

**47-6-10. County subdivision regulations; hearings; appeal.**

In promulgating subdivision regulations, the board of county commissioners shall adhere to the following procedures.

A. Prior to adopting, amending or repealing any regulation, the board of county commissioners shall consult with representatives of the state engineer's office, the department of environment, the office of cultural affairs, all soil and water conservation districts within the county, the state highway and transportation department and the attorney general about the subjects within their respective expertise for which the board of county commissioners is considering promulgating a regulation. In the process of the consultation, the representatives of each of the state agencies shall give consideration to the conditions peculiar to the county and shall submit written guidelines to the board of county commissioners for its consideration in formulating regulations. The guidelines:

(1) shall be given consideration by the board of county commissioners in the formulation of the county's subdivision regulations;

(2) shall become a part of the record of any hearing in which regulations are adopted, amended or repealed; and

(3) may be in such detail as the agency involved desires.

B. A regulation may not be adopted, amended or repealed until after a public hearing held by the board of county commissioners. Notice of the hearing shall be given at least thirty days prior to the hearing date and shall state:

(1) the subject of the regulation;

(2) the time and place of the hearing;

(3) the manner in which interested persons may present their views; and

(4) the place and manner in which interested persons may secure copies of any proposed regulation. The board of county commissioners may impose a reasonable charge for the costs of reproducing and mailing of the proposed regulations.

C. The notice shall be published in a newspaper of general circulation in the county.

D. Reasonable effort shall be made to give notice to all persons who have made a written request to the board of county commissioners for advance notice of its hearings.

E. The board of county commissioners shall give the state engineer, the department of environment, the office of cultural affairs, the state highway and transportation department, all soil and water conservation districts within the county and the attorney general thirty days' notice of its regulation hearings.

F. At the hearing, the board of county commissioners shall allow all interested persons reasonable opportunity to submit data, views or arguments, orally or in writing, and to examine witnesses testifying at the hearing. The board shall keep a complete record of the hearing proceedings.

G. Representatives from the state engineer's office, the department of environment, the office of cultural affairs, all soil and water conservation districts within the county, the state highway and transportation department and the attorney general shall be given the opportunity to make an oral statement at the hearing and to enter into the record of the hearing a written statement setting forth any comments that they may have about the proposed regulation, whether favorable or unfavorable, when the proposed regulation relates to an issue that is within the agencies' respective areas of expertise.

H. A regulation is not invalid because of the failure of a state agency to submit a guideline prior to the promulgation of the regulation or because the representative of a state agency did not appear at a public hearing on the regulation or did not make any comment for entry in the hearing record.

I. The board of county commissioners shall act on the proposed regulations at the regulation hearings or at a public meeting to be held within thirty days of the hearing on the proposed regulations. Upon adopting, amending or repealing the regulations, the board of county commissioners shall include in the record a short statement setting forth the board's reasoning and the basis of the board's decision, including the facts and circumstances considered and the weight given to those facts and circumstances.

J. Any person heard or represented at the hearing shall be given written notice of the board's decision, including the facts and circumstances considered, if the person makes a written request to the board for notice of its decision.

K. A regulation, amendment or repeal is not effective until thirty days after it is filed with the county clerk and the state records administrator.

L. Any person who is or may be adversely affected by a decision of the board of county commissioners to adopt, amend or repeal a regulation may appeal that decision to the district court. All appeals shall be upon the record made at the hearing and shall be filed in the district court within thirty days after the board of county commissioners votes to adopt, amend or repeal the regulation.

M. An appeal is perfected by filing a notice of appeal in the district court of the county that has adopted, amended or repealed the regulation. The appellant shall certify in his notice of appeal that arrangements have been made with the board of county commissioners for preparation of a sufficient number of transcripts of the record of the hearing to support his appeal, including one copy that he shall furnish at his own expense to the board of county commissioners. A copy of the notice of appeal shall also be served upon the board of county commissioners.

N. Upon appeal, the district court shall set aside the regulation only if it is found to be:

- (1) arbitrary, capricious or an abuse of discretion;
- (2) not supported by substantial evidence; or
- (3) otherwise not in accordance with law.

O. Any party to the action in district court may appeal to the court of appeals for further relief.

**History:** 1953 Comp., § 70-5-10, enacted by Laws 1973, ch. 348, § 10; 1977, ch. 253, § 71; 1995, ch. 212, § 10.

**Cross references.** — For procedures governing administrative appeals to the district court, see Rule 1-074 NMRA.

**The 1995 amendment,** effective July 1, 1996, rewrote the section to such an extent that a detailed comparison would be impracticable.

**Compiler's notes.** — For scope of review of the district court, see *Zamora v. Village of Ruidoso Downs*, 120 N.M. 778, 907 P.2d 182 (1995).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 83 Am. Jur. 2d Zoning and Planning §§ 765, 768, 769, 779, 780, 1026.

Validity and construction of statutory notice requirements prerequisite to adoption or amendment of zoning ordinance or regulation, 96 A.L.R.2d 449.

62 C.J.S. Municipal Corporations §§ 226(11), (12), 228(4).