

HOUSE BILL No. 2019

By Representative Sloan

12-28

9 AN ACT concerning cities and counties; concerning encroachment re-
10 striction districts.

11

12 *Be it enacted by the Legislature of the State of Kansas:*

13 Section 1. (a) As used in this section:

14 (1) "Governing body" means the governing body of a city in the case
15 of cities or the board of county commissioners in the case of counties;

16 (2) "person" means any individual, sole proprietorship, partnership,
17 joint venture, association, trust, estate, business trust, corporation, limited
18 liability company, not-for-profit corporation, federal, state or local gov-
19 ernmental or quasi-governmental unit or agency, instrumentality or po-
20 litical subdivision thereof or any similar entity or organization.

21 (3) "property" means real property; and

22 (4) "district" means an encroachment restriction district created pur-
23 suant to this section.

24 (b) The governing body of a city or county may create, enlarge or
25 dissolve encroachment restriction districts in the manner provided by this
26 section.

27 (c) Any person who owns or possesses any property may submit an
28 application for the creation, enlargement or dissolution of an encroach-
29 ment restriction district to the governing body of the city in the case of
30 property located within the corporate limits of a city or to the board of
31 county commissioners in the case of property located outside the cor-
32 porate limits of a city. Such application shall be on a form provided by
33 the governing body. The application shall be accompanied by any infor-
34 mation deemed necessary by the governing body including, but not lim-
35 ited to, the specific encroachment restrictions requested such as light,
36 noise, height and distance requirements and the reasons such restrictions
37 are necessary or requested. The application also shall include a descrip-
38 tion of the impact of the applicant's operations on property not owned or
39 possessed by the applicant including, but not limited to, noise and noise
40 levels at specific distances and the frequency of such noises. Such infor-
41 mation shall be available to any person seeking to develop or make im-
42 provements to property located within the encroachment restriction dis-
43 trict. Such information shall constitute constructive notice of the activities

1 and shall serve as an affirmative defense to any nuisance claim arising
2 from the noticed activity. Impacts approved in the district shall not be
3 subject to restriction and shall be considered an ambient condition of
4 property located within the district.

5 (d) The governing body shall adopt regulations which are necessary
6 to implement the provisions of this section. Such regulations may include:

7 (1) The procedure for the approval of the creation, enlargement or
8 dissolution of an encroachment restriction district;

9 (2) The time limit within which action shall be taken by the governing
10 body;

11 (3) a scale of application fees;

12 (4) penalties for violations of restrictions imposed pursuant to this
13 section; and

14 (5) any other provision deemed necessary by the governing body.

15 (e) The governing body shall hold a public hearing on the application
16 and shall cause an accurate written summary to be made of the proceed-
17 ings. Notice of such public hearing shall be published at least once in the
18 official city newspaper in the case of property subject to the encroach-
19 ment restriction application located within the corporate limits of a city
20 or in the official county newspaper in the case of property subject to the
21 encroachment restriction application located outside the corporate limits
22 of a city. Such notice shall be published at least 20 days prior to the date
23 of the hearing. Such notice shall fix the time and place for such hearing
24 and shall describe such proposal in general terms. In addition to such
25 publication notice, written notice of the application shall be mailed at
26 least 20 days before the hearing to all owners of record of property within
27 the boundaries of the proposed district and to all owners of record of
28 property located outside the boundaries of the district but within 200 feet
29 of such boundaries. All notices shall include a statement that a complete
30 legal description of the proposed district is available for public inspection
31 and shall indicate where such information is available. At any public hear-
32 ing held to consider the creation or enlargement of a district, an oppor-
33 tunity shall be granted to interested parties to be heard.

34 (f) Following the public hearing, the governing body may approve or
35 disapprove the creation or enlargement of the district as requested in the
36 application or may approve the creation or enlargement of the district
37 with modifications made by the governing body. The governing body shall
38 consider the impact of approving or disapproving the creation or enlarge-
39 ment of the district on the entire community involved in order to ensure
40 the orderly growth and development of the community. Action by the
41 governing body approving or disapproving the creation or enlargement
42 of a district shall be by resolution. A copy of any resolution approving the
43 creation or enlargement of a district shall be filed in the office of the

1 register of deeds of the county in which any part of the district is located.

2 (g) At the time a district is created or enlarged, the governing body
3 may exempt property located within a district from restrictions imposed
4 on other property located within the district.

5 (h) Unless a waiver is granted for a new nonconforming condition in
6 the district, the governing body shall require development of land or land
7 use within a district to comply with the restrictions imposed by the res-
8 olution creating the district. A waiver may be granted upon the written
9 consent of the governing body and the person submitting an application
10 for the creation or extension of the district or such person's successor or
11 designee.

12 Sec. 2. This act shall take effect and be in force from and after its
13 publication in the statute book.