

LEGISLATIVE BILL 410

Approved by the Governor May 27, 1975

Introduced by Bereuter, 24

AN ACT to amend sections 16-113, 16-114, 16-114.01, 16-114.02, 18-1303, 19-902, 19-903, 19-904, 19-904.01, 19-905, 19-907, 19-908, 19-910, 19-911, 19-913, 19-915, 23-114.01, 23-114.04, 23-114.05, 23-164, 23-168.01, 23-168.03, 23-172, 23-173, and 23-372, Reissue Revised Statutes of Nebraska, 1943, sections 15-106, 16-112, 16-114.03, and 19-901, Revised Statutes Supplement, 1974, and section 1, Legislative Bill 317, Eighty-fourth Legislature, First Session, 1975, relating to zoning; to provide that certain municipalities shall regulate the subdividing of property; to provide that certain municipalities shall adopt zoning regulations and restrictions as prescribed; to require hearings; to revise membership on the board of adjustment; to provide powers and duties; to provide for the adoption of codes; to change application; to provide for appeals; to provide standards; to repeal the original sections, and also sections 23-168 and 23-171, Reissue Revised Statutes of Nebraska, 1943; and to declare an emergency.

Be it enacted by the people of the State of Nebraska,

Section 1. That section 15-106, Revised Statutes Supplement, 1974, be amended to read as follows:

15-106. The proprietor of any land within the corporate limits or contiguous thereto may lay out such land into lots, blocks, public ways, and other grounds under the name of ..... addition to the city of ..... and shall cause an accurate plat thereof to be made, designating explicitly the land so laid out, and particularly describing the lots, blocks, public ways, and grounds belonging to such addition. The lots must be designated by number and streets, public ways, and other grounds by name and number. Such plat shall be acknowledged before some officer authorized to take acknowledgment of deeds, and shall have appended a certificate made by a registered land surveyor to the effect that he has accurately surveyed such addition, and that the lots, blocks, public ways, and other grounds are well-and-accurately staked and marked as required by such city. When such plat is so made, acknowledged and

certified, complies with the requirements of section 15-901, and is approved by the city council, the same shall be filed and recorded in the office of the register of deeds and county assessor of the county. No such plat shall be recorded in the office of the register of deeds or have any force or effect unless the same be approved by the city council of such city. It shall after being filed with the register of deeds be equivalent to a deed in fee simple absolute to the city, from the proprietor, of all streets, public ways, public squares, parks and commons, and of such portion of the land as is therein set apart for public use, or dedicated to charitable, religious or educational purposes. All additions thus laid out shall remain a part of the city; and all additions now or hereafter laid out adjoining or contiguous to the corporate limits shall be included therein and become thereby a part of the city for all purposes; and the inhabitants of such addition shall be entitled to all the rights and privileges, and shall be subject to all the laws, ordinances, rules and regulations of the city. The mayor and council shall have power by ordinance to compel owners of any such addition to lay out streets and public ways to correspond in width and direction, and to be continuous with the streets and public ways in the city or additions contiguous to or near the proposed addition. No addition shall have any validity, right or privilege as an addition unless the terms and conditions of such ordinance and of this section are complied with, the plats thereof submitted to and approved by the city council, and such approval endorsed thereon.

Sec. 2. That section 16-112, Revised Statutes Supplement, 1974, be amended to read as follows:

16-112: The proprietor or proprietors of any land within the corporate limits of any city of the first or second class or village, or contiguous to the same, may lay out said land into lots, blocks, streets, avenues, alleys, and other grounds under the name of ..... Addition to the City or Village of ....., and shall cause an accurate map or plat thereof to be made out, designating explicitly the land so laid out and particularly describing the lots, blocks, streets, avenues, alleys, and other grounds belonging to such addition. The lots must be designated by numbers, and streets, avenues and other grounds, by names or numbers. Such plat shall be acknowledged before some officer authorized to take the acknowledgments of deeds and shall contain a dedication of the streets, alleys, and public grounds therein to the use and benefit of the public and have appended a survey made by some competent surveyor with a certificate attached, certifying that he



has accurately surveyed such addition and that the lots, blocks, streets, avenues, alleys, parks, commons, and other grounds are well and accurately staked off and marked. When such map or plat is so made out, acknowledged and certified, and has been approved by the mayer-and-council local legislative body, the same shall be filed and recorded in the office of the register of deeds and county assessor of the county. Thereupon such plat shall be equivalent to a deed in fee simple absolute to the city municipality from the proprietor of all streets, avenues, alleys, public squares, parks and commons, and of such portion of the land as is therein set apart for public and city municipal use or is dedicated to charitable, religious or educational purposes. All additions thus laid out shall remain a part of the city municipality and all additions laid out adjoining or contiguous to the corporate limits shall be included within the same and become a part of such city municipality for all purposes whatsoever. The inhabitants of such addition shall be entitled to all the rights and privileges, and subject to all the laws, ordinances, rules and regulations of the city municipality to which said land is an addition; Provided, the mayer-and-the-council local legislative body shall have power by ordinance to provide the manner, plan, or method by which land within the corporate limits of any such city municipality, or contiguous to the same, may be subdivided, platted, or laid out, including a plan or system for the avenues, streets or alleys to be laid out within or across the same, and to compel the owners of any such land in subdividing, platting, or laying out the same to conform to the requirements of the ordinance and to lay out and dedicate the avenues, streets, and alleys in accordance therewith. No addition shall have any validity, right or privileges as an addition, and no plat of land or, in the absence of a plat, no instrument subdividing land within the corporate limits of any such city municipality, or contiguous to the same, shall be recorded or have any force or effect, unless the same be approved by the mayer-and-council governing body; and their its approval endorsed thereon.

Sec. 3. That section 16-113, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

16-113: Power is hereby given to such city municipality through its mayer-and-council governing body by proper ordinance therefor duly enacted to vacate any such existing plat and addition to the city municipality or such part or parts thereof as such city municipality may deem advantageous and best for its interests, and the power hereby granted shall be exercised by such city

municipality upon the petition of the owner or all the owners of lots or lands in such plat or addition. Such ordinance vacating such plat or addition shall specify whether, and, if any, what public highways, streets, alleys, and public grounds thereof are to be retained by such city municipality; otherwise such ways, streets, and public grounds shall upon such vacation revert to the owner or owners of lots or lands abutting the same in proportion to the respective ownerships of such lots or grounds. In case of total or partial vacation of such plat or addition, the ordinance providing therefor shall be, at the cost of the owner or owners, certified to the office of the register of deeds and be there recorded by the owner or owners. Whereupon said officer shall note such total or partial vacation of such plat or addition by writing in plain and legible letters upon such plat or portion thereof so vacated the word "vacated," and also make on the same reference to the volume and page in which said ordinance of vacation is recorded; and the owner or owners of the lots and lands in a plat so vacated shall cause the same and the proportionate part of the abutting highway, streets, alleys and public grounds so vacated to be replatted and numbered by the city or county surveyor. When such replat so executed is acknowledged by such owner or owners and is recorded in the office of the register of deeds of such county such property so replatted may be conveyed and assessed by the numbers given in such replat.

Sec. 4. That section 16-114, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

~~16-114:~~ No owner of real estate within the corporate limits of such city municipality shall be permitted to subdivide, plat, or lay out said real estate into blocks, lots, streets, or other portions of the same intended to be dedicated for public use, or for the use of the purchasers or owners of lots fronting thereon or adjacent thereto, without first having obtained the approval thereof of the ~~mayor and council governing~~ body of such city municipality. Any and all additions to be made to the city municipality shall be made, so far as the same relate to the avenues, streets and alleys therein, under and in accordance with the provisions of sections 1 to 3 of this act. ~~16-112-to-16-114:~~

Sec. 5. That section 16-114.01, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

~~16-114.01:~~ No plat of or instruments effecting the subdivision of real property described in section



~~46-444 4 of this act~~ shall be recorded or have any force and effect unless the same be approved by the ~~mayor--and council governing body~~ of such city municipality. The ~~mayor--and--council governing body~~ of such city municipality shall have power, by ordinance, to provide the manner, plan, or method by which real property in any such area may be subdivided, platted, or laid out, including a plan or system for the avenues, streets or alleys to be laid out within or across the same; and to prohibit the sale or offering for sale of, and the construction of buildings and other improvements on, any lots or parts of real property not subdivided, platted or laid out as required in sections 4 and 6 of this act.  
~~46-444-and-46-444:02.~~

Sec. 6. That section 16-114.02, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

~~46-444:02.~~ The ~~mayor-and-council governing body~~ shall have power to compel the owner of any real property described in section 46-444 4 of this act in subdividing, platting, or laying out the same to conform to the requirements of the ordinance and to lay out and dedicate the avenues, streets, and alleys in accordance therewith.

Sec. 7. That section 16-114.03, Revised Statutes Supplement, 1974, be amended to read as follows:

~~46-444:03.~~ For the purposes of sections 46-442 to-46-444:02 1 to 6 of this act and sections 16-901 to 16-904, in the area where the city municipality has a comprehensive plan and has adopted subdivision regulations pursuant thereto, subdivision shall mean the division of lot, tract, or parcel of land into two or more lots, sites, or other divisions of land for the purpose, whether immediate or future, of ownership or building development, except that the division of land shall not be considered to be a subdivision when the smallest parcel created is more than five ten acres in area.

Sec. 8. The legislative body of any first or second-class city or any village may after public hearing adopt by ordinance, which shall have the force and effect of law, the conditions, provisions, limitations, and terms of a building code, a plumbing code, an electrical code, a fire prevention code or any other code relating to building or relating to the erection, construction, reconstruction, alteration, repair, conversion, maintenance, placing or using of any building, structure, automobile trailer, house trailer or cabin trailer, if the local legislative body shall cause such ordinance

setting forth the code to be published one time in book or pamphlet form or in a legal newspaper published in and of general circulation in the municipality. The legislative body may by ordinance, which shall have the force and effect of law, amend such code so adopted. For this purpose, the local legislative body may adopt any standard code which contains rules or regulations printed as a code in book or pamphlet form, by reference to such code, or portions thereof, alone without setting forth in such ordinance the conditions, provisions, limitations or terms of such code. When such code or any such standard code, or portion thereof, shall be incorporated by reference into any ordinance, as aforesaid, it shall have the same force and effect as though it has been spread at large in such ordinance, without further or additional publication thereof. Not less than three copies of such code or such standard code, or portion thereof, shall be filed for use and examination by the public in the office of the clerk of such municipality prior to the adoption thereof. The adoption of any such standard code by reference shall be construed to incorporate such amendments thereof as may be made therein from time to time, if three copies of such standard code so filed shall be at all times kept current in the office of the clerk of the municipality. Any code adopted and approved by the local legislative body as provided in this section, and the building permit requirements or occupancy permit requirements imposed by any such code or by section 19-913, shall apply to all of the city or village, and within the unincorporated area where a city or village has been granted zoning jurisdiction and is exercising such jurisdiction.

Sec. 9. That section 18-1303, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

18-1303. The commission shall consist of nine members who shall represent insofar as is possible different professions or occupations in the municipality and who shall be appointed by the mayor, by and with the approval of a three-fourths vote of the council. All members of the commission shall serve as such without compensation and shall hold no other municipal office except when appointed to serve on the board of adjustment as provided in section 19-908. The term of each member shall be three years, except that three members of the first commission to be so appointed shall serve for the term of one year, three for the term of two years, and three for a term of three years. All members shall hold office until their successors are appointed. All members may, after a public hearing before the council, be removed by the mayor, by and with the consent of a



three-fourths vote of the council for inefficiency, neglect of duty or malfeasance in office or other good and sufficient cause. Vacancies occurring otherwise than through the expiration of term shall be filled for the unexpired term by the mayor.

Sec. 10. That section 19-901, Revised Statutes Supplement, 1974, be amended to read as follows:

19-901. For the purpose of promoting health, safety, morals, or the general welfare of the community, the legislative bodies in cities of the first and second class and in villages may adopt zoning regulations which regulate and restrict the height, number of stories, and size of buildings and other structures, the percentage of lot that may be occupied, the size of yards, courts and other open spaces, the density of population, and the location and use of buildings, structures and land for trade, industry, residence or other purposes. Such powers shall be exercised only after the municipal legislative body has appointed a planning commission, received from its planning commission a recommended comprehensive development plan as defined in section 19-903, adopted such comprehensive development plan, and received the specific recommendation of the planning commission on the adoption or amendment of building zoning regulations. ~~The comprehensive development plan shall be used only as a guide by the planning commission and the municipal legislative body in all matters to which such comprehensive plan applies.~~ The planning commission shall make a preliminary report and hold public hearings on its recommendations regarding the adoption, amendment, or repeal of the comprehensive development plan and building zoning regulations and shall hold public hearings thereon before submitting its final report to the legislative body. The statutory procedure for adopting an amendment to the comprehensive development plan shall be the same as that used for adopting the plan originally. A comprehensive development plan as defined in section 19-903 which has been adopted and not rescinded by such legislative body prior to May 17, 1967, shall be deemed to have been recommended and adopted in compliance with the procedural requirements of this section where, prior to the adoption of the plan by the legislative body, a recommendation thereon had been made to the legislative body by a zoning commission in compliance with the provisions of section 19-906, or by a planning commission appointed under the provisions of Chapter 18, article 13, regardless of whether the planning commission had been appointed as a zoning commission.

Sec. 11. That section 19-902, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

19-902. (1) For any or all of ~~said the~~ purposes ~~designated in section 19-901~~, the local legislative body may divide the municipality into districts of such number, shape, and area as may be deemed best suited to carry out the purposes of sections 19-901 to 19-914, and within such districts it may regulate and restrict the erection, construction, reconstruction, alteration, repair or use of buildings, structures or land. All such regulations shall be uniform for each class or kind of buildings throughout each district, but the regulations in one district may differ from those in other districts.

~~(2) Subdivision regulations and building, plumbing, electrical, housing, fire, or health codes, or similar regulations and the adoption thereof shall not be subject to the provisions of sections 19-901 to 19-915.~~

Sec. 12. That section 19-903, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

19-903. ~~Such the~~ regulations ~~and restrictions~~ authorized by sections ~~19-901 to 19-915~~ shall be made in accordance with a comprehensive development plan which shall consist of both graphic and textual material and shall be designed to accommodate anticipated long-range future growth which shall be based upon documented population and economic projections. The comprehensive development plan shall, among other possible elements, include:

(1) A land-use element which designates the proposed general distributions, general location, and extent of the uses of land for agriculture, housing, commerce, industry, recreation, education, public buildings and lands, and other categories of public and private use of land;

(2) The general location, character, and extent of existing and proposed major roads, streets, and highways, and air and other transportation routes and facilities; and

(3) The general location, type, capacity, and area served of present and projected or needed community facilities including recreation facilities, schools, libraries, other public buildings, and public utilities and services.



Regulations shall be 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 secure safety from flood; to avoid undue concentration of population; to facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirements; to protect property against blight and depreciation; to protect the tax base; to secure economy in governmental expenditures; and to preserve, protect, and enhance historic buildings, places, and districts.

Such regulations shall be made with reasonable consideration, among other things, of the character of the district and its peculiar suitability for particular uses, and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout such municipality.

Sec. 13. That section 19-904, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

19-904. The legislative body of such municipality shall provide for the manner in which such regulations and restrictions, and the boundaries of such districts, shall be determined, established, and enforced, and from time to time amended, supplemented, or changed. The legislative body shall request and receive the advice of the planning commission before taking definite action on any contemplated amendment, supplement, change, modification, or repeal. No such regulation, restriction, or boundary shall become effective until after a separate public hearing hearings are held by both the planning commission and the legislative body in relation thereto, at which parties in interest and citizens shall have an opportunity to be heard. Notice of the time and place of such hearing shall be given by publication thereof in a paper of general circulation in such municipality at least one time ten days prior to such hearing.

Sec. 14. That section 19-904.01, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

19-904.01. The use of a building, structure, or land, existing and lawful at the time of the enactment adoption of a zoning regulation, or at the time of an amendment of a regulation, may, except as provided in this section, be continued, although such use does not conform with provisions of such regulation or amendment;

and such use may be extended throughout the same building if no structural alteration of such building is proposed or made for the purpose of such extension. If such nonconforming use is in fact discontinued for a period of twelve months, such right to the nonconforming use shall be forfeited and any future use of the building and premises shall conform to the regulation. The municipal legislative body may provide in any zoning regulation for the restoration, reconstruction, extension, or substitution of nonconforming uses upon such terms and conditions as may be set forth in the zoning ordinance regulations. The municipal legislative body may, in any zoning regulation, provide for the termination of nonconforming uses, either by specifying the period or periods in which nonconforming uses shall be required to cease, or by providing a formula whereby the compulsory termination of a nonconforming use may be so fixed as to allow for the recovery of amortization of the investment in the nonconformance.

Sec. 15. That section 19-905, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

19-905. ~~Such----regulations~~ Regulations, restrictions, and boundaries authorized to be created pursuant to sections 19-901 to 19-915 may from time to time be amended, supplemented, changed, modified, or repealed. In case of a protest against such change, signed by the owners of twenty per cent or more either of the area of the lots included in such proposed change, or of those immediately adjacent on the sides and in the rear thereof extending three hundred feet therefrom, and of those directly opposite thereto extending three hundred feet from the street frontage of such opposite lots, such amendment shall not become effective except by the favorable vote of three-fourths of all the members of the legislative body of such municipality. The provisions of section 19-904 relative to public hearings and official notice shall apply equally to all changes or amendments. In addition to the publication of the notice therein prescribed, a notice shall be posted in a conspicuous place on or near the property on which action is pending. Such notice shall not be less than eighteen inches in height and twenty-four inches in width with a white or yellow background and black letters not less than one and one half inches in height. Such posted notice shall be so placed upon such premises that it is easily visible from the street nearest the same and shall be so posted at least ten days prior to the date of such hearing. It shall be unlawful for anyone to remove, mutilate, destroy, or change such posted notice prior to such hearing. Any person so doing shall be deemed guilty



of a misdemeanor. If the record title owners of any lots included in such proposed change be nonresidents of the municipality, then a written notice of such hearing shall be mailed by certified mail to them addressed to their last-known addresses at least ten days prior to such hearing. At the option of the legislative body of the municipality, in place of the posted notice provided above, the owners or occupants of the real estate to be zoned or rezoned and all real estate located within three hundred feet of the real estate to be zoned or rezoned may be personally served with a written notice thereof at least ten days prior to the date of the hearing, if they can be served with such notice within the county where such real estate is located. Where such notice cannot be served personally upon such owners or occupants in the county where such real estate is located, a written notice of such hearing shall be mailed to such owners or occupants addressed to their last-known addresses at least ten days prior to such hearing. The provisions of this section in reference to notice shall not apply (1) in the event of a proposed change in such regulations, restrictions, or boundaries throughout the entire area of an existing zoning district or of such municipality, or (2) in the event additional or different types of zoning districts are proposed, whether or not such additional or different districts are made applicable to areas, or parts of areas, already within a zoning district of the municipality, but only the requirements of section 19-904 shall be applicable.

Sec. 16. That section 19-907, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

19-907. Such local legislative body ~~may~~ shall provide for the appointment of a board of adjustment, and in the regulations and restrictions adopted pursuant to the authority of sections 19-901 to 19-906 ~~may~~ shall provide that the ~~said~~ board of adjustment ~~may~~, in appropriate cases and subject to appropriate conditions and safeguards, make special exceptions to the terms of the ordinance in harmony with its general purpose and intent and in accordance with general or specific rules therein contained. Any such actions taken by the board of adjustment shall not exceed the powers granted by section 19-908.

Sec. 17. That section 19-908, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

19-908. ~~If appointed, the~~ The board of adjustment shall consist of five regular members, plus

one additional member designated as an alternate who shall attend and serve only when one of the regular members is unable to attend for any reason, each to be appointed for a term of three years and removable for cause by the appointing authority upon written charges and after public hearings. Vacancies shall be filled for the unexpired term of any member whose term becomes vacant. One member only of the board of adjustment shall be appointed from the membership of the planning commission, and the loss of membership on the planning commission by such member shall also result in his immediate loss of membership on the board of adjustment and the appointment of another planning commissioner to the board of adjustment. The board of adjustment shall adopt rules in accordance with the provisions of any ordinance adopted pursuant to sections 19-901 to 19-914. Meetings of the board shall be held at the call of the chairman and at such other times as the board may determine. 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 board and shall be a public record.

Sec. 18. That section 19-910, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

19-910. The board of adjustment shall, subject to such appropriate conditions and safeguards as may be established by the legislative body, have only 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 or agency based on or made in the enforcement of any zoning regulation or any regulation relating to the location or soundness of structures; (2) to hear and decide, in accordance with the provisions of any zoning regulation, requests for interpretation of any map, or for decisions upon other special questions upon which the board is authorized by any such regulation to pass; and (3) where by reason of exceptional narrowness, shallowness, or shape of a specific piece of property at the time of the enactment of the regulation zoning regulations, or by reason of exceptional topographic conditions or other extraordinary and exceptional situation or condition of such piece of property, the strict application of any enacted regulation under this



act would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardships upon the owner of such property, to authorize, upon an appeal relating to the property, a variance from such strict application so as to relieve such difficulties or hardship, if such relief may be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of any ordinance or resolution. No such variance shall be authorized by the board unless it finds that: (a) The strict application of the ordinance zoning regulation would produce undue hardship; (b) such hardship is not shared generally by other properties in the same zoning district and the same vicinity; (c) the authorization of such variance will not be of substantial detriment to adjacent property and the character of the district will not be changed by the granting of the variance; and (d) the granting of such variance is based upon reason of demonstrable and exceptional hardship as distinguished from variations for purposes of convenience, profit or caprice. No variance shall be authorized unless the board finds that the condition or situation of the property concerned or the intended use of the property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the ordinance zoning regulations. In exercising the above-mentioned powers such board may, in conformity with the provisions of sections 19-901 to 19-944 ~~19-915~~, reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from, and may make such order, requirement, decision or determination as ought to be made, and to that end shall have all the powers of the officer from whom the appeal is taken. The concurring vote of four members of the board shall be necessary to reverse any order, requirement, decision or determination of any such administrative official, or to decide in favor of the applicant on any matter upon which it is required to pass under any such ordinance regulation or to effect any variation in such regulation ordinance.

Sec. 19. That section 19-911, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

19-911. Such Notwithstanding the provisions of sections 19-907 and 19-908, the legislative body of a village may provide by ordinance that it shall constitute a board of adjustment, and in the regulations and restrictions adopted pursuant to the authority of sections 19-901 to 19-906 may provide that as such board of adjustment it may exercise only the powers granted to

boards of adjustment by section 19-910. in--appropriate cases--and--subject--to--appropriate---conditions---and safeguards,--make special exceptions to the terms of--the ordinance in harmony with its general purpose and intent, and in accordance with the--general--or--specific--rules therein contained.--And as As such board of adjustment it shall adopt rules and proceed--as--nearly--as--may--be procedures that are in harmony with sections 19-907 to 19-910, and shall have the powers and duties therein provided for the board of adjustment, and other parties shall have all the rights and privileges therein provided for. The concurring vote of two-thirds of the members of the legislative body acting as a board of adjustment shall decide any question upon which it is required to pass as such board.

Sec. 20. That section 19-913, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

19-913. The local legislative body may provide by ordinance for the enforcement of sections 19-901 to 19-944 19-915, and of any ordinance, or regulation, or restriction made thereunder. A violation of said such sections or of such ordinance or regulation is hereby declared to be a misdemeanor, and such local legislative body may provide for the punishment thereof by fine of not exceeding one hundred dollars for any one offense, recoverable with costs, together with judgment of or by imprisonment until the amount--of--said--fine--and--costs shall be paid in the county jail for a term not to exceed thirty days. Each day such violation continues after notice of violation is given to the offender may be considered a separate offense. In case any building or structure is erected, constructed, reconstructed, altered, repaired, converted or maintained, or any building, structure or land is used in violation of said sections or of any ordinance or other regulation made under authority conferred hereby, the proper local authorities of the municipality, in addition to other remedies, may institute any appropriate action or proceedings to prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance or use, to restrain, correct, or abate such violation, to prevent the occupancy of said building, structure or land, or to prevent any illegal act, conduct, business or use in or about such premises.

Sec. 21. That section 19-915, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:



19-915. (1) When any city of the first or second class or any village has enacted a zoning ~~plan--or ordinance regulations~~ in accordance with statutory authority and as a part of such ~~plan--or--ordinance regulations~~ has bounded and defined the various zoning or building districts with reference to a zoning map such zoning or building districts may from time to time, be changed, modified or terminated, or additional or different zoning or building districts may from time to time be created, changed, modified or terminated, by an appropriate amendatory ~~ordinance action~~ which describes the changed, modified, terminated or created zone or district or part thereof by legal description or metes and bounds, or by republishing a part only of the original zoning map, and without republishing the original zoning map as a part of the amendatory ~~ordinance action~~ and without setting forth and repealing the entire section or ordinance adopting the rezoning maps, or a part of the zoning map, as a part of the ~~ordinance amendatory action~~, notwithstanding the provisions of section 16-404 or 17-614.

(2) When any city of the first or second class or any village has, prior to March 21, 1969, changed the boundaries of a zoning or building district without compliance with section 16-404 or 17-614, any such amendments of the zoning ordinances shall stand as valid and subsisting amendments until repealed and the action of any such city or village in executing any such amendment is expressly ratified by the Legislature.

Sec. 22. That section 23-114.01, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

23-114.01. (1) In order to avail itself of the powers conferred by section 23-114, the county board shall appoint a planning commission to be known as the county planning commission. The members of the commission shall be residents of the county to be planned, shall be appointed with due consideration to geographical and population factors. As members of the commission, they shall serve without compensation except for reasonable expenses in an amount to be fixed by the county board and shall hold no county or municipal office, except that a member may also be a member of a city, village, or other type of planning commission. The terms of each member shall be three years, except that approximately one-third of the members of the first commission shall serve for a term of one year, one-third for a term of two years, and one-third for a term of three years. All members shall hold office until their successors are appointed. Members of the commission may

be removed by a majority vote of the county board for inefficiency, neglect of duty, or malfeasance in office or other good and sufficient cause upon written charges being filed with the county board and after a public hearing has been held regarding such charges. Vacancies occurring otherwise than through the expiration of term shall be filled for the unexpired term by the chairman of individuals appointed by the county board.

(2) The county planning commission shall prepare and adopt as its policy statement a comprehensive development plan and such implemental means as a capital improvement program, subdivision regulations, building codes, and zoning resolution; consult and advise with public officials and agencies, public utilities, civic organizations, educational institutions, and with citizens with relation to the promulgation of implemental programs; have the power to delegate authority to any of these named groups to conduct studies and make surveys for the commission; and make preliminary reports on its findings and hold public hearings before submitting its final reports. The county board shall not hold its public meetings or take action on matters relating to the comprehensive development plan, capital improvements, building codes, subdivision development, or zoning until it has received the recommendations of the planning commission.

(3) The commission may with the consent of the governing body, in its own name, make and enter into contracts with public or private bodies; receive contributions, bequests, gifts, or grants of funds from public or private sources; expend the funds appropriated to it by the county board; employ agents and employees; acquire, hold, and dispose of property. The commission may on its own authority make arrangements consistent with its program; conduct or sponsor special studies or planning work for any public body or appropriate agency; receive grants, remuneration, or reimbursement for such studies or work; and at its public hearings, summon witnesses, administer oaths, and compel the giving of testimony.

Sec. 23. That section 23-114.04, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

23-114.04. (1) The county board shall provide for enforcement of the zoning regulations within its county by requiring the issuance of permits prior to the erection, construction, reconstruction, alteration, repair, or conversion of any nonfarm building or structure within a zoned area, and the county board may



provide for the withholding of any permit if the purpose for which it is sought would conflict with zoning regulations adopted for the particular district in which the building or structure is situated or in which it is proposed to be erected. All plats for subdivisions in the area outside the corporate limits of cities and villages and outside of an unincorporated area wherein a city or village has been granted subdivision jurisdiction and is exercising such jurisdiction must be approved by the county planning commission.

(2) The county board may establish and appoint a county zoning administrator, who may also serve as a building inspector, and may fix his compensation or may authorize any administrative official of the county to assume the functions of such position in addition to his regular duties. The county board may also fix a reasonable schedule of fees for the issuance of permits under the provisions of subsection (1) of this section. The permits shall not be issued unless the plans of and for the proposed erection, construction, reconstruction, alteration, use or change of use, including sanitation, plumbing and sewage disposal, are filed in writing in the building inspector's office and such plans fully conform to all zoning regulations then in effect.

Sec. 24. That section 23-114.05, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

23-114.05. The erection, construction, reconstruction, alteration, repair, conversion, maintenance, or use of any building, structure, automobile trailer, or land in violation of this act or of any regulation made by the county board under the provisions of this act shall be a misdemeanor. Any person, partnership, association, club or corporation violating the provisions of this act or of any regulation of the county board, or erecting, constructing, reconstructing, altering, or converting any structure without having first obtained a permit as required by the provisions of this act, shall, upon conviction, be fined in any sum not exceeding two hundred and fifty dollars for each offense, and the costs of prosecution, or may be confined in the county jail for a term not to exceed thirty days. Each day such violation continues after notice of violation has been given to the offender may be considered a separate offense. In addition to other remedies, the county board or the proper local authorities of the county, as well as any owner or owners of real estate within the district affected by the regulations, may institute any appropriate action or proceedings to prevent such unlawful construction,

erection, reconstruction, alteration, repair, conversion, maintenance, or use to restrain, correct, or abate such violation, or to prevent the illegal act, conduct, business, or use in or about such premises. Any taxpayer or taxpayers of the county may institute proceedings to compel specific performance, by the proper official or officials, of any duty imposed by the provisions of this act or in resolutions adopted pursuant to the provisions of this act.

Sec. 25. That section 23-164, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

23-164. The county board shall provide for the manner in which such regulations and restrictions and the boundaries of such districts shall be determined, established and enforced, and, from time to time amended, supplemented or changed; provided, no such regulation, restriction or boundary shall become effective until after a public hearing hearings are held by both the county planning commission and county board in relation thereto, when its parties in interest and citizens shall have an opportunity to be heard. Notice of the time and place of such hearing shall be given by the publication thereof in a legal newspaper of general circulation in such county, and in the local newspaper of any county which has territory within three miles of the property affected by such action of the county board, one time at least ten days prior to such hearing. Notice of the time and place of such hearing shall also be given in writing to the chairman of any municipal, county, or joint planning commission which has jurisdiction over land within three miles of the property affected by such action. In the absence of a planning commission, such notice shall be given to the clerks of units of local government having jurisdiction over land within three miles of the property affected by such action.

Sec. 26. That section 23-168.01, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

23-168.01. ~~(1) Instead of acting as the board of adjustment as provided in section 23-168, the county board may provide for the appointment of a board of adjustment. If appointed, the~~ The board of adjustment shall consist of five members, each to be appointed for a term of three years and be removable for cause by the appointing authority upon written charges and after public hearing. Vacancies shall be filled for the unexpired term of any member whose term becomes vacant. One member only of the board of adjustment shall be



appointed by the county board from the membership of the county planning commission, and the loss of membership on the planning commission by such member shall also result in his immediate loss of membership on the board of adjustment and the appointment of another planning commissioner to the board of adjustment.

(2) The board of adjustment shall adopt rules in accordance with the provisions of any resolution adopted pursuant to this act. Meetings of the board shall be held at the call of the chairman and at such other times as the board may determine. 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 with the county clerk and shall be a public record.

Sec. 27. That section 23-168.03, Neissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

23-168.03. The board of adjustment shall, subject to such appropriate conditions and safeguards as may be established by the county board, have only the following powers:

(1) To hear and decide appeals where it is alleged by the appellant that there is an error in any order, requirement, decision, or refusal made by an administrative official or agency based on or made in the enforcement of any zoning regulation or any regulation relating to the location or soundness of structures;

(2) To hear and decide, in accordance with the provisions of any regulation, requests for interpretation of any map, or for decisions upon other special questions upon which the board is authorized by any such regulation to pass; and

(3) Where by reason of exceptional narrowness, shallowness, or shape of a specific piece of property at the time of the enactment adoption of the regulation zoning regulations, or by reason of exceptional topographic conditions or other extraordinary and exceptional situation or condition of such piece of property, the strict application of any enacted regulation under this act would result in peculiar and exceptional practical difficulties to, or exceptional and

undue hardships upon the owner of such property, to authorize, upon an appeal relating to the property, a variance from such strict application so as to relieve such difficulties or hardship, if such relief may be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of any resolution zoning regulations, but no such variance shall be authorized unless the board of adjustment finds that: (a) The strict application of the resolution would produce undue hardship; (b) such hardship is not shared generally by other properties in the same zoning district and the same vicinity; (c) the authorization of such variance will not be of substantial detriment to adjacent property and the character of the district will not be changed by the granting of the variance; and (d) the granting of such variance is based upon reasons of demonstrable and exceptional hardship as distinguished from variations for purposes of convenience, profit or caprice.

No variance shall be authorized unless the board finds that the condition or situation of the property concerned or the intended use of the property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the resolution zoning regulations.

In exercising the above-mentioned powers, the board may, in conformity with the provisions of this act, 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 shall be proper, and to that end shall have the power of the officer or agency from whom the appeal is taken. The concurring vote of four members of the board shall be necessary to reverse any order, requirement, decision, or determination of any such administrative official, or to decide in favor of the applicant on any matter upon which it is required to pass under any such resolution regulation or to effect any variation in such resolution regulation.

Sec. 28. That section 23-172, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

23-172. The county board may adopt by resolution, which shall have the force and effect of law, the conditions, provisions, limitations, and terms of a building code, a plumbing code, an electrical code, a fire prevention code or any other code relating to building or relating to the erection, construction,



reconstruction, alteration, repair, conversion, maintenance, placing or using of any building, structure, automobile trailer, house trailer or cabin trailer. For this purpose, the county board may adopt any standard code which contains rules or regulations printed as a code in book or pamphlet form, by reference to such code, or portions thereof, alone without setting forth in said resolution the conditions, provisions, limitations or terms of such code; and when such code or any such standard code, or portion thereof, shall be incorporated by reference into any resolution, as aforesaid, it shall have the same force and effect as though it has been spread at large in such resolution, without further or additional publication thereof; provided, that not less than three copies of such code or such standard code, or portion thereof, shall be filed for use and examination by the public in the office of the clerk of such county prior to the adoption thereof; and provided further, the adoption of any such standard code by reference shall be construed to incorporate such amendments thereof as may be made therein from time to time, if three copies of such standard code so filed shall be at all times kept current in the office of the clerk of the county. Any code adopted and approved by the county board as provided in ~~section-23-474~~ and this section, and the building permit requirements or occupancy permit requirements imposed by any such code or by sections 23-114.04 and 23-114.05 shall apply to all of the county except within the limits of any incorporated city or village, and except within an unincorporated area where a city or village has been granted zoning jurisdiction and is exercising such jurisdiction.

Sec. 29. That section 23-173, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

23-173. The county board may also pass, approve and publish any other resolution governing and controlling zoning after the zoning district is created and established as provided in section 23-114.03, and when such resolutions are passed and approved, they shall be published as provided in ~~sections-23-474~~ and section 23-172. If any resolution is published by printing the same in book or pamphlet form, purporting to be published by authority of the county board, the same need not be otherwise published, and such book or pamphlet shall be received as evidence of the passage and legal publication of such resolution, as of the dates mentioned in such book or pamphlet, in all courts without further proof.

Sec. 30. That section 23-372, Reissue Revised Statutes of Nebraska, 1943, be amended to read as

follows:

23-372. For purposes of sections 23-372 to 23-377, subdivision shall mean the division of a lot, tract, or parcel of land into two or more sites, or other divisions of land for the purpose, whether immediate or future, of ownership or building development, except that the division of land shall not be considered to be subdivision when the smallest parcel of land created is more than five ten acres in area.

Sec. 31. That section 1, Legislative Bill 317, Eighty-fourth Legislature, First Session, 1975, be amended to read as follows:

Section 1. Effective July 1, 1977, the county government of ~~a county~~ counties that ~~is~~ are ~~are~~ presently included in a Standard Metropolitan Statistical Area, as defined by the federal government, is authorized, with the assistance of its planning commission, to prepare, adopt, and enforce zoning and subdivision regulations that are based upon a comprehensive development plan, as defined by section 23-114.02, Reissue Revised Statutes of Nebraska, 1943, for the land area included in any municipality that has not by such date adopted zoning and subdivision regulations and begun an organized and staffed program to enforce such regulations, either as an individual municipality or jointly with the assistance of the county. If the State Office of Planning and Programming determines, under authority granted by section 6 of this act, that a city of the first class, city of the second class, or village in such county is not, by July 1, 1977, enforcing zoning and subdivision regulations in a manner that the state agency determines to be adequate, the municipality shall permanently lose its land-use planning and land-use regulatory powers, and the county, by July 1, 1978, shall have prepared necessary plans and shall enforce zoning and subdivision regulations for the area within that municipality.

A city of the second class or a village which loses its land-use planning and land-use regulatory powers in such a manner may regain such authority one year after it becomes a city of the first class. Upon the enforcement of zoning and subdivision regulations by the municipality, the county shall relinquish its control over both the area in the municipality and the extraterritorial jurisdiction of the municipality.

At the time that an additional county as recognized by the Legislature, is added to a Standard Metropolitan Statistical Area, a municipality in that county shall have a one-year period after such



designation to individually or jointly begin enforcing zoning and subdivision regulations before it becomes subject to permanent loss of its land-use planning and land-use regulatory powers. If such municipality does not begin adequate regulatory programs, as determined by the State Office of Planning and Programming acting under section 6 of this act, by the end of the one-year period, the county shall begin such regulatory programs within two years after the designation of the county as part of a Standard Metropolitan Statistical Area.

Sec. 32. All municipalities and counties affected by Legislative Bill 317, Eighty-fourth Legislature, First Session, 1975, may appeal from adverse decisions of the State Office of Planning and Programming in accordance with Chapter 84, article 9.

Sec. 33. The State Office of Planning and Programming, in assisting the municipalities and counties in accordance with Legislative Bill 317, Eighty-fourth Legislature, First Session, 1975, shall consider rules, procedures, and regulations which promote beneficial land development policies and programs, prevent detrimental land use, and promote collective action in land use and zoning. The office shall establish such rules, procedures, and regulations in such a manner so as to allow local control to the greatest extent possible. In exercising such local control, the counties and municipalities shall consider the local public interest.

Sec. 34. That original sections 15-113, 16-114, 15-114.01, 16-114.02, 18-1303, 19-902, 19-903, 19-904, 19-904.01, 19-905, 19-907, 19-908, 19-910, 19-911, 19-913, 19-915, 23-114.01, 23-114.04, 23-114.05, 23-164, 23-168.01, 23-168.03, 23-172, 23-173, and 23-372, Reissue Revised Statutes of Nebraska, 1943, sections 15-106, 16-112, 16-114.03, and 19-901, Revised Statutes Supplement, 1974, and section 1, Legislative Bill 317, Eighty-fourth Legislature, First Session, 1975, and also sections 23-168 and 23-171, Reissue Revised Statutes of Nebraska, 1943, are repealed.

Sec. 35. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.