

**MUNICIPAL AND COUNTY LAND USE
DEVELOPMENT AND MANAGEMENT**

1998 GENERAL SESSION

STATE OF UTAH

Sponsor: LeRay McAllister

AN ACT RELATING TO CITIES AND TOWNS AND COUNTIES; REQUIRING MUNICIPALITIES ~~§ [AND COUNTIES]~~ § TO ESTABLISH A PLANNING COMMISSION; MODIFYING PROVISIONS RELATING TO THE NUMBER AND TERM OF MEMBERS AND ALTERNATE MEMBERS OF A PLANNING COMMISSION IN MUNICIPALITIES AND COUNTIES; MODIFYING THE PROCEDURE FOR THE PREPARATION AND ADOPTION OF A ZONING ORDINANCE IN MUNICIPALITIES AND COUNTIES; MODIFYING THE TERM OF BOARD OF ADJUSTMENT MEMBERS IN MUNICIPALITIES AND COUNTIES; MODIFYING THE POWERS AND DUTIES OF THE BOARD OF ADJUSTMENT IN MUNICIPALITIES AND COUNTIES; MAKING CONFORMING CORRECTIONS; AND MAKING TECHNICAL CORRECTIONS.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

- 10-9-201**, as enacted by Chapter 235, Laws of Utah 1991
- 10-9-402**, as last amended by Chapter 79, Laws of Utah 1995
- 10-9-407**, as last amended by Chapter 179, Laws of Utah 1995
- 10-9-701**, as last amended by Chapter 23, Laws of Utah 1992
- 10-9-702**, as last amended by Chapter 23, Laws of Utah 1992
- 10-9-703**, as last amended by Chapter 23, Laws of Utah 1992
- 10-9-704**, as last amended by Chapter 179, Laws of Utah 1995
- 11-36-201**, as enacted by Chapter 11, Laws of Utah 1995, First Special Session
- 17-27-201**, as last amended by Chapter 3, Laws of Utah 1997, Second Special Session
- 17-27-402**, as last amended by Chapter 23, Laws of Utah 1992

1 17-27-701, as last amended by Chapter 179, Laws of Utah 1995

2 17-27-702, as last amended by Chapter 179, Laws of Utah 1995

3 17-27-703, as last amended by Chapter 23, Laws of Utah 1992

4 REPEALS:

5 10-9-706, as enacted by Chapter 235, Laws of Utah 1991

6 17-27-706, as enacted by Chapter 235, Laws of Utah 1991

7 *Be it enacted by the Legislature of the state of Utah:*

8 Section 1. Section 10-9-201 is amended to read:

9 **10-9-201. Appointment, term, vacancy, and compensation.**

10 (1) (a) Each municipality [may] shall enact an ordinance establishing a planning
11 commission.

12 (b) The ordinance shall define:

13 (i) the number [~~and~~] of members, which shall be an odd number of not less than five;

14 (ii) the number of alternate members, if the ordinance provides for alternate members;

15 (iii) the terms of the members, which shall be staggered and not less than three years in
16 length;

17 [(ii)] (iv) the mode of appointment;

18 [(iii)] (v) the procedures for filling vacancies and removal from office; and

19 [(iv)] (vi) other details relating to the organization and procedures of the planning
20 commission.

21 (2) The legislative body may fix per diem compensation for the members of the planning
22 commission, based on necessary and reasonable expenses and on meetings actually attended.

23 Section 2. Section 10-9-402 is amended to read:

24 **10-9-402. Preparation and adoption of zoning ordinance.**

25 (1) The planning commission shall prepare and recommend to the legislative body a
26 proposed zoning ordinance, including both the full text of the zoning ordinance and maps, that
27 represents the commission's recommendations for zoning all or any part of the area within the
28 municipality.

29 (2) (a) The planning commission shall hold a public hearing on the proposed zoning
30 ordinance before recommending it to the legislative body.

31 (b) The planning commission shall provide reasonable notice of the public hearing at least

1 14 days before the date of the hearing.

2 (c) If the § [municipality] PLANNING COMMISSION § mails notice of a proposed zoning
2a change to property owners within

3 § [that] THE § municipality within a specified distance of the property on which the zoning change
3a is

4 proposed, it shall also mail equivalent notice to:

5 (i) property owners of an adjacent municipality within the same distance of the property
6 on which the zoning change is proposed; and

7 (ii) the legislative body of the adjacent municipality.

8 (3) (a) The legislative body shall hold a public hearing on the proposed zoning ordinance
9 recommended to it by the planning commission.

10 (b) The legislative body shall provide reasonable notice of the public hearing at least 14
11 days before the date of the hearing.

12 (c) If a municipality mails notice of a proposed zoning change to property owners within
13 that municipality within a specified distance of the property on which the zoning change is [being]
14 proposed, it shall also mail equivalent notice to:

15 (i) property owners of an adjacent municipality within the same distance of the property
16 on which the zoning change is being proposed; and

17 (ii) the legislative body of the adjacent municipality.

18 [(3)] (4) After the public hearing, the legislative body may:

19 (a) adopt the zoning ordinance as proposed;

20 (b) amend the zoning ordinance and adopt or reject the zoning ordinance as amended; or

21 (c) reject the ordinance.

22 Section 3. Section **10-9-407** is amended to read:

23 **10-9-407. Conditional uses.**

24 [(1)] A zoning ordinance may contain provisions for conditional uses that may be allowed,
25 allowed with conditions, or denied in designated zoning districts, based on compliance with
26 standards and criteria set forth in the zoning ordinance for those uses.

27 [(2)] The board of adjustments has jurisdiction to decide appeals of the approval or denial
28 of conditional use permits unless the legislative body has enacted an ordinance designating the
29 legislative body or another body as the appellate body for those appeals.]

30 Section 4. Section **10-9-701** is amended to read:

31 **10-9-701. Board of adjustment -- Appointment -- Term -- Vacancy.**

1 (1) In order to provide for just and fair treatment in the administration of local zoning
2 ordinances, and to ensure that substantial justice is done, each municipality adopting a zoning
3 ordinance shall appoint a board of adjustment to exercise the powers and duties provided in this
4 part.

5 (2) (a) The board of adjustment shall consist of not less than five members and whatever
6 alternate members that the chief executive officer considers appropriate.

7 (b) The chief executive officer shall appoint the members and alternate members with the
8 advice and consent of the legislative body for a term of [five] not less than three years as
9 established by ordinance.

10 (c) The chief executive officer shall appoint members of the first board of adjustment to
11 terms so that the term of one member expires each year.

12 (3) (a) No more than two alternate members may sit at any meeting of the board of
13 adjustment at one time.

14 (b) The legislative body shall make rules establishing a procedure for alternate members
15 to serve in the absence of members of the board of adjustment.

16 (4) (a) The chief executive may remove any member of the board of adjustment for cause
17 if written charges are filed against the member with the chief executive.

18 (b) The chief executive shall provide the member with a public hearing if he requests one.

19 (5) (a) The chief executive officer with the advice and consent of the legislative body shall
20 fill any vacancy.

21 (b) The person appointed shall serve for the unexpired term of the member or alternate
22 member whose office is vacant.

23 Section 5. Section **10-9-702** is amended to read:

24 **10-9-702. Organization -- Procedures.**

25 (1) The board of adjustment shall:

26 (a) organize and elect a chairperson; and

27 (b) adopt rules that comply with any ordinance adopted by the legislative body.

28 (2) The board of adjustment shall meet at the call of the chairperson and at any other times
29 that the board of adjustment determines.

30 (3) The chairperson, or in the absence of the chairperson, the acting chairperson, may
31 administer oaths and compel the attendance of witnesses.

1 (4) (a) All meetings of the board of adjustment shall comply with the requirements of Title
2 52, Chapter 4, Open and Public Meetings.

3 (b) The board of adjustment shall:

4 (i) keep minutes of its proceedings, showing the vote of each member upon each question,
5 or if absent or failing to vote, indicating that fact; and

6 (ii) keep records of its examinations and other official actions.

7 (c) The board of adjustment may, but is not required to, have its proceedings
8 contemporaneously transcribed by a court reporter or a tape recorder.

9 (d) The board of adjustment shall file its records in the office of the board of adjustment.

10 (e) All records in the office of the board of adjustment are public records.

11 (5) The concurring vote of [~~three~~] a majority of the members of the board of adjustment
12 is necessary to reverse any order, requirement, decision, or determination of any administrative
13 official or agency or to decide in favor of the appellant.

14 (6) Decisions of the board of adjustment become effective at the meeting in which the
15 decision is made, unless a different time is designated in the board's rules or at the time the
16 decision is made.

17 (7) The legislative body may fix per diem compensation for the members of the board of
18 adjustment based on necessary and reasonable expenses and on meetings actually attended.

19 Section 6. Section **10-9-703** is amended to read:

20 **10-9-703. Powers and duties.**

21 (1) [~~The~~] ~~§~~ [~~Unless~~] ~~IF~~ ~~§~~ the legislative body ~~§~~ [~~otherwise provides~~] DELEGATES THE
21a AUTHORITY ~~§~~ by ordinance, the board of
22 adjustment ~~§~~ [~~shall~~] MAY ~~§~~ :

23 (a) hear and decide:

24 [(a)] ~~§~~ [~~(i)~~] appeals from zoning decisions applying the zoning ordinance;

25 ~~—~~ [~~(b)~~] [~~(ii)~~] (i) ~~§~~ special exceptions to the terms of the zoning ordinance; and

26 [(c) variances from the terms of the zoning ordinance.]

27 ~~§~~ [~~(iii)~~] (ii) ~~§~~ appeals of the approval or denial of conditional use permits; and

28 [(2) The board of adjustment may] (b) make determinations regarding the existence,
29 expansion, or modification of nonconforming uses [if that authority is delegated to them by the
30 legislative body].

31 (2) The board of adjustment shall hear and decide ~~§~~ :

31a (a) APPEALS FROM ZONING DECISIONS APPLYING THE ZONING ORDINANCE; AND

31b (b) ~~§~~ variances from the terms of the zoning

1 ordinance.

2 Section 7. Section **10-9-704** is amended to read:

3 **10-9-704. Appeals.**

4 (1) (a) (i) The applicant or any other person or entity adversely affected by a decision
5 administering or interpreting a zoning ordinance may appeal that decision applying the zoning
6 ordinance by alleging that there is error in any order, requirement, decision, or determination made
7 by an official in the administration or interpretation of the zoning ordinance.

8 (ii) The legislative body shall enact an ordinance establishing a reasonable time for appeal
9 to the board of adjustment of decisions administering or interpreting a zoning ordinance.

10 (b) Any officer, department, board, or bureau of a municipality affected by the grant or
11 refusal of a building permit or by any other decisions of the administrative officer in the
12 administration or interpretation of the zoning ordinance may appeal any decision to the board of
13 adjustment.

14 [~~(2) The board of adjustment shall hear and decide appeals from planning commission
15 decisions regarding conditional use permits unless the zoning ordinance designates the legislative
16 body or another body to hear conditional use permit appeals.~~]

17 [~~(3)~~ (2) The person or entity making the appeal has the burden of proving that an error
18 has been made.

19 [~~(4)~~ (3) (a) Only decisions applying the zoning ordinance may be appealed to the board
20 of adjustment.

21 (b) A person may not appeal, and the board of adjustment may not consider, any zoning
22 ordinance amendments.

23 [~~(5)~~ (4) Appeals may not be used to waive or modify the terms or requirements of the
24 zoning ordinance.

25 Section 8. Section **11-36-201** is amended to read:

26 **11-36-201. Impact fees -- Analysis -- Capital facilities plan -- Exemptions.**

27 (1) (a) Each local political subdivision shall comply with the requirements of this chapter
28 before establishing or modifying any impact fee.

29 (b) A local political subdivision may not:

30 (i) establish any new impact fees that are not authorized by this chapter; or

31 (ii) impose or charge any other fees as a condition of development approval unless those

1 fees are a reasonable charge for the service provided.

2 (c) Notwithstanding any other requirements of this chapter, each local political subdivision
3 shall ensure that each existing impact fee that is charged for any public facility not authorized by
4 Subsection 11-36-102(11) is repealed by July 1, 1995.

5 (d) (i) Existing impact fees for public facilities authorized in Subsection 11-36-102(11)
6 that are charged by local political subdivisions need not comply with the requirements of this
7 chapter until July 1, 1997.

8 (ii) By July 1, 1997, each local political subdivision shall:

9 (A) review any impact fees in existence as of the effective date of this act, and prepare and
10 approve the analysis required by this section for each of those impact fees; and

11 (B) ensure that the impact fees comply with the requirements of this chapter.

12 (2) (a) Before imposing impact fees, each local political subdivision shall prepare a capital
13 facilities plan.

14 (b) The plan shall identify:

15 (i) demands placed upon existing public facilities by new development activity; and

16 (ii) the proposed means by which the local political subdivision will meet those demands.

17 (c) Municipalities and counties need not prepare a separate capital facilities plan if the
18 general plan required by Sections 10-9-301 and 17-27-301 contains the elements required by this
19 subsection.

20 (d) (i) If a local political subdivision prepares an independent capital facilities plan rather
21 than including a capital facilities element in the general plan, the local political subdivision shall,
22 before adopting the capital facilities plan, give public notice of the plan according to this
23 subsection, make a copy of the plan available to the public at least 14 days before the date of the
24 public hearing, and hold a public hearing to hear public comment on the plan.

25 (ii) Municipalities shall comply with the notice and hearing requirements of, and receive
26 the protections of, Subsections 10-9-103(2) and [~~10-9-402(2)~~] 10-9-402(3).

27 (iii) Counties shall comply with the notice and hearing requirements of, and receive the
28 protections of, Subsections 17-27-103(2) and [~~17-27-402(2)~~] 17-27-402(3).

29 (iv) Special districts shall comply with the notice and hearing requirements of, and receive
30 the protections of, Section 17A-1-203.

31 (v) Nothing contained in Subsection (d) or in the subsections referenced in Subsections

1 (d)(ii) and (iii) may be construed to require involvement by a planning commission in the capital
2 facilities planning process.

3 (e) Local political subdivisions with a population or serving a population of less than 5000
4 as of the last federal census need not comply with the capital facilities plan requirements of this
5 part, but shall ensure that the impact fees imposed by them are based upon a reasonable plan.

6 (3) In preparing the plan, each local political subdivision shall generally consider all
7 revenue sources, including impact fees, to finance the impacts on system improvements.

8 (4) A local political subdivision may only impose impact fees on development activities
9 when its plan for financing system improvements establishes that impact fees are necessary to
10 achieve an equitable allocation to the costs borne in the past and to be borne in the future, in
11 comparison to the benefits already received and yet to be received.

12 (5) (a) Each local political subdivision imposing impact fees shall prepare a written
13 analysis of each impact fee that:

14 (i) identifies the impact on system improvements required by the development activity;

15 (ii) demonstrates how those impacts on system improvements are reasonably related to the
16 development activity;

17 (iii) estimates the proportionate share of the costs of impacts on system improvements
18 that are reasonably related to the new development activity; and

19 (iv) based upon those factors and the requirements of this chapter, identifies how the
20 impact fee was calculated.

21 (b) In analyzing whether or not the proportionate share of the costs of public facilities are
22 reasonably related to the new development activity, the local political subdivision shall identify,
23 if applicable:

24 (i) the cost of existing public facilities;

25 (ii) the manner of financing existing public facilities, such as user charges, special
26 assessments, bonded indebtedness, general taxes, or federal grants;

27 (iii) the relative extent to which the newly developed properties and the other properties
28 in the municipality have already contributed to the cost of existing public facilities, by such means
29 as user charges, special assessments, or payment from the proceeds of general taxes;

30 (iv) the relative extent to which the newly developed properties and the other properties
31 in the municipality will contribute to the cost of existing public facilities in the future;

1 (v) the extent to which the newly developed properties are entitled to a credit because the
2 municipality is requiring their developers or owners, by contractual arrangement or otherwise, to
3 provide common facilities, inside or outside the proposed development, that have been provided
4 by the municipality and financed through general taxation or other means, apart from user charges,
5 in other parts of the municipality;

6 (vi) extraordinary costs, if any, in servicing the newly developed properties; and

7 (vii) the time-price differential inherent in fair comparisons of amounts paid at different
8 times.

9 (6) Nothing in this chapter may be construed to repeal or otherwise eliminate any impact
10 fee in effect on the effective date of this act that is pledged as a source of revenues to pay bonded
11 indebtedness that was incurred before the effective date of this act.

12 Section 9. Section **17-27-201** is amended to read:

13 **17-27-201. Establishment of commission -- Appointment or election, term, vacancy,**
14 **and compensation.**

15 (1) (a) Except as provided in Subsection (1)(b), each county shall enact an ordinance
16 establishing a countywide planning commission for the unincorporated areas of the county not
17 within a township.

18 (b) Subsection (1)(a) does not apply if all of the county is included within any combination
19 of:

20 (i) municipalities; and

21 (ii) townships with their own planning commissions.

22 (2) The ordinance establishing a countywide planning commission shall define:

23 (a) the number [and] of members, which shall be an odd number of not less than five;

24 (b) the number of alternate members, if the ordinance provides for alternate members;

25 (c) the terms of the members, which shall be staggered and not less than three years in
26 length;

27 [~~b~~] (d) the mode of appointment;

28 [~~c~~] (e) the procedures for filling vacancies and removal from office; and

29 [~~d~~] (f) other details relating to the organization and procedures of the planning
30 commission.

31 (3) (a) If the county establishes township planning commissions, the county legislative

1 body shall enact an ordinance defining appointment procedures, procedures for filling vacancies
2 and removing members from office, and other details relating to the organization and procedures
3 of each township planning commission.

4 (b) The planning commission for each township shall consist of seven members who,
5 except as provided in Subsection (3)(e), shall be appointed by:

6 (i) in a county operating under a form of government in which the executive and legislative
7 functions of the governing body are separated, the county executive with the advice and consent
8 of the county legislative body; or

9 (ii) in a county operating under a form of government in which the executive and
10 legislative functions of the governing body are not separated, the county legislative body.

11 (c) (i) Members shall serve four-year terms and until their successors are appointed or, as
12 provided in Subsection (3)(e), elected and qualified.

13 (ii) Notwithstanding the provisions of Subsection (3)(c)(i) and except as provided in
14 Subsection (3)(e), members of the first planning commissions shall be appointed so that, for each
15 commission, the terms of at least one member and no more than two members expire each year.

16 (d) (i) Except as provided in Subsection (3)(d)(ii), each member of a township planning
17 commission shall be a registered voter residing within the township.

18 (ii) (A) Notwithstanding Subsection (3)(d)(i), one member of a planning commission of
19 a township reconstituted under Chapter 389, Laws of Utah 1997, or reinstated or established under
20 Subsection 17-27-200.5[(2)](1)(e)[(†)] may be an appointed member who is a registered voter
21 residing outside the township if that member:

22 (I) is an owner of real property located within the township; and

23 (II) resides within the county in which the township is located.

24 (B) (I) Each appointee under Subsection (3)(d)(ii)(A) shall be chosen by the township
25 planning commission from a list of three persons submitted by the county legislative body.

26 (II) If the township planning commission has not notified the county legislative body of
27 its choice under Subsection (3)(d)(ii)(B)(I) within 60 days of the township planning commission's
28 receipt of the list, the county legislative body may appoint one of the three persons on the list or
29 a registered voter residing within the township as a member of the township planning commission.

30 (e) (i) The legislative body of each county in which a township reconstituted under Chapter
31 389, Laws of Utah 1997, or reinstated or established under Subsection 17-27-200.5[(2)](1)(e)[(†)]

1 is located shall enact an ordinance that provides for the election of at least three members of the
2 planning commission of that township.

3 (ii) The election of planning commission members under Subsection (3)(e)(i) shall
4 coincide with the election of other county officers during even-numbered years. Approximately
5 half the elected planning commission members shall be elected every four years during elections
6 held on even-numbered years, and the remaining elected members shall be elected every four years
7 on alternating even-numbered years.

8 (f) (i) (A) The legislative body of each county in which a township reconstituted under
9 Chapter 389, Laws of Utah 1997, or reinstated or established under Subsection
10 17-27-200.5[(2)](1)(e)[(f)] is located shall enact an ordinance appointing each elected member of
11 the planning and zoning board of the former township, established under Chapter 308, Laws of
12 Utah 1996, as a member of the planning commission of the reconstituted or reinstated township.
13 Each member appointed under this subsection shall be considered an elected member.

14 (B) (I) Except as provided in Subsection (3)(f)(i)(B)(II), the term of each member
15 appointed under Subsection (3)(f)(i)(A) shall continue until the time that the member's term as an
16 elected member of the former township planning and zoning board would have expired.

17 (II) Notwithstanding Subsection (3)(f)(i)(B)(I), the county legislative body may adjust the
18 terms of the members appointed under Subsection (3)(f)(i)(A) so that the terms of those members
19 coincide with the schedule under Subsection (3)(e)(ii) for elected members.

20 (ii) Subject to Subsection (3)(f)(iii), the legislative body of a county in which a township
21 reconstituted under Chapter 389, Laws of Utah 1997, or reinstated or established under Subsection
22 17-27-200.5[(2)](1)(e)[(f)] is located may enact an ordinance allowing each appointed member of
23 the planning and zoning board of the former township, established under Chapter 308, Laws of
24 Utah 1996, to continue to hold office as a member of the planning commission of the reconstituted
25 or reinstated township until the time that the member's term as a member of the former township's
26 planning and zoning board would have expired.

27 (iii) If a planning commission of a township reconstituted under Chapter 389, Laws of
28 Utah 1997, or reinstated or established under Subsection 17-27-200.5[(2)](1)(e)[(f)] has more than
29 one appointed member who resides outside the township, the legislative body of the county in
30 which that township is located shall, within 15 days of the effective date of this Subsection
31 (3)(f)(iii), dismiss all but one of the appointed members who reside outside the township, and a

1 new member shall be appointed under Subsection (3)(b) within 30 days of the effective date of this
2 Subsection (3)(f)(iii) to fill the position of each dismissed member.

3 (g) (i) Except as provided in Subsection (3)(g)(ii), upon the appointment or election of all
4 members of a township planning commission, each township planning commission under this
5 section shall begin to exercise the powers and perform the duties provided in Section 17-27-204
6 with respect to all matters then pending that previously had been under the jurisdiction of the
7 countywide planning commission or township planning and zoning board.

8 (ii) Notwithstanding Subsection (3)(g)(i), if the members of a former township planning
9 and zoning board continue to hold office as members of the planning commission of the township
10 planning district under an ordinance enacted under Subsection (3)(f), the township planning
11 commission shall immediately begin to exercise the powers and perform the duties provided in
12 Section 17-27-204 with respect to all matters then pending that had previously been under the
13 jurisdiction of the township planning and zoning board.

14 (4) The legislative body may fix per diem compensation for the members of the planning
15 commission, based on necessary and reasonable expenses and on meetings actually attended.

16 Section 10. Section 17-27-402 is amended to read:

17 **17-27-402. Preparation and adoption.**

18 (1) The planning commission shall prepare and recommend to the legislative body a
19 proposed zoning ordinance, including both the full text of the zoning ordinance and maps, that
20 represents the commission's recommendations for zoning all or any part of the area within the
21 county.

22 (2) (a) The planning commission shall hold a public hearing on the proposed zoning
23 ordinance before recommending it to the legislative body.

24 (b) The planning commission shall provide reasonable notice of the public hearing at least
25 14 days before the date of the hearing.

26 (c) If the § [county] PLANNING COMMISSION § mails notice of a proposed zoning change
27a to property owners within § [that] THE §
27 county within a specified distance of the property on which the zoning change is proposed, it shall
28 also mail equivalent notice to:

29 (i) property owners of an adjacent § [municipality] COUNTY § within the same distance of
29a the property

- 30 on which the zoning change is proposed; § [and] §
- 31 (ii) the legislative body of the adjacent § [municipality] COUNTY; AND
- 31a (iii) THE LEGISLATIVE BODY OF EACH MUNICIPALITY IN WHICH ANY OF THE PROPERTY
- 31b WITHIN THE SPECIFIED DISTANCE IS LOCATED § .

1 (3) (a) The legislative body shall hold a public hearing on the proposed zoning ordinance
2 recommended to it by the planning commission.

3 (b) The legislative body shall provide reasonable notice of the public hearing at least 14
4 days before the date of the hearing.

5 ~~[(3)]~~ (4) After the public hearing, the legislative body may:

6 (a) adopt the zoning ordinance as proposed;

7 (b) amend the zoning ordinance and adopt or reject the zoning ordinance as amended; or

8 (c) reject the ordinance.

9 Section 11. Section **17-27-701** is amended to read:

10 **17-27-701. Board of adjustment -- Appointment -- Term -- Vacancy.**

11 (1) In order to provide for just and fair treatment in the administration of local zoning
12 ordinances, and to ensure that substantial justice is done, each county adopting a zoning ordinance
13 shall appoint a board of adjustment to exercise the powers and duties provided in this part.

14 (2) (a) The board of adjustment shall consist of not less than five members and whatever
15 alternate members that the chief executive officer considers appropriate.

16 (b) The legislative body shall establish the terms for members of the board of adjustment
17 by ordinance. The terms shall not be less than three years.

18 (c) The chief executive officer shall appoint the members and alternate members with the
19 advice and consent of the legislative body.

20 (d) The chief executive officer shall appoint members of the first board of adjustment to
21 terms so that the term of one member expires each year.

22 (3) (a) No more than two alternate members may sit at any meeting of the board of
23 adjustment at one time.

24 (b) The legislative body shall make rules establishing a procedure for alternate members
25 to serve in the absence of members of the board of adjustment.

26 (4) (a) The chief executive may remove any member of the board of adjustment for cause
27 if written charges are filed against the member with the chief executive.

28 (b) The chief executive shall provide the member with a public hearing if he requests one.

29 (5) (a) The chief executive officer with the advice and consent of the legislative body shall
30 fill any vacancy.

31 (b) The person appointed shall serve for the unexpired term of the member or alternate

1 member whose office is vacant.

2 Section 12. Section **17-27-702** is amended to read:

3 **17-27-702. Organization -- Procedures.**

4 (1) The board of adjustment shall:

5 (a) organize and elect a chairperson; and

6 (b) adopt rules that comply with any ordinance adopted by the legislative body.

7 (2) The board of adjustment shall meet at the call of the chairperson and at any other times
8 that the board of adjustment determines.

9 (3) The chairperson, or in the absence of the chairperson, the acting chairperson, may
10 administer oaths and compel the attendance of witnesses.

11 (4) (a) All meetings of the board of adjustment shall comply with the requirements of Title
12 52, Chapter 4, Open and Public Meetings.

13 (b) The board of adjustment shall:

14 (i) keep minutes of its proceedings, showing the vote of each member upon each question,
15 or if absent or failing to vote, indicating that fact; and

16 (ii) keep records of its examinations and other official actions.

17 (c) The board of adjustment may, but is not required to, have its proceedings
18 contemporaneously transcribed by a court reporter or a tape recorder.

19 (d) The board of adjustment shall file its records in the office of the board of adjustment.

20 (e) All records in the office of the board of adjustment are public records.

21 (5) The concurring vote of [~~at least three~~] a majority of the members of the board of
22 adjustment is necessary to reverse any order, requirement, decision, or determination of any
23 administrative official or agency or to decide in favor of the appellant.

24 (6) Decisions of the board of adjustment become effective at the meeting in which the
25 decision is made, unless a different time is designated in the board's rules or at the time the
26 decision is made.

27 (7) The legislative body may fix per diem compensation for the members of the board of
28 adjustment, based on necessary and reasonable expenses and on meetings actually attended.

29 Section 13. Section **17-27-703** is amended to read:

30 **17-27-703. Powers and duties.**

31 (1) [The] § [~~Unless~~] **IF** § the county legislative body § [~~otherwise provides~~] **DELEGATES**
31a **THE AUTHORITY** § by ordinance, the board

1 of adjustment § ~~shall~~ MAY § :

2 (a) hear and decide:

3 [(a)] § ~~[(i) appeals from zoning decisions applying the zoning ordinance;~~

4 ~~[(b)] [(ii)] (i) §~~ special exceptions to the terms of the zoning ordinance; and

5 ~~[(c) variances from the terms of the zoning ordinance.]~~

6 § ~~[(iii)] (ii) §~~ appeals of the approval or denial of conditional use permits; and

7 ~~[(2) The board of adjustments may] (b)~~ make determinations regarding the existence,
8 expansion, or modification of nonconforming uses ~~[if that authority is delegated to them by the~~
9 ~~legislative body].~~

10 (2) The board of adjustment shall hear and decide § :

10a (a) APPEALS FROM ZONING DECISIONS APPLYING THE ZONING ORDINANCE; AND

10b (b) § variances from the terms of the zoning

11 ordinance.

12 ~~[(3) If authorized by the legislative body, the board of adjustment may interpret the zoning~~
13 ~~maps and pass upon disputed questions of lot lines, district boundary lines, or similar questions~~
14 ~~as they arise in the administration of the zoning regulations.]~~

15 Section 14. **Repealer.**

16 This act repeals:

17 Section 10-9-706, **Special exceptions.**

18 Section 17-27-706, **Special exceptions.**

Legislative Review Note
as of 1-13-98 9:30 AM

A limited legal review of this bill raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel