

LEGISLATIVE BILL 71

Approved by the Governor March 5, 1983

Introduced by Landis, 46; Lundy, 36

AN ACT relating to cities and villages; to amend sections 16-903, 17-1001, 19-901, 19-904, 19-916, 19-918, 19-919, and 79-4,151, Reissue Revised Statutes of Nebraska, 1943, and sections 16-902, 17-1002, 18-1306, 18-2101.01, and 23-1506, Revised Statutes Supplement, 1982; to state legislative findings; to modify planning and zoning provisions; to provide for a designated agent; to change provisions relating to community development agencies; to harmonize provisions; to repeal the original sections; and to declare an emergency.

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

Section 1. The Legislature hereby finds and declares that the problems relating to the critical social, economic, and environmental problems of the nation's cities, towns, and smaller urban communities which are found and declared to exist by the Congress of the United States in the Housing and Community Development Act of 1974 as amended through the Housing and Community Development Amendments of 1981 exist within this state and that it is in the public interest for the state, cities of all classes, villages, or counties to be authorized to apply for, receive, or expend federal funds for the eligible activities under such act or to administer such programs. The Legislature hereby declares such activities to be a public purpose within this state. Money received from the federal government for such activities shall be placed in a distinct and separate fund and shall not be commingled with other money of the state, city, village, or county.

Sec. 2. That section 16-902, Revised Statutes Supplement, 1982, be amended to read as follows:

16-902. (1) No owner of any real property, located within two miles of the corporate limits of any city of the first class and outside of any organized city or village, shall be permitted to subdivide, plat, or lay out such real property in building 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 city council of such city or its agent designated pursuant to section 19-916. The fact that such real property is located in a different county or counties than some or all portions of the municipality shall not be construed as affecting the necessity of obtaining the approval of the city council of such municipality or its designated agent.

(2) In counties that have both adopted a comprehensive development plan which meets the requirements of section 23-114.02 and are enforcing subdivision regulations, the county planning commission shall be provided with all available materials on any proposed subdivision plat, contemplating public streets or improvements, which is filed with a municipality in that county, when such proposed plat lies partially or totally within the extraterritorial subdivision jurisdiction being exercised by that municipality in such county. The commission shall be given ~~six~~ four weeks to officially comment on the appropriateness of the design and improvements proposed in the plat. The review period for the commission shall run concurrently with subdivision review activities of the municipality after the commission receives all available material for a proposed subdivision plat.

Sec. 3. That section 16-903, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

16-903. No plat, or instruments effecting the subdivision, of real property, described in section 16-902, shall be recorded or have any force and effect unless the same be approved by the city council of such city or by its agent designated pursuant to section 19-916. The city council of such city 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 ~~16-142, 16-144, 16-144-02, and 16-902 to 16-904, 19-916, 19-918, and 19-920.~~

Sec. 4. That section 17-1001, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

17-1001. Cities of the second class and villages may apply by ordinance any existing or future zoning ordinances, property use regulation ordinances,

building ordinances, electrical ordinances, and plumbing ordinances, to an area within one mile of the corporate limits of such municipalities, with the same force and effect as if such area were within their corporate limits. ~~† Provided; no No~~ such ordinance shall be extended or applied so as to prohibit, prevent, or interfere with the conduct of existing farming, livestock operations, businesses, or industry. ~~† and provided further; that for For~~ purposes of sections 70-1001 to 70-1020, the zoning area of a city of the second class or village shall be one half mile from the corporate limits of such municipalities. The fact that ~~such the zoning~~ area or part thereof is located in a different county or counties than some or all portions of the municipality shall not be construed as affecting the necessity of obtaining the approval of the city council or board of trustees of such municipality or its agent designated pursuant to section 19-916.

Sec. 5. That section 17-1002, Revised Statutes Supplement, 1982, be amended to read as follows:

17-1002. (1) No owner of any real property located within one mile of the corporate limits of any city of the second class or village, and outside of any organized city or village, shall be permitted to subdivide, plat, or lay out such real property in building lots and 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 by the city council or board of trustees of such municipality or its agent designated pursuant to section 19-916. The fact that such real property is located in a different county or counties than some or all portions of the municipality shall not be construed as affecting the necessity of obtaining the approval of the city council or board of trustees of such municipality or its designated agent.

(2) No plat of such real property shall be recorded or have any force or effect, unless the same be approved by the city council or board of trustees of such municipality or its designated agent.

(3) In counties that have both adopted a comprehensive development plan which meets the requirements of section 23-114.02 and are enforcing subdivision regulations, the county planning commission shall be provided with all available materials on any proposed subdivision plat, contemplating public streets or improvements, which is filed with a municipality in that county, when such proposed plat lies partially or totally within the extraterritorial subdivision jurisdiction being exercised by that municipality in such county. The commission shall be given ~~six~~ four

weeks to officially comment on the appropriateness of the design and improvements proposed in the plat. The review period for the commission shall run concurrently with subdivision review activities of the municipality after the commission receives all available material for a proposed subdivision plat.

Sec. 6. That section 18-1306, Revised Statutes Supplement, 1982, be amended to read as follows:

18-1306. (1) It shall be the function and duty of the commission to make and adopt plans for the physical development of the municipality, including any areas outside its boundaries which, in the commission's judgment, bear relation to the planning of such municipality, and including a comprehensive development plan as defined by section 19-903; to prepare and adopt such implemental means as a capital improvement program, subdivision regulations, building codes, and zoning ordinance in cooperation with other interested municipal departments; and consult and advise with public officials and agencies, public utilities, civic organizations, educational institutions, and citizens with relation to the promulgation and implementation of the comprehensive development plan and its implemental programs. The commission shall have the power to delegate authority to any such group to conduct studies and make surveys for the commission, make preliminary reports on its findings, and hold public hearings before submitting its final reports. The municipal governing body 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 recommendation of the planning commission if such commission in fact has been created and is existent. The Provided, that the governing body may set a reasonable time within which the recommendation is to be received. A recommendation from the planning commission shall not be required for subdivision of existing lots and blocks whenever all required public improvements have been installed, no new dedication of public rights-of-ways or easements is involved, and such subdivision complies with the ordinance requirements concerning minimum areas and dimensions of such lots and blocks, if the governing body has designated, by ordinance, an agent pursuant to section 19-916.

(2) 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 grant funds from public or private sources; expend the funds appropriated to it by the municipality; employ agents and employees; and 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.

(3) The commission may grant conditional uses or special exceptions to property owners for the use of their property if the municipal governing body has, through a zoning ordinance or special ordinance, generally authorized the commission to exercise such powers and has approved the standards and procedures the commission adopted for equitably and judiciously granting such conditional uses or special exceptions. The granting of a conditional use permit or special exception shall only allow property owners to put their property to a special use if it is among those uses specifically identified in the zoning ordinance as classifications of uses which may require special conditions or requirements to be met by the owners before a use permit or building permit is authorized. The power to grant conditional uses or special exceptions shall be the exclusive authority of the commission, except that the municipal governing body may choose to retain for itself the power to grant conditional uses or special exceptions for those classifications of uses specified in the zoning ordinance. The municipal governing body may exercise such power if it has formally adopted standards and procedures for granting such conditional uses or special exceptions in a manner that is equitable and which will promote the public interest.

Sec. 7. That section 18-2101.01, Revised Statutes Supplement, 1982, be amended to read as follows:

18-2101.01. Cities of all classes and villages of this state are hereby granted power and authority to create a community development agency by ordinance, which agency may consist of the governing body of the city or village or a new or existing municipal division or department, or combination thereof. When such an agency is created, it shall function in the manner prescribed by ordinance and may exercise all of the power and authority granted to a community redevelopment authority in sections 18-2101 to 18-2144. Cities of all classes and villages of this state are any such city or village is also granted power and authority to do all community development activities, and to do all things necessary to cooperate with the federal government in all matters relating to community development program activities as a grantee, or as an agent or otherwise, under the provisions of the

federal Housing and Community Development Act of 1977 1974, as amended through the Housing and Community Development Amendments of 1981. Whenever such a city exercises the power conferred in this section, it may levy taxes for the exercise of such jurisdiction and authority and may issue general obligation bonds, general obligation notes, revenue bonds, and revenue notes including general obligation and revenue refunding bonds and notes for the purposes set forth in such sections and under the power granted to any authority described.

Sec. 8. That section 19-901, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

19-901. (1) 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.

(2) Such powers shall be exercised only after the municipal legislative body has established 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 zoning regulations. 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 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. Amendments to the comprehensive plan or zoning regulations shall be considered at public hearings before submitting recommendations to the legislative body.

(3) 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 when, 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.

(4) The requirement that a planning commission be appointed and a comprehensive development plan be adopted shall not apply to cities of the first and second class and villages which have legally adopted a zoning ordinance prior to May 17, 1967, and which have not amended the zoning ordinance or zoning map since May 17, 1967. Such city or village shall appoint a planning commission and adopt the comprehensive plan prior to amending the zoning ordinance or zoning map.

Sec. 9. 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 separate public 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. 10. That section 19-916, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

19-916. 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 or she 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 local legislative body, the same shall be filed and recorded in the office of the register of deeds and county assessor of the county. The legislative body may designate by ordinance an employee of such city or village to approve further subdivision of existing lots and blocks whenever all required public improvements have been installed, no new dedication of public rights-of-ways or easements is involved, and such subdivision complies with the ordinance requirements concerning minimum areas and dimensions of such lots and blocks.

Upon approval by the legislative body or its designated agent, thereupon such plat shall be equivalent to a deed in fee simple absolute to the 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 municipal use, or is dedicated to charitable, religious, or educational purposes.

All additions thus laid out shall remain a part of the 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 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 municipality to which said land is an addition. † Provided, the

The 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 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 municipality, or contiguous to the same, shall be recorded or have any force or effect, unless

the same be approved by the governing body, or its designated agent, and its or his or her approval endorsed thereon.

Sec. 11. That section 19-918, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

19-918. No owner of real estate within the corporate limits of such 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 governing body of such municipality or its agent designated pursuant to section 19-916. Any and all additions to be made to the 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 15-106, 19-916, and 19-917.

Sec. 12. That section 19-919, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

19-919. No plat of or instruments effecting the subdivision of real property described in section 19-918 shall be recorded or have any force and effect unless the same be approved by the governing body of such municipality or its agent designated pursuant to section 19-916. The governing body of such 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 19-918 and 19-920.

Sec. 13. That section 23-1506, Revised Statutes Supplement, 1982, be amended to read as follows:

23-1506. The register of deeds shall have the custody of, and safely keep and preserve, all books, records, maps, and papers kept or deposited in his or her office. He or she shall also record, or cause to be recorded, in suitable books, all deeds, mortgages, instruments, and writings presented to him or her for recording, and left with him or her for that purpose. Provided, that plats Plats and subdivisions are not authorized to be recorded if such plat or subdivision has not been approved by the city council, the village board of trustees, the agent of a city of the first or second class or of a village designated pursuant to

section 19-916, or the governing body of the county, whichever is appropriate. When such deeds, mortgages, instruments, and writings are so recorded, it shall be his or her the duty of the register of deeds to proofread, or cause to be proofread, such records; ~~Provided, if~~ If an error should occur in recording any of the writings mentioned in this section, thereby necessitating the rerecording of same, the expense thus incurred shall be paid out of the general fund of the county, in the same way as any other claim, and the amount so paid shall be collected from the official responsible for the error or from his or her official bond. The register of deeds shall prepare and file the required annual inventory statement of county personal property in his or her custody or possession, as provided in sections 23-346 to 23-350.

Sec. 14. That section 79-4,151, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

~~79-4,151.~~ In order to provide for orderly school planning and development, and to protect prospective homeowners, their children, and the taxpayer from ill-conceived and poorly-planned development of real estate, a planning commission a municipality considering the adoption or amendment of a zoning ordinance, or approval of the platting or replatting of any development of real estate, shall notify the board of education of each school district in which the real estate, or some part thereof, to be affected by such a proposal lies, of the next regular meeting of the planning commission at which such proposal is to be considered and shall submit a copy of the proposal to the board of education at least ten days prior to such meeting. The provisions of this section shall not apply to zoning, rezoning, or approval of plats by any city of the metropolitan or primary class, which has adopted a comprehensive subdivision ordinance pursuant to sections 14-115 and 14-116, or Chapter 15, articles 9 and 11. Plats of subdivisions approved by the agent of a municipality designated pursuant to section 19-916 shall not be subject to the notice requirement in this section.

Sec. 15. That original sections 16-903, 17-1001, 19-901, 19-904, 19-916, 19-918, 19-919, and 79-4,151, Reissue Revised Statutes of Nebraska, 1943, and sections 16-902, 17-1002, 18-1306, 18-2101.01, and 23-1506, Revised Statutes Supplement, 1982, are repealed.

Sec. 16. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.