to new applications that meet the procedures and standards of the MDC.
- D. Enforcement. The City may secure civil remedies for violations of prior zoning regulations to the same extent that it may secure civil remedies for violations of the MDC pursuant to Division 26-8F, *Enforcement*.
- E. Planned Unit Developments
1. Generally. For land zoned Planned Unit Development (PUD), Preliminary Development Plans approved prior to the effective date of this ordinance may be carried out and are governed according to the terms and conditions of their approvals, unless expressly repealed or modified as provided in Sec. 26-9D-2, *Planned Development*.
 2. Phased Approval. Planned Unit Developments approved prior to the effective date of this ordinance having phases that will be constructed after the effective date, may continue to be implemented through submission of Final Development Plans for each subsequent phase, provided such Final Development Plans are in conformance with the establishing PUD ordinance, the Preliminary Development Plan and subsequent amendments to the PUD Ordinance. If, after the effective date of this ordinance, substantial modifications from the original ordinance and approved development plans are desired, then an amendment to the PUD will be necessary, per the procedures of Section 26-9E-6, *Modification to a Final Development Plan*.
- F. Existing Violations
1. Generally. Any violation of previous versions of the City's zoning regulations are considered a violation of the MDC, and are subject to the penalties and enforcement set out in Division 26-8F, *Enforcement*, as well as those set out in the Sec. 1-7 of the Code of Ordinances, *General Penalty for Violation of Code; Continuing Violations*. However, if the violating use, development, construction, or other activity complies with the provisions of the MDC, the enforcement action will cease, except to the extent of collecting penalties for violations that occurred prior to the effective date of this ordinance.
 2. Fines and Penalties. Payment of fines is required for any civil penalty assessed under the previous regulations, even if the original violation is no longer considered a violation under the MDC.

Section 8. A prior version of the Manhattan Development Code was presented to the Planning Board, which has since been corrected to conform to standardized regulatory text requirements of the Kansas Department of Agriculture, Division of Water Resources, for floodplain development regulations. Therefore, the Governing Body overrides the recommendation of the Planning Board on the prior version of the Manhattan Development Code and adopts the Manhattan Development Code with the required

corrections.

Section 9. This ordinance will take effect and be in force on January 1, 2022.

**PASSED AND ADOPTED THIS 7TH DAY OF DECEMBER, 2021, BY THE
GOVERNING BODY OF THE CITY OF MANHATTAN, KANSAS**

Wynn Butler, Mayor

ATTEST:

Brenda K. Wolf, City Clerk

(PUBLISHED IN *THE MANHATTAN MERCURY* ON DECEMBER 11, 2021)

ORDINANCE NO. 7560 SUMMARY

On December 7, 2021, the governing body of the City of Manhattan, Kansas passed an ordinance entitled:

AN ORDINANCE REPEALING THE MANHATTAN ZONING REGULATIONS AND THE MANHATTAN URBAN AREA SUBDIVISION REGULATIONS, AND ADOPTING A UNIFIED SET OF REGULATIONS AS CHAPTER 26 OF THE CODE OF ORDINANCES OF THE CITY OF MANHATTAN, TITLED THE “MANHATTAN DEVELOPMENT CODE”.

The Ordinance repealed certain existing regulations and sections of the City Code and relating to zoning and the subdivision of land, and adopted a unified set of zoning regulations, the Manhattan Development Code, as Chapter 26 of the City Code. A complete text of the Ordinance may be obtained or viewed free of charge at the office of the City Clerk, City Hall, 1101 Poyntz Avenue, Manhattan, Kansas 66502-5497. A reproduction of the Ordinance is available for not less than 7 days following the publication date of this Summary at www.cityofmhk.com.

This Summary is hereby certified to be legally accurate and sufficient pursuant to the laws of the State of Kansas on December 7, 2021, by City Attorney Katharine Jackson.

City Attorney

Date certified:_____