

SCOMM

#23:36

Draft 12/4/80

Notes

T19B Chapter 42. Planning, Patting and Land Use Regulation

Section

- 10. Planning, platting, and land use regulation
- 20. Planning commission
- 30. Comprehensive plan
- 40. Land use regulations
- 50. Appeals from administrative decisions
- 60. Judicial review
- 70. Platting jurisdiction and power
- 80. Application to state and political subdivisions
- 90. Waiver in certain cases
- 100. Procedure
- 110. Information required
- 120. Alteration of replat petition
- 130. Notice of hearing
- 140. Hearing and determination
- 150. Recording
- 160. Title to vacate area
- 170. Penalties

Sec. 29.42.010. Planning, platting, and land use regulation. (a) First and second class boroughs shall provide for planning, platting, and land use regulation on an areawide basis.

(b) the assembly by ordinance may delegate any of its powers and responsibilities under (a) of this section to the council of a city of any class within the borough or a subordinate board or commission of a city, provided the city first consents by ordinance to that delegation. The Assembly, with or without the consent of the council may at any time revoke any or all powers or responsibilities delegated to a city council or subordinate body under this section.

EXPLANATION

This section is substantially similar to AS 29.33.070. A reference in subsection (a) to "zoning" has been changed to the more flexible term "land use regulation". Subsection (b) is a redrafted version of AS 29.33.070(b). The proposed language clarifies the issue of whether a city's consent is required before delegated powers are revoked by the Assembly.

(Alternate Section suggested by Joanne Shanley)

Sec. 29.42.010. Planning, platting and land use regulation. (a) First and second class boroughs shall provide for planning, platting and land use regulation on an areawide basis.

(b) the assembly by ordinance may delegate any of its powers and responsibilities under (a) of this section to the council of a city of any class within the borough or a subordinate board or commission of a city, provided the city first consents by ordinance to that delegation. The assembly, with or without the consent of the council may at any time revoke any or all powers or responsibilities delegated to a city council or subordinate body under this section.

(c) Notwithstanding the provisions of (b) of this section the functions of planning, platting, and land use regulation within a first class or home rule city located more than 25 miles from the boundary of the Borough seat may be assumed and exercised exclusively by that city upon ratification by the qualified voters residing in the city of an ordinance of the city council proposing exercise of those powers by the city.

use existing language
Sec. 29.42.020. Planning commission. (a) By ordinance the assembly shall establish a planning commission consisting of not less than five ~~persons~~ *residents* appointed and confirmed as provided by law. The assembly by ordinance shall also prescribe the qualifications, terms, and compensation of planning commissioners.

(b) In addition to those responsibilities prescribed by law, the planning commission shall:

E. Administer
(1) Prepare and recommend to the assembly a comprehensive plan for the systematic and organized development of the borough, as defined in .030 of this chapter.

ordinance

(2) Prepare, recommend, and as required by ~~law~~ to administer those

measures necessary to implement the comprehensive plan. *including those measures provided in 29.42.040.*

Add to Reference language
EXPLANATION

This section is a shortened and revised version of AS 29.33.080. Major changes include: elimination of apportionment requirements based on residency of specified members within first class cities; elimination of specific language regarding appointments, terms, and compensation of planning commissioners and substitution of more general language requiring the Assembly to prescribe by ordinance the qualifications, terms and compensation of commissioners; elimination of detailed and unnecessary specifications of the commission's duties in favor of a general statement requiring the commission to prepare and recommend measures necessary to implement the comprehensive plan; and elimination of public meetings and public records requirements as redundant.

Sec. 29.42.030. Comprehensive plan. (a) The comprehensive plan is a compilation of policy statements, goals, standards and maps for guiding the physical, social and economic development, both private and public, of the borough, and may include, but is not limited to, the following: statements of policies, goals, standards, a land use plan, a community facilities plan, a transportation plan, and recommendations for plan implementation.

after receiving the advice
(b) The assembly shall adopt, *by ordinance* ~~or may modify the~~ a comprehensive plan ~~with the~~ recommendations of the planning commission. The assembly shall, with the advice and recommendations of the planning commission, *periodically* undertake an overall review of the plan and update the plan as necessary, ~~to ensure the continued validity and effectiveness of the plan.~~

EXPLANATION

This section is derived from AS 29.33.085. Subsection (a) is identical to AS 29.33.085(a). Subsection (b) is redrafted to eliminate the mandatory two year review requirement of AS 29.33.085(b) and contains a more flexible review requirement premised on a determination that the continued validity and effectiveness of the plan requires review.

Sec. 29.42.040. Land use regulation. In accordance with a comprehensive plan adopted under Section .030 of this chapter and in order to implement that plan, the assembly by ordinance ~~and as a legislative act,~~ *shall* ~~may~~ enact or amend regulatory measures governing the use and occupancy of land, *which may include* including but not limited to:

(1) Zoning regulations which restrict or govern use of land and improvements by geographic districts;

(2) Construction, fire and life safety codes governing placement, erection and occupancy of structures;

xyles (3) Land use permit systems designed to encourage specified uses and structures and to discourage others, or to minimize unfavorable ~~relationships~~ *relationships* of certain uses and structures.

(4) Other regulatory measures ~~reasonably necessary~~ to further the goals and objectives of the comprehensive plan.

(5) Measures defining and regulating public nuisances.

(b) fm 33.110 (b)(3) & c

Make to powers sec.

EXPLANATION

The proposed Section 29.42.040 represents a substantial modification of AS 29.33.090. Present law requires implementation of the comprehensive plan through traditional zoning applicable to geographically defined districts, and allows so called "contract zoning." Although the present AS 29.33.090(b) contains a rather traditional enumeration of the purposes of zoning, the "including but not limited to" preface to that subsection renders the detailed laundry list legally meaningless. The suggested language of AS 29.42.040 preserves the requirement that all land use regulations comply with a comprehensive plan and recites the more important categories of land use regulations available to the Borough. Passage of AS 29.42.040 would clearly enable second class boroughs to enact building and fire codes and to regulate public nuisances.

Sec. 29.42.050. Appeals from administrative decisions. (a) By ordinance the assembly shall provide for appeals from administrative decisions of borough employees or boards and commissions made in the enforcement, administration, or application of land use regulations adopted ~~by the borough~~ under this chapter to a board of adjustment, hearing

assembly *Court,*

officer, or other ~~independent quasi-judicial body established by the~~
~~borough assembly.~~

(b) By ordinance the assembly ^{MAY} ~~shall~~ provide for appointment of hearing officers, or the composition, appointment and terms of office of a board of adjustment or other ~~quasi-judicial~~ body established to hear appeals from administrative actions specified in (a) of this section. ~~and~~ The assembly may define proper parties, prescribe evidentiary rules and standards of review and define remedies available to such bodies or hearing officers.

Raymond King, Jr.
EXPLANATION

This section consolidates provisions of existing Section 29.33.110 and Section 29.33.120. The specific enumeration of the kinds of decisions from which appeals may be taken is eliminated; in its place is a more general requirement allowing appeals from administrative decisions of borough employees or boards made in enforcing or administering land use regulations. New language allows appointment of hearing officers, eliminates redundant public records and meeting requirements, and allows the Assembly to define proper parties, evidentiary rules, and standards of review rather than follow more restrictive rules of the present AS 29.33.120.

Sec. 29.42.060. Judicial review. (a) The assembly shall provide by ordinance for appeals from decisions of the board of adjustment, hearing officer or other ^{body} ~~quasi-judicial board or others named under Sec. 050 of this chapter~~ to the Superior Court by a municipal officer or person jointly ^{an aggrieved} ~~or severally aggrieved.~~

(b) Appeals to the Superior Court under this section are administrative appeals and shall be governed by Rules of Court applicable to appeals from decisions of administrative agencies; ^{provided that}

(c) Appeals are heard ^{solely} ~~on the~~ record established by the administrative agency, ~~and the court may affirm, reverse, wholly or partly, the decision~~ ~~appealed from.~~ Issues in proceedings under this section have preference over all other civil actions and proceedings.

EXPLANATION

Based on AS 29.33.130, the proposed section makes several important changes in procedures governing administrative appeals to Superior Court. The "automatic stay" requirement of AS 29.33.130(c) is eliminated, allowing parties to follow more customary appellate rules governing injunctions pending appeal; the language plainly makes land use appeals administrative appeals under the Appellate Rules, and eliminates procedural requirements already governed by the Rules of Court.

Sec. 29.42.070. Platting jurisdiction and power. ~~(a) First and second class boroughs shall exercise the power to regulate platting and the subdivision of land on an areawide basis.~~ By ordinance the assembly shall enact subdivision regulations *which may include:*

- (1) governing the form, size and other aspects of subdivision, dedications, and vacations of land;
- (2) regulating dimensions and design features of lots or tracts;
- (3) establishing ~~strict~~ *steer* width, arrangement, and right of way, including ~~allowance~~ *Requirement* for public access to lots and installation of street paving, curbs, gutters, sidewalks, sewers, water lines, drainage and other public utility facilities and improvements;
- (4) requiring dedication of streets, rights of way, public utility easements and ~~other~~ areas deemed by the platting authority necessary for *once* future public uses;

(b) The assembly by ordinance shall establish a platting board to administer subdivision regulations adopted by the borough and perform other duties prescribed by law. The platting board may, in whole or in part, consist of members of the planning commission or of other municipal bodies, boards and commissions.

EXPLANATION

This section is derived from AS 29.33.150 and, aside from stylistic changes, makes the following modifications to existing law: requires adoption of subdivision regulations by ordinance; clearly allows the platting authority to require dedications; allows the Assembly to determine the composition of the platting board; and eliminates the provisions of 85 SLA 1979 which allow the State of Alaska to ignore capital improvement requirements of local subdivision regulations.

Sec. 29.42.080. Application to state and political subdivisions. All subdivisions of land made by the state, its agencies, instrumentalities and political subdivisions are subject to the provisions of this chapter or home rule ordinances or regulations governing subdivisions, and shall comply with ordinances and other local regulations adopted under this chapter or under home rule authority, in the same manner and to the same extent as subdivisions made by private landowners.

Governor's override (platting?)

EXPLANATION

This section contains the language of AS 40.15.200 and adds the word "private" preceding the word "landowners" in the last line. It is believed that the provisions of AS 40.15.200 are more appropriately placed here rather than in AS 40.15.

~~Sec. 29.42.090. Waiver in certain cases. (a) The platting authority shall, in individual cases, waive the preparation, submission for approval, and recording of a plat upon satisfactory evidence that:~~

~~(1) each tract or parcel of land will have adequate legal and physical access by the public to a public highway or street;~~

~~(2) each parcel created is five acres in size or larger and that the land is divided into four or fewer parcels;~~

~~(3) the conveyance is not made for the purpose of, or in connection with, a present or projected subdivision development;~~

(4) no dedication of a street, alley, thoroughfare or other public area is involved or required.

in the case of a plat provided by ordinance
(b) In other cases the platting authority may waive the preparation, submission for approval, and recording of a plat, if the transaction involved does not fall within the general intent of this chapter and AS 40.15 if it is not made for the purpose of, or in connection with, a present or projected subdivision development which constitutes an isolated transaction and no dedication of a street, alley, thoroughfare, park or other public area is involved or required.

EXPLANATION

This section contains one modification to its predecessor, AS 29.33.170. A reference to "adequate legal and physical access" is added to subsection (a)(1) which will guarantee public access to tracts or parcels created by waiver.

Sec. 29.42.095. Short plat procedure. (a) Notwithstanding the ~~any~~ ~~requirements~~ of this chapter ~~governing the submission, consideration, or approval of vacations, subdivisions, or resubdivisions, by ordinance the~~ Assembly ^{by ord} may establish a short or abbreviated plat procedure for plats which will only relocate or vacate lot lines, subdivide a single tract, parcel or lot into not more than four tracts or lots and will not:

(1) deny legal and physical ^{public} access to and from all lots or tracts created by, or adjacent to, the subdivision or require construction or improvements necessary for access;

(2) alter a dedicated street or right-of-way, or require any dedication except to match a half right-of-way;

(3) allow a change in the permitted use to which the lot or tract may be devoted under existing law;

(4) require the granting of a vacation or variance from the subdivision regulations enacted by the Borough.

(b) Consistent with this section, regulations governing the short plat procedure may allow an administrative official to review, consider, and approve abbreviated plats with such notice, hearing, and other procedural requirements established by the Assembly.

EXPLANATION

New section allowing short plat procedure under such expedited procedures as the Assembly may adopt.

Sec. 29.42.100. Procedure. (a) The platting board shall within 60 days of filing approve or disapprove the plat or shall return it to the applicant for modification or correction. If the board fails to act, the plat is considered approved and a certificate of approval shall be issued by the board on demand. The applicant for plat approval may consent to the extension of the period for action by the board. The board shall state on its record and in writing to the applicant its reason for disapproval of a plat.

(b) The platting board shall submit an approved plat to the district recorder in compliance with AS 40.15.010 -- 40.15.020.

EXPLANATION

Subsections (a) and (b) are identical to AS 29.33.160(a) and (b). The proposed section eliminates AS 29.33.160(c) relating to submission of preliminary plats for state disposals under AS 38.05 or 38.08, because the proposed changes in Sections 29.42.070 require full state compliance with local capital improvement requirements.

Sec. 29.42.110. Information required. A plat shall show initial point of survey, original or reestablished corners and their descriptions, and actual traverse showing area of closure and all distances, angles and calculations required to determine initial point, corners and distances of the plat, as well as other information which may be required by ordinance.

EXPLANATION

Identical to AS 29.33.180.

*a government agency
of the
or
concerning:
emission
Title 09*

Sec. 29.42.120. Alteration of replat petition. No recorded plat may be altered or replatted except upon petition of the ~~owners of a majority of the land affected by the application of replat or by the platting board.~~ *or in the subdivision.* *alteration or* No platted street may be vacated, except upon petition of the municipality or owners of the majority of the front feet of the land fronting the part of the street sought to be vacated. The petition shall be filed with the platting board. It shall be accompanied by a copy of the existing plat showing the proposed alteration or replat.

EXPLANATION

Identical to AS 29.33.200.

Sec. 29.42.130. Notice of hearing. The platting board shall fix a time for a hearing on the petition which shall not be more than 60 days after the filing. The board shall publish a notice stating when and by whom the petition was filed, its purpose, and the time and place of the hearing. The notice shall generally describe the alteration or replat sought. The notice shall be published once a week for two consecutive weeks in a newspaper of general circulation in the area. The board shall also mail a

copy of the notice to each affected property owner not signing the petition.

EXPLANATION

Identical to AS 29.33.210.

Sec. 29.42.140. Hearing and determination. ~~As the hearing~~ ^{*Following*} the platting board shall consider the alteration or replat and make its decision on the merits of the proposal. No vacation of a city street may be made without the consent of the city council. No vacation of a street in the borough area outside cities may be made without the consent of the borough assembly. The assembly or council shall have 30 days from the decision in which to veto the board decision. If no veto is received by the board within the 30-day period, the consent of the city or borough shall be considered to have been given to the vacation.

EXPLANATION

Identical to AS 29.33.220.

Sec. 29.42.150. Recording. If the alteration or replat is approved, the revised plat must be recorded by the ~~platting board~~ ^{*borough*} and is thereafter the lawful plat.

EXPLANATION

Identical to AS 29.33.240.

Sec. 29.42.160. Title to vacated area. (a) The title to the street or other public area vacated on a plat attaches to the lot or lands bordering

on the area in equal proportions, except that if the area was originally dedicated by different persons, original boundary lines shall be adhered to so that the street area which lies on one side of the boundary line shall attach to the abutting property on that side and the street area which lies on the other side of the boundary line shall attach to the property on that side. The portion of a vacated street which lies within the limits of a platted addition attaches to the lots of the platted addition bordering on the area. If a public square is vacated, the title to it vests in the city if it lies within the city and to the borough if it lies within the borough outside a city. If the property vacated is a lot or tract, title vests in the rightful owner.

(b) If the borough or city acquired the street or other public area vacated for legal consideration or by express dedication to and acceptance by the borough or city other than required subdivision platting, before the final act of vacation the fair market value of the street or public area shall be deposited with the platting authority to be paid over to the borough or city on final vacation.

(c) Provisions of (a) of this section notwithstanding, the council of a second class city located outside an organized borough may vacate those streets, alleys, crossings, sidewalks or other public ways that may have been previously dedicated or established when the council, in its discretion, finds that the streets, alleys, crossings, sidewalks or other public ways are no longer necessary for the public welfare, or when the public welfare will be enhanced by the vacation. If the council determines that all or a portion of the area vacated under this subsection should be devoted to another public purpose, title to the area vacated and held for

another public purpose does not vest as provided in (a) of this section but remains in the city.

EXPLANATION

Identical to AS 29.33.240.

Sec. 29.42.170. Remedies. (a) It shall be unlawful for the owner or agent of the owner of land located within a subdivision to transfer, sell, offer to sell, or to enter into a contract to sell land in a subdivision before a plat of the subdivision has been prepared, approved and recorded in accordance with applicable municipal subdivision regulations enacted under this chapter. It shall be unlawful for any person to file or record a subdivision plat or other instrument depicting subdivided land in any public recorder's office unless that plat or document bears the approval of the municipal platting authority. Every act prohibited by this chapter or the maintenance of any condition prohibited by municipal subdivision regulations adopted in accordance with this chapter is unlawful and the willful commission of such act or maintenance of such condition is a misdemeanor. Every person convicted of a violation of any provision of this title or any municipal subdivision regulation adopted under this title or the terms, conditions, or limitations imposed by a municipal platting authority in the exercise of its powers under this title is guilty of a misdemeanor and may be punished by a fine not to exceed \$500.

(b) If there is a violation of the terms *sections dealing w platting* ~~of this chapter~~, municipal subdivision regulations adopted under this chapter, or any terms, conditions, or limitations imposed by a platting authority in the exercise of its powers under this chapter, the Borough or any aggrieved citizen may institute or cause to be instituted any appropriate civil action to

prevent, abate, enjoin, estop, remove or punish such violation and to obtain monetary damages suffered by that party. In addition to injunctive and compensatory relief each violation shall be subject to a civil penalty not to exceed \$1,000. An action to enjoin ^a violation ~~to this title~~ may be brought notwithstanding the availability of any other remedy. Upon application for injunctive relief and a finding of an existing or threatened violation, the Superior Court shall grant injunctive relief to restrain that violation.

(c) Every day upon which an unlawful act or condition shall ^{continue} ~~occur~~ shall constitute a separate violation.

^{DRAFT}
(d) ~~The platting authority~~ may enjoin any partition, lease, transfer, or sale of land which would result in an unlawful subdivision. Following an unlawful petition, transfer, lease or sale, the platting authority may enjoin any further transfer, sale of all unlawfully subdivided parcels until such time as the parcels are dully subdivided or returned to common ownership.

EXPLANATION

This section is derived in part from AS 29.33.190 and contains certain new provisions which strengthen remedies available to municipalities seeking to enforce subdivision regulations. The new section prohibits persons from offering to sell unsubdivided land in violation of local subdivision regulations; authorizes injunctive relief to restrain violations of subdivision regulations, allows imposition of civil penalties, and makes daily occurrences of unlawful acts separate violations.

1 CHAPTER 42. PLANNING, PLATTING, AND LAND USE REGULATION

2
3 ****Sec. 29.42.010. PLANNING, PLATTING, AND LAND USE REGULATION. (a)
4 First and second class boroughs shall provide for planning, platting, and
5 land use regulation on an areawide basis.

6 (b) The assembly by ordinance may delegate any of its powers and
7 responsibilities under this chapter to a city within the borough, or to a
8 city board or commission, provided the city first consents by ordinance to
9 the delegation. The assembly may, without first obtaining the consent of
10 the city, revoke any power or responsibility delegated under this section.

11 Sec. 29.42.020. PLANNING COMMISSION. (a) The borough planning com-
12 mission consists of five residents unless a greater number is otherwise
13 provided by ordinance. Commission membership shall be apportioned so that
14 the number of members from first class cities reflects the proportion of
15 borough population residing within those cities. Members shall be appointed
16 by the borough executive for a term of three years subject to confirmation
17 by the assembly, except that appointments of members from first class cities
18 are selected from a list of recommendations submitted by the city council.
19 Members first appointed shall draw lots for one, two-and three-year terms.
20 Appointments to fill vacancies are for the unexpired term. The compensation
21 and expenses of the planning commission and its staff are paid as directed
22 by the assembly.

23 **** (b) In addition to the responsibilities prescribed by ordinance,
24 the planning commission shall

25 (1) prepare and recommend to the assembly a comprehensive
26 plan in accordance with AS 29.42.030 for the systematic and organized develop-
27 ment of the borough;

28 (2) prepare, recommend, and administer measures necessary to
29 implement the comprehensive plan, including measures provided under
AS 29.42.040.

1 Sec. 29.42.030. COMPREHENSIVE PLAN. (a) The comprehensive plan is a
2 compilation of policy statements, goals, standards and maps for guiding the
3 physical, social and economic development, both private and public, of the
4 borough, and may include, but is not limited to, the following: statements
5 of policies, goals, standards, a land use plan, a community facilities plan,
6 a transportation plan, and recommendations for plan implementation.

7 **** (b) With the recommendations of the planning commission, the
8 assembly shall adopt by ordinance a comprehensive plan. The assembly shall,
9 after receiving the recommendations of the planning commission, periodically
10 undertake an overall review of the plan and update the plan as necessary.

11 ****Sec. 29.42.040. LAND USE REGULATION. (a) In accordance with a com-
12 prehensive plan adopted under AS 29.42.030 and in order to implement the
13 plan, the assembly by ordinance as a legislative act, shall adopt or amend
14 provisions governing the use and occupancy of land which may include but are
15 not limited to

16 (1) zoning regulations restricting the use of land and
17 improvements by geographic districts;

18 (2) land use permit requirements designed to encourage or
19 discourage specified uses and construction of specified structures, or to
20 minimize unfavorable effects of uses and the construction of structures;

21 (3) measures to further the goals and objectives of the
22 comprehensive plan.

23 (b) A variance from a land use regulation adopted under this
24 section shall not be granted if

25 (1) special conditions which require the variance are caused
26 by the person seeking the variance;

27 (2) the variance will permit a land use in a district in
28 which that use is prohibited; or
29

1 (3) the variance is sought solely to relieve pecuniary
2 hardship or inconvenience.

3 ****Sec. 29.42.050. APPEALS FROM ADMINISTRATIVE DECISIONS. (a) By
4 ordinance the assembly shall provide for an appeal from an administrative
5 decision of a municipal employee, board, or commission made in the
6 enforcement, administration, or application of a land use regulation adopted
7 under this chapter. The assembly may provide for an appeal to a court,
8 board of adjustment, hearing officer, or other body. The assembly shall
9 provide for an appeal from a decision on a request for a variance from the
10 terms of a land use regulation when literal enforcement would deprive a
11 property owner of rights commonly enjoyed by other properties in the
12 district.

13 (b) By ordinance the assembly may provide for appointment of
14 hearing officers, or for the composition, appointment and terms of office of
15 a board of adjustment or other body established to hear appeals from
16 administrative actions specified in (a) of this section. The assembly may
17 define proper parties, prescribe evidentiary rules, standards of review, and
18 remedies available to the hearing officers, board of adjustment or other
19 body.

20 ****Sec. 29.42.060. ADJUSTMENT PROCEDURE. Repeal

21 ****Sec. 29.42.070. JUDICIAL REVIEW. (a) The assembly shall provide by
22 ordinance for an appeal by a municipal officer or person aggrieved from a
23 decision of the board of adjustment, hearing officer or other body to the
24 superior court.

25 (b) An appeal to the superior court under this section is an
26 administrative appeal and the appeal is heard solely on the record
27 established by the board of adjustment, hearing officer or other body. A
28 proceeding under this section has preference over all other civil actions
29 and proceedings.

1 ****Sec. 29.42.080. PLATTING JURISDICTION AND POWER. (a) By ordinance
2 the assembly shall adopt subdivision requirements which may include but are
3 not limited to the control of

4 (1) form, size and other aspects of subdivision, dedications,
5 and vacations of land;

6 (2) dimensions and design of lots or tracts;

7 (3) street width, arrangement, and rights-of-way, including
8 requirements for public access to lots and installation of street paving,
9 curbs, gutters, sidewalks, sewers, water lines, drainage and other public
10 utility facilities and improvements;

11 (4) dedication of streets, rights-of-way, public utility
12 easements and areas deemed by the platting board necessary for other public
13 uses.

14 (b) The assembly by ordinance shall establish a platting authority
15 to administer subdivision regulations adopted by the borough and perform
16 other duties. The platting authority may consist of members of the planning
17 commission or of other ~~municipal~~ ^{delete} bodies, boards, and commissions.]

18 ****Sec. 29.42.085. APPLICATION TO STATE AND POLITICAL SUBDIVISIONS. All
19 subdivisions of land made by the state, its agencies, instrumentalities and
20 political subdivisions are subject to this chapter and AS 40.15.200. The
21 platting authority in the area outside cities in the unorganized borough and
22 in third class boroughs is subject to this chapter and to AS 40.15.075.

23 ****Sec. 29.42.090. PROCEDURE. (a) The platting authority shall approve
24 or disapprove the plat within 60 days of filing or shall return it to the
25 applicant for modification or correction. If the platting authority fails
26 to act, the plat is considered approved and a certificate of approval shall
27 be issued by the platting authority on demand. The applicant for plat
28 approval may consent to the extension of the period for action by the plat-
29 ting authority. The platting authority shall state on its record and in
writing to the applicant its reason for disapproval of a plat.

1 (b) The platting authority shall submit an approved plat to the
2 district recorder in compliance with AS 40.15.010 - 40.15.020.

3 ****Sec. 29.42.100. WAIVER IN CERTAIN CASES. Repeal

4 Sec. 29.42.110. INFORMATION REQUIRED. A plat shall show initial point
5 of survey, original or reestablished corners and their descriptions, and
6 actual traverse showing area of closure and all distances, angles and calcu-
7 lations required to determine initial point, corners and distances of the
8 plat, as well as other information which may be required by ordinance.

9 ****Sec. 29.42.115. SHORT PLAT PROCEDURE. (a) Notwithstanding other
10 provisions of this chapter the assembly may by ordinance establish a short
11 or abbreviated plat filing procedure for a plat which will only relocate or
12 vacate lot lines, or subdivide a single tract or lot into not more than four
13 tracts or lots and which will not:

14 (1) deny legal and physical public access to all lots or
15 tracts created or adjacent to the subdivision, or require construction or
16 improvements necessary for access;

17 (2) alter a dedicated street or right-of-way, or require any
18 dedication other than a dedication needed for an existing right-of-way;

19 (3) allow a change in the permitted use to which the lot or
20 tract may be devoted;

21 (4) require the granting of a vacation or a variance from a
22 subdivision regulation.

23 (b) Regulations may provide for an administrative official to
24 review, consider, and approve short plats with notice, hearing, and other
25 procedure requirements established by the assembly.

26 ****Sec. 29.42.120. PENALTIES. Repeal.

27 ****Sec. 29.42.130. ALTERATION OR REPLAT PETITION. No recorded plat may
28 be altered or replatted except by the platting authority upon petition of
29 the state, the municipality, a public utility, or the owners of a majority

1 of the land affected by the alteration or replat. No platted street may be
2 vacated, except upon petition of the state, municipality, or a public utility,
3 or owners of the majority of the land fronting the part of the street sought
4 to be vacated. The petition shall be filed with the platting authority. It
5 shall be accompanied by a copy of the existing plat showing the proposed
6 alteration or replat.

7 *Sec. 29.42.140. NOTICE OF HEARING. The platting authority shall fix
8 a time for a hearing on the petition which shall not be more than 60 days
9 after the filing. The platting authority shall publish a notice stating
10 when and by whom the petition was filed, its purpose, and the time and place
11 of the hearing. The notice shall generally describe the alteration or
12 replat sought. The notice shall be published once a week for two consecutive
13 weeks in a newspaper of general circulation in the area. The platting
14 authority shall also mail a copy of the notice to each affected property
15 owner not signing the petition.

16 *Sec. 29.42.150. HEARING AND DETERMINATION. At the hearing the platting
17 authority shall consider the alteration or replat and make its decision on
18 the merits of the proposal. No vacation of a city street may be made without
19 the consent of the city council. No vacation of a street in the borough area
20 outside cities may be made without the consent of the borough assembly. The
21 assembly or council shall have 30 days from the decision in which to veto
22 the board decision. If no veto is received by the board within the 30-day
23 period, the consent of the city or borough shall be considered to have been
24 given to the vacation.

25 *Sec. 29.42.160. RECORDING. If the alteration or replat is approved,
26 the revised plat must be recorded by the platting authority and is thereafter
27 the lawful plat.

28 Sec. 29.42.170. TITLE TO VACATED AREA. (a) The title to the street
29 or other public area vacated on a plat attaches to the lot or lands bordering

1 on the area in equal proportions, except that if the area was originally
2 dedicated by different persons, original boundary lines shall be adhered to
3 so that the street area which lies on one side of the boundary line shall
4 attach to the abutting property on that side, and the street area which lies
5 on the other side of the boundary line shall attach to the property on that
6 side. The portion of a vacated street which lies within the limits of a
7 platted addition attaches to the lots of the platted addition bordering on
8 the area. If a public square is vacated, the title to it vests in the city
9 if it lies within the city and to the borough if it lies within the borough
10 outside a city. If the property vacated is a lot or tract, title vests in
11 the rightful owner.

12 (b) If the borough or city acquired the street or other public
13 area vacated for legal consideration or by express dedication to and accep-
14 tance by the borough or city other than required subdivision platting,
15 before the final act of vacation the fair market value of the street or
16 public area shall be deposited with the platting authority to be paid over
17 to the borough or city on final vacation.

18 (c) Provisions of (a) of this section notwithstanding, the council
19 of a second class city located outside an organized borough may vacate those
20 streets, alleys, crossings, sidewalks or other public ways that may have
21 been previously dedicated or established when the council, in its discretion,
22 finds that the streets, alleys, crossings, sidewalks or other public ways
23 are no longer necessary for the public welfare, or when the public welfare
24 will be enhanced by the vacation. If the council determines that all or a
25 portion of the area vacated under this subsection should be devoted to
26 another public purpose, title to the area vacated and held for another
27 public purpose does not vest as provided in (a) of this section but remains
28 in the city.
29

1 ****Sec. 29.42.180. DELEGATIONS. Repeal.

2 ****Sec. 29.42.190. REMEDIES. (a) It shall be unlawful for the owner of
3 land located within a subdivision to transfer, sell, offer to sell, or enter
4 into a contract to sell land in a subdivision before a plat of the sub-
5 division has been prepared, approved and recorded in accordance with this
6 chapter or with an ordinance adopted under this chapter. It shall be unlaw-
7 ful for a person to record a plat or other document depicting subdivided
8 land in any public recorder's office unless the plat or document has been
9 approved by the municipal authority. A person convicted of violating a
10 provision of this chapter, a municipal subdivision regulation adopted under
11 this chapter, or a term, condition, or limitation imposed by a municipal
12 platting authority in the exercise of its powers under this chapter is
13 guilty of a misdemeanor and may be punished by a fine not to exceed \$1,000.

14 (b) The municipality or an aggrieved person may institute civil
15 action against a person who violates a provision of this chapter, a municipal
16 subdivision regulation adopted under this chapter, or a term, condition, or
17 limitation imposed by a municipal platting authority. In addition to
18 injunctive and compensatory relief, a civil penalty not to exceed \$1,000 may
19 be imposed for each violation. An action to enjoin a violation may be
20 brought notwithstanding the availability of any other remedy. Upon
21 application for injunctive relief and a finding of a violation or threatened
22 violation, the injunction shall be granted.

23 (c) Every day upon which an unlawful act or condition continues
24 shall constitute a separate violation.
25
26
27
28
29

PLEASE NOTE: THE FOLLOWING PAGES WERE TREATED
AS A UNIT IN THE ORIGINAL DOCUMENT.

APPROVED BY THE PEOPLE

✓ DRAFTED CHANGES RECOMMENDED BY TECHNICAL COMMITTEE - 06 DECEMBER 1980

Sec. 29.42.010. PLANNING, PLATTING, AND LAND USE REGULATION.

(a) First and second class boroughs shall provide for planning, platting, and land use regulation on an areawide basis.

(b) The assembly by ordinance may delegate any of its powers and responsibilities under this chapter to ~~the council of~~ a city within the borough, or to a city board or commission, provided the city first consents by ordinance to the delegation. The assembly may, without first obtaining the consent of the city, revoke any power or responsibility delegated under this section.

EXPLANATION: This section is substantially similar to the existing AS 29.42.010. A reference in subsection (a) to "zoning" has been changed to the more flexible term "land use regulation". Subsection (b) has been redrafted to clarify the issue of whether a city's consent is required before delegated powers are revoked by the assembly.

MINORITY RECOMMENDATION:

(c) Notwithstanding the provisions of (b) of this section the functions of planning, platting, and land use regulation within a first class or home rule city located more than 25 miles from the boundary of the borough seat may be assumed and exercised exclusively by that city upon ratification by the qualified voters residing in the city of an ordinance of the city council proposing exercise of those powers by the city.

EXPLANATION: Would allow a first class or home rule city located a distance from the borough seat to take over planning without the consent of the borough.

✓ DRAFTED CHANGES RECOMMENDED BY TECHNICAL COMMITTEE - 06 DECEMBER 1980

Sec. 29.42.020. PLANNING COMMISSION. ^{(a) No change.} (b) In addition to responsibilities prescribed by ordinance, the planning commission shall

(1) prepare and recommend to the assembly a comprehensive plan in accordance with AS 29.42.030 for the systematic and organized development of the borough;

(2) prepare, recommend, and administer measures necessary to implement the comprehensive plan, including measures provided under AS 29.42.040.

EXPLANATION: This section is a shortened version of the existing AS 29.42.020. A major change is the elimination of detailed and unnecessary specifications of the commission's duties in favor of a general statement requiring the commission to prepare and recommend measures necessary to implement the comprehensive plan. The public meetings and public records requirement is eliminated since these requirements would attach in any case. The requirement for a public hearing is eliminated because it is felt that the public is adequately protected. A plan must be adopted by ordinance and is therefore subject to notice and hearing provisions.

Sec. 29.42.030 COMPREHENSIVE PLAN. (a) No change.

(b) With the recommendations of the planning commission, the assembly shall adopt by ordinance a comprehensive plan. The assembly shall, after receiving the recommendations of the planning commission, periodically undertake an overall review of the plan and update the plan as necessary.

EXPLANATION: Subsection (b) is redrafted to eliminate the mandatory two year review requirement and substitute a more flexible review requirement.

Sec. 29.42.040. LAND USE REGULATION. (a) In accordance with a comprehensive plan adopted under AS 29.42.030 and in order to implement the plan, the assembly by ordinance as a legislative act, shall adopt or amend provisions governing the use and occupancy of land which may include but are not limited to

(1) zoning regulations restricting the use of land and improvements by geographic districts;

~~(2) construction, fire and safety codes governing placement, erection and occupancy of structures;~~

(2) land use permit requirements designed to encourage or discourage specified uses and construction of specified structures, or to minimize unfavorable effects of uses and the construction of structures;

(3) measures to further the goals and objectives of the comprehensive plan.

(b) A variance from a land use regulation adopted under this section shall not be granted if

(1) special conditions which require the variance are caused by the person seeking the variance;

(2) the variance will permit a land use in a district in which that use is prohibited; or

(3) the variance is sought solely to relieve pecuniary hardship or inconvenience.

EXPLANATION: Present law requires implementation of the comprehensive plan through traditional zoning applicable to geographically defined districts, and allows so-called "contract zoning." Although the present Sec. 29.42.040 (b) contains a rather traditional enumeration of the purposes of zoning, the "including but not limited to" preface to that subsection renders the detailed laundry list legally meaningless. The suggested language of AS 29.42.040 preserves the requirement that all land use regulations comply with a comprehensive plan and recites the more important categories of land use regulations available to the borough. Passage of AS 29.42.040 would enable second class boroughs to enact building and fire codes. Material on variances has been moved to the section from AS 29.42.050.

DRAFTED CHANGES RECOMMENDED BY TECHNICAL COMMITTEE - 06 DECEMBER 1980

Sec. 29.42.050. APPEALS FROM ADMINISTRATIVE DECISIONS. (a)

By ordinance the assembly shall provide for an appeal from an administrative decision of a ~~borough~~^{municipal} employee, board, or commission made in the enforcement, administration, or application of a land use regulation adopted under this chapter. The assembly may provide for an appeal to a court, board of adjustment, hearing officer, or other body. The assembly shall provide for an appeal from a decision on a request for a variance from the terms of a land use regulation when literal enforcement would deprive a property owner of rights commonly enjoyed by other properties in the district.

(b) By ordinance the assembly may provide for appointment of hearing officers, or for the composition, appointment and terms of office of a board of adjustment or other body established to hear appeals from administrative actions specified in (a) of this section. The assembly may define proper parties, prescribe evidentiary rules, standards of review, and remedies available to the hearing officers, board of adjustment or other body.

EXPLANATION: This section consolidates provisions of existing Sec. 29.42.050. and Sec. 29.42.060. The specific enumeration of the kinds of decisions from which appeals may be taken is eliminated; in its place is a more general requirement allowing appeals from administrative decisions of borough employees or boards made in enforcing or administering land use regulations. New language allows appointment of hearing officers, eliminates redundant public record and meeting requirements, and allows the assembly to define proper parties, evidentiary rules, and standards of review rather than following more restrictive rules of the present AS 29.42.060.

✓ DRAFTED CHANGES RECOMMENDED BY TECHNICAL COMMITTEE - 06 DECEMBER 1980

Sec. 29.42.060. ADJUSTMENT PROCEDURE. Repeal

EXPLANATION: A simplified procedure is now provided in the prior section.

✓
DRAFTED CHANGES RECOMMENDED BY TECHNICAL COMMITTEE - 06 DECEMBER 1980

J
Sec. 29.42.070. JUDICIAL REVIEW. (a) The assembly shall provide by ordinance for an appeal by a municipal officer or person aggrieved from a decision of the board of adjustment, hearing officer or other body to the superior court.

(b) An appeal to the superior court under this section is an administrative appeal and the appeal is heard solely on the record established by the board of adjustment, hearing officer or other body. A proceeding under this section has preference over all other civil actions and proceedings.

EXPLANATION: This proposed language makes several important changes in procedures governing administrative appeals to the superior court. The "automatic stay" requirement of is eliminated, allowing parties to follow more customary appellate rules governing injunctions pending appeal; the language makes land use appeals administrative appeals under the Appellate Rules, and eliminates procedural requirements already governed by the Rules of Court.

✓ Sec. 29.42.080. PLATTING JURISDICTION AND POWER. (a) By ordinance the assembly shall adopt subdivision requirements which may include but are not limited to the control of

(1) form, size and other aspects of subdivision, dedications, and vacations of land;

(2) dimensions and design of lots or tracts;

(3) street width, arrangement, and rights-of-way, including requirements for public access to lots and installation of street paving, curbs, gutters, sidewalks, sewers, water lines, drainage and other public utility facilities and improvements;

(4) dedication of streets, rights-of-way, public utility easements and areas deemed by the platting ~~authority~~ ^{board} necessary for other public uses.

^{authority}
~~board~~ (b) The assembly by ordinance shall establish a platting ~~board~~ to administer subdivision regulations adopted by the borough and perform other duties. The platting ~~board~~ ^{authority} may consist of members of the planning commission or of other municipal bodies, boards and commissions.

EXPLANATION: This proposed change makes the following modifications to existing law: it requires adoption of subdivision regulations by ordinance; allows the platting authority to require dedications; allows the assembly to determine the composition of the platting board; and eliminates the provisions which allow the state of Alaska to ignore capital improvement requirements of local subdivision regulations.

*will
platting "board"
or "authority"
to make title
40*

DRAFTED CHANGES RECOMMENDED BY TECHNICAL COMMITTEE - 06 DECEMBER 1980

Sec. 29.42.085. APPLICATION TO STATE AND POLITICAL SUB-DIVISIONS. All subdivisions of land made by the state, its agencies, instrumentalities and political subdivisions are subject to this chapter and AS 40.15.200. The platting authority in the area outside cities in the unorganized borough and in third class boroughs is subject to this chapter and to AS 40.15.075.

EXPLANATION: This new section contains cross references to other statutes applicable to subdivisions and platting.

✓ DRAFTED CHANGES RECOMMENDED BY TECHNICAL COMMITTEE - 06 DECEMBER 1980

Sec. 29.42.090. PROCEDURE. (a) The platting ^{authority}~~board~~ shall approve or disapprove the plat within 60 days of filing or shall return it to the applicant for modification or correction. If the ^{platting authority}~~board~~ fails to act, the plat is considered approved and a certificate of approval shall be issued by the ^{platting authority}~~board~~ on demand. The applicant for plat approval may consent to the extension of the period for action by the ^{platting authority}~~board~~. The ^{platting authority}~~board~~ shall state on its record and in writing to the applicant its reason for disapproval of a plat.

(b) The platting ^{authority}~~board~~ shall submit an approved plat to the district recorder in compliance with AS 40.15.010 - 40.15.020.

EXPLANATION: The proposed change eliminates submission of preliminary plats for state disposals under AS 38.05 or 38.08, because the proposed changes in Sec. 29.42.090 requires full state compliance with local ^{subdivision}~~capital~~ improvement requirements.

✓ DRAFTED CHANGES RECOMMENDED BY TECHNICAL COMMITTEE - 06 DECEMBER 1980

Sec. 29.42.100. WAIVER IN CERTAIN CASES. Repeal.

EXPLANATION: A short plat provision is added as AS 29.42.115, making the waiver provision no longer necessary.

✓ DRAFTED CHANGES RECOMMENDED BY TECHNICAL COMMITTEE - 06 DECEMBER 1980

Sec. 29.42.115. SHORT PLAT PROCEDURE. (a) Notwithstanding other provisions of this chapter the assembly may by ordinance establish a short or abbreviated plat filing procedure for a plat which will only relocate or vacate lot lines, or subdivide a single tract or lot into not more than four tracts or lots and which will not:

(1) deny legal and physical public access to all lots or tracts created or adjacent to the subdivision, or require construction or improvements necessary for access;

(2) alter a dedicated street or right-of-way, or require any dedication other than a dedication needed for an existing right-of-way;

(3) allow a change in the permitted use to which the lot or tract may be devoted;

(4) require the granting of a vacation or a variance from a subdivision regulation.

(b) Regulations may provide for an administrative official to review, consider, and approve short plats with notice, hearing, and other procedure requirements established by the assembly.

EXPLANATION: New section allowing short plat filing under expedited procedures adopted by the assembly so that small subdivisions can be accomplished without unduly complex procedural requirements.

✓ DRAFTED CHANGES RECOMMENDED BY TECHNICAL COMMITTEE - 06 DECEMBER 1980

Sec. 29.42.120. PENALTIES. Repeal.

EXPLANATION: Provisions now contained in this section have been moved to a more inclusive section dealing with remedies - AS 29.42.160.

✓ DRAFTED CHANGES RECOMMENDED BY TECHNICAL COMMITTEE - 06 DECEMBER 1980

Sec. 29.42.130. ALTERATION OR REPLAT PETITION. No recorded plat may be altered or replatted except by the platting ^{authority} ~~board~~ upon petition of the state, the municipality, a public utility, or the owners of a majority of the land affected by the alteration or replat. No platted street may be vacated, except upon petition of the state, municipality, or a public utility, or owners of the majority of the land fronting the part of the street sought to be vacated. The petition shall be filed with the platting ^{authority} ~~board~~. It shall be accompanied by a copy of the existing plat showing the proposed alteration or replat.

EXPLANATION: Similar to current language except for a change allowing the state, the municipality or a public utility to initiate a replat petition, as well as property owners. Petitions to vacate streets may be initiated by the state and a public utility, as well as the municipality or property owners.

Sec. 29.42.1¹⁸~~50~~. DELEGATIONS. Repeal.

EXPLANATION: Since the assembly is able to establish powers and duties of the planning commission and platting board, ~~authority~~ ^{authority} this section is redundant.

Sec. 29.42.160. REMEDIES. (a) It shall be unlawful for the owner of land located within a subdivision to transfer, sell, offer to sell, or enter into a contract to sell land in a subdivision before a plat of the subdivision has been prepared, approved and recorded in accordance with this chapter or with an ordinance, adopted under this chapter. It shall be unlawful for a person to record a plat or other document depicting subdivided land in any public recorder's office unless the plat or document has been approved by the municipal authority. A person convicted of violating a provision of this chapter, a municipal subdivision regulation adopted under this chapter, or a term, condition, or limitation imposed by a municipal platting authority in the exercise of its powers under this chapter is guilty of a misdemeanor and may be punished by a fine not to exceed \$1,000.

(b) The municipality or an aggrieved person may institute civil action against a person who violates a provision of this chapter, a municipal subdivision regulation adopted under this chapter, or a term, condition, or limitation imposed by a municipal platting authority. ~~In addition to injunctive and compensatory relief, a civil penalty not to exceed \$1,000 may be imposed for each violation.~~ An action to enjoin a violation may be brought notwithstanding the availability of any other remedy. * *leave in*

(c) ~~Every day upon which an unlawful act or condition continues shall constitute a separate violation.~~ *leave in*

offer to sell, transfer, or convey
upon application for injunctive relief and a finding of a violation, the court shall be granted.
EXPLANATION: This new section is derived in part from AS 29.42.120 and contains new provisions which strengthen remedies available to municipalities seeking to enforce subdivision regulations. It prohibits persons from offering to sell unsubdivided land in violation of local subdivision regulations, authorizes injunctive relief to restrain violations of subdivision regulations, allows imposition of civil penalties, and makes daily occurrences of unlawful acts separate violations.

after entry of judgment showing that a violation exists
(that) *has occurred*

CHAPTER 42. PLANNING, PLATTING AND ZONING

(Chapter 33. Article 4. PLANNING, PLATTING AND ZONING)

Sec. 29.42.010. (Sec. 29.33.070.) PLANNING, PLATTING AND ZONING.

(a) First and second class boroughs shall provide for planning, platting and zoning on an areawide basis.

(b) The assembly by ordinance may

(1) designate the council of a city within the borough as a board of adjustment within the city;

(2) delegate other planning and zoning powers conferred by this chapter to a city within the borough;

(3) revoke or modify any part or all of the powers delegated under this subsection.

✓ Sec. 29.42.020. (Sec. 29.33.080.) PLANNING COMMISSION. (a) The borough planning commission consists of five residents unless a greater number is otherwise provided by ordinance. Commission membership shall be apportioned so that the number of members from first class cities reflects the proportion of borough population residing within those cities. Members shall be appointed by the borough executive for a term of three years subject to confirmation by the assembly, except that appointments of members from first class cities are selected from a list of recommendations submitted by the city council. Members first appointed shall draw lots for one, two-and three-year terms. Appointments to fill vacancies are for the unexpired term. The compensation and expenses of the planning commission and its staff are paid as directed by the assembly.

(b) The commission shall prepare and recommend to the assembly

(1) a comprehensive plan consisting of maps and related texts for the systematic development of the borough;

(2) a zoning ordinance to implement the plan;

- (3) a subdivision ordinance;
- (4) the official map of the borough;
- (5) modifications to the documents specified in (1)-(4) of

this section.

(c) The commission shall publish notice of and hold at least one hearing before submitting its recommendations under (b) of this section to the assembly.

(d) The commission shall

- (1) act as the platting board;
- (2) act upon requests for variances;
- (3) act upon requests for conditional uses.

(e) Subject to Sec. 150 (Sec. 245) of this chapter, no platting request, variance or conditional use may be granted except upon an affirmative vote of a majority of the commission.

(f) The commission shall designate its presiding officer and shall meet as frequently as is necessary. The commission shall establish, subject to approval by the assembly, rules and regulations for the conduct of its meetings. Meetings shall be public and minutes shall be kept. Minutes and records shall be filed with the municipal clerk and retained as public records.

(g) Exceptions may be granted to building, housing and related codes by the planning commission when an applicant for an exception demonstrates that the exception will result in increased energy efficiency, unless the planning commission determines that the exception would endanger the health or safety of the public.

Sec. 29.42.030. (Sec. 29.33.085.) COMPREHENSIVE PLAN. (a) The comprehensive plan is a compilation of policy statements, goals, standards and maps for guiding the physical, social and economic development, both private and public, of the borough, and may include, but is not limited to,

1 the following: statements of policies, goals, standards, a land use plan, a
2 community facilities plan, a transportation plan, and recommendations for
3 plan implementation.

4 (b) The assembly shall adopt a comprehensive plan based upon the
5 recommendations of the planning commission. The assembly may modify the
6 plan, provided that it first obtains the recommendations of the planning
7 commission. The planning commission shall undertake an overall review of
8 the plan at least once every two years and shall present recommendations
9 based on the review to the assembly.

10 Sec. 29.42.040. (Sec. 29.33.090.) ZONING. (a) In accordance with
11 the comprehensive plan, the assembly shall regulate and restrict the use of
12 land and improvements by districts or contract zoning to permit specific
13 uses provided for in the contract. Regulations shall be uniform for each
14 class or kind of building, structure, land or water area within each
15 district, but the regulations may differ among districts and exceptions may
16 be made in order to provide for the preservation, maintenance and protection
17 of historic sites, buildings and monuments. In this section, "contract
18 zoning" means a zoning reclassification to a less restricted use when the
19 owner of the rezoned property, either through an agreement with the assembly
20 or a covenant in favor of the borough, places restrictions on the use of the
21 land beyond the zoning requirements generally attaching to the new district
22 in which the property has been placed. The assembly shall hold a public
23 hearing on the proposed contract zoning.

24 (b) Zoning regulations adopted under (a) of this section may
25 include, but are not limited to, restriction of

- 26 (1) land use;
27 (2) building location and use;
28 (3) the height and size of structures;

- (4) the number of stories in buildings;
- (5) the percentage of lot which may be covered;
- (6) the size of open spaces;
- (7) population density and distribution.

(c) Zoning regulations are designed to

- (1) provide for orderly development;
- (2) lessen street congestion;
- (3) promote fire safety and public order;
- (4) protect the public health and general welfare;
- (5) prevent overcrowding;
- (6) stimulate systematic development of transportation,

water, sewer, school, park and other public facilities.

(7) establish or participate in federal and state government loan programs for housing rehabilitation and improvement for conservation of energy.

(d) Repealed by sec. 45 ch 85 SLA 1979.

(e) A zoning ordinance adopted or amended under (a) of this section may not preclude an activity authorized under a license or permit issued under AS 04 if the activity was licensed or permitted by the Alcoholic Beverage Control Board before the adoption of the zoning ordinance or zoning ordinance amendment.

Sec. 29.42.050. (Sec. 29.33.110.) BOARD OF ADJUSTMENT. (a) The assembly is the board of adjustment but may delegate by resolution or ordinance part or all of its functions to a city within the borough for the area within city boundaries in accordance with AS 29.42.010(b)(1) [AS 29.33.070(b)(1)], in addition to making delegations as provided for an assembly under AS 29.42.150 (AS 29.33.245). Meetings of the borough board are held at the call of the presiding officer and of the city board by the mayor. The presiding officer or mayor may administer oaths and compel

attendance of witnesses. Meetings and hearings of the board shall be open to the public and the board shall keep minutes of its proceedings as a public record.

(b) The board of adjustment shall hear and decide

(1) appeals regarding alleged errors in enforcement of zoning ordinances and building codes;

(2) appeals from the decisions of the planning commission on requests for conditional uses;

(3) appeals from the decisions of the planning commission on requests for variances from the terms of the zoning ordinance which are not contrary to the public interest, when a literal enforcement would deprive a property owner of rights commonly enjoyed by other properties in the same district.

(c) A variance shall not be granted because of special conditions caused by actions of the person seeking relief or for reasons of pecuniary hardship or inconvenience. A variance shall not be granted which will permit a land use in a district in which that use is prohibited.

Sec. 29.42.060. (Sec. 29.33.120.) ADJUSTMENT PROCEDURE. An interested party, including but not limited to a borough or city official, may file with the board of adjustment an appeal specifying his objections. Copies are filed with the administrative officer involved and with the borough clerk within the time required by the zoning ordinance. The officer shall provide the board with all pertinent records, including his written decision. An appeal to the board stays enforcement proceedings unless the board or a court issues an enforcement order based on a certificate of imminent peril to life or property made by the enforcement officer.

Sec. 29.42.070. (Sec. 29.33.130.) JUDICIAL REVIEW. (a) The assembly shall provide by ordinance for appeals from the board of adjustment to the superior court.

1 (b) A municipal officer, a taxpayer, or a person, jointly or
2 severally aggrieved, may appeal an action of the board to the superior court
3 by filing with the borough clerk within the time fixed by ordinance, a
4 notice of appeal specifying grounds. When the notice of appeal is filed,
5 the board shall at once transmit to the superior court clerk copies of all
6 the papers constituting the record in the case.

7 (c) An appeal from the board of adjustment stays enforcement
8 proceedings unless the court issues an enforcement order based on a
9 certificate of imminent peril to life or property made by the board.

10 (d) The appeal is heard upon the record by the superior court,
11 and the court may reverse or affirm, wholly or partly, the decision appealed
12 from.

13 (e) Issues in proceedings under this section have preference over
14 all other civil actions and proceedings. An appeal lies from the decision
15 of the superior court as in other civil cases.

16 Sec. 29.42.080. (Sec. 29.33.150.) PLATTING JURISDICTION AND POWER.

17 (a) The planning commission acting as the platting board has jurisdiction
18 over platting and shall adopt and publish rules and regulations to implement
19 this power. Jurisdiction includes, but is not limited to, the control of

20 (1) form, size, and other aspects of subdivision,
21 dedications, and vacations of land;

22 (2) dimensions of lots or tracts;

23 (3) street width, arrangement, and right-of-way, including
24 allowance for access to lots and installation of street paving, curbs,
25 gutters, sidewalks, sewers, water lines, drainage, and other public utility
26 facilities and improvements.

27 (b) The regulations adopted under (a) of this section apply to
28 subdivision plats of undeveloped state land for disposal under AS 38.05 or
29 AS 38.08 filed with the platting board, except that the platting board may

1 not disapprove the subdivision plat or adopt regulations which require the
2 state to construct access roads or capital improvements on state land
3 included in the subdivision plat.

4 Sec. 29.42.090. (Sec. 29.33.160.) PROCEDURE. (a) The platting board
5 shall within 60 days of filing approve or disapprove the plat or shall
6 return it to the applicant for modification or correction. If the board
7 fails to act, the plat is considered approved and a certificate of approval
8 shall be issued by the board on demand. The applicant for plat approval may
9 consent to the extension of the period for action by the board. The board
10 shall state on its record and in writing to the applicant its reason for
11 disapproval of a plat.

12 (b) The platting board shall submit an approved plat to the
13 district recorder in compliance with AS 40.15.010-40.15.020.

14 (c) If a municipality has adopted a subdivision ordinance which
15 requires the submission of a preliminary or sketch subdivision plat during
16 the platting procedure, the commissioner of natural resources shall, not
17 later than 60 days before filing a final subdivision plat which contains
18 land to be disposed of to individuals under AS 38.05 or AS 38.08, file a
19 preliminary subdivision plat with the platting authority of the
20 municipality.

21 Sec. 29.42.100. (Sec. 29.33.170.) WAIVER IN CERTAIN CASES. (a) The
22 platting authority shall, in individual cases, waive the preparation,
23 submission for approval, and recording of a plat upon satisfactory evidence
24 that

25 (1) each tract or parcel of land will have adequate access
26 to a public highway or street;

27 (2) each parcel created is five acres in size or larger and
28 that the land is divided into four or fewer parcels;

(3) the conveyance is not made for the purpose of, or in connection with, a present or projected subdivision development;

(4) no dedication of a street, alley, thoroughfare or other public area is involved or required.

(b) In other cases the platting authority may waive the preparation, submission for approval, and recording of a plat, if the transaction involved does not fall within the general intent of Secs. 29.42.080-29.42.170 (Secs. 29.33.150-29.33.240) of this chapter and AS 40.15 if it is not made for the purpose of, or in connection with, a present or projected subdivision development and no dedication of a street, alley, thoroughfare, park or other public area is involved or required.

✓ Sec. 29.42.110. (Sec. 29.33.180.) INFORMATION REQUIRED. A plat shall show initial point of survey, original or reestablished corners and their descriptions, and actual traverse showing area of closure and all distances, angles and calculations required to determine initial point, corners and distances of the plat, as well as other information which may be required by ordinance.

Sec. 29.42.120. (Sec. 29.33.190.) PENALTIES. (a) The owner or agent of the owner of land located within a subdivision who transfers, sells, or enters into a contract to sell land in a subdivision before a plat of the subdivision has been prepared, approved, and recorded, is guilty of a misdemeanor and upon conviction is punishable by a fine of not more than \$500 for each lot or parcel transferred, sold, or included in a contract to be sold. The borough may enjoin a transfer, sale, or contract to sell, and may recover the penalty by appropriate legal action.

(b) No person may record a plat or seek to have a plat recorded unless it bears the approval of the platting board. A person who knowingly violates this requirement is punishable upon conviction by a fine of not more than \$500.

130
1 Sec. 29.42.140. (Sec. 29.33.200.) ALTERATION OF REPLAT PETITION. No
2 recorded plat may be altered or replatted except upon petition of the owners
3 of a majority of the land affected by the alteration or replat or by the
4 platting board. No platted street may be vacated, except upon petition of
5 the municipality or owners of the majority of the front feet of the land
6 fronting the part of the street sought to be vacated. The petition shall be
7 filed with the platting board. It shall be accompanied by a copy of the
8 existing plat showing the proposed alteration or replat.

✓ 9 Sec. 29.42.140. (Sec. 29.33.210.) NOTICE OF HEARING. The platting
10 board shall fix a time for a hearing on the petition which shall not be more
11 than 60 days after the filing. The board shall publish a notice stating
12 when and by whom the petition was filed, its purpose, and the time and place
13 of the hearing. The notice shall generally describe the alteration or
14 replat sought. The notice shall be published once a week for two
15 consecutive weeks in a newspaper of general circulation in the area. The
16 board shall also mail a copy of the notice to each affected property owner
17 not signing the petition.

✓ 18 Sec. 29.42.150. (Sec. 29.33.220.) HEARING AND DETERMINATION. At the
19 hearing the platting board shall consider the alteration or replat and make
20 its decision on the merits of the proposal. No vacation of a city street
21 may be made without the consent of the city council. No vacation of a
22 street in the borough area outside cities may be made without the consent of
23 the borough assembly. The assembly or council shall have 30 days from the
24 decision in which to veto the board decision. If no veto is received by the
25 board within the 30-day period, the consent of the city or borough shall be
26 considered to have been given to the vacation.

✓ 27 Sec. 29.42.160. (Sec. 29.33.230.) RECORDING. If the alteration or
28 replat is approved, the revised plat must be recorded by the platting board
29 and is thereafter the lawful plat.

✓ Sec. 29.42.170. (Sec. 29.33.240.) TITLE TO VACATED AREA (a) The title to the street or other public area vacated on a plat attaches to the lot or lands bordering on the area in equal proportions, except that if the area was originally dedicated by different persons, original boundary lines shall be adhered to so that the street area which lies on one side of the boundary line shall attach to the abutting property on that side, and the street area which lies on the other side of the boundary line shall attach to the property on that side. The portion of a vacated street which lies within the limits of a platted addition attaches to the lots of the platted addition bordering on the area. If a public square is vacated, the title to it vests in the city if it lies within the city and to the borough if it lies within the borough outside a city. If the property vacated is a lot or tract, title vests in the rightful owner.

(b) If the borough or city acquired the street or other public area vacated for legal consideration or by express dedication to and acceptance by the borough or city other than required subdivision platting, before the final act of vacation the fair market value of the street or public area shall be deposited with the platting authority to be paid over to the borough or city on final vacation.

(c) Provisions of (a) of this section notwithstanding, the council of a second class city located outside an organized borough may vacate those streets, alleys, crossings, sidewalks or other public ways that may have been previously dedicated or established when the council, in its discretion, finds that the streets, alleys, crossings, sidewalks or other public ways are no longer necessary for the public welfare, or when the public welfare will be enhanced by the vacation. If the council determines that all or a portion of the area vacated under this subsection should be devoted to another public purpose, title to the area vacated and held for another public purpose does not vest as provided in (a) of this section but remains in the city.

1 Sec. ~~29.42.150.~~^{29.42.150.} (Sec. 29.33.245.) DELEGATIONS. The assembly may by
2 ordinance authorize the planning commission, the platting ^{Authority} ~~board~~ and the
3 board of adjustment to delegate powers to hear and decide cases under this
4 chapter in a manner authorized by the ordinance, including but not limited
5 to delegations to one or more members of the commission or board, to other
6 boards or commissions, or to a hearing officer designated by the commission
7 or board. ~~The assembly shall prescribe procedures for hearings and appeals.~~
8 ~~The commission or board shall hear and decide appeals de novo.~~

Proofed 12-23

CHAPTER 42. PLANNING, PLATTING, AND LAND USE REGULATION

****Sec. 29.42.010. PLANNING, PLATTING, AND LAND USE REGULATION. (a)

First and second class boroughs shall provide for planning, platting, and land use regulation on an areawide basis.

(b) The assembly by ordinance may delegate any of its powers and responsibilities under this chapter to a city within the borough, or to a city board or commission, provided the city first consents by ordinance to the delegation. The assembly may, without first obtaining the consent of the city, revoke any power or responsibility delegated under this section.

Sec. 29.42.020. PLANNING COMMISSION. (a) The borough planning commission consists of five residents unless a greater number is otherwise provided by ordinance. Commission membership shall be apportioned so that the number of members from first class cities reflects the proportion of borough population residing within those cities. Members shall be appointed by the borough executive for a term of three years subject to confirmation by the assembly, except that appointments of members from first class cities are selected from a list of recommendations submitted by the city council. Members first appointed shall draw lots for one, two-and three-year terms. Appointments to fill vacancies are for the unexpired term. The compensation and expenses of the planning commission and its staff are paid as directed by the assembly.

**** (b) In addition to the responsibilities prescribed by ordinance, the planning commission shall

(1) prepare and recommend to the assembly a comprehensive plan in accordance with AS 29.42.030 for the systematic and organized development of the borough;

(2) prepare, recommend, and administer measures necessary to implement the comprehensive plan, including measures provided under (AS

29.42.040.

1 Sec. 29.42.030. COMPREHENSIVE PLAN. (a) The comprehensive plan is a
2 compilation of policy statements, goals, standards and maps for guiding the
3 physical, social and economic development, both private and public, of the
4 borough, and may include, but is not limited to, the following: statements
5 of policies, goals, standards, a land use plan, a community facilities plan,
6 a transportation plan, and recommendations for plan implementation.

7 **** (b) With the recommendations of the planning commission, the
8 assembly shall adopt by ordinance a comprehensive plan. The assembly shall,
9 after receiving the recommendations of the planning commission, periodically
10 undertake an overall review of the plan and update the plan as necessary.

11 ****Sec. 29.42.040. LAND USE REGULATION. (a) In accordance with a com-
12 prehensive plan adopted under AS 29.42.030 and in order to implement the
13 plan, the assembly by ordinance as a legislative act, shall adopt or amend
14 provisions governing the use and occupancy of land which may include but are
15 not limited to

16 (1) zoning regulations restricting the use of land and
17 improvements by geographic districts;

18 (2) land use permit requirements designed to encourage or
19 discourage specified uses and construction of specified structures, or to
20 minimize unfavorable effects of uses and the construction of structures;

21 (3) measures to further the goals and objectives of the
22 comprehensive plan.

23 (b) A variance from a land use regulation adopted under this
24 section shall not be granted if

25 (1) special conditions which require the variance are caused
26 by the person seeking the variance;

27 (2) the variance^{ew} will permit a land use in a district in
28 which that use is prohibited; or
29

1 (3) the variance is sought solely to relieve pecuniary
2 hardship or inconvenience.

3 ****Sec. 29.42.050. APPEALS FROM ADMINISTRATIVE DECISIONS. (a) By
4 ordinance the assembly shall provide for an appeal from an administrative
5 decision of a municipal employee, board, or commission made in the
6 enforcement, administration, or application of a land use regulation adopted
7 under this chapter. The assembly may provide for an appeal to a court,
8 board of adjustment, hearing officer, or other body. The assembly shall
9 provide for an appeal from a decision on a ^{est}required for a variance from the
10 terms of a land use regulation when literal enforcement would deprive a
11 property owner of rights commonly enjoyed by other properties in the
12 district.

13 (b) By ordinance the assembly may provide for appointment of
14 hearing officers, or for the composition, appointment and terms of office of
15 a board of adjustment or other body established to hear appeals from
16 administrative actions specified in (a) of this section. The assembly may
17 define proper parties, prescribe evidentiary rules, standards of review, and
18 remedies available to the hearing officers, board of adjustment or other
19 body.

20 ****Sec. 29.42.060. ADJUSTMENT PROCEDURE. Repeal.

21 ****Sec. 29.42.070. JUDICIAL REVIEW. (a) The assembly shall provide by
22 ordinance for an appeal by a municipal officer or person aggrieved from a
23 decision of the board of adjustment, hearing officer or other body to the
24 superior court.

25 (b) An appeal to the superior court under this section is an
26 administrative appeal and the appeal is heard solely on the record
27 established by the board of adjustment, hearing officer or other body. A
28 proceeding under this section has preference over all other civil actions
29 and proceedings.

WORK DRAFT COPY

WORK DRAFT COPY

WORK DRAFT COPY

1 ****Sec. 29.42.080. PLATTING JURISDICTION AND POWER. (a) By ordinance
2 the assembly shall adopt subdivision requirements which may include but are
3 not limited to the control of

4 (1) form, size and other aspect^s of subdivision, dedications,
5 and vacations of land;

6 (2) dimensions and design of lots or tracts;

7 (3) street width, arrangement, and rights-of-way, including
8 requirements for public access to lots and installation of street paving,
9 curbs, gutters, sidewalks, sewers, water lines, drainage and other public
10 utility facilities and improvements;

11 (4) dedication of streets, rights-of-way, public utility
12 easements and areas deemed by the platting board necessary for other public
13 uses.

14 (b) The assembly by ordinance shall establish a platting authority
15 to administer subdivision regulations adopted by the borough and perform
16 other duties. The platting authority may consist of members of the planning
17 commission or of other municipal bodies, boards, and commissions.

18 ****Sec. 29.42.085. APPLICATION TO STATE AND POLITICAL SUBDIVISIONS. All
19 subdivisions of land made by the state, its agencies, instrumentalities and
20 political subdivisions are subject to this chapter and AS 40.15.200. The
21 platting authority in the area outside cities in the unorganized borough and
22 in third class boroughs is subject to this chapter and to AS 40.15.075.

23 ****Sec. 29.42.090. PROCEDURE. (a) The platting authority shall approve
24 or disapprove the plat within 60 days of filing or shall return it to the
25 applicant for modification or correction. If the platting authority fails
26 to act, the plat is considered approved and a certificate of approval shall
27 be issued by the platting authority on demand. The applicant for plat
28 approval may consent to the extension of the period for action by the plat-
29 ting authority. The platting authority shall state on its record and in
writing to the applicant its reason for disapproval of a plat.

(b) The platting authority shall submit an approved plat to the district recorder in compliance with AS 40.15.010 - 40.15.020.

****Sec. 29.42.100. WAIVER IN CERTAIN CASES. Repeal

Sec. 29.42.110. INFORMATION REQUIRED. A plat shall show initial point of survey, original or reestablished corners and their descriptions, and actual traverse showing area of closure and all distances, angles and calculations required to determine initial point, corners and distance^s of the plat, as well as other information which may be required by ordinance.

****Sec. 29.42.115. SHORT PLAT PROCEDURE. (a) Notwithstanding^{ing} other provisions of this chapter the assembly may by ordinance establish a short or abbreviated plat filing procedure for a plat which will only relocate or vacate lot lines, or subdivide a single tract or lot into not more than four tracts or lots and which will not:

(1) deny legal and physical public access to all lots or tracts created or adjacent to the subdivision, or require construction or improvements necessary for access;

(2) alter a dedicated street or right-of-way, or require any dedication other than a dedication needed for an existing right-of-way;

(3) allow a change in the permitted use to which the lot or tract may be devoted;

(4) require the granting of a vacation or a variance from a subdivision regulation.

(b) Regulations may provide for an administrative official to review, consider, and approve short plats with notice, hearing, and other procedure requirements established by the assembly.

****Sec. 29.42.120. PENALTIES. Repeal.

****Sec. 29.42.130. ALTERATION OR REPLAT PETITION. No recorded plat may be altered or replatted except by the platting authority upon petition of the state, the municipality, a public utility, or the owners of a majority

1 of the land affected by the alteration or replat. No platted street may be
2 vacated, ~~except~~ ^{except} upon ~~petition~~ ^{petition} of the state, municipality, or a public utility,
3 or owners of the majority of the land fronting the part of the street sought
4 to be vacated. The petition shall be filed with the platting authority. It
5 shall be accompanied by a copy of the existing plat showing the proposed
6 alteration or replat.

7 *Sec. 29.42.140. NOTICE OF HEARING. The platting authority shall fix
8 a time for a hearing on the ~~petition~~ ^{petition} which shall not be more than 60 days
9 after the filing. The platting authority shall publish a notice stating
10 when and by whom the petition was filed, its purpose, and the time and place
11 of the hearing. The notice shall generally describe the alteration or
12 replat sought. The notice shall be published once a week for two consecutive
13 weeks in a newspaper of general circulation in the area. The platting
14 authority shall also mail a copy of the notice to each affected property
15 owner not signing the petition.

16 *Sec. 29.42.150. HEARING AND DETERMINATION. At the hearing the platting
17 authority shall consider the alteration or replat and make its decision on
18 the merits of the proposal. No vacation of a city street may be made without
19 the consent of the city council. No vacation of ~~a~~ ^a street in the borough area
20 outside cities may be made without the consent of the borough assembly. The
21 assembly or council shall have 30 days from the decision in which to veto
22 the board decision. If no veto is received by the board within the 30-day
23 period, the consent of the city or borough shall be considered to have been
24 given to the vacation.

25 *Sec. 29.42.160. RECORDING. If the alteration or replat is approved,
26 the revised plat must be recorded by the platting authority and is thereafter
27 the lawful plat.

28 Sec. 29.42.170. TITLE TO VACATED AREA. (a) The title to the street
29 or other public area vacated on a plat attaches to the lot or lands bordering

1 on the area in equal proportions, except that if the area was originally
2 dedicated by different persons, original boundary lines shall be adhered to
3 so that the street area which lies on one side of the boundary line shall
4 attach to the abutting property on that side, and the street area which lies
5 on the other side of the boundary line shall attach to the property on that
6 side. The portion of a vacated street which lies within the limits of a
7 platted addition attaches to the lots of the platted addition bordering on
8 the area. If a public square is vacated, the title to it vests in the city
9 if it lies within the city and to the borough if it lies within the borough
10 outside a city. If the property vacated is a lot or tract, title vests in
11 the rightful owner.

12 (b) If the borough or city acquired the street or other public
13 area vacated for legal consideration or by express dedication to and accep-
14 tance by the borough or city other than required subdivision platting,
15 before the final act of vacation the fair market value of the street or
16 public area shall be deposited with the platting authority to be paid over
17 to the borough or city on final vacation.

18 (c) Provisions of (a) of this section notwithstanding, the council
19 of a second class city located outside an organized borough may vacate those
20 streets, alleys, crossings, sidewalks or other public ways that may have
21 been previously dedicated or established when the council, in its discretion,
22 finds that the streets, alleys, crossings, sidewalks or other public ways
23 are no longer necessary for the public welfare, or when the public welfare
24 will be enhanced by the vacation. If the council determines that all or a
25 portion of the area vacated under this subsection should be devoted to
26 another public purpose, title to the area vacated and held for another
27 public purpose does not vest as provided in (a) of this section but remains
28 in the city.

1 ****Sec. 29.42.180. DELEGATIONS. Repeal.

2 ****Sec. 29.42.190. REMEDIES. (a) It shall be unlawful for the owner of
3 land located within a subdivision to transfer, sell, offer to sell, or enter
4 into a contract to sell land in a subdivision before a plat of the sub-
5 division has been prepared, approved and recorded in accordance with this
6 chapter or with an ordinance adopted under this chapter. It shall be unlaw-
7 ful for a person to record a plat or other document depicting subdivided
8 land in any public recorder's office unless the plat or document has been
9 approved by the municipal authority. A person convicted of violating a
10 provision of this chapter, a municipal subdivision regulation adopted under
11 this chapter, or a term, condition, or limitation imposed by a municipal
12 platting authority in the exercise of its powers under this chapter is
13 guilty of a misdemeanor and may be punished by a fine not to exceed \$1,000.

14 (b) The municipality or an aggrieved person may institute civil
15 action against a person who violates a provision of this chapter, a municipal
16 subdivision regulation adopted under this chapter, or a term, condition, or
17 limitation imposed by a municipal platting authority. In addition to
18 injunctive and compensatory relief, a civil penalty not to exceed \$1,000 may
19 be imposed for each violation. An action to enjoin a violation may be
20 brought notwithstanding the availability of any other remedy. Upon
21 application for injunctive relief and a finding of a violation or threatened
22 violation, the injunction shall be granted.

23 (c) Every day upon which an unlawful act or condition continues
24 shall constitute a separate violation.
25
26
27
28
29

PLEASE NOTE: THE PRECEDING PAGES WERE TREATED
AS A UNIT IN THE ORIGINAL DOCUMENT.