

CHAPTER 1245

LAND USE

S.F. 2218

AN ACT relating to the uses of land in this state by requiring inventories by county organizations, authorizing agricultural land preservation ordinances, county land use plans and agricultural areas and providing for certain preferences and restrictions on certain proceedings and assessments.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Chapter 93A, Code 1981, is amended by striking the chapter and inserting in lieu thereof sections 2 through 14 of this Act.

Sec. 2. **NEW SECTION. PURPOSE.** It is the intent of the general assembly and the policy of this state to provide for the orderly use and development of land and related natural resources in Iowa for residential, commercial, industrial, and recreational purposes, preserve private property rights, protect natural and historic resources and fragile ecosystems of this state including forests, wetlands, rivers, streams, lakes and their shorelines, aquifers, prairies, and recreational areas to promote the efficient use and conservation of energy resources, to promote the creation and maintenance of wildlife habitat, to consider the protection of soil from wind and water erosion and preserve the availability and use of agricultural land for agricultural production, through processes that emphasize the participation of citizens and local governments.

The general assembly recognizes the importance of preserving the state's finite supply of agricultural land. Conversion of farmland to urban development, and other nonfarm uses, reduces future food production capabilities and may ultimately undermine agriculture as a major economic activity in Iowa.

It is the intent of the general assembly to provide local citizens and local governments the means by which agricultural land may be protected from nonagricultural development pressures. This may be accomplished by the creation of county land preservation and use plans and policies, adoption of an agricultural land preservation ordinance, or establishment of agricultural areas in which substantial agricultural activities are encouraged, so that land inside these areas or subject to those ordinances is conserved for the production of food, fiber, and livestock, thus assuring the preservation of agriculture as a major factor in the economy of this state.

Sec. 3. **NEW SECTION. DEFINITIONS.** As used in this chapter unless the context otherwise requires:

1. "Agricultural area" means an area meeting the qualifications of section 7 of this Act and designated under section 8 of this Act.

2. "County board" means the county board of supervisors.

3. "County commission" means the county land preservation and use commission.

4. "Farm" means the land, buildings, and machinery used in the commercial production of farm products.

5. "Farm operation" means a condition or activity which occurs on a farm in connection with the production of farm products and includes but is not limited to the marketing of products at

roadside stands or farm markets, the creation of noise, odor, dust, fumes, the operation of machinery and irrigation pumps, ground and aerial seeding and spraying, the application of chemical fertilizers, conditioners, insecticides, pesticides, and herbicides, and the employment and use of labor.

6. "Farm products" means those plants and animals and their products which are useful to people and includes but is not limited to forages and sod crops, grains and feed crops, dairy and dairy products, poultry and poultry products, livestock, fruits, vegetables, flowers, seeds, grasses, trees, fish, honey, and other similar products, or any other plant, animal, or plant or animal product which supplies people with food, feed, fiber, or fur.

7. "Nuisance" means a public or private nuisance as defined either by statute, administrative rule, ordinance, or the common law.

8. "Nuisance action or proceeding" means an action, claim, or proceeding, whether brought at law, in equity, or as an administrative proceeding, which is based on nuisance.

9. "Farmland" means those parcels of land suitable for the production of farm products.

Sec. 4. NEW SECTION. COUNTY LAND PRESERVATION AND USE COMMISSIONS ESTABLISHED.

1. In each county a county land preservation and use commission is created composed of the following members:

- a. One member appointed by and from the county agricultural extension council.
- b. Two members appointed by the district soil conservation commissioners, one of whom must be a member of the district soil conservation board of commissioners and one must be a person who is not a commissioner, but is actively operating a farm in the county.
- c. One member appointed by the board of supervisors from the residents of the county who may be a member of the board.
- d. One member appointed by and from a convention of the mayors and councilpersons of the cities of the county. If a participating city contains fifty percent or more of the total population of the participating cities, that city may appoint the member appointed under this paragraph.

However, if a city contains more than fifty percent of the population of a county which has a population exceeding fifty thousand persons, that city shall not participate in the convention of mayors and councilpersons and the members appointed under paragraph d shall be one member appointed by and from the mayor and councilpersons of that city and one member appointed by and from the convention of mayors and councilpersons and the member appointed under paragraph c shall be a resident of the county engaged in actual farming operations appointed by the board of supervisors.

2. The county commission shall meet and organize by the election of a chairperson and vice chairperson from among its members by October 1, 1982. A majority of the members of the county commission constitutes a quorum. Concurrence of a quorum is required to determine any matter relating to its official duties.

3. The state agricultural extension service shall provide county commissions with technical, informational, and clerical assistance.

4. A vacancy in the county commission shall be filled in the same manner as the appointment of the member whose position is vacant. The term of a county commissioner is four years. However, in the initial appointments to the county commission, the members appointed under paragraphs a and b of subsection 1 shall be appointed to terms of two years. Members may be appointed to succeed themselves.

Sec. 5. NEW SECTION. COUNTY INVENTORIES.

1. Each county commission shall compile a county land use inventory of the unincorporated areas of the county by January 1, 1984. The county inventories shall where adequate data is available contain at least the following:

a. The land available and used for agricultural purposes by soil suitability classifications or land capability classification, whichever is available.

b. The lands used for public facilities, which may include parks, recreation areas, schools, government buildings and historical sites.

c. The lands used for private open spaces, which may include woodlands, wetlands and water bodies.

d. The land used for each of the following uses: commercial, industrial including mineral extraction, residential and transportation.

e. The lands which have been converted from agricultural use to residential use, commercial or industrial use, or public facilities since 1960.

2. In addition to that provided under subsection 1, the county inventory shall also contain the land inside the boundaries of a city which is taxed as agricultural land.

3. The information required by subsection 1 shall be provided both in narrative and map form. The county commission shall provide a cartographic display which contrasts the county's present land use with the land use in the county in 1960 based on the best available information. The display need only show the areas in agriculture, private open spaces, public facilities, commercial, industrial, residential and transportation uses.

4. The state department of agriculture, office for planning and programming, department of soil conservation, state conservation commission, Iowa natural resources council, department of environmental quality, geological survey, state agricultural extension service, and the Iowa development commission shall, upon request, provide to each county commission any pertinent land use information available to assist in the compiling of the county land use inventories.

Sec. 6. NEW SECTION. COUNTY LAND PRESERVATION AND USE PLAN.

1. By September 1, 1984, after at least one public hearing, a county commission shall propose to the county board a county land use plan for the unincorporated areas in the county, or it shall transmit to the county board the county land use inventory completed pursuant to section 5 of this Act together with a set of written findings on the following factors considered by the county commission:

a. Methods of preserving agricultural lands for agricultural production.

b. Methods of preserving and providing for recreational areas, forests, wetlands, streams, lakes and aquifers.

c. Methods of providing for housing, commercial, industrial, transportation and recreational needs.

d. Methods to promote the efficient use and conservation of energy resources.

e. Methods to promote the creation and maintenance of wildlife habitat.

f. Methods of implementing the plan, if adopted, including a formal countywide system to allow variances from the county plan that incorporates the examination of alternative land uses and a public hearing on such alternatives.

g. Methods of encouraging the voluntary formation of agricultural areas by the owners of farmland.

h. Methods of considering the platting of subdivisions and its effect upon the availability of farmland.

2. Upon receipt of the inventory and findings, the county board may direct the county commission to prepare a county land use plan for the consideration of the county board.

3. Upon receipt of a plan, the county board may rerefer the plan to the county commission for modification, reject the plan or adopt the plan either as originally submitted or as modified.

If the plan is approved by the county board, it shall be the land use policy of the county and shall be administered and enforced by the county in the unincorporated areas. The county commission shall review the county plan periodically for the purpose of considering amendments to it. If the commission proposes amendments to the plan, it shall forward the proposal to the county board which may rerefer the amendments to the commission for modification or reject or adopt the amendments.

4. Within thirty days after the completion of the county land use inventory compiled pursuant to section 5 of this Act or any county land use plan or set of written findings completed pursuant to section 6 of this Act, the county commission shall transmit one copy of each to the interagency resource council.

Sec. 7. **NEW SECTION. CREATION OF AGRICULTURAL AREAS.** An owner of farmland may submit a proposal to the county board for the creation of an agricultural area within the county. An agricultural area, at its creation, shall include at least five hundred acres of farmland, however, a smaller area may be created if the farmland is adjacent to farmland subject to an agricultural land preservation ordinance pursuant to section 15 of this Act. The proposal shall include a description of the proposed area, including its boundaries. The territory shall be as compact and as nearly adjacent as feasible. Land shall not be included in an agricultural area without the consent of the owner. Agricultural areas shall not exist within the corporate limits of the city. Agricultural areas may be created in a county which has adopted zoning ordinances. Except as provided in this section, the use of the land in agricultural areas is limited to farm operations.

1. The following shall be permitted in an agricultural area:

a. Residences constructed for occupation by a person engaged in farming or in a family farm operation. Nonconforming preexisting residences may be continued in residential use.

b. Property of a telephone company, city utility as defined in section 390.1, public utility as defined in section 476.1, or pipeline company as defined in section 479.2.

2. The county board of supervisors may permit any use not listed in subsection 1 in an agricultural area only if it finds all of the following:

a. The use is not inconsistent with the purposes set forth in section 2 of this Act.

b. The use does not interfere seriously with farm operations within the area.

c. The use does not materially alter the stability of the overall land use pattern in the area.

Sec. 8. **NEW SECTION. DUTIES OF COUNTY BOARD.**

1. Within thirty days of receipt of a proposal for an agricultural area which meets the statutory requirements, the county board shall provide notice of the proposal by publishing notice in a newspaper of general circulation in the county. Within forty-five days after receipt, the county board shall hold a public hearing on the proposal.

2. Within sixty days after receipt, the county board shall adopt the proposal or any modification of the proposal it deems appropriate, unless to do so would be inconsistent with the purposes of this chapter.

Sec. 9. **NEW SECTION. REQUIREMENT THAT DESCRIPTION OF AGRICULTURAL AREAS BE FILED WITH COUNTY AUDITOR AND COUNTY RECORDER.** Upon the creation of an agricultural area, its description shall be filed by the county board with the county auditor and placed on record in the office of the county recorder.

Sec. 10. **NEW SECTION. WITHDRAWAL.** At any time after three years from the date of creation of an agricultural area, an owner may withdraw from an agricultural area by filing with the county board a request for withdrawal containing a legal description of the land to be withdrawn and a statement of the reasons for the withdrawal. The county board shall, within sixty days of receipt of the request, approve or deny the request for withdrawal. At any time after six years from the date of creation of an agricultural area, an owner may withdraw from an agricultural area by filing with the county board a notice of withdrawal containing a legal description of the land to be withdrawn.

The board shall cause the description of that agricultural area filed with the county auditor and recorded with the county recorder to be modified to reflect any withdrawal. Withdrawal shall be effective on the date of recording. The agricultural area from which the land is withdrawn shall continue in existence even if smaller than five hundred acres after withdrawal.

Sec. 11. NEW SECTION. LIMITATION ON POWER OF CERTAIN PUBLIC AGENCIES TO IMPOSE PUBLIC BENEFIT ASSESSMENTS OR SPECIAL ASSESSMENTS. A political subdivision or a benefited district providing public services such as sewer, water, or lights or for nonfarm drainage shall not impose benefit assessments or special assessments on land used primarily for agricultural production within an agricultural area on the basis of frontage, acreage, or value, unless the benefit assessments or special assessments were imposed prior to the formation of the agricultural area, or unless the service is provided to the landowner on the same basis as others having the service.

Sec. 12. NEW SECTION. INCENTIVES FOR AGRICULTURAL LAND PRESERVATION.

1. NUISANCE RESTRICTION. A farm or farm operation located in an agricultural area shall not be found to be a nuisance regardless of the established date of operation or expansion of the agricultural activities of the farm or farm operation. The subsection does not apply if the nuisance results from the negligent operation of the farm or farm operation. This subsection does not apply to actions or proceedings arising from injury or damage to person or property caused by the farm or farm operation before the creation of the agricultural area. This subsection does not affect or defeat the right of a person to recover damages for injury or damage sustained by the person because of the pollution or change in condition of the waters of a stream, the overflowing of the person's land, or excessive soil erosion onto another person's land.

2. WATER PRIORITY. In the application for a permit to divert, store, or withdraw water and in the allocation of available water resources under a water permit system, the Iowa natural resources council shall give priority to the use of water resources by a farm or farm operations, exclusive of irrigation, located in an agricultural area over all other uses except the competing uses of water for ordinary household purposes.

Sec. 13. NEW SECTION. STATE REGULATION. In order to accomplish the purposes set forth in section 2 of this Act, a rule adopted by a state agency after the effective date of this Act which would restrict or regulate farms or farm operations may contain standards which are less restrictive for farms or farm operations inside an agricultural area than for farms or farm operations outside such an area. A rule containing such a discrimination shall not for the fact of such discrimination alone be found or held to be unreasonable, arbitrary, capricious, beyond the authority delegated to the agency, or characterized by an abuse of discretion or clearly unwarranted exercise of discretion.

Sec. 14. NEW SECTION. STATE INTERAGENCY RESOURCE COUNCIL. The state interagency resource council shall:

1. Serve as a center to gather information from various resources and agencies and disseminating this information to the county commissions.
2. Receive the county inventories and compile a statewide summary of the information contained in the inventories and submit the summary to the general assembly.
3. Distribute information beneficial to the county commissions for preparing the county plan.
4. Disseminate beneficial information or procedures developed by one or more counties to other counties.
5. Receive and maintain a record of individual county plans.

Sec. 15. Chapter 358A, Code 1981, is amended by adding the following new section:

NEW SECTION. AGRICULTURAL LAND PRESERVATION ORDINANCE. If a county adopts an agricultural land preservation ordinance under this chapter which subjects farmland to the same use restrictions provided in section 7 of this Act for agricultural areas, sections 11 through 13 and section 19 of this Act shall apply to farms and farm operations which are subject to the agricultural land preservation ordinance.

Sec. 16. Section 358A.2, Code 1981 Supplement, is amended to read as follows:

358A.2 FARMS EXEMPT. ~~No~~ Except to the extent required to implement section 15 of this Act, no ordinance adopted under this chapter applies to land, farm houses, farm barns, farm outbuildings or other buildings or structures which are primarily adapted, by reason of nature and area, for use for agricultural purposes, while so used. However, the ordinances may apply to any structure, building, dam, obstruction, deposit or excavation in or on the flood plains of any river or stream.

Sec. 17. Section 358A.5, unnumbered paragraph 1, Code 1981 Supplement, is amended to read as follows:

~~Such~~ The regulations shall be made in accordance with a comprehensive plan and designed to preserve the availability of agricultural land; to consider the protection of soil from wind and water erosion; to encourage efficient urban development patterns; to lessen congestion in the street or highway; to secure safety from fire, flood, panic, and other dangers; to protect health and the general welfare; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; to promote the conservation of energy resources; to promote reasonable access to solar energy; and to facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirements. However, provisions of this section relating to the objectives of energy conservation and access to solar energy shall not be construed as voiding any zoning regulation existing on July 1, 1981, or to require zoning in a county that did not have zoning prior to July 1, 1981.

Sec. 18. Section 414.3, unnumbered paragraph 1, Code 1981, as amended by Acts of the Sixty-ninth General Assembly, 1981 Session, chapter 125, section 2, is amended to read as follows:

~~Such~~ The regulations shall be made in accordance with a comprehensive plan and designed to preserve the availability of agricultural land; to consider the protection of soil from wind and water erosion; to encourage efficient urban development patterns; to lessen congestion in the street; to secure safety from fire, flood, panic, and other dangers; to promote health and the general welfare; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; to promote the conservation of energy resources; to promote reasonable access to solar energy; and to facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements. However, provisions of this section relating to the objectives of energy conservation and access to solar energy shall do not be construed as voiding void any zoning regulation existing on the effective date of this Act July 1, 1981, or to require zoning in a city that did not have zoning prior to the effective date of this Act July 1, 1981.

Sec. 19. Section 472.3, Code 1981, is amended by adding the following new subsection:

NEW SUBSECTION. If the damages are to be paid by the state and the land to be condemned is within an agricultural area as provided in chapter 93A, a statement disclosing whether any of that land is classified as class I or class II land under the United States department of agriculture soil conservation service land capability classification system contained in the agriculture handbook number 210, 1961 edition and, if so classified, stating that the class I or class II land is reasonably necessary for the work of internal improvement for which condemnation is sought.

Sec. 20. This Act does not invalidate any part of a zoning ordinance which is in effect on the effective date of this Act, or require the adoption of a zoning ordinance by any subdivision of the state.

Approved May 14, 1982