

No. 339, A.]

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CHAPTER 490.

AN ACT to repeal and recreate 59.97 of the statutes, relating to the zoning power of counties.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 59.97 of the statutes is repealed and recreated to read:

59.97 ZONING POWER. (1) EXTENT OF POWER. For the purpose of promoting the public health, safety and the general welfare the county board of any county may by ordinance effective within the areas within such county outside the limits of incorporated villages and cities establish districts of such number, shape and area, and adopt such regulations for each such district as the county board shall deem best suited to carry out the purposes of this section. The powers granted by this section shall be exercised through an ordinance which may determine, establish, regulate and restrict:

(a) The areas within which agriculture, forestry, industry, trades, business and recreation may be conducted.

(b) The areas in which residential uses may be regulated or prohibited.

(c) The areas in and along or in or along natural watercourses, channels, streams and creeks in which trades or industries, filling or dumping, erection of structures and the location of buildings may be prohibited or restricted.

(d) Trailer Camps, or tourist camps and motels or both.

(e) Designate certain areas, uses or purposes which may be subjected to special regulation.

(f) The location of buildings and structures designed for specific uses and designation of uses for which buildings and structures may not be used or altered.

(g) The location, height, bulk, number of stories and size of buildings and other structures.

(h) The location of roads and schools.

(i) Building setback lines.

(j) The density and distribution of population.

(k) The percentage of lot which may be occupied, size of yards, courts and other open spaces.

(2) **FORMATION OF ZONING ORDINANCE: PROCEDURE.** (a) The county board shall designate the county park commission, rural planning board, county highway committee, or a special zoning committee which it may create, as its agency in all matters pertaining to county zoning. When such agency shall be directed by the county board to draft a proposed zoning ordinance for its consideration, the agency shall do all things necessary to comply with such direction, including the collection and analysis of pertinent data, the drafting of a tentative ordinance and the layout of tentative districts either by maps or words of description, holding public hearings, preparation of a proposed final draft, and its submission to the county board for its consideration prior to adoption. In any county in which a zoning ordinance has been finally adopted and is in force, the zoning agency designated by the county board shall oversee the administration of such ordinance and to this end such agency shall meet at least once each year.

(b) When the county zoning agency shall have completed a draft of a proposed zoning ordinance, it shall hold a public hearing or hearings thereon, following notice of such hearing by publication at least once each week for 3 successive weeks in the official newspaper of the county, or if there be none, in a newspaper of general circulation in the county. After such hearing the agency may make such revisions in the draft as it shall deem necessary, or it may submit the draft without revision to the county board with recommendations for adoption. Proof of publication of the notice of the public hearing held by such agency shall be attached to its report to the county board.

(c) When the draft of such ordinance, recommended for adoption by the zoning agency, is received by the county board, it may adopt the ordinance as submitted, or reject it, or return it to the agency with such recommendations as the county board may see fit to make. In the event of such return subsequent procedure by the agency shall be as if the agency were acting under the original directions. When adopted, duplicate copies of the ordinance shall be submitted by the county clerk by registered mail to each town clerk for consideration by the town board.

(d) A county ordinance adopted as provided by this section shall not be effective in any town until it has been approved by the town board. If the town board approves an ordinance adopted by the county board, as provided by this section, a certified copy of the approving resolution attached to one of the copies of such ordinance submitted to the town board shall promptly be filed with the county clerk by the town clerk. Such ordinance shall become effective in such town as of the date of such filing, which filing shall be recorded by the county clerk in his office, reported to the town board and the county board, and printed in the proceedings of the county board. Such ordinance shall supersede any prior town ordinance in conflict therewith or which is concerned with zoning, except as provided by section 60.74 (7).

(3) **AMENDMENTS: CHANGES.** (a) The county board may amend the regulations of an ordinance or change the district boundaries. The procedure with reference to such amendments or changes shall be as follows:

(b) A petition for amendment of any county zoning ordinance may be made by any property owner in the area to be affected by the amendment, by the town board of any town wherein the ordinance is in effect; by any member of the county board or by the agency designated by the county board to consider zoning matters as provided in subsection (2) (a). Such petition shall be filed with the county clerk who shall present it to the county board at its next succeeding meeting.

(c) At such meeting of the county board the petition shall be referred directly to the agency designated by the county board to consider county zoning matters as provided in subsection (2) (a) for its consideration, report and recommendations.

(d) Upon receipt of such petition by such agency it shall call a public hearing thereon. Notice of the time and place of such hearing shall be given by publication thereof once each week for 3 successive weeks in the official newspaper of the county or if there be none in a newspaper of general circulation in the county. A copy of such notice shall be mailed by registered mail to the town clerk of each town affected by the proposed amendment at least 10 days prior to the date of such hearing.

(e) As soon as possible after such public hearing, the agency shall act on such petition either approving, modifying and approving, or disapproving of the same. If its action is favorable to granting the requested change or any modification thereof, it shall cause an ordinance to be drafted effectuating its determination and shall submit such proposed ordinance directly to the county board with its recommendations. If the agency after its public hearing shall recommend denial of the petition it shall report its recommendation directly to the county board with its reasons for such action. Proof of publication of the notice of the public hearing held by such agency and proof of the giving of notice to the town clerk of such hearing shall be attached to either such report.

(f) Upon receipt of such agency report the county board may adopt the ordinance as drafted by the zoning agency or with amendments, or it may deny the petition for amendment, or it may refuse to deny the petition as recommended by the agency in which case it shall re-refer the petition to the agency with directions to draft an ordinance to effectuate the petition, hold a public hearing thereon and report the same back to the county board which may then adopt or reject such ordinance. In case a protest against a proposed amendment be filed with the county clerk at least 24 hours prior to the date of the meeting of the county board at which the report of the zoning agency is to be considered, duly signed and acknowledged by the owners of 20 per cent or more of the area proposed to be altered, or by the owners of at least 20 per cent of the frontage immediately in the rear or along the side boundaries thereof within 300 feet of the area proposed to be changed, or by the owners of at least 20 per cent of the frontage directly opposite and across a public street, highway or alley, from the area proposed to be altered, action on such ordinance may be deferred until the zoning agency shall have had a reasonable opportunity to ascertain and report to the county board as the authenticity of such ownership statements. Each signer shall state the amount of area or frontage owned by him and shall include a description of the lands owned by him. If such statements are found to be true, such ordinance shall not be adopted except by the affirmative vote of three-fourths of the members of the county board of supervisors present and voting. If such statements are found to be untrue to the extent that the required frontage or area ownership is not present such protest may be disregarded.

(g) Any such amendatory ordinance when so adopted shall within 7 days thereafter be submitted in duplicate by the county clerk by registered mail to the town clerk of each town in which lands affected by such ordinance are located. If after 40 days from the date of such adoption a majority of such towns have not filed certified copies of resolutions disapproving such amendment with the county clerk, or if, within a shorter time a majority of the towns in which the ordinance is in effect have filed certified copies of resolutions approving the amendment with the county clerk, the amendment shall thereupon be in full force and effect in all of the towns affected by the ordinance. Any such ordinance relating to the location of boundaries of districts shall within 7 days after adoption by the county board be transmitted by the county clerk by registered mail only to the town clerk of the town in which the lands affected by such change are located and shall become effective 40 days after the adoption of the ordinance by the county board unless such town board shall prior to such date file a certified copy of a resolution disapproving of such ordinance with the county clerk provided that if such town board shall approve of such ordinance, said ordinance shall become effective upon the filing of the resolution of the town board approving same with the county clerk. The county clerk shall record in his office the date on which such ordinance becomes effective and he shall notify the town clerk of all towns affected by such ordinance of such effective date and also make such report to the county board, which report shall be printed in the proceedings of the county board.

(4) OPTIONAL ADDITIONAL PROCEDURES. Nothing in this section shall be construed to prohibit the zoning agency or the county board or a town board from adopting any procedures, formal or informal, in addition to those prescribed in this section and not in conflict therewith. Such procedures may, but are not required to, provide for public hearings before the county board. The public hearing provided by subsections (2) (b) and (3) (a) is deemed to be sufficient for the requirements of due process whether or not the county board holds a further public hearing thereafter.

(5) EXCHANGE OF TAX DEEDED LANDS. When any county acquires lands by tax deeds,

the county board may exchange any such lands for other lands in the county for the purpose of promoting the regulation and restriction of agricultural and forestry lands.

(6) **ZONING OF COUNTY OWNED LANDS.** The county board may by ordinance zone and rezone any lands owned by the county without necessity of securing the approval of the town boards of the towns wherein such lands are situated and without following the procedure outlined in subsections (2) and (3), provided that the county board shall give written notice to the town board of the town wherein such lands are situated of its intent to so rezone and shall hold a public hearing on the proposed rezoning ordinance and give notice of such hearing by posting in 5 public places in the town.

(7) **NONCONFORMING USES.** (a) An ordinance under this section shall not prohibit the continuance of the lawful use of any building or premises for any trade or industry for which such building or premises is used at the time such ordinances take effect, but the alteration of, or addition to, or repair in excess of 50 per cent of its assessed value of any existing building or structure for the purpose of carrying on any prohibited trade or new industry within the district where such buildings or structures are located, may be prohibited. The continuance of the nonconforming use of a temporary structure may be prohibited.

(b) The county board shall designate an officer to administer the zoning ordinance, who may be the secretary of the zoning agency or other appropriate person. The officer thus designated shall cause a record to be made immediately after the approval of an ordinance or amendment thereto, or change in district boundary, approved by the town board, of all lands, premises and buildings in the town used for purposes not conforming to the regulations applicable to the district in which they are situated. Such record shall include the legal description of the lands, the nature and extent of the uses therein, and the names and addresses of the owner or occupant or both. Promptly on its completion such record shall be published for 3 successive weeks in the official county newspaper, or if there be none, in a newspaper having general circulation in the county. Such record, as corrected, shall be on file with the register of deeds 60 days after the last publication and shall be prima facie evidence of the extent and number of nonconforming uses existing on the effective date of the ordinance in the town. Corrections prior to the filing of the record with the register of deeds may be made on the filing of sworn proof in writing, satisfactory to the officer administering the zoning ordinance.

(c) The county board shall prescribe a procedure for the annual listing of nonconforming uses, discontinued or created, since the previous listing and for all other nonconforming uses. Discontinued and newly created nonconforming uses shall be recorded with the register of deeds immediately after the annual listing.

(d) Paragraphs (b) and (c) shall not apply to those counties issuing building permits or occupancy permits as a means of enforcing the zoning ordinance or to counties which have provided other procedures for this purpose.

(8) **PROCEDURE FOR ENFORCEMENT OF COUNTY ZONING ORDINANCE.** The county board shall prescribe such rules and regulations and administrative procedures, and provide such administrative personnel as it may deem necessary for the enforcement of the provisions of this section, and all ordinances enacted in pursuance thereof. Such rules and regulations and the districts, setback building lines and regulations authorized by this section, shall be prescribed by ordinances which shall be declared to be for the purpose of promoting the public health, safety and the general welfare. Such ordinances shall be enforced by appropriate fines and penalties. Compliance with such ordinances may also be enforced by injunctive order at the suit of such county or the owner or owners of real estate within the district affected by such regulation.

(9) **PREVIOUS ORDINANCES EFFECTIVE.** Nothing in this section shall invalidate any county zoning ordinance adopted pursuant to statutes in effect prior to the effective date of this section.

(10) **CONSTRUCTION OF SECTION.** The powers herein granted shall be liberally construed in favor of the county exercising them, and this section shall not be construed to limit or repeal any powers now possessed by any such county.

(11) Nothing contained in this section shall operate to invalidate any county zoning ordinance passed pursuant to statutes in effect prior to the effective date of this section. Any petition for adoption of a county zoning ordinance or amendment of any existing county zoning ordinance on file with the county board of any county prior to the aforesaid effective date shall be processed according to the provisions of section 59.97, statutes of 1949.

(12) A land owner, occupant or other person affected by a county zoning ordinance or amendment thereto, who claims that such ordinance or amendment is invalid because procedures prescribed by the statutes or the ordinance, were not followed, shall be forever

barred unless court action thereon is commenced within the following periods: By January 1, 1952 for ordinances or amendments adopted on or before July 1, 1951. Within 6 months after adoption, for ordinances or amendments adopted subsequent to July 1, 1951. Provided, that this subsection shall not apply unless there has been at least one publication of a notice of a zoning hearing in a local newspaper of general circulation and unless there has been held a public hearing on the ordinance or amendment at the time and place specified in such notice.

Approved June 27, 1951.
