

Title 5 - Municipal Corporations

CHAPTER 23.

ZONING AND PLANNING

1994 Act No. 355, SECTION 2, provides as follows:

"SECTION 2. Chapter 27 of Title 4, Chapter 23 of Title 5, Section 6-7-310 through Section 6-7-1110, and Act 129 of 1963 are repealed, effective five years from the date of approval of this act by the Governor [approved May 3, 1994]. At the end of five years, all local planning programs must be in conformity with the provisions of this act. During the intervening five years, this act is cumulative and may be implemented at any time."

For new provisions, see SECTIONS 6-29-310 et seq.

ARTICLE 1.

ZONING

SECTION 5-23-10. Building and zoning regulations authorized.

For the purpose of promoting health, safety, morals or the general welfare of the community, the legislative body of cities and incorporated towns may by ordinance regulate and restrict the height, number of stories and size of buildings and other structures, the percentage of lot that may be occupied, the size of yards, courts and other open spaces, the density of population and the location and use of buildings, structures and land for trade, industry, residence or other purposes. No city or town shall pass an ordinance regulating the thickness of walls of buildings which conflicts with the laws of the State.

SECTION 5-23-20. Division of municipality into districts; regulations as to nonconformities.

For any or all of the purposes provided in SECTION 5-23-10, the local municipal governing body may divide the municipality into districts of such number, shape, and area as may be considered best suited to carry out the purposes of this article. Within the districts it may regulate and restrict the erection, construction, reconstruction, alteration, repair, or use of buildings, structures, or land. It may require off-street parking and loading. All the regulations must be uniform for each class or kind of building throughout each district, except as provided in SECTION 5-23-47, but the regulations in one district may differ from those in other districts. The regulations may provide that land, buildings, and structures and the uses which are lawful at the time of enactment or amendment of zoning regulations may be continued although not in conformity with the regulations or amendments, hereinafter called a nonconformity. The municipal governing body, upon recommendation of the zoning commission, may provide in the zoning ordinance for the continuance, restoration, reconstruction, extension, or substitution of nonconformities.

SECTION 5-23-30. City plan; purposes; considerations.

Such regulations shall be made in accordance with a comprehensive plan and shall be designed to lessen congestion in the streets, to secure safety from fire, 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 and to facilitate the adequate provision of transportation, water, sewage, schools, parks and other public requirements. Such regulations shall be made with reasonable consideration, among other things, to the character of the district and its peculiar suitability for particular uses and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout such municipality.

SECTION 5-23-40. Manner of adopting regulations; hearing; notices thereof; time limit on challenges.

The legislative body of such municipality shall provide for the manner in which such regulations and restrictions and the boundaries of such districts shall be determined, established and enforced and from time to time amended, supplemented or changed. But no such regulation, restriction or boundary shall become effective until after a public hearing in relation thereto, at which parties in interest and citizens shall have an opportunity to be heard. Two notices of such hearing shall be published in an official paper or paper of general circulation in the municipality. One notice shall be published at least thirty days prior to the hearing and the second notice at least fifteen days prior thereto. The notices shall be blocked in and shall have an appropriate descriptive title.

No challenge to the adequacy of notice or challenge to the validity of a regulation, restriction, boundary or map, or amendment thereto, whether enacted before or after the effective date of this section because of inadequacy of notice, shall be made more than two years after the public hearing, if there has been substantial compliance with the notice requirements of this section.

SECTION 5-23-43. Subdivision regulations as to reservation and dedication of land for public recreational purposes or cash payments in lieu thereof.

Subdivision regulations may further provide for reservation and dedication of land for parks, playgrounds, or other public recreational purposes or the payment of cash contributions earmarked for such purposes in lieu thereof, but only after the adoption by the local governing body of a comprehensive park and recreation plan which includes guidelines for preferred open-space reservation locations. In order to avail itself of the powers conferred by this article, the governing body must adopt regulations in accordance with this section.

The regulations must provide that a subdivider of land dedicate land areas, sites, and locations for parks, playgrounds, or other public recreational purposes, as are reasonably necessary to serve the proposed subdivision and the future residents thereof. The land required to be dedicated shall bear a reasonable relationship to the impact on park, playground, and recreational needs posed by the anticipated number of future developments in the area subdivided. The regulations must set forth the standards to be applied in determining the amount of land that is required to be dedicated, which standards must be based upon the number and type of dwelling units or structures to be included in each subdivision and upon studies and surveys conducted by the local governing body to determine the need, if any, for parks, playgrounds, or other recreational purposes generated by the proposed future subdivisions and residents thereof.

The local governing body may also adopt, as part of its subdivision control regulations, provisions requiring a subdivider, in lieu of such dedication, to pay to the local governing body a sum of money equal to the value of land that would otherwise be required to be so dedicated, where the local governing body determines that it would not be in the public interest to accept a dedication in connection with a particular proposed subdivision. The regulations must set forth the standards to be applied in determining when it is not in the public interest to accept a dedication. The regulations must provide that the in lieu fee to be paid by a subdivider be based upon the per acre value of the actual land subdivided.

The regulations must also provide for the manner of making payment. The regulations may provide that the payment be deferred or made in installments following approval of a subdivision plat, and may require the posting of a good and sufficient surety bond guaranteeing the payment. All funds so received must be held by the local governing body in a special account which must be applied and used only for the purpose of acquiring park, playground, and recreational sites for the benefit of the future residents of the subdivision for which the payment was made.

The regulations may also provide that the dedication of land, or the payment of a fee in lieu thereof, may be waived, partially or entirely, where a subdivider provides private open space for park, playground, and recreational purposes, which space is to be privately owned and maintained by future residents of the subdivision, where it is found to be in the public interest to do so, based upon standards adopted by the local governing body.

The regulations must also provide that the local governing body or an agency shall have the final decision in selecting the location of land areas to be dedicated for park, playground, and recreational purposes. In exercising such authority, the local governing body must take into consideration the variations, the relative desirability, and the market value of the land that may be required to be dedicated within the area of any particular proposed subdivision, so as to lessen any adverse impacts upon the subdivision and the subdivider.

SECTION 5-23-45. Reduction or waiver of parking requirements within central business district in return for cash contributions or dedications of land for public parking spaces. In accordance with a central business district parking facility plan and program, which includes guidelines for preferred parking locations and indicates prohibited parking areas, the zoning commission may recommend and the local legislative body may adopt, regulations which permit the reduction or waiver of parking requirements within such district in return for cash contributions or dedications of land earmarked for provision of public parking spaces which contributions or dedications must be used within the district and may not be used for any other purpose. Such cash contribution or the value of the land shall not exceed the approximate cost to build the required spaces that would have incurred had not the reduction or waiver been granted.

SECTION 5-23-47. Conditional use regulations with respect to residential, commercial, and community facility developments.

The local governing body after review by the zoning commission may adopt conditions with respect to use, hereafter called conditional use regulations, for planned residential, commercial, and community facility developments authorized pursuant to the zoning ordinance. The conditional use permits are intended to encourage good community site planning for large residential, commercial, and community facility developments that are planned as a unit where district regulations may impose rigidities and prevent achievement of a better site plan within overall zoning bulk and density controls. Conditional use regulations authorized under the provisions of this section may provide for variations from district regulations concerning use, setbacks, lot size, density, bulk, and other district requirements to accommodate flexibility in the arrangement of dwellings, shops, vegetation, open spaces, covered malls, parking, institutional facilities, and ancillary structures on the land for the general purpose of promoting and protecting public health, safety, and general welfare.

SECTION 5-23-50. Amendment of regulations; protests.

Such regulations, restrictions and boundaries may from time to time be amended, supplemented, changed, modified or repealed. In case, however, of a protest against such change signed by the owners of twenty per cent or more of the area of (a) the lots included in such proposed change, (b) those immediately adjacent in the rear thereof or (c) those directly opposite thereto, such amendment shall not become effective except by the favorable vote of three fourths of all the members of the legislative body of such municipality. The provisions of SECTION 5-23-40 relative to public hearings and official notices shall apply equally to all changes or amendments.

SECTION 5-23-60. Zoning commissions; reports.

In order to avail itself of the powers conferred by this article, the municipal governing body shall appoint a commission to be known as the zoning commission to recommend the boundaries of the various original districts and appropriate regulations to be enforced in the districts. The commission shall make a preliminary report and hold public hearings on the districts before submitting its final report and the governing body shall not hold its public hearing or take action until it has received the final report of the commission. When a city planning commission already exists, it may be appointed as the zoning commission. The zoning commission may further recommend to the municipal governing body approval of conditional permits authorized pursuant to the zoning ordinance.

SECTION 5-23-70. Board of adjustment.

Such local legislative body may provide for the appointment of a board of adjustment and in the regulations and restrictions adopted pursuant to the authority of this article may provide that the board of adjustment may, in appropriate cases and subject to appropriate conditions and safeguards, make special exceptions to the terms of the ordinance in harmony with its general purpose and intent and in accordance with general or specific rules therein contained. The Board of Adjustment shall consist of not less than three nor more than nine members, a majority of which shall constitute a quorum, appointed for staggered terms of not less than three nor more than five years and until successors are appointed and qualify. Members may be removed from office for cause by the appointing authority upon written charges and after public hearing. Vacancies must be filled for the unexpired term of any member whose term becomes vacant.

SECTION 5-23-80. Five-year term for members of boards of adjustment permitted in cities over 86,000.

The governing body of any municipality having a population of more than eighty-six thousand inhabitants by the most recent United States census may appoint a board of adjustment consisting of five members, to be appointed for a term of five years and until their successors are appointed, the original members having been appointed, one to serve for one year, one to serve for two years, one to serve for three years, one to serve for four years and one to serve for five years. Vacancies on such board shall be filled by the governing body for the unexpired term of any member whose term becomes vacant.

SECTION 5-23-90. Rules and regulations of board; meetings, minutes, administering oaths and attendance of witnesses.

The board of adjustment shall adopt rules in accordance with the provisions of any ordinance adopted pursuant to this article. Meetings of the board shall be held at the call of the chairman and at such other times as the board may determine. The chairman or, in his absence, the acting chairman may administer oaths and compel the attendance of witnesses. All meetings of the board shall be open to the public. The board shall keep minutes of its proceedings, showing the vote of each member upon each question or, if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the board and shall be a public record.

SECTION 5-23-100. General powers of board.

The board of adjustment shall have the following powers:

(1) To hear and decide appeals when it is alleged that there is error in any order, requirement, decision or determination made by an administrative official in the enforcement of this article or of any ordinance adopted pursuant hereto;

(2) To hear and decide special exceptions to the terms of any ordinance upon which such board is required to pass under such ordinance; and

(3) To authorize upon appeal in specific cases such variance from the terms of any ordinance as will not be contrary to the public interest when, owing to special conditions, a literal enforcement of the provisions of such ordinance will result in unnecessary hardship and so that the spirit of such ordinance is observed and substantial justice done; provided, a municipality by ordinance may permit or preclude the granting of a variance for a use of land, a building, or a structure that is prohibited in a given district and, if it does permit such a variance, it may require the affirmative vote of two-thirds of the local adjustment board members present and voting. Notwithstanding any other provision of this section, the governing body of a municipality may overrule the decision of the local board of adjustment concerning a use variance.

SECTION 5-23-110. Appeals to board.

Appeals to the board of adjustment may be taken by any person aggrieved or by any officer, department, board or bureau of the municipality affected by any decision of the administrative officer. Such appeal shall be taken within a reasonable time as provided by the rules of the board by filing with the officer from

whom the appeal is taken and with the board of adjustment a notice of appeal specifying the grounds thereof. The officer from whom the appeal is taken shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken.

SECTION 5-23-120. Effect of appeal.

An appeal stays all proceedings in furtherance of the action appealed from unless the officer from whom the appeal is taken certifies to the board of adjustment after the notice of appeal shall have been filed with him that by reason of facts stated in the certificate a stay would in his opinion cause imminent peril to life or property. In such case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the board of adjustment or by a court of record on application on notice to the officer from whom the appeal is taken and on due cause shown.

SECTION 5-23-130. Hearing on appeal.

The board of adjustment shall fix a reasonable time for the hearing of the appeal, give public notice thereof, as well as due notice to the parties in interest, and decide the appeal within a reasonable time. Upon the hearing any party may appear in person or by agent or by attorney.

SECTION 5-23-140. Order of board on appeal.

In exercising the above-mentioned powers the board may, in conformity with the provisions of this article, reverse or affirm wholly or partly or may modify the order, requirement, decision or determination appealed from and may make such order, requirement, decision or determination as ought to be made and to that end shall have all the powers of the officer from whom the appeal is taken. Except as provided in Section 5-23-100(3), the concurring vote of a majority of the members of the board present and voting is necessary to reverse any order, requirement, decision, or determination of any such administrative official or to decide in favor of the applicant on any matter upon which it is required to pass under any such ordinance or to effect any variation in such ordinance.

SECTION 5-23-150. Appeal from board to court.

Any person or persons, jointly or severally aggrieved by any decision of the board of adjustment, any taxpayer or any officer, department, board or bureau of the municipality may present to a court of record a petition, duly verified, setting forth that a decision of the board of adjustment is illegal, in whole or in part, specifying the grounds of the illegality. Such petition shall be presented to the court within thirty days after the filing of the decision in the office of the board.

Upon the presentation of such petition the court may allow a writ of certiorari directed to the board of adjustment to review such decision of the board of adjustment and shall prescribe therein the time within which a return thereto must be made and served upon the relator's attorney, which shall not be less than ten days and may be extended by the court. The allowance of the writ shall not stay proceedings upon the decision appealed from, but the court may, on application, on notice to the board and on due cause shown, grant a restraining order.

The board of adjustment shall not be required to return the original papers acted upon by it, but it shall be sufficient to return certified or sworn copies thereof or of such portions thereof as may be called for by such writ. The return shall concisely set forth such other facts as may be pertinent and material to show the grounds of the decision appealed from and shall be verified.

SECTION 5-23-160. Hearing and decision on appeal.

All issues in any proceeding in court under this article shall have preference over all other civil actions and proceedings.

If, upon the hearing, it shall appear to the court that testimony is necessary for the proper disposition of the matter, it may take evidence or appoint a referee to take such evidence as it may direct and report it to the court with his findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which the determination of the court shall be made. The court may reverse or affirm, wholly or partly, or may modify the decisions brought up for review.

Costs shall not be allowed against the board, unless it shall appear to the court that it acted with gross negligence or in bad faith or with malice in making the decision from which the appeal is taken.

SECTION 5-23-170. Conflicting regulations.

Whenever the regulations made under the authority of this article require a greater width or size of yards, courts or other spaces, require a lower height of building or less number of stories or require a greater percentage of lot to be left unoccupied or impose other higher standards than are required in any other statute, local ordinance or regulation, the provisions of the regulation made under authority of this article shall govern. Whenever the provisions of any other statute or local ordinance or regulation require a greater width or size of yards, courts or other open spaces, require a lower height of building or a less number of stories, require a greater percentage of lot to be left unoccupied or impose other higher standards than are required by the regulations made under the authority hereof, the provisions of such statute, local ordinance or regulation shall govern.

SECTION 5-23-180. Prevention of violation of regulations.

In case any building or structure is erected, constructed, reconstructed, altered, repaired, converted or maintained or any building, structure or land is used in violation of this article or of any ordinance or other regulations made under authority conferred hereby, the proper local authorities of the municipality, in addition to other remedies, may institute any appropriate action or proceedings to prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance or use, to restrain, correct or abate such violation, to prevent the occupancy of such building, structure or land, or to prevent any illegal act, conduct, business or use in or about such premises.

SECTION 5-23-190. Approval of plats by municipality before recording.

When the legislative body of an incorporated municipality has adopted subdivision regulations as part of a zoning ordinance under the authority of this article, such regulations or ordinance may provide that no plat of a subdivision of land within such municipality shall be filed or recorded in the county register of mesne conveyance office or clerk of court's office until it shall have been approved by the designated administrative officer of such municipality, and the approval entered in writing on the plat by such officer.

ARTICLE 5.

PLANNING COMMISSIONS GENERALLY

SECTION 5-23-410. Creation of planning commissions authorized.

Any municipality in this State may by ordinance provide for and create a planning commission for such municipality and its environs, with the jurisdiction, powers and duties set forth in this article.

SECTION 5-23-420. Appointment; compensation; terms.

The commission shall consist of not exceeding nine members and, with the exception of the supervisor or other head of the governing body of the county, shall be appointed by the city council. All members of the commission shall serve as such without compensation, and the appointive members shall hold no other

municipal office, except that one of such members may be a member of the board of adjustment. The terms of office of the members of the commission shall be for four years and until their successors are appointed and qualify, except that the term of office of the supervisor or other head of the governing body of the county shall be coextensive with the term of his county office. The supervisor or other head of the governing body of a county, when any such planning commission shall be established, shall become a member of the commission, ex officio, and may confer with the commission on all matters pertaining to the laying out of streets beyond the corporate limits of the city.

SECTION 5-23-430. Removal of members; vacancies.

Members may, after a public hearing, be removed by the mayor for inefficiency, neglect of duty or malfeasance in office. The mayor shall file a written statement of reasons for such removal. Vacancies occurring otherwise than through the expiration of a term shall be filled for the unexpired term by the mayor.

SECTION 5-23-440. Officers, meetings, rules and records.

The commission shall elect its chairman from among the appointed members and create and fill such other of its offices as it may determine. The term of office of the chairman shall be one year, and the chairman shall be eligible for re-election. The commission shall hold at least one regular meeting in each month. It shall adopt rules for the transaction of business and shall keep a record of its recommendations, transactions, findings and determinations. Such record shall be a public record.

SECTION 5-23-450. Employees; consultants; expenditures.

The commission may appoint such employees as it may deem necessary for its work, whose appointment, promotion, demotion and removal shall be subject to the same provisions of law as govern other corresponding civil employees of the municipality. The commission may also contract with city planners, engineers, architects and other consultants for such services as it may require. The expenditures of the commission, exclusive of gifts, shall be within the amounts appropriated for the purpose by the city council which shall provide the funds, equipment and accommodations which it may deem necessary for the commission's work.

SECTION 5-23-460. Acceptance of gifts.

The commission may accept and use gifts for the exercise of its functions.

SECTION 5-23-470. Obtaining information from public officials; entry upon land for purpose of making examinations, surveys and the like.

All public officials shall, upon request, furnish to the commission, within a reasonable time, such available information as it may require for its work. The commission, its members, officers and employees, in the performance of their functions, may enter upon any land and make examinations and surveys and place and maintain necessary monuments and marks thereon.

SECTION 5-23-480. General powers.

In general the commission shall have such powers as may be necessary to enable it to fulfill its functions, promote municipal planning or carry out the purposes of this article.

SECTION 5-23-490. Master city plan for physical development.

The commission shall make or cause to be made and adopt a master city plan for the physical development of the municipality, including any areas outside of its boundaries which, in the commission's judgment, bear relation to the planning of such municipality. Such plan, with the accompanying maps, plats, charts and descriptive matter, shall show the commission's recommendations for:

- (1) The development and redevelopment of such territory, including the general location, character and extent of streets, viaducts, subways, bridges, waterways, waterfronts, boulevards, parkways, playgrounds, squares, parks, aviation fields and other public ways, grounds and open spaces, the general location of public buildings and other public property and the general location and extent of public utilities and terminals;
- (2) The removal, relocation, widening, narrowing, vacating, abandonment, change of use or extension of any public ways, grounds, open spaces, buildings, property, utilities or terminals;
- (3) A zoning plan for the control of the height, area, bulk, location, use and intensity of use of buildings, structures and premises and of population density;
- (4) The general location, character, layout and extent of community centers and neighborhood units; and
- (5) The general character, extent and layout of the replanning of blighted districts and slum areas.

The commission may from time to time amend, extend or add to the master plan.

SECTION 5-23-500. Studies for plan; general purpose of plan.

In the preparation of such master plan, the commission shall make or cause to be made careful and comprehensive surveys and studies of present conditions and trends of future growth of the municipality and shall also give due regard to the relation of the municipality to any neighboring territory. The plan shall be made and used for the general purpose of guiding and accomplishing a coordinated, adjusted and harmonious development or redevelopment of the municipality and its environs which will, in accordance with present and future needs, best promote the public health, safety, morals, order, convenience, prosperity and general welfare, as well as efficiency and economy in the process of development or redevelopment, including adequate provision for traffic, the promotion of safety from fire or other dangers, adequate provision for light and air, the promotion of the healthful and convenient distribution of population, the promotion of good civic design and arrangement, wise and efficient expenditure of public funds and the adequate provision of public utilities and other public requirements.

SECTION 5-23-510. Public hearing on plan.

Before the adoption of the plan or any such part, amendment, extension or addition the commission shall hold at least one public hearing thereon, after not less than five days' notice of the time and place of such hearing shall have been given by at least one publication in a newspaper having general circulation in the city.

SECTION 5-23-520. Requirements for adoption of plan or amendment.

The adoption of the plan or of any part, amendment, extension or addition shall be by resolution of the commission, carried by the affirmative votes of not less than a majority of the entire membership of the commission. The resolution shall refer expressly to the maps and other descriptive matter intended by the planning commission to form the whole or part of the plan and the action as taken shall be recorded on the map and plan and descriptive matter by the identifying signature of the chairman and secretary of the commission. An attested copy of the plan or part thereof as adopted and approved shall be certified to the city council and to all legislative and administrative agencies affected by the plan.

SECTION 5-23-530. Adoption of plan as a whole or by successive resolutions.

The commission may adopt the plan as a whole by a single resolution or may by successive resolutions adopt parts of the plan, such parts corresponding with the major geographical sections or divisions of the municipality or with functional subdivisions of the subject matter of the city plan, and may adopt any amendment or extension thereof or addition thereto.

SECTION 5-23-540. Propaganda; advising and consulting with other agencies.

The commission may promote public interest in an understanding of the plan and to that end may publish and distribute copies of the plan or of any report and may employ such other means of publicity and education as it may determine. Members of the commission and any of its employees, when duly authorized by the commission, may attend city planning conferences or meetings of city planning institutes or hearings upon pending city planning legislation and the commission may, by resolution spread upon its minutes, pay the reasonable traveling expenses incident to such attendance. The commission shall, from time to time, recommend to the appropriate public officials, programs for public structures and improvements and for the financing thereof. It shall consult and advise with public officials and agencies, public utility companies, civic, educational, professional and other organizations and with citizens with relation to the projecting or carrying out of the plan.

SECTION 5-23-550. Commission approval for building and other projects required after adoption of master plan; overruling commission's disapproval.

Whenever the commission shall have adopted the master plan of the municipality or of one or more sections or districts thereof, no new street, square, park or other public way, grounds or open space or public building, structure or public utility, whether publicly or privately owned, shall be constructed or authorized in the municipality or in such planned section or district until the location, character and extent thereof shall have been submitted to and approved by the commission. In case of disapproval the commission shall communicate its reasons to the city council which shall have the power to overrule such disapproval by the recorded vote of not less than two thirds of its entire membership. But if the public way, ground, space, building, structure or utility within such municipality be one the authorization or financing of which does not, under the law, fall within the province of the municipal council, then the submission to the planning commission shall be by the board, commission or body having such jurisdiction and the planning commission's disapproval may be overruled by such board, commission or body by a vote of not less than two thirds of its membership. The failure of the planning commission to act within sixty days from and after the date of official submission to it shall be deemed approval.

SECTION 5-23-560. Commission vested with powers of former commissions; postponement of such powers.

The commission appointed under this article shall have all powers granted by law to any planning or zoning commission of the municipality, and from and after the creation of a planning commission hereunder in such municipality all powers and records of the then planning or zoning commission shall be transferred to this planning commission, which may then be referred to as the planning and zoning commission of such municipality and which shall be subject to the laws and ordinances relating to both zoning and planning. But in the event that any existing planning or zoning commission shall be nearing the completion of its zoning plan, the city council may, by resolution, postpone the transfer of the zoning commission's powers until the completion of such zoning plan. But such postponement shall not exceed a period of six months.

SECTION 5-23-570. Building or setback lines on streets or highways.

Whenever the plan for a major street system has been adopted and properly filed, the city council, upon recommendation of the planning commission, may establish, regulate and limit, by ordinance, building or setback lines on such existing and proposed major streets or highways and may prohibit any new building being located within such building or setback lines, within the corporate limits of the city. The city council shall provide for the method by which this section shall be enforced. The board of zoning appeals or other similar board, if such has been established having power to make variances or exceptions in zoning regulations, may modify or vary the setback regulations in specific cases, in order that unwarranted hardship, which constitutes a complete deprivation of use as distinguished from merely granting a privilege, may be avoided, yet the intended purpose of the regulations shall be strictly observed and the public welfare and public safety protected. Such setback regulations shall not be adopted, changed or amended until a public hearing has been held thereon, after not less than fifteen days' notice of the time and

place of such hearing shall have been given by publication in one or more issues of a paper having general circulation in such city.

SECTION 5-23-580. Territorial jurisdiction over subdivisions.

The territorial jurisdiction of the municipal planning commission over the subdivision of land shall include all land located in the municipality and all land lying within three miles of the corporate limits of the municipality and not located in any other municipality.

SECTION 5-23-590. Approval of subdivision plats required.

Whenever the commission shall have adopted a major street plan of the territory within its subdivision jurisdiction or part thereof, then no plat of a subdivision of land within such territory or part shall be filed or recorded until it shall have been approved by the planning commission and such approval entered in writing on the plat by the chairman or secretary of the commission.

SECTION 5-23-600. Regulations governing land subdivisions.

Before exercising the powers referred to in SECTION 5-23-590 the planning commission shall prepare regulations governing the subdivision of land within its jurisdiction. Such regulations may provide for the proper arrangement of streets, in relation to other existing planned streets and to the master plan, for adequate and convenient open spaces for traffic, utilities, access of firefighting apparatus, recreation, light and air and for the avoidance of congestion of population, including minimum width and area of lots.

SECTION 5-23-605. Subdivision regulations as to reservation and dedication of land for public recreational purposes or cash payments in lieu thereof.

Subdivision regulations may further provide for reservation and dedication of land for parks, playgrounds, or other public recreational purposes or the payment of cash contributions earmarked for such purposes in lieu thereof, but only after the adoption by the local governing body of a comprehensive park and recreation plan which includes guidelines for preferred open-space reservation locations. In order to avail itself of the powers conferred by this article, the governing body must adopt regulations in accordance with this section.

The regulations must provide that a subdivider of land dedicate land areas, sites, and locations for parks, playgrounds, or other public recreational purposes, as are reasonably necessary to serve the proposed subdivision and the future residents. The land required to be dedicated shall bear a reasonable relationship to the impact on park, playground, and recreational needs posed by the anticipated number of future developments in the area subdivided. The regulations must set forth the standards to be applied in determining the amount of land that is required to be dedicated, which standards must be based upon the number and type of dwelling units or structures to be included in each subdivision and upon studies and surveys conducted by the local governing body to determine the need, if any, for parks, playgrounds, or other recreational purposes generated by the proposed future subdivisions and residents.

The local governing body may also adopt, as part of its subdivision control regulations, provisions requiring a subdivider, in lieu of such dedication, to pay to the local governing body a sum of money equal to the value of land that would otherwise be required to be so dedicated, where the local governing body determines that it would not be in the public interest to accept a dedication in connection with a particular proposed subdivision. The regulations must set forth the standards to be applied in determining when it is not in the public interest to accept a dedication. The regulations must provide that the in lieu fee to be paid by a subdivider be based upon the per acre value of the actual land subdivided.

The regulations must also provide for the manner of making payment. The regulations may provide that the payment be deferred or made in installments following approval of a subdivision plat, and may require the posting of a good and sufficient surety bond guaranteeing the payment. All funds received must be held by

the local governing body in a special account which must be applied and used only for the purpose of acquiring park, playground, and recreational sites for the benefit of the future residents of the subdivision for which the payment was made.

The regulations may also provide that the dedication of land, or the payment of a fee in lieu thereof, may be waived, partially or entirely, where a subdivider provides private open space for park, playground, and recreational purposes, which space is to be privately owned and maintained by future residents of the subdivision, where it is found to be in the public interest to do so, based upon standards adopted by the local governing body.

The regulations must also provide that the local governing body or an agency shall have the final decision in selecting the location of land areas to be dedicated for park, playground, and recreational purposes. In exercising such authority, the local governing body must take into consideration the variations, the relative desirability, and the market value of the land that may be required to be dedicated within the area of any particular proposed subdivision, so as to lessen any adverse impacts upon the subdivision and the subdivider.

SECTION 5-23-610. Hearings on proposed regulations.

Before any such regulations shall be adopted by the commission a public hearing shall be held thereon, notice of the time and place of which shall be published fifteen days prior to the date of such hearing in a newspaper having general circulation in the municipality.

SECTION 5-23-620. Content of regulations; tentative approval of plat; bond in lieu of final approval of plat.

The regulations may include provisions as to the extent to which streets and other ways are graded and improved and to which water, sewer, and other utility mains, piping, or other facilities must be installed as a condition precedent to the approval of the plat. The regulations or practice of the commission may provide for tentative approval of the plat previous to the installation, but a tentative approval is revocable and must not be entered on the plat. In lieu of the completion of the improvements and utilities prior to the final approval of the plat, the commission may accept a bond with adequate surety to secure to the municipality the actual construction and installation of the improvements or utilities at a time and according to specifications fixed by or in accordance with the regulations of the commission. The municipality may enforce the bond by all appropriate legal and equitable remedies.

SECTION 5-23-630. Time for approval or disapproval of subdivision plat; ground for disapproval required shall be stated.

The planning commission shall approve or disapprove a plat within thirty days after the submission thereof to it. Otherwise such plat shall be deemed to have been approved and a certificate to that effect shall be issued by the commission on demand. But the applicant for the commission's approval may waive this requirement and consent to an extension of such period. The ground of disapproval of any plat shall be stated upon the records of the commission.

SECTION 5-23-640. Hearing on approval or disapproval of plats.

Any plat submitted to the commission shall contain the name and address of a person to whom notice of a hearing shall be sent, and no plat shall be acted on by the commission without affording a hearing thereon. Notice shall be sent to such address by registered mail of the time and place of such hearing not less than five days before the date fixed therefor.

SECTION 5-23-650. Effect of approval of plat.

Every plat approved by the commission shall, by virtue of such approval, be deemed to be an amendment of, an addition to or a detail of the municipal plan and a part thereof. Approval of a plat shall not be deemed to constitute or effect an acceptance by the public of any street or other open space shown upon the plat.

SECTION 5-23-660. New streets beyond corporate limits.

In new subdivisions, beyond the corporate limits of cities and towns as herein referred to, no new street shall be laid out, improved or maintained by the county until it shall be approved by such planning commission by an appropriate resolution.

SECTION 5-23-670. Restrictions as to use, height and the like.

The commission may agree with the applicant upon the use, height, area or bulk requirements or restrictions governing buildings and premises within the subdivision, provided such requirements or restrictions do not authorize the violation of the then effective zoning ordinance of the municipality. Such requirements or restrictions shall be stated upon the plat prior to the approval and recording thereof and shall have the same force of law and be enforceable in the same manner and with the same sanctions and penalties and subject to the same power of amendment or repeal as though set out as a part of the zoning ordinance or map of the municipality.

SECTION 5-23-680. Recommendations for zoning amendments and for approval of conditional permits.

The planning commission may, from time to time, recommend to the municipal governing body amendments of the zoning ordinance or map or additions to it to conform to the commission's recommendations for the zoning regulation of the territory comprised within approved subdivisions. The planning commission may further recommend to the governing body approval of conditional permits authorized pursuant to the zoning ordinance.

SECTION 5-23-685. Conditional use regulations with respect to planned residential, commercial, and community facility developments.

The local governing body after review by the zoning commission may adopt conditions with respect to use, hereafter called conditional use regulations, for planned residential, commercial, and community facility developments authorized pursuant to the zoning ordinance. The conditional use permits are intended to encourage good community site planning for large residential, commercial, and community facility developments that are planned as a unit where district regulations may impose rigidities and prevent achievement of a better site plan within overall zoning bulk and density controls. Conditional use regulations authorized under the provisions of this section may provide for variations from district regulations concerning use, setbacks, lot size, density, bulk, and other district requirements to accommodate flexibility in the arrangement of dwellings, shops, vegetation, open spaces, covered malls, parking, institutional facilities, and ancillary structures on the land for the general purpose of promoting and protecting public health, safety, and general welfare.

SECTION 5-23-687. Reduction or waiver of parking requirements within central business district in return for cash contributions or dedications of land for public parking spaces.

In accordance with a central business district parking facility plan and program, which includes guidelines for preferred parking locations and indicates prohibited parking areas, the zoning commission may recommend and the local legislative body may adopt regulations which permit the reduction or waiver of parking requirements within such district in return for cash contributions or dedications of land earmarked for provision of public parking spaces which contributions or dedications must be used within the district and may not be used for any other purpose. Such cash contribution or the value of the land shall not exceed the approximate cost to build the required spaces that would have incurred had not the reduction or waiver been granted.

SECTION 5-23-690. Naming of streets.

Any planning commission or planning and zoning commission created under the provisions of this article shall, by proper certificate, approve and authorize the name of any street or road hereafter laid out within the territory over which such commission has jurisdiction. It shall be unlawful for any person in laying out any new street or road within the territory over which such planning commission or planning and zoning commission has jurisdiction to name such street or road on any plat, by any marking or in any deed of instrument without first getting the approval of such commission of the name selected and given to such street or road. Any person violating this provision shall be guilty of a misdemeanor and, upon conviction, shall be punished by fine of not more than one hundred dollars or by imprisonment of not more than thirty days.

SECTION 5-23-700. Changing names of streets.

Any such commission may, after reasonable notice through the public press printed in the municipality wherein such commission is created and exists, change the name of any street or road within the boundary of its territorial jurisdiction (a) when there is duplication of names or other conditions which tend to confuse the traveling public or the delivery of mail, orders or messages, (b) when it is found that a change may simplify marking or giving of directions to persons seeking to locate addresses or (c) upon any other good and just reason that may appear to the commission. On such name being changed, after reasonable opportunity for a public hearing, the commission shall issue its certificate designating the change, which shall be recorded in the office of the register of deeds or clerk of court, if there is no register of deeds, of the county, and the name as so changed and certified shall thereafter be the legal name of the street or road. But when the name of a street or road outside the corporate limits of any such municipality, but within the three-mile jurisdictional zone, is so changed, the county engineer or, in those counties having no county engineer, the supervisor shall approve the change in name before the action of the commission shall become final and binding.

SECTION 5-23-710. Transfer of property in subdivision prior to approval of plat.

Whoever, being the owner or agent of the owner of any land located within a subdivision, transfers or sells, agrees to sell or negotiates to sell any land by reference to or exhibition of or by other use of a plat of a subdivision, before such plat has been approved by the planning and zoning commission and recorded in the office of the county where deeds are required to be recorded, shall forfeit and pay a penalty of one hundred dollars to the municipality revoking this article, for each lot or parcel so transferred or sold or agreed or negotiated to be sold. The description of any such lot or parcel by metes and bounds in the instrument of transfer or other document used in the process of selling or transferring such lot or parcel shall not exempt the transaction from such penalties or from the remedies herein provided. Such municipality may enjoin such transfer, sale or agreement by action for injunction brought in any court of competent jurisdiction and may also recover such penalty by civil action in any court of competent jurisdiction. The plats referred to in this section mean only such plats as shall designate and establish new streets in a subdivision which is presently to be developed, and the penalty provided herein shall not apply to owners of property platted beyond the corporate limits.

SECTION 5-23-720. Duties of recording officials.

In any county in which a planning and zoning commission has, by proper ordinance, been established by a municipality under the provisions of this article, the county official whose duty it is to accept and record plats of real estate shall not accept, file or record any subdivision plat in such office without the approval of the planning and zoning commission of such municipality within the area of its jurisdiction under the provisions of this article and should such public official violate the provisions of this section he shall in each instance be subject to the same penalty as provided in SECTION 5-23-710, and the municipality shall have the same rights and remedies as to enforcement or collection as therein provided and may enjoin any violations thereof.

SECTION 5-23-730. Jurisdiction of commission over plats of subdivisions exclusive.

From and after the time when a planning commission shall have control over subdivisions as provided in SECTION 5-23-590, the jurisdiction of the planning commission over plats shall be exclusive within the territory under its jurisdiction and all statutory control over plats or subdivisions of land granted by other statutes shall, in so far as in harmony with the provisions of this section, be deemed transferred to the planning commission of such municipality.

SECTION 5-23-740. Powers of commission beyond corporate limits of cities.

Nothing herein contained shall be construed to give or permit any such planning commission to exercise any authority and power beyond the corporate limits of cities and towns, except in the matter of planning and laying out new streets in new subdivisions, it being the express intent hereof that in all other matters and things referred to it, such planning commission shall have only advisory powers.