777 SCOMM23: TITLE 29 POLICY REVISION ADVISORY COMM. 1980

Sec. 29.36.170. SECOND CLASS BOROUGH. (a) The second class borough may exercise in the area outside cities municipal powers approved at incorporation, conferred by AS 29.36.170 or added as provided in this chapter. Before exercising a power outside cities only, the borough shall seek to have the identical power transferred from cities within the borough or propose joint borough-city exercise of the power.

****(b) A second class borough may, in the area outside cities,

(1) regulate or prohibit the offering for sale, exposure for sale, sale, use, or explosion of fireworks;

(2) provide for the licensing, impounding, and disposition of animals;

(3) regulate the licensing and operation of motor vehicles and operators;

(4) regulate snow vehicles as provided in AS 05.30.070;

(5) provide for garbage and solid waste collection and disposal subject to AS 29.33.080;

(6) provide for water pollution control;

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

**** (8) Tax, spend, and regulate for the purpose of promoting economic development.

Sec. 29.36.180. ADDITIONAL POWERS. The second class borough may initiate the acquisition of additional powers outside cities in either of two ways:

(1) a number of voters equal to 15 percent of the number of votes cast in the area outside cities at the preceding regular election may file a petition with the assembly, or

(2) the assembly may place the question on the ballot.

Sec. 29.36.190. INVESTIGATION. The assembly shall hold at least one public hearing in the borough on the question. The assembly shall then evaluate the ability of the borough to exercise the powers and make its findings public.

Sec. 29.36.200. ELECTION. (a) The assembly shall, within 30 days after its findings have been made public, order an election on the question in the borough area outside cities. The election shall be held at least 30 days after the order and not later than the next regular election occurring after the 30-day period.

(b) If more than one power is proposed, each appears separately on the ballot.

(c) The borough mayor shall certify the election results to the Department of Community and Regional Affairs. If the majority of the votes cast on the question is favorable, the borough shall assume the added power within 30 days of certification of election results.

Article 5. POWERS OF THIRD CLASS BOROUGHS. (L.C.)

Sec. 29.36.230. POWERS OF THIRD CLASS BOROUGHS. (a) A third class borough shall exercise the areawide powers of education and tax assessment and collection in the manner provided for second class boroughs. Areawide exercise of powers other than education and tax assessment and collection is not authorized.

(b) A third class borough may by a majority vote of the voters in a general or special election provide for planning, platting and zoning in accordance with AS 29.42.010-29.42.150 for boroughs and may exercise any general law municipal power which a second class borough is authorized to assume by this title. Powers assumed by a third class borough under this section may be exercised only within service areas. A third class borough may establish, operate, alter or abolish service areas in the manner provided

by AS 29.63.090 for second class boroughs. The acquisition of additional powers on a service area basis may be initiated in either of two ways:

(1) a number of voters equal to 15 percent of the number of votes cast in the proposed service area at the preceding regular election may file a petition with the assembly; or

(2) the assembly may place the question on the ballot.

(c) A third class borough may borrow money and issue negotiable general obligation, revenue or refunding bonds and other evidences of indebtedness as provided for first and second class boroughs in AS 29.51.200-29.51.510

(d) A military reservation within a third class borough is not part of the borough school district until the military mission is terminated or until inclusion in the borough school district is approved by the Department of Education. However, operation of the military reservation schools by the borough school district may be required by the Department of Education under AS 14.14.110. If the military mission of a military reservation terminates or continued management and control by a regional educational attendance area is disapproved by the Department of Education, operation, management and control of schools on the military reservation transfers to the borough school district in which the military reservation is located.

Sec. 29.36.240. ASSEMBLY TO SERVE AS SCHOOL BOARD. Repeal.

U.C.

Article 6. SERVICE AREAS.

Sec. 29.36.270. SERVICE AREAS. ****(a) Service areas to provide special services within a borough may be established, operated, altered or abolished by the assembly by ordinance. Special services include services not provided on an areawide basis within the borough or the borough area outside cities or a higher or different level of service than that provided on an areawide basis or in the borough area outside cities. In a first class borough the assembly may exercise within a service area any power granted a first class city by general law. Except as provided in (f) of

this section, a second class borough may exercise the powers granted a first class city by general law but the exercise of the powers must be approved by a majority of the qualified voters residing within the service area and voting on the question at a regular or special election, or if no voters reside within the area, all owners of real property within the service area must consent in writing to the exercise of the power.

(b) The assembly may levy or authorize the levying of taxes, charges, or assessments in service areas to finance the special services.

(c) The assembly may provide for appointed or elected boards to supervise the furnishing of special services in service areas.

(d) A new service area may not be established if, consistent with the purposes of art. X of the state constitution, the new service can be provided by an existing service area, by annexation to a city, or by incorporation as a city.

DRAFTED CHANGES RECOMMENDED BY THE TECHNICAL COMMITTEE
06 December 1980

Sec. 29.36.170. SECOND CLASS BOROUGH POWERS OUTSIDE CITIES.

(8) tax, spend, and regulate for the purpose of promoting ~~industrial~~ economic development.

The rest of the section is the same.

EXPLANATION: This is added as a specific power which need not be assumed under AS 29.36.180. A first class borough may exercise this power under AS 29.36.160, the general grant of power to first class boroughs.

DRAFTED CHANGES RECOMMENDED BY THE TECHNICAL COMMITTEE
06 December 1980

Sec. 29.24.420. SCHOOL BOARDS. (a) Each ~~borough and city~~ municipal school district has a school board. (1) Members are elected at the regular election held annually on the first Tuesday of October, unless a different election date or interval of years is provided by ordinance. Members are elected for three-year terms and until their successors take office. (2) All board members are elected at large. unless a different method of election has been approved by the voters in a regular election.

(b) [illegible]

EXPLANATION; The provision that school zones may be established as provided by Sec. 100 is deleted. AS 29.23.100 was repealed in 1972.

[illegible]

Sec. 29.24.420. repeal.

29.36.240.

(1) ~~The number of members shall be determined by ordinance. Subject to voter approval.~~

(2) ~~The election of board members shall be the same as provided for members of the governing body unless provided otherwise by ordinance ratified by the voters.~~

Clarify status of third class borough provisions as elected assembly form dissolves

ck: any Constitutional problem

DRAFTED CHANGES RECOMMENDED BY THE TECHNICAL COMMITTEE
06 December 1980

Sec. 29.36.270. SERVICE AREAS. (a) (First two sentences the same). Except as provided in (f) of this section, a second class borough may exercise the powers granted a first class city by general law but the exercise of the powers must be approved by a majority of the voters residing within the service area and voting on the question at a regular or special election, ~~unless~~ all owners of real property within the service area must consent in writing to the exercise of the power. ~~and no one resides~~ or if no voters reside within the area.

No other changes to this section.

EXPLANATION: Change in (a) to avoid the necessity of an election if there is no opposition by property owners who will be affected by the service area.

Words from Dunmick - on cities w/in service area. Is this allowed? Consideration by Technical group.

* flag as needing more work

combine w/ CHAP 33

CHAPTER 36. AREAWIDE BOROUGH POWERS AND DUTIES

(CHAPTER 33. AREAWIDE BOROUGH POWERS AND DUTIES)

Article 1. SCOPE

Sec. 29.36.010. (Sec. 29.33.010.) SCOPE OF AREAWIDE POWERS. (a) First and second class boroughs shall exercise the powers as specified and in the manner specified in this chapter on an areawide basis, both inside and outside cities within their boundaries.

(b) No city, whether home rule or not, may exercise an areawide power once that power is being exercised by a borough.

Article 2. MANDATORY AREAWIDE POWERS AND DUTIES

(Chapter 33, Article 2. ASSESSMENT AND COLLECTION OF TAXES)

Sec. 29.36.040. (Sec. 29.33.050.) EDUCATION. Each borough constitutes a borough school district and establishes, maintains, and operates a system of public schools on an areawide basis as provided in AS 14.14.060. A military reservation within an organized borough is not part of the borough school district until the military mission is terminated or until inclusion in the borough school district is approved by the Department of Education. However, operation of the military reservation schools by the borough school district may be required by the Department of Education under AS 14.14.110. If the military mission of a military reservation terminates or continued management and control by a regional educational attendance area is disapproved by the Department of Education, operation, management and control of schools on military reservation transfers to the borough school district in which the military reservation is located.

Sec. 29.36.050. (Sec. 29.33.030.) ASSESSMENT AND COLLECTION OF TAXES. (ASSESSMENT AND COLLECTION) Boroughs shall assess and collect property, sales, and use taxes levied within their boundaries, subject to ch. 45 (ch. 53) of this title. Taxes levied by a city and collected by a borough are returned in full to the levying city.

Sec. 29.36.060. (New Section) PLANNING, PLATTING, AND ZONING. Boroughs shall provide land use regulation

Article 3. ACQUISITION OF ADDITIONAL AREAWIDE POWERS

(Chapter 33. Article 5. ADDITIONAL AREAWIDE POWERS)

Sec. 29.36.090. (Sec. 29.33.250.) ADDITIONAL AREAWIDE POWERS. First and second class boroughs acquire additional areawide municipal powers by transfer from a city or by holding an areawide election on the question, except as provided otherwise in AS 29.33.070 ~~(AS 29.48.030)~~ and ~~AS~~ 29.33.080 ~~[29.48.035(b)].~~

Sec. 29.36.100. (Sec. 29.33.260.) TRANSFER BY CITY. (a) A city may transfer to the first or second class borough in which it is located any of its powers or functions, subject to the approval of the borough assembly.

(b) First and second class boroughs shall exercise all powers transferred to them by cities.

Sec. 29.36.110. (Sec. 29.33.270.) PETITION FOR POWER. An election on the question of adding an areawide power may be initiated in two ways:

(1) a number of voters equal to 15 percent of the number of votes cast in the borough at the preceding regular election may file a petition with the assembly, or

(2) the assembly may propose the acquisition of the power.

Sec. 29.36.120. (Sec. 29.33.280.) INVESTIGATION. The assembly shall hold at least one public hearing in the borough on the question. The assembly shall then evaluate the ability of the borough to exercise the powers and make its findings public.

Sec. 29.36.130. (Sec. 29.33.290.) ELECTION. (a) The assembly shall, within 30 days after its findings have been made public, order an election to be held on the question. The election shall be held at least 30 days after the order and not later than the next regular election occurring after the 30-day period.

(b) If more than one power is proposed, each appears separately on the ballot.

OWN SECTION

(c) The borough mayor shall certify the election results to the Department of Community and Regional Affairs. The vote on the question of adding an areawide power shall be tabulated in two separate classifications. One shall consist of all votes cast in the home rule and first class cities of the borough. The other shall consist of all votes cast in the remaining borough area. If the majority of the votes cast in each classification is favorable, the borough shall assume the added power within 30 days of certification of the election results. Upon acquisition of an areawide power the borough succeeds to all of the rights, powers and duties of any city or service area with respect to that power. The borough succeeds to claims, franchises and other contractual obligations, liability for bonded and all other indebtedness and to all of the right, title and interest in the real and personal property held by the city or service area for the exercise of the power. The borough assembly may levy and collect special charges, taxes or assessments including interest for the purpose of amortizing bonded indebtedness previously incurred by the city or service area for continuing services in the area. When a city or service area had previously incurred bonded indebtedness, no less than all property that was within the city or service area at the time the bonds were issued shall remain subject to taxation to pay the principal of and interest on the bond for as long as they remain outstanding. Upon acquisition of additional areawide powers the borough, in consultation with the city or service area personnel, shall arrange for an orderly and equitable transfer of rights, assets, liabilities, powers, duties and other matters related to acquisition of the areawide powers. This subsection applies to home rule and general law cities.

Article 4. BOROUGH POWERS AND DUTIES IN THE AREA OUTSIDE CITIES

(CHAPTER 38. BOROUGH POWERS AND DUTIES IN THE AREA OUTSIDE CITIES

Sec. 29.36.160. (Sec. 29.38.010.) FIRST CLASS BOROUGH. The first class borough may exercise in the area outside cities any general law municipal power. Before exercising a power outside cities only, the borough shall seek to have the identical power transferred from cities within the borough or propose joint borough-city exercise of the power.

Sec. 29.36.170. (Sec. 29.38.020.) SECOND CLASS BOROUGH. The second class borough may exercise in the area outside cities municipal powers approved at incorporation, conferred by AS 29.36.170 (AS 29.48.020), or added as provided in this chapter. Before exercising a power outside cities only, the borough shall seek to have the identical power transferred from cities within the borough or propose joint borough-city exercise of the power.

Sec. ~~29.36.180~~. (Sec. 29.48.020.) ~~SECOND CLASS BOROUGH POWERS OUTSIDE CITIES. [NOTE: THIS SECTION HAS BEEN COMBINED WITH SEC. 29.38.020]~~ A second class borough may, in the area outside cities,

(1) regulate or prohibit the offering for sale, exposure for sale, sale, use, or explosion of fireworks;

(2) provide for the licensing, impounding, and disposition of animals;

(3) regulate the licensing and operation of motor vehicles and operators;

(4) regulate snow vehicles as provided in AS 05.30.070;

(5) provide for garbage and solid waste collection and disposal subject to AS 29.33.080 ~~(Sec. 33) of this chapter;~~

(6) provide for water pollution control;

(7) establish or participate in federal and state government loan programs for housing rehabilitation and improvement for conservation of energy. (8) tax, spend, & regulate for the purposes of promoting industrial development.

Sec. 29.36.180. (Sec.29.38.030.) ADDITIONAL POWERS. The second class borough may initiate the acquisition of additional powers outside cities in either of two ways: consolidate:

(1) a number of voters equal to 15 percent of the number of votes cast in the area outside cities at the preceding regular election may file petition with the assembly, or

(2) the assembly may place the question on the ballot.

Sec. 29.36.190. (Sec. 29.38.040.) INVESTIGATION. The assembly shall hold at least one public hearing in the borough on the question. The assembly shall then evaluate the ability of the borough to exercise the powers and make its findings public.

Sec. 29.36.200. (Sec. 29.38.050.) ELECTION. (a) The assembly shall, within 30 days after its findings have been made public, order an election on the question in the borough area outside cities. The election shall be held at least 30 days after the order and not later than the next regular election occurring after the 30-day period.

(b) If more than one power is proposed, each appears separately on the ballot.

(c) The borough mayor shall certify the election results to the Department of Community and Regional Affairs. If the majority of the votes cast on the question is favorable, the borough shall assume the added power within 30 days of certification of election results.

Article 5. POWERS OF THIRD CLASS BOROUGHS

(CHAPTER 41. POWERS OF THIRD CLASS BOROUGHS)

Sec. 29.36.230. (Sec. 29.41.010.) POWERS OF THIRD CLASS BOROUGHS. (a) A third class borough shall exercise the areawide powers of education and tax assessment and collection in the manner provided for second class boroughs. Areawide exercise of powers other than education and tax assessment and collection is not authorized.

(b) A third class borough may by a majority vote of the voters in a general or special election provide for planning, platting and zoning in accordance with AS 29.42.010-29.42.150 ~~(AS 29.33.070-29.33.245)~~ for boroughs and may exercise any general law municipal power which a second class borough is authorized to assume by this title. Powers assumed by a third class borough under this section may be exercised only within service areas. A third class borough may establish, operate, alter or abolish service areas in the manner provided by (AS 29.63.090) for second class boroughs. The acquisition of additional powers or a service area basis may be initiated in either of two ways:

(1) a number of voters equal to 15 percent of the number of votes cast in the proposed service area at the preceding regular election may file a petition with the assembly; or

(2) the assembly may place the question on the ballot.

(c) A third class borough may borrow money and issue negotiable general obligation, revenue or refunding bonds and other evidences of indebtedness as provided for first and second class boroughs in AS 29.51.200-29.51.510 ~~(AS 29.58.150-29.58.340)~~.

(d) A military reservation within a third class borough is not part of the borough school district until the military mission is terminated or until inclusion in the borough school district is approved by the Department of Education. However, operation of the military reservation schools by the borough school district may be required by the Department of Education under AS 14.14.110. If the military mission of a military

reservation terminates or continued management and control by a regional educational attendance area is disapproved by the Department of Education, operation, management and control of schools on the military reservation transfers to the borough school district in which the military reservation is located.

Sec. 29.36.240. (Sec. 29.41.020.) ASSEMBLY TO SERVE AS SCHOOL BOARD. The borough assembly is the borough school board for third class boroughs. The borough executive is the presiding officer of the borough assembly and president of the school board. The borough executive has all powers of a borough executive except for the veto power.

Article 6. SERVICE AREAS

Sec. 29.36.270. (Sec. 29.63.090) SERVICE AREAS. (a) Service areas to provide special services within a borough may be established, operated, altered or abolished by the assembly by ordinance. Special services include services not provided on an areawide basis within the borough or the borough area outside cities or a higher or different level of service than that provided on an areawide basis or in the borough area outside cities. In a first class borough the assembly may exercise within a service area any power granted a first class city by general law. Except as provided in (f) of this section, a second class borough may exercise the powers granted a first class city by general law but the exercise of the powers must be approved by a majority of the qualified voters residing within the service area and voting on the question at a regular or special election.

(b) The assembly may levy or authorize the levying of taxes, charges, or assessments in service areas to finance the special services.

(c) The assembly may provide for appointed or elected boards to supervise the furnishing of special services in service areas.

(d) A new service area may not be established if, consistent with the purposes of art. X of the state constitution, the new service can be

provided by an existing service area, by annexation to a city, or by incorporation as a city.

(e)

SCOMM

#23:35

CHAPTER 39. POWERS OF CITIES OUTSIDE BOROUGHS.

Sec. 29.39.010. ADDITIONAL POWERS. In addition to the powers granted by ch. 48 of this title, cities outside boroughs are granted the powers specified in this chapter. Powers of this chapter which are incorporated by reference to laws governing boroughs apply to home rule cities outside boroughs only in those cases in which they are made applicable to home rule boroughs in the provisions incorporated.

Sec. 29.39.020. ASSESSMENT AND TAX COLLECTION. Home rule and first class cities outside boroughs may assess, levy and collect a general property tax. A property tax if levied must be assessed, levied and collected as provided by ch. 45 of this title for boroughs. Cities outside boroughs may levy and collect sales and use taxes as provided by ch. 45 of this title for boroughs.

move back to taxing material

Sec. 29.39.030. DIFFERENTIAL TAX ZONES. Cities may by ordinance establish, alter and abolish differential tax zones to provide and levy property taxes for services not provided generally within the city or a different level of service than that provided generally within the city.

Sec. 29.39.040. EDUCATION. Home rule and first class cities outside boroughs constitute city school districts and establish, maintain, and operate a system of public schools as provided by AS 29.36.040 for boroughs.

****Sec. 29.39.050. PLANNING AND LAND USE REGULATION. (a) Home rule and first class cities outside boroughs shall, and second class cities outside boroughs may, provide for planning, platting and land use regulation within their boundaries as provided by AS 29.42.010 - 29.42.245 for boroughs.

(b) Home rule and first class cities within third class boroughs shall, and second class cities within third class boroughs may provide for planning, platting and land use regulation, as provided by AS 29.42.010 - 29.42.150 for boroughs.

****Sec. 29.39.060. EXTENSION OF CURFEWS OUTSIDE CITIES. Repeal.

****Sec. 29.39.070. ENFORCEMENT OF CURFEWS. Repeal.

****Sec. 29.39.080. PENALTY FOR VIOLATION OF CURFEW. Repeal.

Proofed (12-3)

CHAPTER 39. POWERS OF CITIES OUTSIDE BOROUGHS.

Sec. 29.39.010. ADDITIONAL POWERS. In addition to the powers granted by ~~ch. 48~~ of this title, cities outside boroughs are granted the powers specified in this chapter. Powers of this chapter which are incorporated by reference to laws governing boroughs apply to home rule cities outside boroughs only in those cases in which they are made applicable to home rule boroughs in the provisions incorporated.

Sec. 29.39.020. ASSESSMENT AND TAX COLLECTION. Home rule and first class cities outside boroughs may assess, levy and collect a general property tax. A property tax if levied must be assessed, levied and collected as provided by ch. 45 of this title for boroughs. Cities outside boroughs may levy and collect sales and use taxes as provided by ch. 45 of this title for boroughs.

Sec. 29.39.030. DIFFERENTIAL TAX ZONES. Cities may by ordinance establish, alter and abolish differential tax zones to provide and levy property taxes for services not provided generally within the city or a different level of service than that provided generally within the city.

Sec. 29.39.040. EDUCATION. Home rule and first class cities outside boroughs constitute city school districts and establish, maintain, and operate a system of public schools as provided by AS 29.36.040 for boroughs.

****Sec. 29.39.050. PLANNING AND LAND USE REGULATION. (a) Home rule and first class cities outside boroughs shall, and second class cities outside boroughs may, provide for planning, platting and land use regulation within their boundaries as provided by AS 29.42.010-29.42.245 for boroughs.

(b) Home rule and first class cities within third class boroughs shall, and second class cities within third class boroughs may provide for planning, platting and land use regulation, as provided by AS 29.42.010 - 29.42.150 for boroughs.

****Sec. 29.39.060. EXTENSION OF CURFEWS OUTSIDE CITIES. Repeal.

****Sec. 29.39.070. ENFORCEMENT OF CURFEWS. Repeal.

****Sec. 29.39.080. PENALTY FOR VIOLATION OF CURFEW. Repeal.

DRAFTED CHANGES RECOMMENDED BY THE TECHNICAL COMMITTEE
06 December 1980

Sec. 29.39.010. PLANNING AND LAND USE REGULATION. (a) Home rule and first class cities outside ~~first and second class~~ boroughs shall, and second class cities outside ~~first and second class~~ boroughs may ~~in whole or part~~, provide for planning, platting and land use regulation within their boundaries, as provided by AS 29.42.010-29.42.245 for boroughs.

(b) Home rule and first class cities within third class boroughs shall, and second class cities within third class boroughs may ~~in whole or part~~ provide for planning, platting and land use regulation, as provided by AS 29.42.010-29.42.150 for boroughs.

EXPLANATION; Clarifies that a city may only plan for the area within its boundary. ~~Adds the provision that second class cities may plan "in whole or part" as provided for boroughs, so that it is clear that they are not forced into an all or nothing situation.~~

on list of unfinished policy questions
How to encourage planning w/out forcing them into complex & expensive procedures.

DRAFTED CHANGES RECOMMENDED BY THE TECHNICAL COMMITTEE
06 December 1980

Sec. 29.39.060. EXTENSION OF CURFEWS OUTSIDE CITIES. Repeal.

Sec. 29.39.070. ENFORCEMENT OF CURFEWS. Repeal.

Sec. 29.39.080. PENALTY FOR VIOLATION OF CURFEW. Repeal.

EXPLANATION: It is felt that these provisions are unnecessary and would be properly placed in the criminal code. (NOTE: These were in the criminal code as AS 11.60.250, 11.60.260, and 11.60.270 and moved to Title 29 effective January 1, 1980.)

CHAPTER 39. POWERS OF CITIES OUTSIDE BOROUGHS

(CHAPTER 43. POWERS OF CITIES OUTSIDE BOROUGHS

Sec. 29.39.010. ~~(Sec. 29.43.010.)~~ ADDITIONAL POWERS. In addition to the powers granted by ~~(~~ch. 48~~)~~ of this title, cities outside boroughs are granted the powers specified in this chapter. Powers of this chapter which are incorporated by reference to laws governing boroughs apply to home rule cities outside boroughs only in those cases in which they are made applicable to home rule boroughs in the provisions incorporated.

Sec. 29.39.020. ~~(Sec. 29.43.020.)~~ ASSESSMENT AND TAX COLLECTION. Home rule and first class cities outside boroughs may assess, levy and collect a general property tax. A property tax if levied must be assessed, levied and collected as provided by ch. 45 ~~(ch. 53)~~ of this title for boroughs. Cities outside boroughs may levy and collect sales and use taxes as provided by ch. 45 ~~(ch. 53)~~ of this title for boroughs.

Sec. 29.39.030. (Sec. 29.53.405) DIFFERENTIAL TAX ZONES. Cities may by ordinance establish, alter and abolish differential tax zones to provide and levy property taxes for services not provided generally within the city or a different level of service than that provided generally within the city.

Sec. 29.39.040. (Sec. 29.43.030.) EDUCATION. Home rule and first class cities outside boroughs constitute city school districts and establish, maintain, and operate a system of public schools as provided by AS 29.36.040 ~~(AS 29.33.050)~~ for boroughs.

Sec. 29.39.050. (Sec. 29.43.040.) PLANNING AND ZONING. (a) Home rule and first class cities outside first and second class boroughs shall, and second class cities outside first and second class boroughs may, provide for planning, platting and zoning, as provided by AS 29.42.010-29.42.245 (AS 29.33.070-29.33.245) for boroughs.

(b) Home rule and first class cities within third class boroughs shall, and second class cities within third class boroughs may, provide for planning, platting and zoning, as provided by AS 29.42.010-29.42.150 (AS 29.33.070-29.33.245) for boroughs.

DELETE

Sec. 29.39.060. (Sec. 29.43.100.) EXTENSION OF CURFEWS OUTSIDE CITIES. The provisions of a curfew ordinance enacted by a city of any class concerning minors shall be imposed in the total area within 20 miles of the limits of that city. If a given area lies within 20 miles of two or more cities with conflicting curfew ordinances, the provisions of the curfew ordinance of the city having the largest population prevails as to the overlapping area.

Sec. 29.39.070. (Sec. 29.43.105.) ENFORCEMENT OF CURFEWS. (a) The municipal peace officers shall enforce the provisions of the ordinance inside the city limits. Under AS 29.39.060-29.39.080 (AS 29.43.100 - 29.43.110) the state peace officers shall enforce the provisions of the ordinance in the area outside the city limits.

(b) In an area where state peace officers are not available, the municipal peace officer may enforce the provisions of the ordinance in the area outside the city limits if the enforcement responsibilities are delegated by contract between the state and the municipality.

Sec. 29.39.080. (Sec. 29.43.110.) PENALTY FOR VIOLATION OF CURFEW. The penalty for violation of AS 29.36.060-29.36.080 (AS 29.43.100 29.43.110) is as prescribed by the curfew ordinance of the city, and a fine so paid shall be paid to the city when the violation takes place in the city. Otherwise the fine shall be paid to the state. However, the penalty shall not exceed a fine of $300, or imprisonment for 30 days, or both.

SCOMM

#23:36

Draft 12/4/80

T19B Chapter 42. Planning, Patting and Land Use Regulation Notes

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:

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

(2) Prepare, recommend, and as required by ~~law~~ ordinance to administer those measures necessary to implement the comprehensive plan. (including those measures provided in 29.42.040.)

Add to Reference language → 040

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.

(b) The assembly shall adopt, ~~or~~ by ordinance may modify the a comprehensive plan after receiving & ~~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, may~~ shall enact or amend regulatory measures governing the use and occupancy of land, including but not limited to which may include:

(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;

(3) Land use permit systems designed to encourage specified uses and structures and to discourage others, or to minimize unfavorable ~~external~~ effects ~~relations~~ 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. Make to powers sec. (b) fm 33.110 (b)(3) & c

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 catagories 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~~ assembly under this chapter to a board of adjustment, hearing Court,

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

(b) By ordinance the assembly ~~shall~~ may 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.

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 redundent public records and meeting requirements, and allows the Assembly to define proper parties, evidentary 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 ~~quais-judicial board or others named under Sec. 050 of this chapter~~ body to the Superior Court by a municipal officer or person ~~jointly or severally aggrieved.~~ an 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~~ street 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 other 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" preceeding 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.

(b) In other cases the platting authority may, in the manner provided by ordinance, 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 requirements~~ any 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 ~~Municipality~~ or the governing body 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.~~ of all 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. Following ~~At the hearing~~ 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 ~~of this chapter,~~ sections dealing w platting municipal subidivision 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 any 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 ~~occur~~ continue shall constitute a separate violation.

(d) ~~The platting authority~~ Draught 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.

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.

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.

**** (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.

****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) 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.

****Sec. 29.42.050. APPEALS FROM ADMINISTRATIVE DECISIONS. (a) By ordinance the assembly shall provide for an appeal from an administrative decision of a 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.

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

****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.

****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 board necessary for other public uses.

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

****Sec. 29.42.085. APPLICATION TO STATE AND POLITICAL SUBDIVISIONS. 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.

****Sec. 29.42.090. PROCEDURE. (a) The platting authority 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 fails to act, the plat is considered approved and a certificate of approval shall be issued by the platting authority on demand. The applicant for plat approval may consent to the extension of the period for action by the platting 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 distances of the plat, as well as other information which may be required by ordinance.

****Sec. 29.42.115. SHORT PLAT PROCEDURE. (a) Nothwithstanding 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

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. It shall be accompanied by a copy of the existing plat showing the proposed alteration or replat.

*Sec. 29.42.140. NOTICE OF HEARING. The platting authority shall fix a time for a hearing on the petition which shall not be more than 60 days after the filing. The platting authority 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 platting authority shall also mail a copy of the notice to each affected property owner not signing the petition.

*Sec. 29.42.150. HEARING AND DETERMINATION. At the hearing the platting authority 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.

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

Sec. 29.42.170. 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.

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

****Sec. 29.42.190. 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 chpater 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. Upon application for injunctive relief and a finding of a violation or threatened violation, the injunction shall be granted.

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

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

APPROVED BY THE POLICY

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.

DRAFTED CHANGES RECOMMENDED BY TECHNICAL COMMITTEE - 06 DECEMBER 1980

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.

DRAFTED CHANGES RECOMMENDED BY TECHNICAL COMMITTEE - 06 DECEMBER 1980

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, evidentary 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

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.

DRAFTED CHANGES RECOMMENDED BY TECHNICAL COMMITTEE - 06 DECEMBER 1980

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 improvments;

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

(b) The assembly by ordinance shall establish a platting ~~board~~ authority 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.

use platting "board" or "authority" throughout the 40

DRAFTED CHANGES RECOMMENDED BY TECHNICAL COMMITTEE - 06 DECEMBER 1980

Sec. 29.42.085. APPLICATION TO STATE AND POLITICAL SUBDIVISIONS. 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 ~~board~~ authority shall approve or disapprove the plat within 60 days of filing or shall return it to the applicant for modification or correction. If the ~~board~~ platting authority fails to act, the plat is considered approved and a certificate of approval shall be issued by the ~~board~~ platting authority on demand. The applicant for plat approval may consent to the extension of the period for action by the ~~board~~ platting authority. The ~~board~~ platting authority shall state on its record and in writing to the applicant its reason for disapproval of a plat.

(b) The platting ~~board~~ authority 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 uder AS 38.05 or 38.08, because the proposed changes in Sec. 29.42.090 requires full state compliance with local ~~capital~~ Subdivision 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 ~~board~~ authority 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 ~~board~~ authority. 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.

DRAFTED CHANGES RECOMMENDED BY TECHNICAL COMMITTEE - 06 DECEMBER 1980

Sec. 29.42.150. DELEGATIONS. Repeal.

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

DRAFTED CHANGES RECOMMENDED BY TECHNICAL COMMITTEE - 06 DECEMBER 1980

Sec. 29.42.~~160~~ 190. 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.

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

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 occurances of unlawful acts separate violations.

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,

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

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

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

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

(1) land use;

(2) building location and use;

(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.

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

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

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

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

Sec. 29.42.080. (Sec. 29.33.150.) PLATTING JURISDICTION AND POWER. (a) The planning commission acting as the platting board has jurisdiction over platting and shall adopt and publish rules and regulations to implement this power. Jurisdiction includes, but is not limited to, the control of

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

(2) dimensions of lots or tracts;

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

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

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

Sec. 29.42.090. (Sec. 29.33.160.) 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.

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

Sec. 29.42.100. (Sec. 29.33.170.) 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 access 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.

(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.

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Sec. 29.42.~~140~~. (Sec. 29.33.200.) 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 alteration or replat or by the platting board. 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.

✓ Sec. 29.42.140. (Sec. 29.33.210.) 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.

✓ Sec. 29.42.150. (Sec. 29.33.220.) HEARING AND DETERMINATION. At the hearing 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.

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

Sec. 29.42.~~130~~ 140. (Sec. 29.33.245.) DELEGATIONS. The assembly may by ordinance authorize the planning commission ~~and~~ the platting ~~board~~ authority and the board of adjustment to delegate powers to hear and decide cases under this chapter in a manner authorized by the ordinance, including but not limited to delegations to one or more members of the commission or board, to other boards or commissions, or to a hearing officer designated by the commission or board. ~~The assembly shall prescribe procedures for hearings and appeals. The commission or board shall hear and decide appeals de novo.~~

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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.

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.

**** (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.

****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) 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.

****Sec. 29.42.050. APPEALS FROM ADMINISTRATIVE DECISIONS. (a) By ordinance the assembly shall provide for an appeal from an administrative decision of a 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 requires 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.

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

****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.

****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 board necessary for other public uses.

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

****Sec. 29.42.085. APPLICATION TO STATE AND POLITICAL SUBDIVISIONS. 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.

****Sec. 29.42.090. PROCEDURE. (a) The platting authority 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 fails to act, the plat is considered approved and a certificate of approval shall be issued by the platting authority on demand. The applicant for plat approval may consent to the extension of the period for action by the platting 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 distances of the plat, as well as other information which may be required by ordinance.

****Sec. 29.42.115. SHORT PLAT PROCFDURE. (a) Nothwithstanding 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

of the land affected by the alteration or replat. No platted street may be vacated, ~~except~~ 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. It shall be accompanied by a copy of the existing plat showing the proposed alteration or replat.

*Sec. 29.42.140. NOTICE OF HEARING. The platting authority shall fix a time for a hearing on the petition which shall not be more than 60 days after the filing. The platting authority 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 platting authority shall also mail a copy of the notice to each affected property owner not signing the petition.

*Sec. 29.42.150. HEARING AND DETERMINATION. At the hearing the platting authority 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.

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

Sec. 29.42.170. 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.

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

****Sec. 29.42.190. 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 chpater 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 chpater, 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. Upon application for injunctive relief and a finding of a violation or threatened violation, the injunction shall be granted.

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

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