

SCOMM

#23:37

Section

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→
use

Sec. 29.42.010. ^{APPD} 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 ^{under this chapter} ~~(a) of this section~~ to the council of a city of ~~any class~~ within the borough, ^{or} a ^{city} subordinate board or commission, ~~of a city~~ provided the city first consents by ordinance to ^{the} ~~that~~ delegation. The ~~Assembly~~ ^{the} ~~with or without the consent of the council~~ may ^{at any time} ~~at any time~~ revoke any or ~~all~~ powers or responsibilities ~~delegated to a city council, or to~~ ^{only board or commission} ~~subordinate body~~ under this section, ^{without first obtaining the} ~~consent of the city,~~

EXPLANATION

use →

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 ^a ~~Assembly~~.

~~(Alternate Section suggested by Joanne Shanley)~~

MINORITY RECOMMENDATION

use
(a)
next
page

CRP-2

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.

Add
a
minority
recommendation

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

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

New Page

use
existing
(a)

(b) In addition to these responsibilities prescribed by ^{ordinance} law, the planning commission shall

(in accordance with AS. 29.42.030)

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

(2) Prepare, recommend, and as required by law to administer those measures necessary to implement the comprehensive plan, including those measures provided under ~~440 of this Chapter~~. AS. 29.42.040.

EXPLANATION

This section is a shortened and revised version of AS 29.33.080. Major changes include: ^{Am} 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. ^{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.}

New Page

Sec. 29.42.030. (b) 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.

be adopted by ordinance and is therefore subject to notice and hearing provisions.

(b) The assembly shall adopt, ^{by ordinance} or may modify the a comprehensive plan.

With the recommendations of the planning commission, ^{after receiving} The assembly shall, ^{periodically and with} ~~with~~ the advice and recommendations of the planning commission, 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.

INSERT

29.42.040

(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} it is sought solely to relieve pecuniary hardship or inconvenience.

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Sec. 29.42.040. Land use regulation. In accordance with a comprehensive plan adopted under ~~Section 030~~ ^{AS 29.42.00} of this chapter and in order to implement ^{the} that plan, the assembly by ordinance ~~and~~ as a legislative act, ^{shall} ~~may~~ enact or amend ^{provisions} regulatory measures governing the use and occupancy of land, ^{which may} ~~including~~ but ^{one} not limited to

- (1) ~~Zoning~~ regulations ~~which~~ restrict ^{ing} or ~~govern~~ ^{the} 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~~ ^{requirements} systems designed to encourage ^{or discourage} specified uses and ^{construction of specified} structures and to discourage ~~others~~, or to minimize unfavorable ^{effects} externalities of certain uses and structures;
- (4) ~~Other regulatory~~ measures ^{intended} reasonably necessary to further the goals and objectives of the comprehensive plan.
- (5) ~~Measures defining and regulating public nuisances.~~ ^{← powers section}

insert (b) →

b (3) (b) ~~insert~~ ^{from} ~~AS 29.42.050~~ ^{2.050}
EXPLANATION
^{material on appeals from decisions}
^{material on appeals from decisions}

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

New page

Sec. 29.42.050. Appeals from administrative decisions. (a) By ordinance the assembly shall provide for ^{an} appeal ^{from} ~~an~~ administrative decision ^a of borough employees, ^{or} board ^{or} ^{or} commission ^a made in the enforcement, administration, or application of land use regulations adopted ^{The assembly may provide for appeals} by ~~the borough~~ ^{the borough} under this chapter, to a board of adjustment, hearing

variance has been moved to the section from AS 29.33.0

The Assembly shall provide for an appeal or a request for a
officer, or other ~~independent quasi-judicial~~ body established, by the ~~residents~~
~~through~~. *From the terms of a land use regulation when literal enforcement*
would deprive a property owner of rights commonly enjoyed by
other property in the district.

(b) By ordinance the assembly ~~shall~~ ^{for} 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~~ ^{may} define proper parties, prescribe evidentiary rules, and standards of review, and ~~define~~ ^{the} remedies available to such ~~bodies~~ or hearing officers, board of adjustment, or other ~~body~~.

EXPLANATION

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

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

(b) ^{An} appeal to the Superior Court under this section ^{is an} ~~are~~ administrative appeal and shall be governed by Rules of Court applicable to appeals from decisions of administrative agencies, ~~provided that~~ ^{and the}

~~Appeals~~ ^{is} 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.

INSERT

Sec 29.42.060. ADJUSTMENT PROCEDURE. Repeal.

EXPLANATION. An ^{simplified} appeal procedure is now provided in the prior sections.

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 ~~plainsly~~ makes land use appeals administrative appeals under the Appellate Rules, and eliminates procedural requirements already governed by the Rules of Court.

Next page

Sec. 29.42.070⁹⁰ 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~~ ^{adopt} subdivision ~~regulations~~ ^{requirements} ~~of the borough~~ which may include, but are not limited to

- (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~~ ^{street} width, arrangement, and right-of-way, including ~~allowance~~ ^{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) ~~requiring~~ dedication of streets, rights of way, public utility easements and ~~other~~ areas deemed by the platting authority necessary for ~~future~~ ^{other} public use.

(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 ~~AS 29.33.150(b) 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 ^{+ this chapter AS 40.15.200} ~~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.~~ The platting authority ^{is to govern, override provision} in the area outside cities in the unrecognized borough and in third class boroughs is subject to ^{AS 40.15.075} ~~AS 40.15.075.~~

EXPLANATION

^{new} This section contains the language of AS 40.15.200 and adds the word "private" preceding the word "landowners" in the last line. It is believed that the provisions of AS 40.15.200 are more appropriately placed here rather than in AS 40.15. ^{cross references to other statutes applicable}
to subdivisions and platting.

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;

Repeal

Type

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.

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

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

EXPLANATION

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

115
Sec. 29.42.095. Short plat procedure. (a) Notwithstanding ^{other} the ~~provisions~~ ~~requirements~~ of this chapter governing the submission, consideration, or approval of vacations, subdivisions, or resubdivisions, by ordinance the assembly may ^{by ordinance} establish a short or abbreviated plat procedure for plats which will only relocate or vacate lot lines, ^{or} subdivide a single tract, ~~parcel~~ or lot into not more than four tracts or lots and ^{which} 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 ^{other than a dedication needed for an existing} 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 ^a variance from ^a the subdivision regulations enacted by the Borough.

(b) ~~Consistent with this section, Regulations governing the short plat procedure~~ ^{provide for} may allow an administrative official to review, consider, and approve ^{short} ~~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.~~ ^{adopted by the Assembly} so that small subdivisions can be accomplished without ^{an} ~~unduly~~ complex procedural requirements.

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.

Do Not Type
Type → Sec. 29.42.120, PENALTIES. Repeal

EXPLANATION Explanation: provision now contained in this section have been moved to a more inclusive section dealing with remedies, AS

Identical to AS 29.33. v.

130 OR
Sec. 29.42.120. Alteration or replat petition. No recorded plat may be altered or replatted except upon petition ^{(of the state, or the municipality, or a public utility, or} of the owners of a majority of the land affected by the application of replat, ^{in the application} ~~of~~ ^{alteration or} by the platting board, ^{leave in} ~~of~~ ^{state, the municipality, or a public utility,} 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

EXPLANATION Similar ~~Identical~~ to AS 29.33.200. ^{except for change allowing the state, the municipality or a public utility to initiate a replat petition, as well as property owners.} ^{may be initiated by the state or a public utility, as well as the municipality or property owners.} ~~Identical~~ to AS 29.33.200. ^{except for change allowing the state, the municipality or a public utility to initiate a replat petition, as well as property owners.} ^{may be initiated by the state or a public utility, as well as the municipality or property owners.}

Do Not Type
Sec. 29.42.140. 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.

DO NOT TYPE

EXPLANATION

Identical to AS 29.33.210.

Sec. 29.42.⁵⁰~~140~~. 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.

DO NOT TYPE

EXPLANATION

Identical to AS 29.33.220.

Sec. 29.42.¹⁶⁰~~150~~. Recording. If the alteration or replat is approved, the revised plat must be recorded by the ^{borough} platting board and is thereafter the lawful plat.

DO NOT TYPE

EXPLANATION

~~Identical to AS 29.33.240.~~

~~Technical change to reflect the fact that the boroughs not~~

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

DO NOT TYPE

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.

TYPE

~~AS 29.42.150. DELEGATIONS. Repeal~~
~~AS 29.42.150. DELEGATIONS. Repeal~~
~~Ex: Since the assembly is able to establish powers and duties of the~~
~~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, municipal subdivision regulations adopted under this chapter, or any terms, conditions, or limitations imposed by a platting authority in the exercise of its powers under this chapter, the Borough or any aggrieved citizen may institute or cause to be instituted any appropriate civil action 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.~~

~~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 ^{continues} ~~shall~~ occur shall constitute a separate violation.

(d) The ^{enough} platting authority may enjoin any partition, lease, transfer, or sale of land which would result in an unlawful subdivision. Following an unlawful ~~partition~~, 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

^{new} 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.

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.

*Tam -
one numbering
& references are
mixing apples &
oranges?*

use new numbers.

EXPLANATION: This section is substantially similar to AS ^{existing} 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)~~. ^{consent language.} The proposed language clarifies 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.

no change

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.

Sec. 29.42.020. PLANNING COMMISSION. (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.

29.42.020
EXPLANATION: This section is a shortened version of ^{*the existing*} ~~29.33.000~~ 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.

~~29.42.030~~
EXPLANATION: ~~This section is derived from AS 29.33.005.~~
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 ~~enact~~ ^{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;
- (3) 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;
- (4) 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 AS 29.33.090(b) contains a rather traditional enumeration of the purposes of zoning, the "including but not limited to" preface to that subsection renders the detailed laundry list legally meaningless. The suggested language of AS 29.42.040 preserves the requirement that all land use regulations comply with a comprehensive plan and recites the more important categories of land use regulations available to the borough. Passage of AS 29.42.040 would enable second class boroughs to enact building and fire codes. Material on variances has been moved to the section from AS 29.33.110.

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(b)

29.42.050
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Sony

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 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} appeals 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, ~~for~~ ^{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. 29.33.110 and Sec. 29.33.120. The specific enumeration of the kinds of decisions from which appeals may be taken is eliminated; in its place is a more general requirement allowing appeals from administrative decisions of borough employees or boards made in enforcing or administering land use regulations. New language allows appointment of hearing officers, eliminates redundant public record and meeting requirements, and allows the assembly to define proper parties, evidentiary rules, and standards of review rather than following more restrictive rules of the present AS 29.33.120.

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42.060

42.060

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.

leave as is

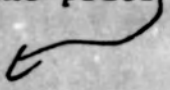
(b) An appeal to the superior court under this section is an administrative appeal and the appeal is heard solely on the record established by the ~~administrative agency~~ ^{board of adjustment, hearing officer or other body}. ~~Issues in A~~ proceedings under this section ^{have} preference over all other civil actions and proceedings.

EXPLANATION: ~~Based on AS 29.99.130,~~ ^{This} proposed ^{language} section makes several important changes in procedures governing administrative appeals to the superior court. The "automatic stay" requirement ~~of AS 29.99.130~~ 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.

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Sec. 29.42.060. ADJUSTMENT PROCEDURE. Repeal

EXPLANATION: A simplified procedure is now provided in the prior sec



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

- (1) form, size and other aspects of subdivision, dedications, and vacations of land;
- (2) dimensions and design of lots or tracts;
- (3) street width, arrangement, and rights-of-way, including requirements for public access to lots and installation of street paving, curbs, gutters, sidewalks, sewers, water lines, drainage and other public utility facilities and improvements;
- (4) dedication of streets, rights-of-way, public utility easements and areas deemed by the platting authority 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. The platting board may consist of members of the planning commission or of other municipal bodies, boards and commissions.

This proposed change

new no.

EXPLANATION: ~~This section is derived from AS 29.33.150 and~~ 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 ~~of AS 29.33.150(b)~~, which allows the state of Alaska to ignore capital improvement requirements of local subdivision regulations.

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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. ↑
ok

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. 29.42.100. 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} procedure under expedited procedures adopted by the assembly so that small subdivisions can be accomplished without unduly complex procedure requirements.

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add
Sec. 29.42.090. 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.

new
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 Sec. 29.42.070 requires full state compliance with local capital improvement requirements. *change*

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 29.42.140.

Thanks!

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 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 front feet of 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. *Ha!*

current language
EXPLANATION: Similar to ~~asked in 200~~ except for a change allowing the state, the municipality or a public utility to initiate a replat petition, as well as property owners. Petitions to vacate streets may be initiated by the state and a public utility, as well as the municipality or property owners.

Sec. 29.42.150. DELEGATIONS. Repeal.

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

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Sec. 29.42.160. REMEDIES. (a) It shall be unlawful for the owner of land located within a subdivision to transfer, sell, offer to sell, or enter into a contract to sell land in a subdivision before a plat of the subdivision has been prepared, approved and recorded in accordance with this chapter ^{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 \$500.

(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.

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

New no. 29.42.120
EXPLANATION: This new section is derived in part from AS 29.33.190 and contains new provisions which strengthen remedies available to municipalities seeking to enforce subdivision regulations. It prohibits persons from offering to sell unsubdivided land in violation of local subdivision regulations, authorizes injunctive relief to restrain violations of subdivision regulations, allows imposition of civil penalties, and makes daily occurrences of unlawful acts separate violations.