

1 HB162
2 125897-3
3 By Representative McMillan
4 RFD: County and Municipal Government
5 First Read: 03-MAR-11

1 "When used in this chapter, the following words or
2 phrases shall have the following meanings, respectively,
3 unless the context clearly indicates otherwise:

4 "(1) MUNICIPALITY or MUNICIPAL. Cities or towns.

5 "(2) MAYOR. The chief executive of the municipality,
6 whether the official designation of his office be mayor, city
7 manager, or otherwise.

8 "(3) COUNCIL. The chief legislative body of the
9 municipality.

10 "(4) COUNTY COMMISSION. The chief administrative or
11 legislative body of the county.

12 "~~(5) DEVELOPMENT. Development includes, but is not
13 limited to, design work of lot layout, construction of
14 drainage structures, construction of buildings or public use
15 areas, planning and construction of public streets and public
16 roads, and placement of public utilities.~~

17 "~~(5) (6) (5)~~ STREETS. Streets, avenues, boulevards,
18 roads, lanes, alleys, viaducts, and other ways.

19 "~~(6) (7) (6)~~ SUBDIVISION. The division of a lot,
20 tract, or parcel of land into two or more lots, plats, sites,
21 or other divisions of land for the purpose, whether immediate
22 or future, of sale, of lease, or of building development. ~~Such~~
23 The term includes resubdivision and, when appropriate to the
24 context, relates to the process of subdividing or to the land
25 or territory subdivided.

26 "§11-52-30.

1 "(a) ~~The~~ Except as otherwise provided herein, the
2 territorial jurisdiction of any municipal planning commission
3 ~~over the subdivision of land~~ shall include all land located in
4 the municipality and all land lying within five miles of the
5 corporate limits of the municipality and not located in any
6 other municipality; except that, in the case of any
7 nonmunicipal land lying within five miles of more than one
8 municipality having a municipal planning commission, the
9 jurisdiction of each municipal planning commission shall
10 terminate at a boundary line equidistant from the respective
11 corporate limits of such municipalities; provided further,
12 that in all counties having a population of 600,000 or more
13 according to the 1950 federal census or any succeeding
14 decennial federal census, the county planning and zoning
15 commission shall be invested with ~~such~~ the authority, except
16 and unless the municipality or municipalities in question are
17 actively exercising zoning jurisdiction and control within the
18 police or five mile jurisdiction or, in the case of a
19 municipality subsequently incorporated, within 180 days from
20 the date of its incorporation; provided, further, that in all
21 counties having a population of 600,000 or more inhabitants
22 according to the 1950 federal census or any succeeding
23 decennial federal census, the county commission of ~~such~~ the
24 county may establish minimum specifications and regulations
25 governing the lay-out, grading, and paving of all streets,
26 avenues, and alleys and the construction or installation of
27 all water, sewer, or drainage pipes or lines in any

1 subdivision lying wholly or partly in areas outside the
2 corporate limits of any municipality in the counties and
3 relating to subdivisions lying within the corporate limits of
4 any municipality in the counties which has declined or failed
5 to exercise zoning jurisdiction and control as provided in
6 this section.

7 "(b) A municipal planning commission, by properly
8 adopted regulation, may provide that the territorial
9 jurisdiction of the municipal planning commission ~~over the~~
10 ~~subdivision of land~~ shall include all land lying within ~~an~~
11 ~~area~~ a radius less than the five miles permitted by this
12 section. The regulation shall establish the territory within
13 which the municipal planning commission will exercise
14 jurisdiction ~~over the subdivision of land~~ to a boundary line
15 equidistant from the corporate limits of the municipality,
16 except, that in the case of any nonmunicipal land lying within
17 the territorial jurisdiction of more than one municipality
18 with a municipal planning commission exercising jurisdiction
19 ~~over the subdivision of land~~ outside the municipal corporate
20 limits, the jurisdiction of each municipal planning commission
21 shall terminate at a boundary line equidistant from the
22 respective corporate limits of each municipality. A copy of
23 the resolution altering the territorial jurisdiction shall be
24 forwarded to the county commission within five days of
25 adoption. Additionally, nothing in this subsection shall be
26 construed to alter the provisions of Article 5 of Chapter 49,
27 which require a municipality to assume responsibility for

1 roads annexed into the municipality under certain
2 circumstances.

3 "(c) If a county commission has adopted subdivision
4 regulations pursuant to Chapter 24 of this title, those
5 subdivision regulations shall apply to the development of
6 subdivisions within the territorial jurisdiction of a
7 municipal planning commission outside the corporate limits of
8 a municipality and shall be regulated and enforced by the
9 county commission in the same manner and to the same extent as
10 other subdivision development governed by the county's
11 subdivision regulations. Notwithstanding the foregoing, a
12 county commission and the municipal planning commission may
13 enter into a written agreement providing that the municipal
14 planning commission shall be responsible for the regulation
15 and enforcement of the development of subdivisions within the
16 territorial jurisdiction of the municipal planning commission
17 under the terms and conditions of the agreement. In order to
18 be effective, the agreement shall be approved by a resolution
19 adopted by the county commission, the municipal governing
20 body, and the municipal planning commission of the
21 municipality respectively. If a county commission has not
22 adopted subdivision regulations pursuant to Chapter 24 of this
23 title, the municipal planning commission shall have sole
24 responsibility jurisdiction for the regulation and enforcement
25 of the development of subdivisions within the territorial
26 jurisdiction of the municipal planning commission.

1 "(d) If the municipal planning commission accepts
2 responsibility for the development of a subdivision within its
3 territorial jurisdiction as provided in subsection (c), the
4 county commission shall not accept any roads or bridges within
5 the subdivision for county maintenance unless the county
6 engineer certifies to the county commission that the road or
7 bridge meets the minimum road and bridge standards of the
8 county. This section shall not apply to any roads or bridges
9 which the county has accepted for maintenance prior to the
10 effective date of the act adding this subsection.

11 "(e) (1) If the county commission is responsible for
12 the regulation and enforcement of a subdivision development
13 within the territorial jurisdiction of a municipal planning
14 commission outside the corporate limits of a municipality, the
15 recording of any map or plat related to the subdivision shall
16 be governed by Chapter 24 of this title.

17 "(2) In those counties in which the county
18 commission has adopted subdivision regulations pursuant to
19 Chapter 24 of this title and the municipal planning commission
20 has been unsuccessful in reaching an agreement to exercise its
21 jurisdiction as provided in subsection (c), the governing body
22 of the municipality and the municipal planning commission may
23 override the county's enforcement of regulations for
24 subdivisions within the planning jurisdiction by fully
25 complying with all of the following requirements:

26 "a. The municipal governing body and the municipal
27 planning commission shall each adopt separate resolutions

1 expressing intent to exercise jurisdiction over the
2 construction of subdivisions initiated after the effective
3 date of the resolutions, despite the county commission's
4 objections to the exercise of that authority.

5 "b. The municipal planning commission shall at all
6 times thereafter employ or contract with a licensed
7 professional engineer who shall notify the county commission
8 of the initiation of subdivisions; conduct inspections of the
9 construction of the subdivision; and shall certify, in
10 writing, the compliance with either the municipal or county
11 subdivision regulations, whichever is stricter.

12 "c. The county commission shall retain the authority
13 to require a performance and maintenance bond from the
14 developer, consistent with the requirements for the bonds in
15 the county subdivision regulations, which shall be payable to
16 the county.

17 "d. The county commission shall retain the authority
18 to execute on the bond to make necessary improvements to the
19 public roads and drainage structures of the subdivision while
20 it remains in the unincorporated area of the county.

21 "e. The municipal governing body and the municipal
22 planning commission exercising the authority granted in this
23 subsection may thereafter withdraw their exercise of
24 jurisdiction over future subdivisions located outside the
25 corporate limits of the municipality after not less than six
26 months' notice to the county commission. After withdrawal, the
27 municipal planning commission of the municipality may not

1 reinstate the authority granted in this subsection for 24
2 months after the effective date of its withdrawal.

3 ~~"(c)(f) No~~ If the municipal planning commission is
4 responsible for the regulation and enforcement of a
5 subdivision development within the territorial jurisdiction of
6 the municipal planning commission, no map or plat of any
7 subdivision shall be recorded, and no property shall be sold
8 referenced to ~~such~~ the map or plat, until and unless it has
9 been first submitted to and approved by the municipal planning
10 commission pursuant to Section 11-52-32 and its adopted
11 procedures, and then certified by the county engineer or, in
12 his or her designee as follows within 30 days of being
13 submitted to the county engineer: "The undersigned, as County
14 Engineer of the County _____ of Alabama, hereby certifies
15 on this _____ day of _____, 20____, that the _____
16 Planning Commission approved the within plat for the recording
17 of same in the Probate Office of _____ County, Alabama
18 absence, by the acting county engineer of the county, who
19 shall examine same for compliance with the specifications and
20 regulations of the county commission of the county and, if it
21 is in compliance, shall note his or her approval on the map or
22 plat by noting thereon "approved," giving the date of approval
23 and signing same in his or her official capacity.

24 ~~"(d)(g) Where any subdivision lies within the~~
25 ~~extraterritorial planning jurisdiction of any municipality~~
26 ~~having exercised extraterritorial jurisdiction, the~~
27 ~~requirement for approval of improvements in the subdivision by~~

1 ~~the county engineer shall in no way diminish, waive, or~~
2 ~~otherwise lessen the requirements of the municipality. The~~
3 ~~more strict requirements, whether of the municipality or of~~
4 ~~the county, must be complied with by the developer. Approval~~
5 ~~by the county engineer pursuant to this subsection shall in no~~
6 ~~way not~~ constitute approval in lieu of or on behalf of any
7 municipality with respect to ~~subdivisions lying within its~~
8 ~~extraterritorial planning jurisdiction. All subdivision~~
9 ~~development regulated and enforced by the municipal planning~~
10 ~~commission, wherein all maps or plats must be first submitted~~
11 ~~to and approved by the municipal planning commission or other~~
12 ~~appropriate municipal agency exercising jurisdiction over any~~
13 ~~the subdivision lying within the extraterritorial planning~~
14 ~~jurisdiction and, following approval by such municipal~~
15 ~~planning commission, must then be approved by the county~~
16 ~~engineer or, in his or her absence, by the acting county~~
17 ~~engineer.~~

18 ~~"(e)(h)~~ Nothing in this section shall be interpreted
19 as allowing a municipal planning commission or a municipality
20 to exercise the power of eminent domain outside of its
21 corporate limits.

22 ~~"(f)(i)~~ Nothing in this section shall be interpreted
23 as allowing a municipal planning commission or a municipality
24 to levy taxes or fees outside of its corporate limits.

25 ~~"(j)~~ Nothing in this section shall limit or impair
26 the authority of a municipality to regulate the construction
27 of buildings within the police jurisdiction of the

1 municipality, including, but not limited to, the issuing of
2 building permits, the inspection of building construction, and
3 the enforcement of building codes.

4 "(k) Nothing in this section shall be construed to
5 grant the county commission or county engineer the authority
6 to regulate subdivision development or approve maps or plats
7 for any developments within the corporate limits of a
8 municipality.

9 "§11-52-31.

10 ~~The~~ Except where the county commission is
11 responsible for the regulation of subdivision regulations
12 within the territorial jurisdiction of a municipal planning
13 commission pursuant to Section 11-52-30, the municipal
14 planning commission shall adopt subdivision regulations
15 governing the subdivision of land within its jurisdiction.
16 ~~Such~~ The regulations may provide for the proper arrangement of
17 streets in relation to other existing or planned streets and
18 to the master plan, for adequate and convenient open spaces
19 for traffic, utilities, access of fire-fighting apparatus,
20 recreation, light and air and for the avoidance of congestion
21 of population, including minimum width and area of lots. ~~Such~~
22 The regulations may include provisions as to the extent to
23 which streets and other ways shall be graded and improved and
24 to which water and sewer and other utility mains, piping, or
25 other facilities shall be installed as a condition precedent
26 to the approval of the plat. The regulations or practice of
27 the municipal planning commission may provide for a tentative

1 approval of the plat previous to ~~such~~ the installation, but
2 any ~~such~~ tentative approval shall be revocable and shall not
3 be entered on the plat. In lieu of the completion of ~~such~~ the
4 improvements and utilities prior to the final approval of the
5 plat, the municipal planning commission may accept a bond with
6 surety to secure to the municipality the actual construction
7 and installation of ~~such~~ the improvements or utilities at a
8 time and according to specifications fixed by or in accordance
9 with the regulations of the municipal planning commission. The
10 municipality is hereby granted the power to enforce ~~such~~ the
11 bond by all appropriate legal and equitable remedies.

12 "All ~~such~~ regulations shall be published as provided
13 by law for the publication of ordinances, and before adoption
14 a public hearing shall be held thereon. A copy thereof shall
15 be certified by the municipal planning commission to the
16 probate judge of the county in which the municipality and
17 territory are located.

18 "§11-52-32.

19 "(a) ~~The~~ Except where the development of a
20 subdivision within the territorial jurisdiction of a municipal
21 planning commission is regulated by the county commission
22 pursuant to Section 11-52-30, the municipal planning
23 commission shall approve or disapprove a plat within 30 days
24 after the submission thereof to it; otherwise, ~~such~~ the plat
25 shall be deemed to have been approved, and a certificate to
26 that effect shall be issued by the municipal planning
27 commission on demand; provided, however, that the applicant

1 for the municipal planning commission's approval may waive
2 this requirement and consent to an extension of such period.
3 The ground of disapproval of any plat shall be stated upon the
4 records of the municipal planning commission. Any plat
5 submitted to the municipal planning commission shall contain
6 the name and address of a person to whom notice of a hearing
7 shall be sent, and no plat shall be acted on by the municipal
8 planning commission without affording a hearing thereon.
9 Notice shall be sent to the ~~said~~ address by registered or
10 certified mail of the time and place of ~~such~~ the hearing not
11 less than five days before the date fixed therefor. Similar
12 notice shall be mailed to the owners of land immediately
13 adjoining the platted land as their names appear upon the
14 plats in the county tax assessor's office and their addresses
15 appear in the directory of the municipality or on the tax
16 records of the municipality or county.

17 "(b) Every plat approved by the municipal planning
18 commission shall, by virtue of ~~such~~ the approval, be deemed to
19 be an amendment of or an addition to or a detail of the
20 municipal plan and a part thereof. Approval of a plat shall
21 not be deemed to constitute or effect an acceptance by the
22 public of any street or other open space shown upon the plat.

23 "(c) The municipal planning commission ~~may~~, from
24 time to time, may recommend to the ~~council~~ governing body of
25 the municipality amendments of the zoning ordinance or map or
26 additions thereto to conform to the municipal planning
27 commission's recommendations for the zoning regulation of the

1 territory comprised within approved subdivisions. The
2 municipal planning commission shall have the power to agree
3 with the application upon use, height, area, or bulk
4 requirements or restrictions governing buildings and premises
5 within the subdivision, provided ~~such~~ the requirements or
6 restrictions do not authorize the violation of the then
7 effective zoning ordinance of the municipality. ~~Such~~ The
8 requirements or restrictions shall be stated upon the plat
9 prior to the approval and recording thereof and shall have the
10 same force of law and be enforceable in the same manner and
11 with the same sanctions and penalties and subject to the same
12 power of amendment or repeal as though set out as a part of
13 the zoning ordinance or map of the municipality.

14 "(d) The municipal planning commission of any Class
15 1 city may elect no fewer than three and no more than five
16 persons who are members of ~~such~~ the municipal planning
17 commission to serve while members thereof and at the pleasure
18 of ~~such~~ the municipal planning commission as a committee to
19 approve or disapprove in the name of ~~such~~ the municipal
20 planning commission any plat presented to ~~such~~ the municipal
21 planning commission. Should any committee member so elected by
22 the municipal planning commission be unable for any reason to
23 serve at any time as a member of ~~said~~ the committee or should
24 a vacancy occur at any time on the committee, the ~~chairman~~
25 chair of the municipal planning commission shall appoint
26 another member thereof to serve as a member of the committee
27 until such time as the replaced member of the committee shall

1 resume his or her duties or until the municipal planning
2 commission shall fill ~~said~~ the vacancy by electing another of
3 its members to serve on the committee. ~~Such~~ The committee
4 shall be governed by all the provisions of this article
5 applicable to municipal planning commissions in regard to the
6 approval or disapproval of any ~~such~~ plat and to all
7 regulations adopted by ~~such~~ the municipal planning commission
8 in regard thereto not inconsistent with the provisions of this
9 article. Any plat submitted to ~~such~~ the committee shall be
10 considered as if submitted to the municipal planning
11 commission, and any approval or disapproval of any ~~such~~ plat
12 by ~~such~~ the committee shall be as if the same were approved or
13 disapproved by the municipal planning commission; provided,
14 however, that any party aggrieved by any decision of ~~such~~ the
15 committee ~~may,~~ within 15 days thereafter, may appeal therefrom
16 to the full municipal planning commission of ~~such~~ the
17 municipality by filing with ~~such~~ the municipal planning
18 commission a written notice of appeal specifying the decision
19 from which the appeal is taken. In the case of ~~such~~ an appeal,
20 ~~such~~ the committee shall cause a transcript of all papers and
21 documents filed with the committee in connection with the
22 matter involved in the appeal to be certified to the municipal
23 planning commission to which the appeal is taken and the
24 municipal planning commission ~~shall,~~ within 45 days from the
25 taking of ~~such~~ the appeal, in accordance with ~~such~~ the
26 reasonable regulations as it may from time to time adopt,
27 shall make ~~such~~ an investigation as it deems proper and either

1 affirm the decision of ~~such the~~ committee or render ~~such the~~
2 decision as in the judgment of ~~such the~~ municipal planning
3 commission should have been rendered by ~~such the~~ committee.

4 "§11-52-33.

5 "(a) Whoever, being Where the regulation of a
6 subdivision development is the responsibility of the municipal
7 planning commission, if the owner or agent of the owner of any
8 land located within a subdivision, transfers or sells or
9 agrees to sell or negotiates to sell any land by reference to
10 or exhibition of or by other use of a plat of a subdivision
11 before ~~such the~~ plat has been approved by the municipal
12 planning commission and recorded or filed in the office of the
13 appropriate county probate office shall forfeit and pay a
14 penalty of ~~\$100.00~~ one hundred dollars (\$100) for each lot or
15 parcel so transferred or sold or agreed or negotiated to be
16 sold, and the description of ~~such the~~ lot or parcel by metes
17 and bounds in the instrument of transfer or other document
18 used in the process of selling or transferring shall not
19 exempt the transaction from ~~such the~~ penalties or from the
20 remedies provided in this section.

21 "(b) The municipal corporation may enjoin ~~such the~~
22 transfer or sale or agreement by a civil action for injunction
23 brought in any court of competent jurisdiction or may recover
24 the same penalty provided in this section by a civil action in
25 any court of competent jurisdiction.

26 "(c) Where the county commission is responsible for
27 regulation of subdivision development within the territorial

1 jurisdiction of a municipal planning commission, enforcement
2 of the subdivision regulations of the county shall be as
3 provided in Chapter 24 of this title, and any penalties
4 assessed against a developer for failure to comply with the
5 subdivision regulations of the county shall be as provided
6 therein."

7 Section 2. This act shall not affect any application
8 for development or any subdivision filed prior to the
9 effective date of this act.

10 Section 3. Nothing contained in this act requires a
11 municipality to assume responsibility for roads or
12 infrastructure in subdivisions approved by the city engineer
13 outside the municipal corporate limits, or alters, amends, or
14 supersedes the requirements relating to responsibility for
15 road and bridge maintenance pursuant to Section 11-49-80, Code
16 of Alabama 1975.

17 Section 4. All laws or parts of laws which conflict
18 with this act are repealed. Sections 11-24-5 and 11-52-36,
19 Code of Alabama 1975, are specifically repealed.

20 Section 5. This act shall become effective on
21 October 1, 2011, following its passage and approval by the
22 Governor, or its otherwise becoming law.

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House of Representatives

Read for the first time and re-
ferred to the House of Representa-
tives committee on County and Mu-
nicipal Government..... 03-MAR-11

Read for the second time and placed
on the calendar 1 amendment 06-APR-11

Read for the third time and passed
as amended..... 21-APR-11

Yeas 91, Nays 0, Abstains 0

Greg Pappas
Clerk