

CHAPTER 87

AN ACT

[H. B. 27]

To amend Section 2383 Compiled Laws of Alaska, 1933, relating to the powers of City Councils, by adding thereto subsection twenty-second on the subject of Garbage Disposal, sub-section twenty-third on the subject of creating Planning Commission, and subsection twenty-fourth on the subject of Zoning Commissions; to repeal Chapter 10, Session Laws of Alaska, 1935; and declaring an emergency.

Be it enacted by the Legislature of the Territory of Alaska:

Section 1. That Section 2383 Compiled Laws of Alaska, 1933, is hereby amended by adding thereto subsections twenty-second, twenty-third, and twenty-fourth reading as follows:

Twenty-second: Any city or town, through its legislative authority, shall have power, by ordinance, to provide for the establishment, maintenance and operation of a system of garbage collection and disposal for the entire city or town or for districts or portions thereof; to require all persons within the town or district to use the system and to dispose of their garbage as provided in the ordinance; to award contracts for such collection and disposal, or to provide for the collection and disposal of garbage by and under the direction of officials and employees of the city or town; to pay for any such garbage collection and disposal from any available funds; to require property owners or occupants of premises to use the garbage collection and disposal system provided by the city or

Garbage
handling by
local government.

May award
contracts.

Require property owners to use.

town and to fix charges against the property owners or occupants of premises for such garbage collection and disposal; to provide that the charges therefor shall be paid by the property owner or occupants of the premises; and to provide penalties for violations of such ordinances.

City Planning Commission.

Term of office.
Duty of Commission.

Power and authority.

Twenty-third: To appoint a City Planning Commission consisting of not less than three nor more than nine citizens, all of whom shall reside in such municipality and who shall be nominated by the Mayor and confirmed by the Council, each for a term of three years, the Mayor and City Engineer to be additional and ex-officio members of the Commission; provided, however, that in the first instance one-third thereof shall be appointed for three years, one third for two years and one-third for one year. Appointments to fill vacancies shall be for the unexpired term only. The members shall serve as Commissioners without pay, and it shall be the duty of such Commission to prepare from time to time plans for the systematic development and betterment of such municipality as a place of residence or for business. It shall have the power and authority to employ engineers, attorneys, clerks and a secretary, or any other help deemed necessary, subject to the approval of the council, and their salaries and compensation shall be fixed by the council and paid out of the city treasury as are the salaries of other officers and employees, and the other necessary expense incurred by said Commission shall be paid out of the city treasury the same as other legal expense of the city government, within the limits of appropriations by the council for said purpose, provided that in no event shall said City Planning Commission be authorized to create a deficiency. The said City Planning

Commission may consider and investigate any subject matter tending to the development and betterment of such municipality, and make recommendations as it may deem advisable concerning the adoption thereof, to any department of the municipal government, and for any purpose, make or cause to be made, surveys, maps or plans, before final action shall be taken by any municipality or department thereof, on the location and design of any public building, dock, beach, ski ground, statue, memorial, park, parkway, boulevard, street or alley, playground, public street, alley or the grade thereof, such question shall be submitted to the City Planning Commission for investigation and report. All plans, plats or replats of land laid out in lots or plats, and the streets, alleys, or other portions of the same intended to be dedicated to public or private use within the corporate limits of any city or town, shall first be submitted to the City Planning Commission for its approval or rejection, and before such plans, plats or replats shall be entitled to record in the office of the United States Commissioner, ex-officio Recorder, they must be approved by the council of said city or town. It shall be unlawful to file or record any such plan, plat or replat in any public office unless the same shall bear thereon, by endorsement, or otherwise, the approval of the council of said city or town, and any person, partnership or corporation violating this provision shall, upon conviction thereof, be fined not more than One Thousand Dollars (\$1,000.00), or punished by imprisonment for term of not more than six (6) months, or may be subjected to both such fine and imprisonment.

Planning Commission

Surveys and plans.

Land matters to be approved by City Council.

Penalty for violation.

Twenty-fourth: For the purpose of promoting the public health, safety and morals, the

Zoning authority
of City Council.

May enact
Building Code.

Authority to
condemn
buildings.

Notice to
owner.

Uniform
regulations
and their
purpose.

council is hereby empowered to regulate and restrict the heights, number of stories and size of buildings and other structures, the percentage of lot that may be occupied, the size of yards, courts and other open spaces, the density of population, and the location and use of buildings, structures and land for trade, industry, residence or other purposes; to enact a Building Code regulating minimum construction, heating, lighting, and other requirements and specifications within districts as hereinafter mentioned, and defining offenses and prescribing punishment therefor; to provide by ordinance for the condemnation of buildings which have become a fire or health hazard or public nuisance, and, after hearing on thirty days notice to the owner or his agent, order or cause their removal or demolition, provided the owner shall be given at least thirty days time after hearing within which to remove the objectionable building or buildings before the city may proceed to do so, in connection with which eventuality, the cost incurred by the city shall be chargeable to the property, first against the salvaged material, which may be sold at public auction, and the balance of cost, if any, against the land, the same as taxes; to divide the municipality into districts of such number, shape and area as may be deemed best suited to carry out the purposes hereof; and within such districts to regulate and restrict the erection, construction, reconstruction, alteration, repair or use of buildings, structures or land. All such regulations shall be uniform for each class or kind of buildings throughout each district, but the regulations in one district may differ from those in other districts. Such regulations shall be made in accordance with a comprehensive plan and designed to lessen congestion in the streets; to

secure safety from fire, panic and other dangers ; to promote health and the general welfare ; to provide adequate light and air ; to prevent the overcrowding of land ; to avoid undue concentration of population ; to facilitate adequate provision for transportation, water, sewerage, schools, parks and other public requirements. Such regulations shall be made with reasonable consideration, among other things, as to the character of the district and its peculiar suitability for particular uses, and with a view to enhancing the value of buildings and lots and encouraging the most appropriate use of land throughout such municipality ; to provide for the manner in which such regulations and restrictions and the boundaries of such districts shall be determined, established and enforced, and from time to time amended, supplemented or changed ; however, no such regulation, restriction or boundary shall become effective until after a public hearing in relation thereto at which parties in interest and citizens shall have an opportunity to be heard, as hereinafter provided. At least fifteen days notice of the time and place of such hearing shall be published in an official paper or a paper of general circulation in such municipality. Such regulations, restrictions and boundaries may from time to time be amended, supplemented, changed, modified or repealed. In case, however, of a protest against such change, signed by the owners of twenty percent or more either of the area of the lots included in such proposed change, or by the owners of twenty percent or more of the area of the lots immediately abutting either side of the territory included in such proposed change, or separated therefrom only by an alley or street, such amendment shall not become effective except by the favorable vote of three-

Notice of
public hearing.

Objection
by property
owners.

Three fourths
vote of council
to overcome
objections.

fourths of all the members of the council. The provisions relative to public hearings and official notice shall apply equally to all changes or amendments.

Zoning
Commission.

In order to avail itself of the powers conferred by this sub-section, the council shall appoint a Commission to be known as the Zoning Commission, composed of not less than three qualified residents of the town, and the Mayor and City Engineer as additional ex-officio members, to recommend the boundaries of the various original districts and to recommend appropriate regulations to be enforced therein. The City Engineer shall have the privilege of the floor but no right to vote; the Mayor shall be ex-officio chairman but he shall have authority to vote only in case of a tie. Such Commission shall make a preliminary report and hold public hearings thereon before submitting its final report; and the council shall not take final action until it has received the final report of such Commission. Where a city planning commission already exists, it may be appointed as the Zoning Commission.

Mayor to be
ex-officio
chairman.

City Council
to be Board of
Adjustment.

The council shall constitute a Board of Adjustment hereunder, with the Mayor as ex-officio chairman, and may, in appropriate cases and subject to appropriate conditions and safeguards make special exceptions to the terms of the ordinance and regulations adopted hereunder in harmony with their general purpose and intent and in accordance with general or specific rules therein contained. The Board shall adopt rules in accordance with the provisions of any ordinance adopted pursuant hereto. Meetings of the Board shall be held at the call of the Chairman and at such other times as the Board may de-

termine. Such Chairman, or in his absence, the Acting Chairman, may administer oaths and compel the attendance of witnesses. All meetings of the Board shall be open to the public. The Board shall keep minutes of its proceedings, showing the vote of each member upon each question, or if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the City Clerk and shall be a public record. The Board of Adjustment shall have the following powers: (1) To hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement of this sub-section or of any ordinance adopted pursuant thereto; (2) To hear and decide requests for exceptions to the terms of the ordinance or regulation upon which such Board is required to pass; (3) To authorize upon appeal in specific cases such variance from the terms of the ordinance as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provisions of the ordinance would result in unnecessary hardship, and so that the spirit of the ordinance shall be observed and substantial justice done. In exercising the above mentioned powers, such Board may, in conformity with the provisions hereof, reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from and may make such order, requirement, decision or determination as ought to be made, and to that end shall have all the powers of the officer from whom the appeal is taken. The concurring vote of four members of the Board shall be necessary to reverse any order, requirement, decision

Authority of
the Board.

or determination of any such administrative official, or to decide in favor of the applicant on any matter upon which it is required to pass under any such ordinance or regulation, or to effect any variation or exception in the application of such ordinance or regulation. The council shall, by ordinance, provide for appeals from any administrative officer to the Board of Adjustment and from the Board of Adjustment to the District Court of the judicial division in which such municipality is located, in the following manner: Appeals from the action of any administrative officer to the Board of Adjustment may be taken by any person aggrieved, or by any officer, department, board or bureau of the municipality affected by any decision of the administrative officer. Such appeal shall be taken within such time as is fixed by ordinance of the municipality, by filing with the officer from whom the appeal is taken and with the Board of Adjustment, a notice of appeal specifying the grounds thereof. The officer from whom the appeal is taken shall forthwith transmit to the Board, the original or certified copies of all the papers constituting the record of said matter, together with a copy of the ruling or order from which such appeal is taken. In the event the administrative board or agency has not entered such order in writing, the filing of the appeal shall nevertheless be allowed and the administrative officer or board ordered to produce, in writing, the decision in question. An appeal stays all proceedings in furtherance of the action appealed from unless the Officer from whom the appeal is taken certifies to the Board of Adjustment, after the notice of appeal shall have been filed with him, that by reason of facts stated in the certificate, a stay would in his opinion cause imminent peril

Appeal to
District Court.

Who may
appeal.

Appeal stays
all proceedings.

Exception.

to life or property. In such case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Board of Adjustment or by a court of record on application or notice to the officer from whom the appeal is taken and on due cause shown. The Board of Adjustment shall fix a reasonable time for the hearing of the appeal, give public notice thereof, as well as due notice to the parties in interest, and decide the same within a reasonable time. Upon the hearing, any party may appear in person or by agent or by attorney. An appeal from any action, decision, ruling, judgment or order of the Board of Adjustment may be taken by any person or persons, jointly or severally aggrieved, or any taxpayer or any officer, department, board or bureau of the municipality, to the district court, by filing with the City Clerk and with the Clerk of the Board of Adjustment, if there be one, within the time fixed by ordinance, a notice of appeal, which notice shall specify the ground of such appeal. Upon filing of the notice of appeal as herein provided, the said Board shall forthwith transmit to the district court clerk of the judicial division in which the controversy arises, the original, or certified copies, of all the paper constituting the record in the case, together with the order, decision or ruling of the Board. Said case shall be heard and tried de novo in the District Court. An appeal shall lie from the action of the District Court as in all other civil actions. An appeal to the District Court from the Board of Adjustment stays all proceedings in furtherance of the action appealed from, unless the Chairman of the Board of Adjustment, from which the appeal is taken certified to the Court Clerk, after the notice of appeal shall have been filed, that by reason of facts stated in

Record
transmitted
to Clerk of the
Court.

Appeal from
District Court.

the certificate, a stay would in his opinion cause imminent peril to life or property. In such case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the district court upon application or notice to the administrative officer in charge of the enforcement of the terms and provisions of the ordinance or regulation, and upon notice to the Chairman of the Board of Adjustment from which the appeal is taken. After trial of an appeal on the merits, the court may reverse or affirm, wholly or partly, the decision appealed from. Costs shall not be allowed against the Board unless it shall appear to the court that it acted with gross negligence or in bad faith or with malice in making the decision appealed from. All issues in any proceedings under this section shall have preference over all other civil actions and proceedings. In case any building, or structure is erected, constructed, reconstructed, altered, repaired, converted or maintained, or any building, structure or land is used in violation hereof or of any ordinance or other regulation made under authority conferred hereby, the proper local authorities of the municipality, or any other person affected thereby, in addition to other remedies, may institute any appropriate action or proceedings to prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance or use, to restrain, correct or abate such violation, to prevent the unlawful occupancy of said building, structure or land, or to prevent any illegal act, conduct, business or use in or about such premises.

Section 2. That Chapter 10, Session Laws of Alaska, 1935, is hereby repealed.

Section 3. An emergency is hereby declared to exist, and this Act shall take effect immediately upon its passage and approval. Emergency clause.

Approved March 28, 1947.

CHAPTER 88

AN ACT

[H. B. 92]

To amend Section 4315 of the Compiled Laws of Alaska, 1933, relating to an agreement, not in writing; when void.

Be it enacted by the Legislature of the Territory of Alaska:

Section 1. That Section 4315, Compiled Laws of Alaska, 1933, be, and it is hereby amended by adding the following additional subsection:

Seventh. An agreement entered into subsequent to the taking effect of this act, authorizing or employing an agent or broker to sell or purchase real estate for a compensation or commission; provided, however, that if the note or memorandum of such agreement be in writing and subscribed by the party to be charged, or by his lawfully authorized agent, and contains a description of the property sufficient for identification, and authorizes or employs the agent or broker named therein to sell such property, and expresses with reasonable certainty the amount of the commission or compensation to be paid such agent or broker, such agree-

Failure to state consideration does not invalidate agreement in writing.