

*** Current through the end of the 2015 Regular Session and First Special Session (Acts 2015, No. 15-

534)*** TITLE 11 Counties and Municipal Corporations
 SUBTITLE 2 Provisions Applicable to Municipal
 Corporations Only CHAPTER 52 Planning, Zoning, and
 Subdivisions

§ 11-52-1. Definitions.

When used in this chapter, the following words or phrases shall have the following meanings, respectively, unless the context clearly indicates otherwise:

- (1) **Municipality or municipal.** -- Cities or towns.
- (2) **Mayor.** -- The chief executive of the municipality, whether the official designation of his office be mayor, city manager, or otherwise.
- (3) **Council.** -- The chief legislative body of the municipality.
- (4) **County commission.** -- The chief administrative or legislative body of the county.
- (5) **Streets.** -- Streets, avenues, boulevards, roads, lanes, alleys, viaducts, and other ways.
- (6) **Subdivision.** -- The division of a lot, tract, or parcel of land into two or more lots, plats, sites, or other divisions of land for the purpose, whether immediate or future, of sale, of lease, or of building development. The term includes resubdivision and, when appropriate to the context, relates to the process of subdividing or to the land or territory subdivided.

§ 11-52-2. Municipal planning commissions; authorized.

(a) Any municipality is hereby authorized and empowered to make, adopt, amend, extend, add to, or carry out a municipal plan as provided in this article and to create by ordinance a planning commission with the powers and duties herein set forth.

(b) The planning commission of a city shall be designated city planning commission and the planning commission of a town, town planning commission, as its council may specify.

§ 11-52-3. Municipal planning commissions; members.

(a) The commission shall consist of nine members: The mayor, or his or her designee, one of the administrative officials of the municipality selected by the mayor, a member of the council to be selected by it as a member ex officio and six persons who shall be appointed by the mayor, if the mayor is an elective officer, otherwise by the officer as the council may in the ordinance creating the commission designate as the appointing power; provided, that in any Class 1 municipality, the commission shall consist of 16 members: The mayor, one of the administrative officials of the municipality selected by the mayor, two members of the council to be selected by it as members ex officio, and 12 persons who shall be selected by the council. In the event the mayor designates a person to sit in his or her place on the municipal planning commission, the person so appointed shall serve during the term of the mayor, unless the original appointment shall be limited to a term certain of not less than 12 months at time of appointment.

In addition to regular members, the mayor and each of the council members of Class 1 municipalities serving on the commission may each appoint, from the administrative staff of the mayor and council exclusively, a supernumerary member who shall be authorized to be counted for the purpose of determining a quorum, and, while serving, to act with all of the power and authority of a regular member whenever such municipal official is not

personally in attendance.

In addition to the regular members, in all cities having populations of not less than 175,000 nor more than 275,000, two supernumerary members shall be appointed to serve on the board at the call of the chair only in the absence of regular members, and while so serving, they shall have and exercise the power and authority of regular members.

(b) All members of the commission shall serve without compensation, and the appointed members shall hold no other municipal office, except, that one of the appointed members may be a member of the zoning board of adjustment or appeals, except in all cities having populations of not less than 175,000 nor more than 275,000, according to the most recent federal decennial census, wherein no member of the commission may be a member of the zoning board of adjustment or appeals and wherein all members of the commission shall be bona fide residents and qualified electors of such cities, except that the 12 appointed members of any commission elected by the council in Class 1 municipalities, under subsection (a) of this section, upon adoption of a resolution by the city council approving Acts 1994, No. 94-672, shall be paid twenty-five dollars (\$ 25) per meeting for each meeting of the commission attended by the members. No member shall be paid more than fifty dollars (\$ 50) in any one month, and any appointed member who is an elected official or an employee of the municipality shall not be eligible to receive the compensation.

(c) The terms of ex officio members shall correspond to their respective official tenures, except that the term of the administrative official selected by the mayor shall terminate with the term of the mayor selecting the member.

The term of each appointed member shall be six years or until the successor takes office, except that the respective terms of five of the members first appointed shall be one, two, three, four, and five years, provided, that in any city having a 16 member commission as provided in subsection (a) of this section, the respective terms of five pairs of the members first appointed by council shall be one, two, three, four, and five years, and provided further, that in all cities having populations of not less than 175,000 nor more than 275,000, the term of each appointed member of the commission shall be for three years.

(d) Members other than the member selected by the council may, after a public hearing, be removed by the mayor for inefficiency, neglect of duty or malfeasance in office, provided, that in any city having a 16 member commission, as provided in subsection (a) of this section, members may, after a public hearing, be removed by the council for any of the above reasons or for continued failure to attend meetings. The council may for like cause remove the member or members selected by it. The mayor or council, as the case may be, shall file a written statement of reasons for such removal.

(e) Vacancies occurring otherwise than through the expiration of term shall be filled for the unexpired term by the mayor in the case of members selected or appointed by him or her, by the council in the case of the member, or other members selected by it and by the appointing power designated by the council in municipalities in which the mayor is not an elective officer.

§ 11-52-3.1. Municipal planning commissions; members in Class 2 municipalities.

In a Class 2 municipality, two additional members of the municipal planning commission created under Section 11-52-3, Code of Alabama 1975, shall be appointed by the mayor and shall reside outside the corporate limits of the municipality, but within the territorial jurisdiction of the planning commission at the time of the appointment. The two additional members shall be appointed by the mayor within 90 days of May 5, 2009. The additional members shall serve the same terms and have the same powers and duties as other members of the planning commission.

§ 11-52-4. Municipal planning commissions; officers and meetings.

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, with eligibility for reelection. The commission shall hold at least one regular meeting in each month. It shall adopt rules for transaction of business and shall keep a record of its resolutions, transactions, findings and determinations, which record shall be a public

record.

§ 11-52-5. Municipal planning commissions; employees and expenditures.

(a) 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.

(b) The expenditures of the commission, exclusive of gifts, shall be within the amounts appropriated for the purpose by the council, which shall provide the funds, equipment and accommodations necessary for the commission's work.

§ 11-52-6. Municipal planning commissions; powers generally.

(a) 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 chapter.

(b) The commission shall have power to promote public interest in and understanding of the master 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.

(c) Members of the commission, when duly authorized by the commission, may attend municipal planning conferences or meetings of municipal planning institutes or hearings upon pending municipal planning legislation, and the commission may, by resolution, spread upon its minutes, pay the reasonable traveling expenses incident to such attendance.

(d) The commission shall, from time to time, recommend to the appropriate public officials programs for public structures and improvements and for the financing thereof.

(e) It shall be part of the duties of the commission to consult and advise with public officials and agencies, public utility companies, civic, educational, professional and other organizations and with citizens with relation to the protecting or carrying out of the plan.

(f) The commission shall have the right to accept and use gifts for the exercise of its functions.

(g) All public officials shall, upon request, furnish to the commission within a reasonable time such available information as it may require for its work.

(h) 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.

§ 11-52-7. Municipal planning commissions; zoning powers.

The commission shall have all powers heretofore granted by law to the zoning commission of the municipality and, from and after the creation of a planning commission in such municipality, all powers and records of the zoning commission shall be transferred to the planning commission; provided, that, in the event that the existing zoning commission shall be nearing the completion of its zoning plan, the council may, by resolution, postpone the said 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.

§ 11-52-8. Master plan; generally.

(a) It shall be the function and duty of the commission to make and adopt a master 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.

(b) The plan, with the accompanying maps, plats, charts, and descriptive matter shall show the commission's recommendations for the development of said territory, including, among other things, 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, the general location and extent of public utilities and terminals, whether publicly or privately owned or operated, for water, light, sanitation, transportation, communication, power and other purposes, the removal, relocation, widening, narrowing, vacating, abandonment, change of use or extension of any of the foregoing ways, grounds, open spaces, buildings, military installations, property, utilities, or terminals; as well as a zoning plan for the control of the height, area, bulk, location, and use of buildings and premises.

(c) As the work of making the whole master plan progresses, the commission may from time to time adopt and publish a part or parts thereof, any such part to cover one or more major sections or divisions of the municipality or one or more of the aforesaid or other functional matters to be included in the plan.

(d) The commission may from time to time amend, extend, or add to the plan.

(e) For purposes of this section, the term "military installation" has the same meaning as specified in Section 11-106-3.

§ 11-52-9. Master plan; purposes.

In the preparation of such plans the commission shall make careful and comprehensive surveys and studies of present conditions and future growth of the municipality and with due regard to its relation to neighboring territory.

The plan shall be made with the general purpose of guiding and accomplishing a coordinated, adjusted and harmonious development of the municipality and its environs which will, in accordance with present and future needs, best promote health, safety, morals, order, convenience, prosperity and general welfare as well as efficiency and economy in the process of development, including, among other things, adequate provision for traffic, the promotion of safety from fire and 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.

§ 11-52-10. Master plan; adoption procedure.

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

Before the adoption of the plan or any such part, amendment, extension or addition, the commission shall hold at least one public hearing thereon, notice of the time and place of which shall be given by one publication in a newspaper of general circulation in the municipality and in the official gazette, if any, of the municipality; provided, that the planning commission may dispense with such public hearing prior to the approval or disapproval of a plan when the municipal governing body to whom the plan will be submitted will be required to hold a public hearing, and give notice thereof before the plan can be adopted by such municipality.

The adoption of the plan or of any such part or amendment or extension or addition shall be by resolution of the commission carried by the affirmative votes of not less than six members of the commission or, in any city having a 16-member planning commission as provided in subsection (a) of Section 11-52-3, by the affirmative votes of not less than 12 members of the commission. The resolution shall refer expressly to the maps and descriptive and other matters intended by the commission to form the whole or part of the plan, and the action taken shall be recorded on the map and plan and descriptive matter by the identifying signature of the chairman or secretary of the commission. An attested copy of the plan or part thereof shall be certified to the governing body and to the county probate judge.

§ 11-52-11. Submission of proposed construction for approval.

Whenever the commission shall have adopted the master plan of the municipality or of one or more major sections or districts thereof, no street, square, park or other public way, ground or open space or public building or structure or public utility, whether publicly or privately owned, shall be constructed or authorized in the municipality or in such planned section and district until the location, character and extent thereof shall have been submitted to and approved by the commission; provided, that in case of disapproval the commission shall communicate its reasons to the council, which shall have the power to overrule such disapproval by a recorded vote of not less than two thirds of its entire membership; provided further, that if the public way, ground, space, building, structure or utility is one the authorization or financing of which does not, under the law or charter provisions governing same, fall within the province of the municipal council, then the submission by the planning commission shall be to the board, commission or body having such jurisdiction and the planning commission's disapproval may be overruled by said board, commission or body by a vote of not less than two thirds of its membership.

The failure of the commission to act within 60 days from and after the date of official submission to the commission shall be deemed approval.

§ 11-52-12. Planning commissions in Class 3 municipalities.

(a) The governing body of any Class 3 municipality may determine by ordinance that any planning commission of the municipality created pursuant to the provisions of Section 11-52-3 shall consist of 12 members: namely, the mayor, or at the discretion of the mayor, any administrative assistant to the mayor or any administrative officer of the municipality under the supervision of the mayor; one administrative official of the municipality selected by the mayor; one member of the governing body selected by it as member ex officio; and nine members appointed by the mayor.

(b) Where an alternate planning commission structure of any Class 3 municipality has been provided for by ordinance as provided herein, the adoption of any plan or amendment by the commission shall be by resolution of the commission and shall be carried by the affirmative votes of not less than eight members of the commission. Six members of the commission shall constitute a quorum for the conduct of business. The approval of any subdivision and the passage of any question before the commission other than the adoption or amendment of any plan, shall be carried by majority of those members present.

§ 11-52-13. Planning commissions in Class 5 municipalities; generally.

(a) The governing body of any Class 5 municipality may determine by ordinance that any planning commission of the municipality created pursuant to the provisions of Section 11-52-3, shall consist of nine members: namely, eight members appointed by the governing body representing as equally as possible the several districts or wards of the municipality, such representation to be determined by the governing body and one member appointed by the mayor or chief executive officer of the municipality. The eight appointees appointed by the governing body shall serve at the pleasure of the governing body and the member appointed by the mayor or chief executive officer shall serve at his pleasure. Each member of the governing body excluding the mayor or chief executive officer shall

nominate persons to fill two vacancies on said commission within two months after the vacancy occurs. Failure to do so shall result in the vacancy being filled by the governing body without said nomination. In addition, each member of the governing body shall nominate an alternate member of the commission subject to the approval of the governing body. The powers and duties of the alternate members shall be prescribed by the governing body. Alternate members shall serve at the pleasure of the governing body. The city engineer of any Class 5 municipality who adopts this alternate planning commission structure shall be an ex officio member of the planning commission but shall have no voting rights.

(b) Where an alternate planning commission structure of any Class 5 municipality has been provided for by ordinance as provided herein, the action of the planning commission shall be subject to appeal to the governing body of the municipality. An appeal of the action of the local governing body shall be to the circuit court of the county in which such municipality is located.

§ 11-52-14. Planning commissions in Class 5 municipalities; city manager, mayor commission form of government.

(a) When used in this section, the words municipality, municipalities, mayor, and council shall have the meanings as provided for in Section 11-52-1.

(b) (1) The council of any Class 5 municipality with a city manager, mayor commission form of government may determine by ordinance that any planning commission of the municipality created pursuant to the provisions of Section 11-52-3, shall consist of nine members: namely, eight regular members appointed by the council and representing as equally as possible the several districts, wards or other areas of the municipality, such representation to be determined by the council, and one regular member appointed by the mayor.

(2) The regular members of the planning commission shall elect a chairman and vice-chairman, both of whom shall be regular members, and a secretary who need not be a member of the planning commission.

(3) The council shall appoint four supernumerary members to the planning commission, and the mayor shall appoint one supernumerary member to the planning commission.

(4) Supernumerary members shall serve at the call of the chairman only in the absence of regular members or in the event that one or more regular members excuse themselves from deliberation on a particular item being considered by the planning commission. While so serving, supernumerary members shall have and exercise the power and authority of regular members.

(5) The terms of the regular members and supernumerary members appointed by the council shall be four years or until their successors take office, provided, however, that the terms of the regular members and supernumerary members initially appointed pursuant to this section shall be staggered as follows: four regular members and two supernumerary members shall serve four-year terms; two regular members and one supernumerary member shall serve three-year terms; two regular members and one supernumerary member shall serve two-year terms; and one regular member and one supernumerary member shall serve one-year terms. The mayor shall make the appointment of the one regular member and one supernumerary member who shall initially serve a one-year term. Any regular member or supernumerary member may be reappointed.

(6) After a public hearing, the council, in the case of regular or supernumerary members appointed by it, or the mayor, in the case of the regular or the supernumerary member appointed by him or a previous mayor, may remove a regular or supernumerary member for reason of inefficiency, neglect of duty, malfeasance in office or continued failure to attend meetings. The council or mayor, as the case may be, shall file a written statement of reasons for removal.

(7) Vacancies occurring other than through expiration of term shall be filled for the duration of the unexpired term by the mayor in the case of the regular member and supernumerary member appointed by him or a previous mayor; and by the council in the case of the regular members and supernumerary members appointed by it.

(8) The city engineer of any municipality adopting an alternate planning commission structure pursuant to this section, or a similar official in the case of a municipality having no city engineer, shall be an ex officio member of the planning commission, but shall have no voting privileges.

(9) All regular members and supernumerary members shall serve as such without compensation, and shall hold no other municipal office.

(c) Upon the adoption by the council of any Class 5 municipality with a city manager, mayor commission form of government of an ordinance adopting an alternate planning commission structure pursuant to this section, the terms of the incumbent members of any existing planning commission shall be terminated.

(d) Unless specified otherwise in this section, the duties, powers, responsibilities, and procedures of any planning commission appointed pursuant to this section shall be as provided for in Title 11, Chapter 52.

§ 11-52-15. Class 6 municipalities with a council-manager form of government; provision for appointing municipal planning commission.

A Class 6 municipality with a council-manager form of government may provide by ordinance for the members of the municipal planning commission upon the expiration of the current term of office for the current members to be appointed by the city council in lieu of appointment in the manner provided in Section 11-52-3; provided that the mayor or his or her designee shall be a voting member of the planning commission and the mayor shall appoint all remaining members of the planning commission subject to approval by the city council.

Upon the expiration of the current term of office for the current members of the municipal planning commission, a member serving on the city council of a Class 6 municipality with a council-manager form of government or an employee of a Class 6 municipality with a council-manager form of government may not serve as a member of the municipal planning commission.

§ 11-52-16. Planning commissions in Class 6 municipalities; members.

(a) The governing body of any Class 6 municipality may determine by ordinance that the planning commission of the municipality, created under authority of Section 11-52-3 of the Code of Alabama 1975, shall consist of seven voting members, appointed as follows:

(1) Six members appointed by the mayor.

(2) One member, appointed by a majority of the city council, who may be a member of the city council.

(b) In addition, one nonvoting advisory member shall be appointed by the mayor, who shall be a senior administrative official of the municipality qualified by education, training, experience, and job responsibilities to provide substantive and technical advice, assistance, and guidance to the planning commission in the exercise of its statutory functions.

(c) All members of the planning commission shall be at least 21 years of age and, to the extent not inconsistent with this section, shall meet the additional qualifications for membership on municipal planning commissions as prescribed by law.

(d) All voting members of the planning commission shall be residents of the municipality. A vacancy shall be declared by the planning commission, after notice to the member, if a voting member of the planning commission ceases to reside in the municipality. The vacant position shall be filled by the mayor or council, as appropriate, within 90 days of a declaration of vacancy by the planning commission. The declaration of a vacancy shall operate to terminate the membership and voting authority of the member who no longer resides within the municipality.

§ 11-52-30. Planning commission jurisdiction.

(a) Except as otherwise provided herein, the territorial jurisdiction of any municipal planning commission shall include all land located in the municipality and all land lying within five miles of the corporate limits of the municipality and not

Code of Ala. § 11-52-50

located in any other municipality; except that, in the case of any nonmunicipal land lying within five miles of more than one municipality having a municipal planning commission, the jurisdiction of each municipal planning commission shall terminate at a boundary line equidistant from the respective corporate limits of such municipalities. Any alterations of a municipal planning commission based upon annexation or deannexation of property within the corporate limits of a municipality shall occur once a year on the first day of January and shall take effect for any annexations which were finalized on or before the preceding first day of October. In all counties having a population of 600,000 or more according to the 1950 federal census or any succeeding decennial federal census, the county planning and zoning commission shall be invested with the authority, except and unless the municipality or municipalities in question are actively exercising zoning jurisdiction and control within the police or five mile jurisdiction or, in the case of a municipality subsequently incorporated, within 180 days from the date of its incorporation; provided, further, that in all counties having a population of 600,000 or more inhabitants according to the 1950 federal census or any succeeding decennial federal census, the county commission of the county may establish minimum specifications and regulations governing the lay-out, grading, and paving of all streets, avenues, and alleys and the construction or installation of all water, sewer, or drainage pipes or lines in any subdivision lying wholly or partly in areas outside the corporate limits of any municipality in the counties and relating to subdivisions lying within the corporate limits of any municipality in the counties which has declined or failed to exercise zoning jurisdiction and control as provided in this section.

(b) A municipal planning commission, by resolution properly adopted no later than the first day of October of any year, may provide that, effective on the first day of January, the territorial jurisdiction of the municipal planning commission shall include all land lying within a radius less than the five miles permitted by this section. The resolution shall establish the territory within which the municipal planning commission will exercise jurisdiction to a boundary line equidistant from the corporate limits of the municipality, except, that in the case of any nonmunicipal land lying within the territorial jurisdiction of more than one municipality with a municipal planning commission exercising jurisdiction outside the municipal corporate limits, the jurisdiction of each municipal planning commission shall terminate at a boundary line equidistant from the respective corporate limits of each municipality. A copy of the resolution altering the territorial jurisdiction shall be forwarded to the county commission within five days of adoption. Additionally, nothing in this subsection shall be construed to alter the provisions of Article 5 of Chapter 49, which require a municipality to assume responsibility for roads annexed into the municipality under certain circumstances.

(c) (1) If a county commission has adopted subdivision regulations pursuant to Chapter 24, those subdivision regulations shall apply to the development of subdivisions within the territorial jurisdiction of a municipal planning commission outside the corporate limits of a municipality and shall be regulated and enforced by the county commission in the same manner and to the same extent as other subdivision development governed by the county's subdivision regulations. Notwithstanding the foregoing, a county commission and the municipal planning commission may enter into a written agreement providing that the municipal planning commission shall be responsible for the regulation and enforcement of the development of subdivisions within the territorial jurisdiction of the municipal planning commission under the terms and conditions of the agreement. In order to be effective, the agreement shall be approved by a resolution adopted by the county commission, the municipal governing body, and the municipal planning commission of the municipality, respectively.

(2) In those counties in which the county commission has adopted subdivision regulations pursuant to Chapter 24 and the municipal planning commission has been unsuccessful in reaching an agreement to exercise its jurisdiction as provided in subdivision (1), the governing body of the municipality and the municipal planning commission may override the county's enforcement of the regulation of subdivisions within the planning jurisdiction by fully complying with all of the following requirements:

a. The municipal governing body and the municipal planning commission shall each adopt separate resolutions expressing intent to exercise jurisdiction over the construction of subdivisions initiated after the effective date of the resolutions, despite the county commission's objections to the exercise of that authority.

b. The municipal planning commission shall at all times thereafter employ or contract with a licensed professional engineer who shall notify the county commission of the initiation of subdivisions; conduct inspections of the construction of the subdivision; and shall certify, in writing, the compliance with the subdivision regulations governing the development of the subdivision.

c. The county commission shall retain the authority to require a performance and maintenance bond from the developer, consistent with the requirements for the bonds in the county subdivision regulations, which shall be payable to the county.

d. The county commission shall retain the authority to execute on the bond to make necessary improvements to the public roads and drainage structures of the subdivision while it remains in the unincorporated area of the county.

e. The municipal governing body and the municipal planning commission exercising the authority granted in this subsection may thereafter withdraw their exercise of jurisdiction over future subdivisions located outside the

Code of Ala. § 11-52-50

corporate limits of the municipality after not less than six months' notice to the county commission. After withdrawal, the municipal planning commission of the municipality may not reinstate the authority granted in this subsection for 24 months after the effective date of its withdrawal.

(d) If a county commission has not adopted subdivision regulations pursuant to Chapter 24, the municipal planning commission shall have sole jurisdiction for the regulation and enforcement of the development of subdivisions within the territorial jurisdiction of the municipal planning commission.

(e) If the municipal planning commission accepts responsibility for the development of a subdivision within its territorial jurisdiction as provided in subsection (c), the county commission shall not accept any roads or bridges within the subdivision for county maintenance unless the county engineer certifies to the county commission that the road or bridge meets the minimum road and bridge standards of the county. This section shall not apply to any roads or bridges which the county has accepted for maintenance prior to October 1, 2012.

(f) If the county commission is responsible for the regulation and enforcement of a subdivision development within the territorial jurisdiction of a municipal planning commission outside the corporate limits of a municipality, the recording of any map or plat related to the subdivision shall be governed by Chapter 24.

(g) If the municipal planning commission is responsible for the regulation and enforcement of a subdivision development within the territorial jurisdiction of the municipal planning commission outside the corporate limits of the municipality, no map or plat of any subdivision shall be recorded, and no property shall be sold referenced to the map or plat, until and unless it has been first submitted to and approved by the municipal planning commission, pursuant to Section 11-52-32 and its adopted procedures, and then certified by the county engineer or his or her designee as follows within 30 days of being submitted to the county engineer: "The undersigned, as County Engineer of the County of _____ of Alabama, hereby certifies on this _____ day of _____, 20__ , that the _____ Planning Commission approved the within plat for the recording of same in the Probate Office of _____ County, Alabama."

(h) Approval by the county engineer pursuant to this subsection shall not constitute approval in lieu of or on behalf of any municipality with respect to subdivision development regulated and enforced by the municipal planning commission, wherein all maps or plats must be first submitted to and approved by the municipal planning commission or other appropriate municipal agency exercising jurisdiction over the subdivision.

(i) Nothing in this section shall be interpreted as allowing a municipal planning commission or a municipality to exercise the power of eminent domain outside of its corporate limits.

(j) Nothing in this section shall be interpreted as allowing a municipal planning commission or a municipality to levy taxes or fees outside of its corporate limits.

(k) Nothing in this section shall limit or impair the authority of a municipality to regulate the construction of buildings within the police jurisdiction of the municipality, including, but not limited to, the issuing of building permits, the inspection of building construction, and the enforcement of building codes.

(l) Nothing in this section shall be construed to grant the county commission or county engineer the authority to regulate subdivision development or approve maps or plats for any developments within the corporate limits of a municipality.

§ 11-52-31. Regulations.

(a) Except where the county commission is responsible for the regulation of subdivision regulations within the territorial jurisdiction of a municipal planning commission pursuant to Section 11-52-30, the municipal planning commission shall adopt subdivision regulations governing the subdivision of land within its jurisdiction. The regulations may provide for the proper arrangement of streets in relation to other existing or planned streets and to the master plan, for adequate and convenient open spaces for traffic, utilities, access of fire-fighting apparatus, recreation, light and air and for the avoidance of congestion of population, including minimum width and area of lots. The regulations may include provisions as to the extent to which streets and other ways shall be graded and improved and to which water and sewer and other utility mains, piping, or other facilities shall be installed as a condition precedent to the approval of the plat. The regulations or practice of the municipal planning commission may provide for a tentative approval of the plat previous to the installation, but any tentative approval shall be revocable and shall 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 municipal planning commission may accept a bond with 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 municipal planning commission. The municipality is hereby granted the power to enforce the bond by all appropriate legal and equitable remedies.

(b) Notwithstanding any other provision of law, regulations adopted by a municipal planning commission may authorize administrative approval of a minor subdivision without a public hearing. A minor subdivision consists of the

Code of Ala. § 11-52-50

subdivision of land into not more than six lots or a reduction of the number of lots in an existing subdivision. The developer of a minor subdivision approved by the municipal planning commission shall not require any public improvements, the dedication of a public way, or the expenditure of any public funds, and the plan for the minor subdivision shall not conflict with the master plan, official zoning map, any zoning ordinance, or any other subdivision regulations. This subsection does not require a municipal planning commission to authorize approval of a minor subdivision without first holding a public hearing.

(c) All regulations shall be published as provided by law for the publication of ordinances, and before adoption a public hearing shall be held thereon. A copy thereof shall be certified by the municipal planning commission to the probate judge of the county in which the municipality and territory are located.

§ 11-52-32. Plat approval -- Zoning powers of planning commission.

(a) Except where the development of a subdivision within the territorial jurisdiction of a municipal planning commission is regulated by the county commission pursuant to Section 11-52-30, the municipal planning commission shall approve or disapprove a plat within 30 days after the submission thereof to it; otherwise, the plat shall be deemed to have been approved, and a certificate to that effect shall be issued by the municipal planning commission on demand; provided, however, that the applicant for the municipal planning 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 municipal planning commission. Any plat submitted to the municipal planning 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 municipal planning commission without affording a hearing thereon. Notice shall be sent to the address by registered or certified mail of the time and place of the hearing not less than five days before the date fixed therefor. Similar notice shall be mailed to the owners of land immediately adjoining the platted land as their names appear upon the plats in the county tax assessor's office and their addresses appear in the directory of the municipality or on the tax records of the municipality or county.

(b) Every plat approved by the municipal planning commission shall, by virtue of the approval, be deemed to be an amendment of or 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.

(c) The municipal planning commission, from time to time, may recommend to the governing body of the municipality amendments of the zoning ordinance or map or additions thereto to conform to the municipal planning commission's recommendations for the zoning regulation of the territory comprised within approved subdivisions. The municipal planning commission shall have the power to agree with the application upon use, height, area, or bulk requirements or restrictions governing buildings and premises within the subdivision, provided the requirements or restrictions do not authorize the violation of the then effective zoning ordinance of the municipality. The 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.

(d) The municipal planning commission of any Class 1 city may elect no fewer than three and no more than five persons who are members of the municipal planning commission to serve while members thereof and at the pleasure of the municipal planning commission as a committee to approve or disapprove in the name of the municipal planning commission any plat presented to the municipal planning commission. Should any committee member so elected by the municipal planning commission be unable for any reason to serve at any time as a member of the committee or should a vacancy occur at any time on the committee, the chair of the municipal planning commission shall appoint another member thereof to serve as a member of the committee until such time as the replaced member of the committee shall resume his or her duties or until the municipal planning commission shall fill the vacancy by electing another of its members to serve on the committee. The committee shall be governed by all the provisions of this article applicable to municipal planning commissions in regard to the approval or disapproval of any plat and to all regulations adopted by the municipal planning commission in regard thereto not inconsistent with the provisions of this article. Any plat submitted to the committee shall be considered as if submitted to the municipal planning commission, and any approval or disapproval of any plat by the committee shall be as if the same were approved or disapproved by the municipal planning commission; provided, however, that any party aggrieved by any decision of the committee, within 15 days thereafter, may appeal therefrom to the full municipal planning commission of the municipality by filing with the municipal planning commission a written notice of appeal specifying the decision from which the appeal is taken. In the case of an appeal, the committee shall cause a transcript of all papers and documents filed with the committee in connection with the matter involved in the appeal to be certified to the municipal planning commission to which the appeal is taken and the municipal planning commission, within 45 days from the taking of the appeal, in accordance with the reasonable regulations as it may from time to time adopt, shall make an investigation as it deems proper and either affirm the decision of the committee or render the decision as in the judgment of the municipal planning commission should have been rendered by the committee.

§ 11-52-33. Transfer or sale of land prior to plat approval.

(a) Where the regulation of a subdivision development is the responsibility of the municipal planning commission, if the owner or agent of the owner of any land located within a subdivision conveys, transfers, or sells any land by reference to or exhibition of or by other use of a plat of a subdivision before the plat has been approved by the appropriate commission, department, or agency of any municipality requiring such approval and recorded or filed in the office of the appropriate county probate office, the owner or agent shall forfeit and pay a penalty of one hundred dollars (\$ 100) for each lot or parcel so transferred, and the description of the lot or parcel by metes and bounds in the instrument of transfer or other document used in the process of selling or transferring shall not exempt the transaction from the penalties or from the remedies provided in this section.

(b) The municipality may enjoin the conveyance, transfer, or sale by a civil action for injunction brought in any court of competent jurisdiction or may recover the same penalty provided in this section by a civil action in any court of competent jurisdiction.

(c) Where the county commission is responsible for regulation of subdivision development within the territorial jurisdiction of a municipal planning commission, enforcement of the subdivision regulations of the county shall be as provided in Chapter 24, and any penalties assessed against a developer for failure to comply with the subdivision regulations of the county shall be as provided therein.

(d) Nothing in this section shall impair, impede, or prohibit any person or entity from entering into any otherwise valid and enforceable contract for the purchase or sale of any lot within any proposed subdivision prior to its approval.

§ 11-52-33.1. Applicability of regulatory authority.

(a) Sections 11-52-1, 11-52-30, 11-52-31, 11-52-32, and 11-52-33 shall not affect any application for development or any subdivision filed prior to October 1, 2012.

(b) Additionally, in the event the municipal planning commission lawfully assumes the authority to exercise control over the development of subdivisions in an area where the county commission has previously exercised regulation of subdivision development, the municipal planning commission's regulatory authority shall not apply to a subdivision development which is already being regulated and enforced by the county commission pursuant to an application for plat approval submitted to the county commission by the developer prior to the date on which the municipal planning commission lawfully assumed responsibility for the development of subdivisions pursuant to this chapter.

(c) Nothing contained in Sections 11-52-1, 11-52-30, 11-52-31, 11-52-32, and 11-52-33 requires a municipality to assume responsibility for roads or infrastructure in subdivisions approved by the city engineer outside the municipal corporate limits or alters, amends, or supersedes the requirements relating to responsibility for road and bridge maintenance pursuant to Section 11-49-80, Code of Alabama 1975.

(d) Nothing contained in Sections 11-52-1, 11-52-30, 11-52-31, 11-52-32, and 11-52-33 shall be construed to effect or limit the authority conferred by Sections 37-4-130 and 37-4-131, Code of Alabama 1975.

§ 11-52-34. Street improvements and grading.

The municipality shall not accept, lay out, open, improve, grade, pave, curb or light any street or lay or authorize water mains or sewers or connection to be laid in any street within any portion of territory for which the planning commission shall have adopted a major street plan unless such street shall have been accepted or opened as or shall otherwise have received the legal status of a public street prior to the adoption of such plan or unless such street corresponds with a street shown on the official master plan or with a street on a subdivision plat approved by the planning commission or with a street on a street plat made by and adopted by the commission.

The council may, however, accept any street not shown on or not corresponding with a street on the official master plan or on an approved subdivision plat or an approved street plat; provided, that the ordinance or other measure accepting such street shall be first submitted to the municipal planning commission for its approval and, if approved by the commission, shall be enacted or passed by not less than a majority of the entire membership of the council or, if disapproved by the commission, shall be enacted or passed by not less than two thirds of the entire membership of the council. A street approved by the planning commission upon submission by the council or a street accepted by a two-thirds vote of the council after disapproval by the planning commission shall thereupon have the status of an approved street as fully as though it had been originally shown on the official master plan or on a subdivision plat approved by the commission or

had been originally platted by the commission.

§ 11-52-35. Building permits.

From and after the time when a planning commission shall have adopted a major street plan of the territory within its subdivision jurisdiction or part thereof, no building shall be erected on any lot within such territory or part nor shall a building permit be issued therefor unless the street giving access to the lot upon which such building is proposed to be placed shall have been accepted or opened as or shall otherwise have received the legal status of a public street prior to that time or unless such street corresponds with a street shown on the official master plan or with a street on a subdivision plat approved by the planning commission or with a street on a street plat made by and adopted by the commission or with a street accepted by council after submission to the planning commission by the favorable vote required in Section 11-52-34.

Any building erected in violation of this section shall be deemed an unlawful structure, and the building inspector or other appropriate official may cause it to be vacated and have it removed.

§ 11-52-36. Conflict of laws. (Repealed)

Repealed: Acts 2012, No. 12-297, § 4, effective October 1, 2012.

Article 3 Reservation of Lands in Subdivisions for Future Acquisition for Public Streets

§ 11-52-50. Authorized -- Plat adoption -- Abandonment of reservation.

Any municipal planning commission is empowered, after it shall have adopted a major street plan of the territory within its subdivision jurisdiction or of any major section or district thereof, to make or cause to be made, from time to time, surveys for the exact location of the lines of a street or streets in any portion of such territory and to make a plat of the area or district thus surveyed, showing the land which it recommends be reserved for future acquisition for public streets.

The commission, before adopting any such plat, shall hold a public hearing thereon, notice of the time and place of which, with the general description of the district or area covered by the plat, shall be given not less than 10 days previous to the time fixed therefor by one publication in a newspaper of general circulation in the municipality if the district or area is within the municipality or of general circulation in the county if the district or area is outside of the municipality.

After such a hearing the commission may transmit the plat, as originally made or modified as may be determined by the commission, to the council, together with the commission's estimate of the time or times within which the lands shown on the plat as street locations should be acquired by the municipality. Thereupon by resolution the council may approve and adopt or may reject such plat or may modify it with the approval of the planning commission or, in the event of the planning commission's disapproval, the council may, by a favorable vote of not less than two thirds of its entire membership, modify such plat and adopt the modified plat. In the resolution of adoption of a plat the council shall fix the period of time for which the street locations shown upon the plat shall be deemed reserved for future taking or acquisitions for public use. Upon such adoption the clerk of the council shall transmit one attested copy of the plat to the probate judge of each county in which the platted land is located and retain one copy for the purpose of public examination and hearings of claims for compensation.

Such approval and adoption of a plat shall not, however, be deemed the opening or establishment of any street nor the taking of any land for street purposes nor for public use nor as a public improvement, but solely as a reservation of the street locations shown thereon for the period specified in the council resolution for future taking or acquisition for public use.

The commission may, at any time, negotiate for or secure from the owner or owners of any such lands releases of claims for damages or compensation for such reservations or agreements indemnifying the municipality from such claims by others, which releases or agreements shall be binding upon the owner or owners executing the same and their successors in title. At any time after the filing of a plat with the probate judge and during the period specified for the reservation, the planning commission and the owner of any land containing a reserved street location may agree upon a modification of the location of the lines of the proposed street, such agreement to include a release by said owner of any claim

for compensation or damages by reason of such modification, and thereupon the commission may make a plat corresponding to the said modification and transmit same to the council and, if such modified plat shall be approved by the council, the clerk of council shall transmit an attested copy thereof to the said probate judge, and said modified plat shall take the place of the original plat.

At any time the council may, by resolution, abandon any reservation and shall certify any such abandonment to the said probate judge.

§ 11-52-51. Board of appraisers.

In the resolution of adoption of a plat the council shall appoint a board of three appraisers and shall fix the time and place of meetings for hearings by said board upon the amounts of compensation to be paid for such reservations. Thereupon the clerk of the council shall publish in at least two newspapers of general circulation in the municipality once a week for four consecutive weeks a notice which shall contain a general description of the land thus reserved as shown on the plat, the provisions of the resolutions of the council, including the period of time for which such reservations are made, the time within which claims for compensation may be filed, which shall be not less than three months nor more than six months from the date of the notice, and the time and place of hearings by the board of appraisers. The first hearing shall not be set earlier than 30 days after the date of the first of such publications. Such notice shall also be posted in at least three public places in the neighborhood of or along the line of the location of the reservation.

The board of appraisers shall fix the amounts of compensation to be paid, respectively, to the owners of the lands reserved for the period of time as shown on the plat and in the resolution adopted by council. Whenever the clerk of the council receives, within the period fixed for the same, any claim for such compensation, he shall transmit it to the board of appraisers. At the time and place fixed for such hearings the board of appraisers shall hear and consider all claims presented to it in writing or in person, including all evidence which may be presented by the claimants or other persons. The board of appraisers shall have the right on its own initiative to investigate and ascertain data or evidence relevant to the question of such compensation.

In case of the abandonment of a reservation prior to the time fixed for payment of compensation, the municipality shall be liable to the owner of the land included within the abandoned reservation for the expenses, if any, incurred by such owner by reason of such reservation.

§ 11-52-52. Objections to appraisers' report -- Payment of compensation.

The board of appraisers shall, within 90 days after the time fixed for the filing of claims, file its tentative report with the clerk of the council, setting forth its findings as to the amounts of compensation to be paid the respective owners of the lands included within the lines of such reservations as located on the approved plat. Thereupon the clerk of the council shall publish once a week for two consecutive weeks in at least two newspapers of general circulation in the municipality the fact of the filing of the report of the appraisers and specify a period of 30 days from and after the date of the first such publication within which objections to the report may be filed with the clerk of the council. If objections are filed within said period, then the clerk of the council shall cause the board of appraisers to hold a meeting at which said objections shall be transmitted to the board, and the board may modify its report. The report in its original form or, if modified, in its modified form shall be transmitted to the council by its clerk. Before passing on the report, the council may return it to the board of appraisers for reconsideration, and the board may, upon further consideration, transmit its former or a modified report to the council. The council may approve or disapprove the report.

If the report is approved by the council, the council shall provide for the payment of amounts of compensation set forth in the report within 90 days after the filing of the report with council. In the case of those property owners who file claims, payments shall be made through the clerk of the council, who shall notify the claimants at the addresses given upon the claims filed with him. Payments to all other persons shall be made through the clerk of

the circuit court of the county in which the reserved location is situated by the payment to said clerk of the amounts awarded to such persons, notice of distribution to such persons to be given and made as may be provided by a rule or order of said court. Payments made as aforesaid to the clerk of the council or clerk of said court within said 90 days shall be deemed compliance with the above requirements for payment within 90 days.

If the council disapproves the report or fails to provide for such payment within said 90 days, such disapproval or failure shall be deemed a dismissal of the proceedings and a cancellation of the plat and an abandonment of the reservations of the street locations as shown on the plat, with the same liability of the municipality for expenses as provided in Section 11-52-51 in the case of abandonment by resolution, and thereupon the clerk of the council shall cause to be transmitted to the probate judge of the county an attested statement of such abandonment.

§ 11-52-53. Appeals from compensation awards.

Within 20 days after the approval of any such report by the council, any person dissatisfied with the award of compensation therein contained may file with the clerk of the council notice of appeal to the court of the county in which the appellant's land is located having jurisdiction of actions by municipalities to assess compensation for property taken or appropriated for public use for streets. Thereupon, and within 10 days of such notice, the clerk of the council shall file with the clerk of said court the report of the board of appraisers approved by the council, together with certified copies of the resolution of the council and of the notice of appeal. Within five days thereafter the appellant shall give and file with the clerk of said court an appeal bond, running to the municipality, for such amount as may be fixed by the court, to secure the municipality against the costs of the appeal in the event that appellant fails to obtain an award of compensation greater than that fixed in the said report. Thereupon said appeal shall be deemed to be filed and pending as a civil action brought by the municipality to appropriate and assess the compensation to be paid for the reservation of the land of the appellant as shown on the approved plat for the period fixed in the resolution of the council, and the procedure shall be in accordance with the procedure specified by law in the proceedings for the taking or appropriation of property for public use for streets, and the municipality shall pay the appellant the amount fixed in said civil action or, in the event it abandons the reservations, the amount of costs and expenses incurred by the appellant in said civil action.

§ 11-52-54. Effect -- Exclusive nature of compensation.

The reservation of a street location as provided in Section 11-52-50 shall not be deemed to prohibit or impair in any respect the use of the reserved land by the owner or occupant thereof for any lawful purpose, including the erection of buildings thereon, but no compensation other than the compensation awarded in the final report of said board of appraisers as approved by the council as provided in Section 11-52-52 or, in the case of an appeal, as awarded on such appeal as provided in Section 11-52-53 shall at any time be paid by the municipality or public to or recovered from the municipality or public by any person for the taking of or injury to any building or structure built or erected within the period fixed in the resolution of council upon any such reserved location.

No compensation or damages for any such reservation shall be paid or recovered except as provided in Sections 11-52-51 through 11-52-53.

Article 4 Zoning

§ 11-52-70. Districts; powers of municipalities as to.

Each municipal corporation in the State of Alabama may divide the territory within its corporate limits into business, industrial and residential zones or districts and may provide the kind, character and use of structures and improvements that may be erected or made within the several zones or districts established and may, from time to time, rearrange or alter the boundaries of such zones or districts and may also adopt such ordinances as necessary to carry into effect and make effective the provisions of this article.

§ 11-52-71. Districts; generally.

For any or all of said purposes the local legislative body may divide the municipality into districts of such number, shape and area as may be deemed best suited to carry out the purposes of this article, and within such districts it may regulate and restrict the erection, construction, reconstruction, alteration, repair or use of buildings, structures or land. All such regulations shall be uniform for each class or kind of buildings throughout each district, but the regulations in any one district may differ from those in other districts.

§ 11-52-72. Regulations; generally.

Such regulations shall be made in accordance with a comprehensive plan and 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, sewerage, 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.

§ 11-52-73. Regulations; buildings and yards.

For the purpose of promoting the health, safety, morals or general welfare of the community, the legislative body of incorporated cities and towns is hereby empowered to 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, residences or other purposes.

§ 11-52-74. [Repealed.]

Repealed: Acts 1981, 3rd Ex. Sess., No. 81-1191.

§ 11-52-75. Regulations; housing of different classes of inhabitants.

For the promotion of the public peace, order, safety or general welfare, such municipal corporations may, within residential districts established pursuant to this article, further regulate as to the housing or residence therein of the different classes of inhabitants, but such regulations are not hereby authorized as will discriminate in favor of or against any class of inhabitants.

§ 11-52-75.1. Multi-family homes for people with intellectual disabilities or mental illness.

(a) It is the express intent of the Legislature to abolish and prohibit any zoning law, ordinance, or regulation which prevents or prohibits people with an intellectual disability or mental illness from living in a natural residential environment zoned "multi-family." Zoning ordinances shall not exclude a group home from a "multi-family" residential area solely because the persons residing in the group home are not blood related, and no such group home shall be located within 1,000 feet of another group home as measured between lot lines. The group home shall be required to meet all other zoning and licensing requirements of local and state governmental agencies.

(b) For the purpose of any zoning law, ordinance or regulation in force in the State of Alabama and its political subdivisions, the classification of "multi-family" shall not exclude a group home in which 10 or less unrelated people with an intellectual disability or mental illness may reside, and said home may, in addition

thereto, include two additional persons who need not be related by blood or marriage to each other or to any of the people with an intellectual disability or mental illness living in the home.

(c) Notwithstanding the provisions of this section, nothing herein contained shall be construed to affect any such group home previously established and existing on the date of the enactment of this section.

§ 11-52-76. Enforcement and amendment of regulations.

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 and may adopt such ordinances as may be necessary to carry into effect and make effective the provisions of this article.

§ 11-52-77. Ordinance adoption.

No ordinance shall be passed by any municipal corporation under the authority of this article unless and until the municipal governing body has complied with the procedures set forth in either subdivision (1) or subdivision (2) of this section.

(1) Prior to adoption, the proposed ordinance shall be published in full for one insertion and an additional insertion of a synopsis of the proposed ordinance, one week after the first insertion, which synopsis shall refer to the date and name of the newspaper in which the proposed ordinance was first published; both such insertions shall be at least 15 days in advance of its passage and in a newspaper of general circulation published within the municipality, or, if there is no such newspaper, then by posting the proposed ordinance in four conspicuous places within the municipality, together with a notice stating the time and place that the ordinance is to be considered by the municipal legislative authorities and stating further that at such time and place all persons who desire shall have an opportunity of being heard in opposition to or in favor of such ordinance.

(2) Prior to adoption, notice that an ordinance will be considered shall be published for three consecutive weeks in a newspaper of general circulation in the county. The notice shall include the following information:

a. A provision that an ordinance proposing to zone or rezone property will be considered by the municipal governing body pursuant to this section and that a copy of the proposed ordinance is available for public inspection at the city or town hall;

b. The location of the city or town hall;

c. A map showing the location of the property;

d. A general description of the property proposed to be zoned or rezoned including the common name by which the property is known; and

e. The time and place where all persons may be heard in opposition to or in favor of the ordinance.

The notice required by this subdivision shall be published in the legal section of the publication in standard form. In addition, the same notice shall also be published one time in the regular section of the newspaper which notice shall be in the form of at least a one-quarter page advertisement.

(3) No such ordinance 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.

§ 11-52-78. Amendment procedure.

Such regulations, restrictions and boundaries and ordinances passed under the authority of this article may from time to time be amended, supplemented, changed, modified or repealed.

The provisions of Section 11-52-77 relative to public hearings and official notices shall apply equally to all changes and amendments.

§ 11-52-79. Zoning commission.

In availing itself of the powers conferred by this article, the legislative body of any incorporated city or town may 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 therein. Such commission shall make a preliminary report and hold a public hearing thereon before submitting its final report. In case of the appointment of such zoning commission, the municipal legislative body shall not hold its public hearings or take action until it has received the final report of such commission. Where a municipal planning commission already exists, it may be appointed as the "zoning commission."

§ 11-52-80. Board of adjustment.

(a) In availing itself of the powers conferred by this article, the legislative body of any incorporated city or town 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 said board of adjustment shall in appropriate cases and subject to appropriate conditions and safeguards make special exceptions to the terms of the ordinance in harmony with its general purposes and interests and in accordance with general or specific rules therein contained.

The board of adjustment shall consist of five members, each to be appointed for a term of three years, except that in the first instance one member shall be appointed for a term of three years, two for a term of two years and two for a term of one year, and thereafter each member appointed shall serve for a term of three years or until his successor is duly appointed; provided, that in all cities having a population of not less than 175,000 nor more than 275,000 according to the most recent federal decennial census, all members of the board, including any alternate member provided for in this subsection, shall be bona fide residents and qualified electors of such cities; provided further, that the members of boards of adjustment created shall serve out their terms, and thereafter the members of such boards shall be appointed in the manner prescribed in this subsection for boards created after August 26, 1971. In addition to the five regular members provided for in this subsection two supernumerary members shall be appointed to serve on such board at the call of the chairman only in the absence of regular members and while so serving shall have and exercise the power and authority of regular members. Such supernumerary members shall be appointed to serve for three year terms and shall be eligible for reappointment. Appointed members may be removable for cause by the appointing authority upon written charges and after public hearing. Vacancies shall be filled for the unexpired term of any member whose term becomes vacant.

(b) The board 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; provided that, in cities having populations of not less than 175,000 nor more than 275,000, the board shall meet regularly once a month on a day determined by the board. Such 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 of other official actions, all of which shall immediately be filed in the office of the board and shall be a public record.

(c) 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 transmit forthwith to the board all papers constituting the record upon which the action appealed was taken. 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. Such 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. 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 same within a reasonable time. Upon the hearing any party may appear in person or by agent or by attorney.

(d) The board of adjustment shall have the following powers:

(1) To hear and decide appeals where it is alleged 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 thereto;

(2) To hear and decide special exceptions to the terms of the 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 the ordinance as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provisions of the ordinance will result in unnecessary hardship and so that the spirit of the ordinance shall be observed and substantial justice done.

(e) In exercising the powers mentioned in subsection (d) of this section, such 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. The concurring vote of four members of the board shall be 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.

(f) 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 on 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.

§ 11-52-80.1. Board of adjustment; Class 5 municipalities; membership; alternate structure.

(a) When used in this section, the words municipality, municipalities, and mayor shall have the meanings as provided for in Section 11-52-1.

(b) The council of any Class 5 municipality with a city manager or mayor commission form of government may determine by ordinance that any board of adjustment of the municipality created pursuant to Section 11-52-80, shall consist of seven members: six regular members appointed by the council and representing as equally as possible the several districts, wards, or other areas of the municipality, to be determined by the council, and one regular member appointed by the mayor.

(c) In exercising the powers in subsection (d) of Section 11-52-80, the board may reverse, affirm, or may modify the order, requirement, decision, or determination appealed from and may enter the appropriate order, requirement, decision, or determination and, to that end, shall have all the powers of the officer from whom the appeal is taken. The concurring vote of five members of the board shall be necessary to reverse any order, requirement, decision, or determination of an administrative official or to decide in favor of the applicant on a matter upon which the board is required to pass under any ordinance or to effect any variation in the ordinance.

(d) Upon the adoption by the council of any Class 5 municipality with a city manager or mayor commission form of government of an ordinance adopting an alternate board of adjustment structure pursuant to this section, the terms of the incumbent members of any existing planning commission shall be terminated.

(e) Unless specified otherwise in this section, the duties, powers, responsibilities, and procedures of any planning commission appointed pursuant to this section shall be as provided for in this chapter.

§ 11-52-81. Appeals from board of adjustment.

Any party aggrieved by any final judgment or decision of such board of zoning adjustment may within 15 days thereafter appeal therefrom to the circuit court by filing with such board a written notice of appeal specifying the judgment or decision from which the appeal is taken. In case of such appeal such board shall cause a transcript of the proceedings in the action to be certified to the court to which the appeal is taken, and the action in such court shall be tried de novo.

§ 11-52-82. Conflict of laws.

Wherever the regulations made under authority of this article require a greater width or size of yards or courts or other open spaces or require a lower height of buildings or a lesser 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 or local ordinance or regulation, the provisions of the regulations made under authority of this article shall govern.

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

§ 11-52-83. Remedies for violations.

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 regulation made under authority conferred by this article, 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.

§ 11-52-84. Saving clause.

Nothing contained in this article shall be held to repeal, modify or change in any way any regulations, restrictions, boundaries or ordinances now existing or in force in any incorporated city or town in this state, and this article shall not be held to repeal Sections 11-52-70 and 11-52-74 [Section 11-52-74 repealed], but said sections shall remain in full force and effect.

§ 11-52-85. Rezoning contemporaneously with annexation.

(a) A municipality which exercises its authority to zone territory within its corporate limits may pre-zone territory proposed for annexation into the corporate limits of the municipality prior to the effective date of the annexation by complying with this article. If all the requirements, including all notice and public hearing requirements, of this article are met, the zoning shall become effective upon the date the territory is annexed into the corporate limits, or upon the date the zoning process is completed, whichever is later.

(b) A municipality which exercises its authority to zone territory within its corporate limits shall pre-zone territory as provided in subsection (a) and issue a statement of zoning classification to an affected property owner if the individual property owner residing in the area to be annexed requests in writing that a zoning determination be made pursuant to this section prior to being annexed.

(c) Any pre-zoning established by a municipality pursuant to this section for territory proposed for annexation shall be null and void as to any portion of the territory that is not annexed into the corporate limits

within 180 days of the initiation of annexation proceedings as provided by law.

(d) Nothing contained in this section shall allow a municipality to zone territory outside the corporate limits of the municipality that is not in the process of being annexed into the corporate limits of a municipality as provided by law.

(e) Section 6-5-127 shall be applicable to any property pre-zoned pursuant to this section.