

DEPARTMENT OF COMMERCE

HERBERT HOOVER, SECRETARY

# A STANDARD CITY PLANNING ENABLING ACT

BY THE

ADVISORY COMMITTEE ON CITY PLANNING AND ZONING  
OF THE U. S. DEPARTMENT OF COMMERCE



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THE ADVISORY COMMITTEE ON CITY PLANNING AND ZONING

APPOINTED BY SECRETARY HOOVER

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## FOREWORD

By HERBERT HOOVER, SECRETARY OF COMMERCE

In several hundred American cities and regions planning commissions are working with public officials and private groups in order to obtain more orderly and efficient physical development of their land area. They are concerned partly with rectifying past mistakes, but more with securing such location and development of streets, parks, public utilities, and public and private buildings as will best serve the needs of the people for their homes, their industry and trade, their travel about the city, and their recreation. The extent to which they succeed affects in no small degree the return, in terms of practical usefulness now and for years to come, of several hundred million dollars of taxpayers' money spent each year for public improvements, as well as the value and serviceability of new private construction costing several billion dollars each year.

The drafting of a standard city planning enabling act based on a careful analysis of the wide experience gained by these numerous local efforts was undertaken three years ago by the advisory committee on city planning and zoning of the Department of Commerce, in response to many requests. A State legislature, in adopting such an act, grants to cities the authority deemed necessary for effective planning and prescribes certain conditions as to planning organization and procedure.

The advisory committee members have each had many years of first-hand experience in coping with local planning problems, both as local citizens and in connection with the leading national business, professional, and civic groups which they represent. During their three years' work in drafting this act they have made laborious researches into legal problems and have consulted with expert planners, members of planning commissions, municipal officials, and other interested persons throughout the country.

The report recommends, first, a clearly defined permanent planning branch in the local government, in the form of a commission which formulates a comprehensive plan and keeps it up to date. The commission then advises the legislative and executive branches of the municipality, and the public, as to the importance of the plan and promotes conformance to it in the laying out of new streets, the construction of public works and utilities, and the private development of land. Close attention was given to every detail here,

as elsewhere in the act, that would help make good planning popular and effective.

The sections devoted to control of new subdivisions are framed with careful regard to constitutionality and aim at procedure which will promote harmony and justice in all relations between the planning commission and the private landowner. The part relating to control of buildings in the bed of mapped streets involved much laborious original work on a special problem.

The portion on regional planning presents the primary need for bodies to study and define regional problems comprehensively as the first step toward solving them. This procedure tends to forestall mistakes and prevent the gradual growth of conditions that may call for hasty, emergency solutions at extra expense. I thoroughly agree with the committee that regional problems should be thoroughly analyzed and publicly discussed before supplementary or new regional forms of government are set up to cope with them.

I hope that this document, with its full discussions of the text of the act, may aid in the wise development of city and regional planning throughout the United States. The cordial response to a limited preliminary edition, issued last March, which was used by three State legislatures in framing laws, testifies that the committee and those who have cooperated with it have rendered a splendid service for which the American people may well be grateful.

OCTOBER 17, 1927.



# A STANDARD CITY PLANNING ENABLING ACT

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## GENERAL STATEMENT

This act covers the four general subjects which experience has shown to be a necessary part of planning legislation, namely (1) the making of the city plan and the organization and powers of the city planning commission, (2) control of subdivisions, (3) control of buildings in mapped streets, and (4) regional plan and planning commission.

Sooner or later every State will need legislation covering all of these four general subjects. The text of this act has been so arranged, however, that any State which feels that it does not desire to include the control of subdivisions or buildings in mapped streets or regional planning or any two or three of these subjects can omit the part or parts for which it does not deem itself ready.

The later parts of the act often contain such references to earlier parts that these later parts would be rendered incomplete if the earlier parts be omitted. For instance, the sections on the organization, powers, and procedure of regional planning commissions, for the sake of brevity and avoidance of repetition, incorporate by reference provisions of earlier sections dealing with the organization, powers, and procedure of city planning commissions. Consequently, if any State is satisfied with its present city planning legislation but desires to use this act as a model for a statute on subdivision control, buildings in mapped streets, or regional planning, care must be taken to incorporate into the statute provisions similar to those which in this act are set out in full in the municipal planning sections but are only referred to or summarized in the subsequent parts of the act.

Legislation concerning the three subjects of subdivision control, mapped streets, and regional planning may be said to be in the trial and error stage. By this is meant that practical experience and judicial decisions upon the legislation have not been sufficiently extensive to enable anyone to be dogmatic about the best or final form of legislation on these subjects. The committee believes that it has worked out provisions which represent the most extensive investigation into and the best prevailing thought on the various features. As stated above, each of these subjects is a necessary part of effective planning legislation, and the text of this act supplies, therefore, a model from which to frame and develop the planning legislation of the various States of the country.

Some States now have upon their statute books measures to which any new provisions on these subjects would need to be adjusted. Some parts of this act, particularly those relating to mapped streets, involve considerations of and adjustments to constitutional provisions relating to eminent domain, and, as these provisions differ in different States, variations of those parts of the text of this act may be requisite in any particular State to adjust this legislation to the privileges and limitations allowed by or imposed by the constitution of that State as interpreted by its courts. Other adjustments to local decisions on constitutional law, local legislative customs, local modes of expression, or local traditions may prove necessary or advisable.

Consequently, though this standard act has been prepared after careful study of the legal and administrative problems that arise in planning, it is not meant to be slavishly followed in every word, sentence, or section, but rather to be used as a model and to be followed but with such adjustments as may be dictated by local constitutional and statutory law and legislative customs and tradition.

Furthermore, as the act is worded to include all municipalities and urban incorporated districts, and as the nomenclature and classification of municipalities differ amongst the different States, and as the forms of municipal government differ not only amongst the different States but often within an individual State, consequently, in the preparation of legislation in final form for enactment, account will need to be taken of the necessity of adjusting the provisions to the classifications and nomenclature of the various types of municipalities and the various forms of municipal government which are to fall within the scope of the legislation.

In the notes are pointed out many of the places where these problems will arise and need to be taken into account in the final form of the enactment.

#### SOME DETAILS

*Adding new words and phrases.*—Especial caution is given to beware of adding additional words and phrases which, as a rule, restrict the meaning from the legal point of view.

*Do not try to consolidate sections.*—It is natural to try to shorten the act by consolidating sections. This may defeat one of the purposes of the act, namely, that of keeping the language of the statute as simple and concise as possible. It is much better to have an act broken up into a number of sections, provided they are properly drawn, than to have one or two long involved sections.

*Enacting clause.*—No enacting clause has been included in this act, as the custom and form of such enacting clause vary in almost every State. The act should, of course, be preceded by the appropriate enacting clause in accordance with the local legislative custom.



*Definitions.*—A few definitions, only those felt to be absolutely necessary, have been included. The terms used in the act are so commonly understood that definitions are unnecessary. Definitions are generally a source of danger; they give to words a restricted meaning.

## A STANDARD CITY PLANNING ENABLING ACT

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AN ACT To provide for city and regional planning; the creation, organization, and powers of planning commissions; the regulation of subdivision of land and the acquisition of right to keep planned streets free from buildings; and providing penalties for violation of this act.

### SECTION 1. Definitions.

#### TITLE I.—MUNICIPAL PLANNING AND PLANNING COMMISSIONS

2. Grant of power to municipality.
3. Personnel of the commission.
4. Organization and rules.
5. Staff and finances.
6. General powers and duties.
7. Purposes in view.
8. Procedure of commission.
9. Legal status of official plan.
10. Miscellaneous powers and duties of commission.
11. Zoning.

#### TITLE II.—SUBDIVISION CONTROL

12. Subdivision jurisdiction.
13. Scope of control of subdivisions.
14. Subdivision regulations.
15. Procedure; legal effect of approval of plat.
16. Penalties for transferring lots in unapproved subdivisions.
17. County recorder's duties.
18. Improvements in unapproved streets.
19. Erection of buildings.
20. Status of existing platting statutes.

#### TITLE III.—BUILDINGS IN MAPPED STREETS

21. Reservation of locations of mapped streets for future public acquisition.
22. Compensation for such reservations.
23. Report of appraisers and council's action.
24. Appeal from compensation awards.
25. No compensation for buildings in reserved street locations.

## TITLE IV.—REGIONAL PLANNING AND PLANNING COMMISSIONS

26. Creation of commission.
27. Organization of commission.
28. Powers and duties of the commission.
29. Certification of the regional plan.
30. Adoption of regional plan by municipalities.
31. Legal status of regional plan.

## TITLE V.—MISCELLANEOUS PROVISIONS

32. Saving clause.
33. Repeal.
34. Time of taking effect.

SECTION 1. DEFINITIONS.—For the purpose of this act<sup>1</sup> certain terms are defined as provided in this section. Wherever appropriate the singular includes the plural and the plural includes the singular. "Municipality" or "municipal" includes or relates to cities, towns, villages, and other incorporated political subdivisions.<sup>2</sup> "Mayor" means the chief executive of the municipality, whether the official designation of his office be mayor, city manager, or

<sup>1</sup> "For the purpose of this act": These definitions have no wider application than this particular act. They are included so as to save the inconvenience of constantly repeating words in the different sections. Thus, for instance, by saying "the singular includes the plural and the plural the singular," it becomes unnecessary each time that the word "municipality" is used to say "municipality or municipalities," etc.

<sup>2</sup> "other incorporated political subdivisions": The intention is to include all urban incorporated political subdivisions but not to include those types of political units, such as the county or, in most States, the township, which are administrative subdivisions of the State rather than separate urban incorporated communities. The county is seldom a logical planning unit. Those States which have classes of incorporated urban political subdivisions which are not included in the text, such as, for instance, boroughs, should include the same, whereas those States in which the county or rural township is incorporated should insert express exclusion of such units.

It is not intended to include special-purpose districts, such as sanitary districts, conservancy districts, or park districts. As planning is conceived of in this act as the master or general design for the coordination and adjustment of the various types or classes of public works, a district created for some one type or class of public works is not an appropriate planning unit. In those States, therefore, in which such special-purpose districts have the legal status of incorporated political subdivisions, express exclusion of them should be inserted at this point in the act. There are some States, as for instance, Ohio and California, in which the State constitution grants to municipalities directly the power to frame and adopt their own charters and determine their own governmental organization and powers. In such States a municipality would have the power to determine for itself the composition, organization, procedure, and powers of its own planning commission and the legal status within its own borders of its city plan.

However, even in such cities there are provisions in this act for which State legislation and the State authorization would be necessary, as, for instance, the



otherwise.<sup>3</sup> "Council" means the chief legislative body of the municipality.<sup>4</sup> "County commissioners" means the chief administrative or legislative body or board of the county.<sup>5</sup> The term "streets" includes streets, avenues, boulevards, roads, lanes, alleys, viaducts, and other ways. "Subdivision" means the division of a lot, tract, or parcel of land into two or more lots, plats, sites, or other divisions of land for the purpose, whether immediate or future, of sale or of building development.<sup>6</sup> It includes resubdivision and, when appropriate to the context, relates to the process of subdividing or to the land or territory subdivided.

control over subdivisions of land outside the municipal boundary, the use of county recorder's offices, courts and other nonmunicipal organs, the regional planning provisions, and others. Home-rule charter cities would wish to avail themselves of these provisions, and the State would naturally wish to give the charter cities all the powers and to the city plans of charter cities all the force and effect which are granted to noncharter cities. In such States, therefore, there should be inserted in section 1 of the act some express provision to the effect that the act applies, so far as constitutionally permissible, to municipalities which make and adopt their own charters.

<sup>3</sup> "*mayor, city manager, or otherwise*": In the mayor, or federal form of city government the mayor is the chief executive. In the city manager form of government the manager is usually designated as the chief executive. In some States there may be other designations for the office which has the powers of the chief executive of the municipality. The word "mayor" is adopted as a convenient method of indicating the official intended. The consequences of and the problems raised by this in its effects upon the personnel of the commission are discussed in the notes under section 3.

<sup>4</sup> "*chief legislative body of the municipality*": In many municipalities various boards have legislative powers within designated spheres of control. Boards of health, boards of education, some park boards, and others are illustrations. Every municipal government, however, has a chief or central legislative body with general legislative powers. This is usually called "council," but in some forms of city government it is called commission, board of aldermen, or by other names. In some places it is a bicameral body. The more usual word "council" is adopted in the text as a convenient designation and is intended to apply to this central body of general legislative power, whether the same be called council or commission or otherwise and whether the same be unicameral or bicameral.

<sup>5</sup> "*chief administrative or legislative body or board of the county*": Every county has a central board or body. Its powers are usually largely administrative, though it may have some legislative functions, and it is usually called "county commissioners," but in some States other designations are used.

<sup>6</sup> "*for the purpose of sale or of building development*": Every division of a piece of land into two or more lots, parcels, or parts is, of course, a subdivision. The intention is to cover all subdivision of land where the immediate or ultimate purpose is that of selling the lots or building on them. The object of inserting a definition in the text of the act is to avoid the inclusion, within the planning commission's control, of such cases as a testator's dividing his property amongst his children, partners' dividing firm property amongst themselves on dissolution, or cases of that nature.

## TITLE I.—MUNICIPAL PLANNING AND PLANNING COMMISSIONS

SEC. 2. GRANT OF POWER TO MUNICIPALITY.—Any municipality is hereby authorized and empowered <sup>7</sup> to make, adopt, amend, extend, add to, or carry out <sup>8</sup> a municipal plan as provided in this act and create by ordinance <sup>9</sup> a planning commission <sup>10</sup> with the powers and duties herein set forth. The planning commission of a city shall be designated city planning commission; of a town or village, town or village planning commission; and of any other municipality, such designation as its council may specify.

<sup>7</sup> “*authorized and empowered*”: This act is an enabling act and permits municipalities to avail themselves of the powers conferred by the act if they so wish. It does not impose such powers or duties upon them. It does not impose the creation of city planning commissions throughout the State by mandate of the legislature. One State has passed a mandatory statute which requires every city or town having a population of 10,000 or more to create a planning board which must make a report and recommendations at least once a year. In actual practice many such boards exist only on paper and exercise few useful functions. It is believed that a permissive act will generally work to better advantage than a mandatory statute.

<sup>8</sup> “*make and carry out*”: The act contemplates that the planning commission shall not only make the plan but also have a strong influence in protecting the plan against departures and in getting the plan carried out, and that, in the case of subdivisions and street locations, it shall even have a considerable degree of control. While the making of the comprehensive master city plan is the main initial piece of work to be undertaken by the planning commission, the completion of that plan does not represent the completion of its work. On the contrary, the second main and equally important stage of its work commences with the adoption of the master plan. This stage is continuous and permanent, being the continuous process of adjusting the actual physical development of the municipality to the plan, and also the continuous elaboration of the plan and adjustment of the plan to new situations as they arise. Planning is just as important and essential a function of city government as is administration or legislation. In other words, the successful and efficient work of city government, for the promotion of the public health, convenience, safety, and welfare, requires the exercise of the three distinct functions of planning, legislation, and administration, each in charge of separate officers or boards. The planning board is that organ of the municipal government which performs this planning function, and within its sphere it needs the same independence, specialized qualification, and permanence as the other organs of the city government need in their respective spheres.

<sup>9</sup> “*ordinance*”: The word “ordinance” is the usual designation of enactments of city councils. In those States in which other terms are used, as, for instance, “by-law,” or in which the creation of a planning commission may be made by resolution, such words as “by-law” or “resolution” should be inserted in section 1 to cover the appropriate designations.

<sup>10</sup> “*planning commission*”: As stated in note 8, the planning function is quite different and distinct from the legislative function. The city council represents the people of the city for the length of the term for which it is elected and during that term is to be deemed to possess the qualification for and has its time and energies taken up with the problems of current legislation and current control of the public moneys. The making of a plan or design for a long period of future

SEC. 3. PERSONNEL OF THE COMMISSION.<sup>11</sup>—The commission shall consist of nine members,<sup>12</sup> namely, the mayor,<sup>13</sup> one of the adminis-

years, a period which will cover the incumbency of many successive councils, is an entirely different type of work, raises problems which involve different factors, and requires different qualifications. The board which has this work in charge should be free from the pressures of purely current problems. Consequently council, by virtue of the very nature of its functions and by virtue of its term of office, does not have the qualifications, the time, or the political status which would make it an appropriate body for this long-time planning work. That work needs to be intrusted to a board or body specially chosen for the purpose and given a place in the structure of the government specially appropriate to the nature of this planning work. Later provisions of this act and later notes explain the mutual relationships between the planning commission, the plan, council, and current developments.

<sup>11</sup> "*personnel of the commission*": The nature of the duties and the powers of the planning commission, as set forth in this act and in the discussion contained in these notes, make it a body quite distinct from a citizens' or civic city planning committee. Such civic committees perform an essential, but different and separate function. In most communities they are needed to promote the creation of an official planning commission. In some communities it may be found necessary for the citizens' committee to raise some of the moneys needed to finance the making of the city plan. Even after the planning commission is created and the master plan is made, the citizens' committee continues to be a vital and necessary instrumentality for protecting the plan and for coordinating the public and private developments. However, in order that the plan may have substantial and continuous influence upon the development of the community, it will need both the legal status and the prestige which will usually be obtainable only if the plan be made by an official commission.

<sup>12</sup> "*nine members*": The problem of the size of the commission can be variously solved, and there is no figure which could be dogmatically claimed as the sole correct figure. Some States may prefer to adopt a more elastic provision, as, for instance, from 5 to 11 members, thus giving the council of each municipality some leeway and permitting the size of the commission to be varied somewhat according to the size of the municipality. Other States may prefer to fix in the enabling act itself varying sizes for municipalities of varying populations, as, for instance, a certain number of members for cities with less than 100,000 inhabitants and a different or larger number for cities with more than 100,000 inhabitants.

In determining the answer to this problem of the size of the commission two general principles should be kept in mind. One of these is that the commission should include at least one administrative official and one legislative official of the municipality. The second principle is that the appointive members—that is, the members who have no other office—should exceed the ex officio members in number; that is, that at least the majority of the membership should be city-planning officials exclusively, without any other official functions.

Naturally, as the appointive members are citizens with other occupations and receive no compensation for their work, a full attendance of all appointive members at each meeting of the commission is improbable. It is consequently thought advisable that the number of the appointive members exceed the number of ex officio members sufficiently to promise that normally the appointive members will be in a majority at the meetings. Whether or not the mayor shall be on the commission, in addition to some other administrative officer, is a question upon which there is a great difference of opinion and one which is discussed



trative officials<sup>14</sup> of the municipality selected by the mayor, and a

in the next note. The text provides for his being a member, and the number of the commissioners adopted in the text, namely, nine, follows as a conclusion from the foregoing principles.

If some number other than nine be inserted in the section, then, of course, care needs to be exercised to make the necessary adjustments as regards the terms of office of the appointive members of the commission, so that the term of only one member will come to an end in any year and so that, preferably, no single city administration will have the power during its term of office to name a majority of the appointive members.

<sup>13</sup> "mayor": As to whether the mayor should be a member of the planning commission, there is a decided difference of opinion. This problem also differs for different forms of city government. For instance, in the city manager form the city manager is usually not only the head of the administration of the public works but is the chief executive of the city, and, as both these functions are concentrated in the city manager, he is the appropriate official to represent the administration on the commission, and there would seem to be no reason for adding the mayor to the personnel of the commission. Consequently, in so far as the act governs city manager cities, its provisions at this point should be understood as designating the city manager, and not the mayor, as a member of the commission.

In cities with the so-called federal form of government, namely, those in which an elective mayor is the chief executive, the question whether he should be a member of the commission has, as aforesaid, given rise to a difference of opinion. It is argued on the one hand that in large cities, at least, the mayor is so exceedingly busy an official and so exceedingly subject to what might be called political pressures and currents that he would seldom have the time, leisure, disposition, or point of view for the planning work. At the same time, owing to his position, he would have an influence on the other members of the commission entirely disproportionate to his actual knowledge of or deep insight into city planning. It is argued, on the other hand, that the mayor is in the position to become the leader in administrative policies and, therefore, is the logical liaison officer between planning and administration and between planning and the public and, therefore, is the official who most needs to become educated to the importance of city planning and who in turn is in the best position to give planning the necessary prestige with public and council.

The latter of these two views has been adopted in the text, but without the intention of conveying the impression that it represents the sole correct solution of this problem. If the legislature decides not to include the mayor as a member of the commission, a modification of the text can easily be made by omitting the reference to him, by changing six to seven and making the necessary adjustments in the terms of the appointive members of the commission, or by reducing the total number of the commission to seven with five appointive members.

<sup>14</sup> "administrative officials": It does not seem wise to attempt in this act to specify which administrative officials shall be included as members of the planning commission, as this will vary, dependent upon circumstances. In some cities it may be desirable to include the chairman of the park board, in others the city engineer, in others the commissioner of public works. What is advisable is to be sure that a substantial majority or two-thirds of the commission be composed of members who are not regular officials and who have no official functions other than those of planning.

member of council<sup>15</sup> to be selected by it as members ex officio, and six persons<sup>16</sup> who shall be appointed by the mayor, if the mayor be an elective officer, otherwise by such officer as council may in the ordinance creating the commission designate as the appointing power.<sup>17</sup> All members of the commission shall serve as such without compensation,<sup>18</sup> and the appointed members shall hold no other municipal office,<sup>19</sup> except that one of such appointed members may

<sup>15</sup> "*a member of council*": It is highly desirable that the chief legislative body of the city feel that it has an integral part in the work of city planning and be kept in touch with what the city planning commission is doing. This can be best accomplished through representation of one of its own members upon the commission. This becomes especially important in view of the power which is given in section 9 to the council to overrule the planning commission's disapproval of specific public improvements or street locations.

<sup>16</sup> "*six persons*": This enables the mayor to appoint a group of representative citizens. Limitations upon the selection of this appointing power are deemed inadvisable. For instance, requirement that these citizens shall be electors of the particular municipality is not recommended, for often a person who is well adapted for this kind of service resides in some near-by suburb and has large business interests in the municipality in question. Similarly, it seems a mistake to prescribe any professional qualifications of the members, since capacity for leadership in city planning, rather than any particular type of technical or professional training, constitutes the best qualification.

<sup>17</sup> "*appointing power*": It is important to note that the word "mayor" is so defined in section 1 of the act that, under this text of section 3, the city manager would be the appointing power in city manager cities, unless special provision be made placing this appointing power elsewhere. It is doubtful whether an appointive administrative official like the city manager should have the power of appointing the members of the city planning commission, whose functions, while connected with, still are basically different from the functions of the administration. In city manager cities the mayor is usually a member of council and the appropriate official in whom to lodge this power of appointment. In view of the definition given to the word "mayor" in section 1 of the act and the fact that the word "mayor" is not of universal use in city manager charters, the "mayor" can not be here specified as the appointing power, and the designation of the appointing official has been left to the council. A requirement of confirmation of the appointments by council has been considered but rejected as probably creating an unwise degree of control of a planning body by a legislative body.

<sup>18</sup> "*without compensation*": In the case of boards which do not spend all their time in official work it is quite customary to make this provision that there shall be no compensation, and there is nothing in city planning experience hitherto to indicate that compensation is needed to obtain men of the necessary qualifications and enthusiasm. In some States it is the practice to allow a fee for the attendance at meetings. This seems neither necessary nor desirable, though, if desired, such a provision can be easily inserted.

<sup>19</sup> "*no other municipal office*": The duties of members of the planning commission, though not exclusive of other occupations, are sufficiently arduous and continuous to warrant this requirement that whatever time they give to official work shall be devoted to the planning commission. In other words, neither their official time nor interest should be divided between planning and other functions, planning being quite sufficiently important and exacting to be entitled to all their

be a member of the zoning board of adjustment or appeals. The terms of ex officio members shall correspond to their respective official tenures, except that the term of the administrative official selected by the mayor shall terminate with the term of the mayor selecting him. The term of each appointed member shall be six years<sup>20</sup> or until his successor takes office, except that the respective terms of five of the members first appointed shall be one, two, three, four, and five years. Members other than the member selected by council may, after a public hearing, be removed by the mayor for inefficiency, neglect of duty, or malfeasance in office.<sup>21</sup> Council may for like cause remove the member selected by it. The mayor or council, as the case may be, shall file a written statement of reasons for such removal. Vacancies occurring otherwise than through the expiration of term shall be filled for the unexpired term by the mayor in the case of members selected or appointed by him, by council in the case of the councilmanic member, and by the appointing power designated by council in municipalities in which the mayor is not an elective officer.

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official time and enthusiasm. Furthermore, the plan touches quite vitally the work of all departments of the city administration, including those often headed by boards, such as the health board or the park board or school board, and a member of the planning commission, other than the ex officio members, should not have a duality or a diversity of interests which may be conflicting. In other words, the appointive members of the planning commission should be free from considerations other than planning.

The exception of a member of the zoning board of adjustment or appeals is required by a recognition of the fact that the zoning board is concerned with administering one of the most important parts of the city plan, namely, the zoning plan, and as this involves an understanding of the city plan, and as the need of amendments of the zoning plan must sooner or later be brought to the attention of the planning commission, it seems advisable, or at least permissible, that one member of the zoning board be also a member of the planning board.

<sup>20</sup> "*six years*": The principle which explains this period is that the terms of members of the planning commission should so overlap the terms of councilmen and of the officials of the city administration that, in the first place, the whole planning commission will not go out when a city administration or council goes out and, in the second place, that no city administration shall during a single term have the power to name a majority of the members of the planning commission. If any State changes the total membership of the commission to a figure other than nine, these principles should be borne in mind in fixing the terms of the appointive members.

<sup>21</sup> "*for inefficiency, neglect of duty, or malfeasance in office*": The members of the commission should feel secure in their tenure of office so long as they perform their functions faithfully and retain the confidence of the community. Conceivably, however, a situation might arise where a mayor might wish to remove members of the commission because they had recommended something that was not in harmony with his political desires. The members of the commission should be protected from such a situation by specifying removal for cause only and requiring the mayor to file a statement of his reasons.



SEC. 4. ORGANIZATION AND RULES.—The commission shall elect its chairman from amongst the appointed members <sup>22</sup> and create and fill such other of its offices <sup>23</sup> as it may determine. The term of chairman shall be one year, with eligibility for reelection. The commission shall hold at least one regular meeting in each month. It shall adopt rules <sup>24</sup> for transaction of business and shall keep a record of its resolutions, transactions, findings, and determinations, which record shall be a public record. <sup>25</sup>

SEC. 5. STAFF AND FINANCES.—The commission may appoint such employees <sup>26</sup> as it may deem necessary for its work, whose appointment, promotion, demotion, and removal shall be subject to the same provisions of law as govern other corresponding civil employees of the municipality. The commission may also contract with city planners, engineers, architects, and other consultants <sup>27</sup>

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<sup>22</sup> "*the appointed members*": The regular administrative and legislative officials have most of their time and thought occupied with pressing current problems and are most interested in these and in immediate results. The community needs, also, leadership in long-time thinking and planning, and this leadership, in the nature of things, can seldom be furnished by an official busy with daily routine and subject to daily pressures. So the chairman, generally the outstanding personality of the commission, should be chosen from the citizen members and not from the ex officio members.

<sup>23</sup> "*other offices*": This will permit the election of a vice chairman or a secretary-treasurer or other officer of the commission.

<sup>24</sup> "*rules*": These will ordinarily deal with such matters as quorum, call of meetings, order of business, procedure, etc., with the details of which it does not seem desirable to burden the statute.

<sup>25</sup> "*a public record*": The proceedings of the commission should not be kept secret, and all its transactions and records should be open to public scrutiny and consideration.

<sup>26</sup> "*employees*": Technical and clerical assistance is essential to success. The size of the commission's staff should, of course, vary somewhat with the size of the municipality and the stage of the making or execution of the plan. Every commission should be in position to obtain technical advice and assistance from a man or men responsible to it exclusively and independent of the regular administration.

<sup>27</sup> "*may contract with consultants*": In the making of the original master plan, the obtaining of the services of competent city planners is essential to work that will be effective and permanent in its influence. In some cases the commission might be able to employ such an expert as a member of its own staff and, in addition, contract with consultants. In others the commission might find it most practicable, for one reason or another, to contract with city planners for the making of the plan. Even during the making of the plan by outside talent it is advisable to have some specialized technical service on the staff of the commission. At the very least, from the time of the making and adoption of the plan, when the process of carrying out the plan begins, the commission needs its own technical staff, with or without outside consultants. Consequently, the powers granted to the commission in the enabling act should be sufficiently broad to enable the commission to adjust the expert service to its needs by either contract or employment or both.

for such services as it may require. The expenditures of the commission, exclusive of gifts,<sup>28</sup> shall be within the amounts appropriated for the purpose by council, which shall<sup>29</sup> provide the funds,<sup>30</sup> equipment, and accommodations necessary for the commission's work.

SEC. 6. GENERAL POWERS AND DUTIES.<sup>31</sup>—It shall be the function and duty of the commission to make and adopt a master plan<sup>32</sup>

<sup>28</sup> "*exclusive of gifts*": The authority to accept gifts for exercise of the commission's functions is granted in section 10 and is discussed in footnote 57, p. 23.

<sup>29</sup> "*shall*": The word "shall" implies a mandatory requirement. Cities are usually hard pressed financially, and in the early stages of city planning its officials seldom appreciate the importance of having a city plan, and some of them may even have a somewhat jealous attitude. It would be well, therefore, if at least during the early stage of the planning commission's work, usually that of making the comprehensive plan, some provision be made whereby the financing of the work be compulsory. The word "shall" can, of course, easily be changed to the word "may" if that be desired by the legislature.

<sup>30</sup> "*the funds*": In some States provision for special-tax levies for city planning purposes is made by statute on a basis of so many mills in each \$100 of taxable property in the city. This practice, however, is not in accordance with the best practice of municipal administration or with modern ideas of centralized budget control. Outside of gifts, the funds for maintaining city planning commission activities should be derived from general city revenues.

<sup>31</sup> "*Powers and duties*": The general function of a planning commission is to prepare a general design of the city's development, so that development may take place in a systematic, coordinated, and intelligently controlled manner. The matters to be covered by the design may be broadly classified as dealing with (a) streets, (b) other types of public grounds, (c) public buildings, (d) public utilities, (e) development of private property (zoning).

This act is based on the theory that a planning commission should view all these phases of a city's development in a broad and comprehensive fashion and should not concern itself with detailed administrative duties which rightfully belong to other branches of the government. It should not, for example, be required to pass on details of street elevations or details of installation and construction which the city engineer is best equipped to determine.

The planning commission's function in such matters is to make a general design as to location, which it is especially competent to do in view of its knowledge of the needs of the city and the probable trend of the city's future growth. The regular city department or board concerned should ordinarily decide the advantages and disadvantages of specific lots within a given range of area. It may consult the planning commission during the negotiations and should, in any event, submit its final decision as to location to the commission. For instance, the commission should prepare the major thoroughfare plan showing the future new streets and extensions and their general conformity to existing conditions and topographical features. When the time comes for building the streets, then the selection of the more specific location may depend on a considerable number of factors, such as cost of construction, or of land, or engineering details of one type or another; and this part of the work is best worked out by the city engineer, whose decision is subject to general review by the planning

for the physical development<sup>33</sup> of the municipality, including any areas outside of its boundaries<sup>34</sup> which, in the commission's judgment, bear relation to the planning of such municipality. Such plan, with the accompanying maps, plats, charts, and descriptive matter shall show the commission's recommendations for the develop-

commission, and similarly as to parks and all other classes of public works and improvements and utilities.

This section has been carefully drawn with these considerations in view so as to give the planning commission the authority it needs to fulfill its major purpose and at the same time to prevent its taking over the functions that rightfully belong to the city engineer, the public works department, the board of education, the park board, and other similar municipal agencies.

There are those who advocate that a city planning commission be given authority to act as an art commission, with the duty of passing on the design and architectural features of public buildings, or private structures erected along boulevards and other public property, and on the artistic merit of statues, fountains, and other artistic or ornamental objects.

Planning commissions as created under this act are charged with quite different functions, and it is not thought desirable to impose such duties upon them. These responsibilities are of a different order and call for different qualities and experience. The planning commission has the function of passing on the general location of public buildings, even where art commissions are in existence. By virtue of its powers in relation to public buildings and public works and its general advisory powers, the planning commission can greatly promote the beautification of the city in locating public buildings and streets and squares, to take account of opportunities for interesting and beautiful vistas or for sites for monuments and the like. In smaller towns and cities, where the planning work is of less magnitude, there would be less objection to combining the planning and art jury functions in one commission whose personnel is carefully chosen to perform both of these differing functions well.

<sup>32</sup> "*a master plan*": By this expression is meant a comprehensive scheme of development of the general fundamentals of a municipal plan. An express definition has not been thought desirable or necessary. What is implied in it is best expressed by the provisions of this section which illustrate the subject matter that a master plan should consider.

<sup>33</sup> "*physical development*": The word "physical" is used so as to make it plain that the planning commission should limit its activities to those problems of city life which are to be worked out through influencing the physical development of the territory.

<sup>34</sup> "*areas outside of its boundaries*": No city planning commission can make an effective or adequate plan for its own municipality unless it takes into consideration present conditions and future growth of the territory outside its boundaries. This might seem like giving to a municipality the power to interfere with the administrative or legislative freedom of other municipalities, but the mere making of a plan by a city contains no such interference. There can be, therefore, no harm, but, on the contrary, great benefits will result from permitting one municipality to cover in its plan as much of surrounding country as it may please, and the educational and moral effect of so doing may be of very great importance. The making of a plan is merely the making of a plan. It is a design which may or may not be carried out. In the process of making a city plan which covers territory outside the city limits the planning commission and its technical men will, of course, consult with planning commissions of neighboring municipalities,



ment of said territory, including, among other things,<sup>35</sup> the general location, character, and extent<sup>36</sup> of streets, viaducts, subways, bridges, waterways, water fronts, boulevards, parkways, playgrounds, squares, parks, aviation fields, and other public ways, grounds and open spaces, the general location of public buildings and other public property, and the general location and extent of public utilities and terminals, whether publicly or privately owned or operated,<sup>37</sup> for water, light, sanitation, transportation, communica-

if there be any such commissions, and with the officials and civic organizations of these neighboring municipalities. The making of the city plan may well be the beginning of cooperation which will do away with any mutual jealousies or fears which may exist in the relations of neighboring municipalities and may ultimately lead to regional planning movements. Annexation of the smaller municipalities with the larger is often difficult or impossible to bring about, and the fear of being annexed is one of the causes of the difficulties in the way of cooperative action by the municipalities of a region.

Furthermore, students of municipal government are learning of the disadvantages of completely centralized government of large and populous urban regions, and the line of true progress will probably be in the direction not of annexation, but of regional administration of regional affairs with distributed or local administration of local affairs. By including in its planning survey, to some extent, territory lying immediately outside its own boundaries, a city learns the factors involved in this problem of annexation and regional administration and thus becomes better prepared to assist in an intelligent solution of the problem.

<sup>35</sup> "*among other things*": The enumeration of the kinds of matters with which a city plan should deal, which follows these words, is purely illustrative and in no sense meant to be exclusive. The power given to the city planning commission is to make recommendations for the physical development of the entire territory covered by the plan, and, whether the specific phase of that development happens to be mentioned in this section or not, the power to deal with the whole field still rests with the commission. The list included in the text of the act might be helpful to a new city planning commission in undertaking its work; but they are all illustrations only and not comprehensive.

<sup>36</sup> "*general location and extent*": These words have very great importance. They indicate the demarcation of the commission's functions. As pointed out in the general discussion of the commission's powers and duties (note 31, p. 13), it is not intended that the planning commission shall include in the master plan such exact details of location or engineering plans and specifications as will come to be needed when the public improvement or building is to be actually constructed.

<sup>37</sup> "*operated*": Public utilities, such as railroads, street railways, power-transmission facilities, telephones, electric-transmission facilities, gas mains, and so on, are, to a predominant extent in the United States, owned and operated by public-utility companies. Their relationship to the city plan is no less vital or integral by reason of this fact. This should certainly be so obvious as to require little elaboration. As an example, the location of the street railroads of the city bears exactly as intimate and important a relation to the location of business, industrial, and residential districts as does the location of the streets themselves. Consequently, the location of these public utilities, whether publicly or privately owned or operated, is quite as essential a part of the city plan as the location of the streets or parks or other public works, and, for the same reason, the legal

tion, power, and other purposes; also the removal, relocation, widening, narrowing, vacating, abandonment, change of use or extension of any of the foregoing ways, grounds, open spaces, buildings, property, utilities, or terminals; as well as a zoning plan<sup>38</sup> for the control of the height, area, bulk, location, and use of buildings and premises. As the work of making the whole master plan progresses, the commission may from time to time adopt and publish a part or parts thereof, any such part to cover one or more major sections or divisions of the municipality or one or more of the aforesaid or other functional matters to be included in the plan. The commission may from time to time amend, extend, or add to<sup>39</sup> the plan.

SEC. 7. PURPOSES IN VIEW.<sup>40</sup>—In the preparation of such plan the commission shall make careful and comprehensive surveys and studies of present conditions and future growth of the municipality

status and the administration of these parts of the plan which relate to public utilities should be exactly the same as in the case of publicly owned or publicly operated works. This, of course, is not intended to mean, and in practice will not mean, that every little detail of the utility, such as house connections, exact location of poles, etc., should appear in the plan or be submitted to the city planning commission. The dividing line is not capable of exact statement in the text of the law, but a reasonable dividing line can easily be worked out in practice.

<sup>38</sup> "zoning plan": Where no zoning plan has been made and no zoning commission exists, the preparation of a zoning plan should be undertaken by the city planning commission, as zoning is simply one phase of city planning. This section assumes that a zoning enabling act is in force in the State where it is proposed to adopt the present act. If there is no such law in force, then a proper zoning enabling act should be secured and should be incorporated into and made a part of this general planning act. For this purpose, see A Standard State Zoning Enabling Act, which has been followed in 29 different States, and also A Zoning Primer, both issued by the Department of Commerce.

<sup>39</sup> "add to": From time to time the need of changes in the plan will develop. From time to time the plan will be carried into greater detail in one or other of its features. For instance, it may start with a major street system, and various subsidiary streets may be gradually added or the general locations of the projected major streets may be made more specific. From time to time the plan needs to be extended territorially; that is, to cover territory not completely covered or not covered in sufficient detail in the original plan as first adopted and promulgated. Furthermore, from time to time new subjects will be included within the plan, as, for instance, the original plan may not have included markets, whereas later a study of market locations is made and the result incorporated into the plan. These illustrations will sufficiently indicate the meaning of the words "amend, extend, or add to" and the wisdom of having all three in the text of the law. (See also note 42, p. 17.)

<sup>40</sup> "Purposes in view": The purposes underlying the making of the plan are stated here to aid the members of a city planning commission in understanding the nature of their task and in making sure that the plan developed will be a comprehensive one and not a piecemeal one, and will be the result of careful study both of present conditions and future growth, and that it will consider the needs and development, not only of the municipality, but of its environs as well.

and with due regard to its relation to neighboring territory. The plan shall be made with the general purpose of guiding and accomplishing a coordinated, adjusted, and harmonious development of the municipality and its environs which will, in accordance with present and future needs, best promote health, safety, morals, order, convenience, prosperity, and general welfare,<sup>41</sup> as well as efficiency and economy in the process of development; including, among other things, adequate provision for traffic, the promotion of safety from fire and other dangers, adequate provision for light and air, the promotion of the healthful and convenient distribution of population, the promotion of good civic design and arrangement, wise and efficient expenditure of public funds, and the adequate provision of public utilities and other public requirements.

SEC. 8. PROCEDURE OF COMMISSION.—The commission may adopt the plan as a whole by a single resolution or may by successive resolutions adopt successive parts of the plan,<sup>42</sup> said parts corre-

<sup>41</sup> "welfare": These words, "health, safety, morals, order, convenience, prosperity, and general welfare," are so customarily used in connection with definitions of the police power that the impression may easily prevail that their sole accurate use is in relation to the police power and that their use in this place in the text of the act indicates that city planning in all its phases is an exercise of the police power. These impressions are entirely erroneous. Every legislative power exists and is exercised for the promotion of health, safety, morals, etc. For instance, the power of taxation, when exercised for maintaining a hospital, is for the promotion of health. The power of eminent domain, when exercised to obtain a site for a hospital, is for the promotion of health. All governmental power is for the promotion of these goods, health, safety, etc.

Merely making a city plan might be said to be not an exercise of police power, if that expression is to be defined with anything like technical narrowness or exactness. Many of the phases of protecting and carrying out the plan, however, are exercises of the police power, as, for instance, zoning legislation or subdivision regulation. Many of the controls over persons or property specified in this act may, with a fair degree of accuracy, be called police power.

Neither the process of making plans nor the process of protecting plans nor the process of carrying out plans in accordance with this legislation belongs, however, exclusively to that particular type of governmental power known as the police power. So these words "health," etc., are to be taken to indicate not a reference to those ends which are the recognized valid purposes of the police power, but rather to those ends or purposes for which all powers of government and all activities of government, including the police power, exist.

<sup>42</sup> "parts of the plan": The city plan is an organic whole, every part of which, whether considered territorially or as to subject matter, is organically interrelated with every other part. That means that every part needs to be studied with these interrelations in mind. However, while the comprehensive or master plan should be envisaged and treated as an organic single unity or whole, there may be no imperative necessity for withholding the completion and publication of parts as they are finished to await the conclusion and publication of the whole. By part may be meant a territorial part; that is, that the plan of one of the major geographical divisions or sections of the city, as, for instance, the territory on one side of a river which divides the city into two sections, may be completed and



sponding with major geographical sections or divisions of the municipality or with functional subdivisions of the subject matter of the plan, and may adopt any amendment or extension thereof or addition thereto. Before the adoption of the plan or any such part, amendment, extension, or addition the commission shall hold at least one public hearing thereon,<sup>43</sup> notice of the time and place of which shall be given by one publication in a newspaper of general circulation in the municipality and in the official gazette, if any, of the municipality. The adoption<sup>44</sup> of the plan or of any such part or

published previous to the completion and promulgation of the plan of the whole city. "Part" may also relate to subject matter, as, for instance, the completion of the major thoroughfare part of the plan and its publication previous to the completion of the park part or recreational part or railroad part. The territorial part selected should have, in and of itself, some logical basis; and nothing less than the whole of one subject matter, such as major streets, should be treated as a part. Moreover, any such part adopted before the completion and adoption of the whole plan should be clearly recognized and treated as a part which is being adopted and published in advance pending the completion of the plan, and always as a part, the significance and usefulness of which depends on its relation to the other parts.

<sup>43</sup> "*public hearing thereon*": The public hearing previous to the adoption of the plan or substantial part thereof has at least two values of importance. One of these is that those who are or may be dissatisfied with the plan, for economic, sentimental, or other reasons, will have the opportunity to present their objections and thus get the satisfaction of having their objections produce amendments which they desire, or at least the feeling that their objections have been given courteous and thorough consideration. The other great value of the public hearing is as an educating force; that is, it draws the public's attention to the plan, causes some members of the public to examine it, to discuss it, to hear about it, and gets publicity upon the plan and planning. Thus the plan begins its life with some public interest in it and recognition of its importance.

<sup>44</sup> "*adoption*": Planning is intended to be a process whereby the larger lines and directions of future public and private development will be influenced and to some extent controlled. It should be designed to cover a long period of years, much longer than the term of office of any single city council, including the city council which is in office at the time of adoption of the plan or any part of it. Legislation is designed to meet pressing and immediate needs, whether it take the form of penal legislation controlling persons or property or whether it be fiscal legislation expending public funds. The two functions, planning and legislation, are important and essential to the efficient working of city government, but they are quite different from each other and involve differing considerations, differing points of view, and differing talents and interests. The two functions, therefore, need to be reposed in two separate bodies, one called in this act the planning commission and the other the council.

Furthermore, a city council is elected for a specific term during which it is the representative of the people. Beyond that term it is not the representative of the people, and its legislation, therefore, should be restricted to the matters which require decision and enactment into law and action during its specific term.

For these reasons the plan should not be required to be submitted to or approved by council. Each council will finally determine the public improvements for

amendment or extension or addition shall be by resolution of the commission carried by the affirmative votes of not less than six members <sup>45</sup> of the commission. The resolution shall refer expressly to the maps and descriptive and other matter intended by the commission to form the whole or part of the plan, and the action taken shall be recorded on the map and plan and descriptive matter by the identifying signature of the chairman and/or secretary of the commission. An attested copy of the plan or part thereof shall be certified to council and to the county recorder.

SEC. 9. LEGAL STATUS OF OFFICIAL PLAN.<sup>46</sup>—Whenever <sup>47</sup> the commission shall have adopted the master plan of the municipality <sup>48</sup>

which moneys are to be expended during its term, and as to each council the plan will have the legal status given to it in the later section of the act, a status which does not finally bind council. In other words, in the end the planning commission can not bind council. To pass upon the plan itself, however, is, for the above reasons, not within the appropriate functions of council; and a requirement that the plan be submitted to and approved by council will have many disadvantages. For instance, in case of a political overturn, a later council might be hostile to the plan as the work of its overturned predecessor. Council's representation upon the personnel of the planning commission gives the appropriate amount of influence in the process of making the plan.

<sup>45</sup> "six members": So important an action as the adoption of the plan should not be by a majority of one in the commission but should only become effective if carried by more than a mere majority of the whole commission. It is therefore thought wise to provide that at least two-thirds of the members of the commission must vote affirmatively for the plan before it can be adopted. In case a number other than nine be adopted as the size of the commission, then "six" should be changed to some figure corresponding approximately to two-thirds of the total membership of the commission. In case, by reason of home-rule charters, the size of planning commissions varies in different cities in the State, or, by reason of the classification of cities, planning commissions have varying sizes, the "six members" should be changed to "two-thirds of the entire membership."

<sup>46</sup> "Legal status of official plan": This section is one of the most important of the act. Numerous matters are constantly before council for decision. Some of them may represent a departure from or violation of the city plan. Others may represent matters upon which the city plan contains no light but which involve a major planning problem. As council proceeds from week to week with its work, pressed by all sorts of pressures to pass this, that, or the other measure, there is great danger, especially in the early stages of the planning movement in any city, that the city plan may come to be ignored or given rather casual attention. Consequently, the State planning legislation should devise a means whereby, from the time there is a city plan or a substantial part thereof, all matters which involve location of public buildings, improvements, utilities, etc., should receive city planning consideration; that is, full consideration of their bearing upon the city plan. The requirement contained in the text appears reasonable and adequate and has worked well where it has been adopted. It provides that in the case of any improvement in which the planning problem is involved the opinion of the planning commission must first be asked. If the planning commission approves, the council will be free to proceed with whatever affirmative vote is required by the general law governing it. If the commission

or of one or more major sections or districts thereof<sup>49</sup> no street, square, park, or other public way, ground, or open space, or public building or structure,<sup>50</sup> or public utility, whether publicly or privately owned,<sup>51</sup> shall be constructed or authorized in the municipality

disapproves, there naturally ensues a reconsideration, with probably a full discussion between council and commission. Council retains the power it should have, namely, the power to decide in the end; but in order that this decision may be after full consideration of the planning problem and of the relation of the proposed improvement to other city developments, the requirement of a vote of two-thirds of council is reasonable and justified.

<sup>47</sup> "*Whenever*": This power to require public improvements to be submitted to the city planning commission does not become operative until after the commission has adopted its master plan, or a plan of some major section or district of the city. For, until that stage has been reached, the planning commission presumably has not that knowledge and experience which would enable it to reach conclusions with regard to definite proposals for new streets or public improvements, nor would it be appropriate under these circumstances to allow a newly appointed commission, inexperienced in such matters, to hold up important public improvements which the duly elected officials might desire.

But, after the commission has made its studies and adopted a comprehensive plan, then, if there is to be any effective city planning in its community, future public improvements must not be authorized or carried out until they have been submitted to the city planning commission and their relation to the city plan carefully studied and the public given a chance to discuss and weigh the proposal.

<sup>48</sup> "*municipality*": The plan may take in as much territory as the planning commission deems necessary from the point of view of good planning. The actual control of the location of public buildings, improvements, and utilities is, however, limited to the territory of the municipality itself. This is obviously proper and in many States would be imposed by constitutional considerations.

<sup>49</sup> See footnote 42, p. 17.

<sup>50</sup> "*public building or structure*": In every municipality there are public works and public buildings whose construction and location are determined by officials or bodies other than the municipal legislative and administrative departments. For instance, in many municipalities the school board is entirely separate and distinct from the municipal government. In many municipalities, particularly the county seat, the county has from time to time occasion to build buildings or highways or other public improvements. Similarly, the State may locate State public works or institutions within the territory of a municipality. The intention is that the municipal plan and the official acts of the municipal planning commission shall be concerned with all public structures within the municipality, whether built by the municipal authorities or by nonmunicipal authorities; but, of course, it would be improper to permit the city council or other municipal body to control the actual building location of such nonmunicipal public works and buildings. Consequently it is necessary to provide in the act that the final control in these cases shall be in the appropriate nonmunicipal board or official.

<sup>51</sup> "*owned*": For reasons explained in note 37 this same principle is as applicable to privately owned public utilities as to any other parts of the city plan or any other type of development. The fact that a public-utilities commission or like body is authorized or required by law to pass upon the location of a public utility, as, for instance, a new railroad or railroad terminal or bus line, is no reason for excluding the question from the jurisdiction of the planning commission. The planning problem should be submitted to the planning body, just as in the



or in such planned section and district until the location, character, and extent thereof shall have been submitted to and approved by the commission: *Provided*, That in case of disapproval the commission shall communicate its reasons to council, which shall have the power to overrule<sup>52</sup> such disapproval by a recorded vote of not less than two-thirds of its entire membership: *Provided, however*, That if the public way, ground, space, building, structure, or utility be one the authorization or financing of which does not, under the law or charter provisions governing same, fall within the province of the municipal council, then the submission to the planning commission shall be by the board, commission, or body having such jurisdiction, and the planning commission's disapproval may be overruled by said board, commission, or body by a vote of not less than two-thirds of its membership. The failure of the commission to act within 60 days from and after the date of official submission to the commission shall be deemed approval.<sup>53</sup>

SEC. 10. MISCELLANEOUS POWERS AND DUTIES OF COMMISSION.—The commission shall have power to promote public interest in and understanding of the plan and to that end may publish and distribute copies of the plan or of any report and may employ such other means of publicity and education<sup>54</sup> as it may determine. Members of the

case of any other type of development which is related to the city plan, and with the same power in the utilities commission to overrule the planning commission as is granted to the authorizing body in other cases to overrule the planning commission's disapproval. This is the effect of the text of the act. To omit the privately owned utilities from the plan or from planning procedure would be apt to create very serious dislocations and maladjustments which might break down the plan.

<sup>52</sup> "*overrule*": When a specific improvement has been submitted to the commission after the comprehensive plan has been adopted and the commission disapproves, the council should not be allowed to overrule such disapproval except by a substantial majority. It is, therefore, provided that such action shall be by not less than two-thirds of the votes of the entire membership of council and not merely a majority of two-thirds of those who happen to be present on a given day. Such a provision militates against hasty action, when a bare quorum might be present, and will also necessitate full discussion and the members going on record where important action is to be taken.

<sup>53</sup> "*shall be deemed approval*": It is obvious that the commission should not be put in the position where it can hold up for an indefinite period needed public improvements by failure to act upon proposals submitted to it by council. The requirement that failure to act within 60 days "*shall be deemed approval*" is a reasonable one. As a matter of actual practice the proposed improvement and the plans thereof will usually be discussed with the city planning commission before formal submission for official approval, and the commission will be in position to act officially very shortly after official submission.

<sup>54</sup> "*education*": The purpose of this provision is to enable the commission to use any means that may be appropriate to inform the citizens of the community as to the necessity of city planning as well as on the details of the city plan.

commission, when duly authorized by the commission, may attend city planning conferences or meetings of city planning institutes or hearings upon pending city planning legislation, and the commission may, by resolution spread upon its minutes, pay the reasonable traveling expenses incident to such attendance. The commission shall, from time to time, recommend to the appropriate public officials programs for public structures and improvements and for the financing thereof.<sup>55</sup> It shall be part of its duties to consult and advise<sup>56</sup> with public officials and agencies, public-utility companies,

The act is intended to enable the commission to print and distribute pamphlets, handbills, and posters, to make lantern slides and motion-picture films and use them, to prepare exhibits for use in schools and generally throughout the community—in short, to use every modern method of education to inform the public as to the importance and need of city planning and of the city plan. Without some such provision the commission might find itself seriously handicapped by general provisions of law limiting the number of copies of given reports that might be published or even prohibiting the publication of a document which dealt with city planning principles generally and had no particular application, so far as the other city authorities could see, to that particular community. Of course, these expenditures of the commission will have to be within its lawfully available funds.

<sup>55</sup> "thereof": This is one of the most important functions of planning commissions. Practically all municipalities carefully budget their annual appropriations from current funds for current operating purposes. Much of the waste in municipal public affairs, however, has come from the failure to budget or program the expenditure of bonds or capital funds. In the case of the budget of current funds for current operating expenses, the original preparation of the budget—that is, its tentative form for submission to council—falls usually and appropriately within the function of the administration; that is, the mayor or heads of the administrative departments. A bond budget or program of major improvements, however, should, by virtue of its nature, cover not one year but many years in the future, preferably 10 years. The city administration is elected or appointed for a short period and is occupied with immediate and pressing questions. The original or tentative preparation of a bond budget or improvement program should be made by a body less temporary in its nature and less subject to current and urgent pressures. The planning commission appears to be the appropriate body to make the first or tentative draft of the improvement program. It is the body best fitted to adjust such a program to the city plan. As from year to year council authorizes bond issues and the construction of major improvements, council will not be bound by such a program, but such a program is an essential part of any economical fiscal system, and the planning commission, for the above reasons, would seem to be the appropriate body to prepare it. Bond issues, however, which relate to such matters as equipment, fire apparatus, and other similar matters in which the planning problem is not involved, should be placed upon the program by the administrative officials rather than by the planning commission.

<sup>56</sup> "to advise": One of the main and most important functions of the planning commission is that of using its knowledge and influence to prevent violations of the plan and to cause the development of the municipality in conformance with the plan. In city administrations and city councils proposals are constantly coming up to build this or that improvement and locate it at this point or that point.

Similarly, citizens and civic organizations are constantly discussing and promoting public improvements of various kinds and at various points. Utility

civic, educational, professional, and other organizations, and with citizens with relation to the protecting or carrying out of the plan. The commission shall have the right to accept and use gifts<sup>57</sup> for the exercise of its functions. All public officials<sup>58</sup> shall, upon request, furnish to the commission, within a reasonable time, such available information<sup>59</sup> as it may require for its work. The commission, its members, officers, and employees, in the performance of their functions, may enter upon any land and make examinations and surveys and place and maintain necessary monuments and marks thereon. In general, the commission shall have such powers as may be necessary to enable it to fulfill its functions, promote municipal planning, or carry out the purposes of this act.

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companies are constantly engaged in locating additions or extensions of public utilities or new public utilities. In short, the whole community, both through its officials and through its nonofficial organizations, is constantly engaged in promoting and discussing public improvements. The planning commission should, therefore, keep in constant contact with all these agencies of the community, so that it may use its influence to cause the city's development to conform to the city plan.

<sup>57</sup> "*gifts*": Very often public-spirited citizens are willing to give to the community a sum of money to be used in making a city plan. This provision would permit a city planning commission which had not received an adequate appropriation from the public treasury to accept a sum from private citizens to enable it to carry on—a situation which has arisen in the past and which may easily arise in future.

This express provision to permit planning commissions to receive gifts may not be necessary in those States in which the right of the municipality or any department thereof to accept and use gifts is conceded even in the absence of any express statutory authorization. It may be well to point out that the gifts referred to in the text are for the purpose of enabling the planning commission to perform its function of planning. The planning commission should not engage in construction. The locating of a park as a part of the city plan is appropriately the function of the planning commission; but the actual buying of the land or the building of the park belongs to the park department. It is always better that the planning commission remain within the province of planning.

<sup>58</sup> "*public officials*": This includes all public officials, whether municipal, county, school, or State.

<sup>59</sup> "*information*": As duplication of work is always a waste, every department of a municipality should place at the disposal of every other department the information it may have gathered in the course of its work and all its records. Naturally, in the process of making a plan or developing a plan, the planning commission will constantly need information and data which are already in the possession of the engineering and other departments. These other departments should not be permitted to adopt a policy of withholding this information and making the work of the planning commission more arduous or more expensive. As planning is something comparatively new compared with administration and may be met by some jealousy or even a tendency to sabotage, the statute should make perfectly plain that it is the duty of every department to place all its information and data at all convenient times at the disposal of the planning commission.



SEC. 11. ZONING.<sup>60</sup>—The commission shall have all powers heretofore granted by law to the zoning commission of the municipality, and, from and after the creation of a planning commission in such municipality, all powers and records of the zoning commission shall be transferred to the planning commission: *Provided, however,* That in the event that the existing zoning commission shall be nearing the completion<sup>61</sup> of its zoning plan, council may, by resolution, postpone the said transfer of the zoning commission's powers until the completion of such zoning plan; but such postponement shall not exceed a period of six months.

## TITLE II.—SUBDIVISION CONTROL

SEC. 12. SUBDIVISION JURISDICTION.<sup>62</sup>—The territorial jurisdiction of any municipal planning commission over the subdivision of land shall include all land located in the municipality and all land lying

<sup>60</sup> "zoning": This section is appropriate in those States which have a zoning enabling law upon their statute books. If that be not the case, then zoning enabling provisions should be included and should vest the powers of the zoning commission in the planning commission and not create a separate zoning commission. The zoning board of adjustment, which is distinct and separate from the zoning commission, retains its status and is unaffected by this act.

<sup>61</sup> "completion": If there be a zoning commission already at work and it has not made material progress in developing its work, its work should be transferred to the planning commission when that body is appointed. A situation may exist, however, under which the zoning commission has made substantial progress on the preparation of the zoning plan and is about to make its report. Under those circumstances it would be unwise to take from the hands of a commission, which had already practically completed its study of the subject, its responsibilities and duties and intrust them to a newly appointed board, totally unfamiliar with the subject, and which would have to do all over again the work that has already been done. For this reason it is provided that where such a situation exists council may provide for the continuance of the zoning commission's powers and postpone their transfer until its work is completed; but in order that this may not be drawn out for an interminable period, a six-months' limitation is imposed. Any zoning commission which is substantially nearing the completion of its task can certainly finish within six months.

<sup>62</sup> "Subdivision jurisdiction": The municipality is not the only agency which is locating streets and other public open spaces. On the contrary, except in the case of major thoroughfares, most of the highways are located by private agencies; namely, the subdividers of land. Obviously, the way the subdivider locates the streets and his lots determines, to as great an extent as any other factor, the adequacy and economy of the city's highway system, the density of population, the flow of traffic, the open spaces for light, air, health, and recreation. After the subdivider has sold his lots and people have built houses, it becomes almost inescapable that the public will accept, sooner or later, the streets and lots as laid out by the subdivider. Therefore, the subdivider has it in his power to dislocate or destroy the city plan, and the community must needs exercise this control at a time when the control can be made effective; namely, at the time of the subdividing or platting of the land.

Provisions of this title provide an effective control in a way that will work no hardship on the legitimate subdivider but, on the contrary, will be a help to him.

within 5 miles <sup>63</sup> of the corporate limits of the municipality and not located in any other municipality, except that, in the case of any such nonmunicipal land lying within 5 miles of more than one municipality having a planning commission, the jurisdiction <sup>64</sup> of each such municipal planning commission shall terminate at a boundary line

In the actual workings of such a system of control the planning commission and the subdivider usually cooperate to produce a result that will be beneficial to the community and subdivider alike. The statute will bring the subdivider and the commission into conference with each other, and the final result will usually be amicably reached. The commission will seldom have to impose its judgment over the hostile position of the subdivider, but these are the very cases in which the control is most essential.

Obviously, this control of subdivisions, within the reasonable limits and subject to the fair and reasonable procedure set out in the act, needs to be comprehensive, for any dislocation of the city plan is a progressive evil which spreads and may ultimately break down the whole plan.

<sup>63</sup> "5 miles": As has been pointed out in note 34, intelligent city planning of a municipality must take into consideration conditions which exist in the surrounding territory. For a number of years in many States control has been given to the municipality over the subdivision of property in the territory within a certain zone outside the city limits. This zone varies in different States. In some it is a 3-mile zone, in others 5 miles, in others less, in others more.

Three miles has been the usual distance, but the automobile is rapidly making that too small. No uniform figure will quite fit all municipalities, since, naturally, the larger municipalities have larger urban fringes than the smaller ones. It would not be difficult to include a provision for varying distances according to the size of the municipality.

The reason why control of platting in this territory should be given to the planning commission of the municipality in question is obvious, for practically all of this territory will ultimately become a part of that municipality or at least seriously affect the development of the municipality. Even though it may never come within the corporate limits, it will in all essential respects be a part of the municipality. Ultimately the control of property in territory outside the corporate limits of municipalities should be handled in relation to regional planning and regional organization. When and where regional planning is well developed, control in such territory by an adjacent city may very wisely be discontinued. In the meantime, however, pending the development of regional plans and regional control, control by the central municipality is necessary in many cases if that city is to be insured against the ill effects of badly planned developments near its borders. There is ample precedent for such control, as, for instance, in Ohio there has been control of plats within the 3-mile limits of municipalities for the past 16 years. From the legal point of view, there is no difficulty in exercising such control if the legislature gives the power.

<sup>64</sup> "jurisdiction": The statute itself must necessarily define the jurisdiction of each planning commission. Compulsory joint action by two or more planning commissions would create many practical difficulties, many delays in dealing with subdividers, and might result in decisions which represent enforced compromises rather than intelligent solutions. Voluntary cooperation by two or more municipalities for the regulation of the platting of territory which is tributary to all of them is always advisable and requires no statutory authority.

equidistant from the respective corporate limits of such municipalities.<sup>65</sup>

SEC. 13. SCOPE OF CONTROL OF SUBDIVISIONS.—Whenever a planning commission shall have adopted a major street plan<sup>66</sup> of the territory within its subdivision jurisdiction or part thereof, and shall have filed a certified copy of such plan in the office of the county recorder of the county in which such territory or part is located, then no plat of a subdivision of land within such territory or part shall be filed or recorded<sup>67</sup> until it shall have been approved by such planning commission and such approval entered in writing on the plat by the chairman or secretary of the commission.

SEC. 14. SUBDIVISION REGULATIONS.—Before exercising the powers<sup>68</sup> referred to in section 13, the planning commission shall adopt regulations<sup>69</sup> governing the subdivision of land within its

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<sup>65</sup> "*municipalities*": In using the text of this section care should be taken to keep in mind the definition of "municipality" and "municipal" which may have been adopted for section 1 of the act. For instance, if, under the definition set forth in section 1, there is no nonmunicipal territory in the State, then, of course, changes will need to be made in section 12 to correspond with this situation. In each State care should be exercised that the phraseology of section 12, taken in connection with that adopted for section 1, will carry out the legislative intention regarding the scope of subdivision control by each planning commission.

<sup>66</sup> "*major street plan*": The planning commission is empowered to exercise its control of subdivisions only after it shall have developed at least a major street plan of the territory to be controlled. Until that phase of its plan has been reached, platting should continue under the existing form of control or lack of control, for the imposition of requirements which might turn out to have little or no relation to the ultimate principles of control would be unfair to the subdivider's plan. This limitation, of course, does not involve the necessity of the commission having completed all the other features of the comprehensive plan, but merely that a main thoroughfare plan shall have been adopted.

<sup>67</sup> "*filed or recorded*": In each State using this act it would be well to mention here the office at which the plat is required to be recorded. The word "filed" or the word "recorded," or both, should be used, according to the individual practice of the different States.

<sup>68</sup> "*Before exercising the powers*": Before acquiring jurisdiction over plats the planning commission is required to adopt general regulations laying down the principles and rules governing the subdivision of land within its jurisdiction. Any other arrangement would be unfair to subdividers and might easily give rise to arbitrary or capricious regulation.

<sup>69</sup> "*regulations*": Platting control, like all other control of private property or conduct, should be applied according to general rules and regulations, so as to thereby reduce the field of arbitrary discretion on the part of the planning commissions, so far as this is practicable to do by means of general rules and regulations. These general rules and regulations should be prepared, discussed, adopted, and promulgated like other laws or ordinances governing private conduct, so that the subdivider, in the preparation of his surveys and plats, may have a general indication of the standards to which he is expected to conform. Such platting regulations have been adopted by many planning commissions throughout the country, and models and precedents are available.



jurisdiction. Such regulations may provide for the proper arrangement of streets<sup>70</sup> in relation to other existing or planned streets and to the master plan, for adequate and convenient open spaces for traffic, utilities, access of fire-fighting apparatus, recreation, light and air, and for the avoidance of congestion of population, including minimum width and area of lots.<sup>71</sup>

Such regulations may include provisions as to the extent to which streets and other ways shall be graded and improved and to which water and sewer and other utility mains, piping, or other facilities shall be installed as a condition precedent to the approval of the plat.<sup>72</sup> The regulations or practice of the commission may provide

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<sup>70</sup> "*arrangement of streets*": To insure that streets or rights of way, whether dedicated as public streets or not, shall fit into each other and the ultimate street plan of the city and coordinate with that plan is one of the primary purposes of giving control of land subdivision to planning commissions. The regulations which the commission is empowered to adopt with regard to platting should be primarily concerned with this end. The commission should, however, not be limited to this purpose of street coordination and should be empowered to take into account the supply of adequate open spaces for traffic, for utilities, for access of fire-fighting apparatus, for recreation, for light and air, for healthful population density, and for other public benefits.

<sup>71</sup> "*width and area of lots*": One of the fundamental purposes of platting regulations, in addition to insuring a proper street plan, is also to insure that property shall not be subdivided into narrow lots which will bring in their train a host of evils, notably congestion of population, as well as an unsatisfactory type of housing development. Most platting regulations in force in the different States, therefore, include provisions as to the width, area, and arrangement of building lots, generally setting a minimum width below which lots can not be plotted.

Planning commissions should have the power to cooperate and agree with the subdivider upon restrictions as to height, area, and even use of buildings, so long as these do not authorize violation of the zoning ordinance. In other words, the planning commission and the subdivider may cooperate to bring about development of the territory of the subdivision in accordance with high standards of health and convenience. The commission is peculiarly well fitted for this, because it is, in most places, the maker of the original zone plan and passes upon all changes in that plan and, consequently, is well qualified to mutually adjust the standards of subdivisions and the general standards of the zone plan. These building restrictions, however, are so unmistakably legislative in their nature and so integrally related to the zoning ordinance that the planning commission should not have the power to impose those building restrictions upon the subdivider.

<sup>72</sup> "*plat*": Properly speaking, this is not a planning matter, as it is not a matter of location and extent, but rather a matter of construction. Both to protect persons who buy the lots and to assure that the materials and locations of the improvements and utilities will conform to the proper standards, as well as to protect the city from the incurring of costs which should be borne by the original subdivider, this time of the approval of the plat is the best one at which to require these features. This includes not only the paving, but also such items as sidewalks, curbs, gutters, and service connections to various utility mains placed in the streets.

for a tentative approval<sup>73</sup> of the plat previous to such installation; but any such tentative approval shall be revocable and shall not be entered on the plat. In lieu of the completion of such improvements and utilities prior to the final approval of the plat, the commission may accept a bond<sup>74</sup> with surety to secure to the municipality the actual construction and installation of such improvements or utilities at a time and according to specifications fixed by or in accordance with the regulations of the commission.<sup>75</sup> The municipality is hereby granted the power to enforce such bond by all appropriate legal and equitable remedies.

All such regulations shall be published as provided by law for the publication of ordinances, and, before adoption, a public hearing shall be held thereon. A copy thereof shall be certified by the commission to the recorders of the counties in which the municipality and territory are located.

SEC. 15. PROCEDURE,<sup>76</sup> LEGAL EFFECT OF APPROVAL OF PLAT.—The planning commission shall approve or disapprove a plat within 30

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<sup>73</sup> *tentative approval*": It is manifestly fair to the subdivider that before he be put to the expense of paving, installing utilities, or other work connected with the development, he receive a reasonable degree of assurance that the plan of the subdivision will meet with the approval of the planning commission and that it will ultimately receive official approval. This is accomplished by the practice of a tentative approval, which tentative approval, in all but the most exceptional cases, will be later followed by the formal and final approval.

<sup>74</sup> *"may accept a bond"*: In most cases the subdivider will desire to proceed with the sale of some of the lots before carrying out the paving and other improvements throughout the whole subdivision, and if the plan of the whole subdivision is one which meets with the approval of the commission, there is no reason why the subdivider should be required to build all the streets and utilities throughout the subdivision, provided he secure to the city that the improvements will be carried out at the appropriate time.

<sup>75</sup> *"commission"*: Possibly the director of public works, city manager, or other administrative official in charge of street and utility work would be more appropriate officials than the planning commission for determining the time within which and the specifications according to which the improvements or utilities should be constructed. For the sake of simplicity, this power has, in the text of the act, been left with the planning commission, but those States which prefer to place these determinations within the jurisdiction of one of the administrative departments can easily vary the text in this particular.

<sup>76</sup> *Court review*: In some statutes provision is expressly made for court review of the action of the planning commission on plats. There is a difference of opinion as to the necessity or advisability of such provision. The right of court review to test the legality and genuineness of the action of the planning commission always exists without express statutory provisions therefor. The only type of appeal to a court for which express provisions would be required would not be a review of the legality of the planning commission's disapproval of the plat, but rather a complete rehearing and redetermination by a court of the same administrative questions as were before the commission. In other words, a court review provision would be necessary only if the problem to be placed before the court be not one of law but be whether or not the plat should be approved

days<sup>77</sup> after the submission thereof to it; otherwise such plat shall be deemed to have been approved, and a certificate to that effect shall be issued by the commission on demand: *Provided, however, That* the applicant for the commission's approval may waive this requirement and consent to an extension of such period. The ground of disapproval<sup>78</sup> of any plat shall be stated upon the records of the

as a matter of good city planning and platting. The courts, with less experience or technical knowledge in this field, are, as a rule, not qualified for as intelligent a decision on such administrative problems as are the planning commissions themselves. It seems a mistake to have administrative problems decided by tribunals less qualified to pass on these questions than the administrative board from whom the appeal is made. If court review be desired, the following draft of a section, to be modified to suit local practice, may be useful:

*Section 15A.—Court review:* Any person aggrieved by any decision of the planning board concerning a plat or subdivision may present to a court of record a petition, duly verified, setting forth that such decision is illegal in whole or in part, specifying the grounds of the illegality. Such petition shall be presented to the court within 30 days after the filing of the decision in the office of the commission. Upon the presentation of such petition the court may allow certiorari order directed to the planning commission to review such decision and shall prescribe therein the time within which return thereto shall be made and served upon the petitioner's attorney, which shall not be less than 10 days and may be extended by the court. The allowance of the order shall stay proceedings upon the decision appealed from. The planning commission shall not be required to return the original papers acted upon by it, but it shall be sufficient to return certified or sworn copies thereof, or of such portions thereof as may be called for by such order. The return shall concisely set forth such other facts as may be pertinent and material to show the grounds of the decision appealed from and shall be verified. If, upon the hearing, it shall appear to the court that testimony is necessary for the proper disposition of the matter, it may take evidence or appoint a referee to take such evidence as it may direct and report the same to the court with his findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which the determination of the court shall be made. The court may reverse or affirm, wholly or partly, or may modify the decision brought up for review. Costs shall not be allowed against the municipality, unless it shall appear to the court that the planning commission acted with gross negligence or in bad faith or with malice in making the decision appealed from.

<sup>77</sup> "*within 30 days*": In all fairness the subdivider should not be subjected to unreasonable delay, and, consequently, this time limit is imposed upon the planning commission. Naturally, the planning commission will have to gather considerable information upon which to base its decision and in most cases will desire to consult with the city engineer and other city departments. In actual practice there will usually be back-and-forth discussions and negotiations between the subdivider and the planning commission, and this 30-day requirement will be waived by mutual consent where longer time is found necessary to reach an agreement.

<sup>78</sup> "*disapproval*": The object of this requirement is to compel, so far as practicable, the planning commission's control over subdivisions to be exercised in accordance with general standards and principles and thus reduce the dangers of arbitrary action. The requirement that the ground of disapproval be expressed on the records of the commission has the further advantage that in case of a contest in court there will be official record of the reasons for and the justifications for the commission's decision.



commission. Any plat submitted to the commission shall contain the name and address of a person to whom notice <sup>79</sup> of a hearing shall be sent; and no plat shall be acted on by the commission without affording a hearing thereon. Notice shall be sent to the said address by registered mail of the time and place of such hearing not less than five days before the date fixed therefor. Similar notice shall be mailed to the owners of land immediately adjoining <sup>80</sup> the platted land, as their names appear upon the plats in the county auditor's office and their addresses appear in the directory of the municipality or on the tax records of the municipality or county. Every plat approved by the commission shall, by virtue of such approval, be deemed to be an amendment of or an addition to or a detail of the municipal plan and a part thereof. Approval of a plat shall not be deemed to constitute or effect an acceptance by the public of any street or other open space shown upon the plat. The planning commission may, from time to time, recommend to council amendments of the zoning ordinance or map or additions thereto to conform to the commission's recommendations for the zoning regulation of the territory comprised within approved subdivisions.<sup>81</sup> The commission shall have the power to agree with the applicant upon use, height, area or bulk requirements<sup>82</sup> or restrictions governing buildings and premises within the subdivision, provided such requirements or restrictions do not authorize the violation of the then effective zoning

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<sup>79</sup> "notice": In order to satisfy the requirement of due process of law, it is important that the subdivider should have proper notice of the action by the commission.

<sup>80</sup> "owner of land adjoining": Obviously, owners of adjoining land have an interest in the layout of the subdivision, and it is, therefore, good practice to send them this notice required by the text of the act. Such notice, however, is not required by any principles of constitutional law; and if this provision for notifying of adjoining landowners be deemed too difficult or productive of unnecessary delay or trouble, the same may be omitted without any danger of impairing the legality of the procedure.

<sup>81</sup> "subdivisions": As stated in a previous note, the power to make zoning regulations should be reposed exclusively in council. However, in the course of its work of passing upon subdivisions the commission will frequently see the need of changes in the zoning regulations or changes in the zoning map. This sentence is inserted in the act for the purpose of pointing out to the commission its duty to bring the advisability of such changes to the attention of the council.

<sup>82</sup> "use, height, area or bulk requirements": As has been pointed out in a previous note, while the commission should not have the power to impose height, area, bulk, and use restrictions, cases will arise in which, in the course of the negotiations between the subdivider and the commission, the subdivider will himself offer to impose certain building restrictions, and the commission's final approval of the plat will be based upon the assurance that such restrictions will be placed upon the land and carried out. This portion of the text of the act enables such agreements to be carried out by giving the agreed restrictions the force of law.

ordinance of the municipality. Such requirements or restrictions shall be stated upon the plat prior to the approval and recording thereof and shall have the same force of law and be enforceable in the same manner and with the same sanctions and penalties and subject to the same power of amendment or repeal as though set out as a part of the zoning ordinance or map of the municipality.

SEC. 16. PENALTIES FOR TRANSFERRING LOTS IN UNAPPROVED SUBDIVISIONS.—Whoever, being the owner or agent of the owner of any land located within a subdivision, transfers or sells<sup>83</sup> or agrees to sell or negotiates to sell any land by reference to or exhibition of or by other use of a plat<sup>84</sup> of a subdivision, before such plat has been approved by the planning commission and recorded or filed in the office of the appropriate county recorder, shall forfeit and pay a penalty of \$100 for each lot or parcel so transferred or sold or agreed or negotiated to be sold; and the description of such lot or parcel by metes and bounds<sup>85</sup> in the instrument of transfer or other document used in the process of selling or transferring shall not exempt the transaction from such penalties or from the remedies herein provided. The municipal corporation may enjoin such transfer or sale or agreement by action for injunction brought in any court of equity jurisdiction or may recover the said penalty by a civil action<sup>86</sup> in any court of competent jurisdiction.

SEC. 17. COUNTY RECORDER'S DUTIES.—A county recorder<sup>87</sup> who files or records a plat of a subdivision without the approval of the planning commission as required by law shall be deemed guilty of a misdemeanor and shall be fined not less than \$100 nor more than \$500.

SEC. 18. IMPROVEMENTS IN UNAPPROVED STREETS.—The municipality shall not accept, lay out, open, improve, grade, pave, curb,

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<sup>83</sup> "*sells*": The act does not invalidate or attempt to invalidate the sale itself. This is by virtue of certain legal considerations, and especially on account of the practical consideration of the inadvisability of affecting titles or creating uncertainties as to title.

<sup>84</sup> "*of a plat*": This section is limited to those transfers or sales of land in connection with which a plat or diagram of some kind is used. In the absence of such a penalty irresponsible dealers are apt to use an unapproved or disapproved plat for facilitating sales by metes and bounds in a manner calculated to deceive innocent purchasers, and to create de facto subdivisions and streets that are serious misfits in the city plan and bring needless expense and complications upon the municipality.

<sup>85</sup> "*by metes and bounds*": An effort is sometimes made by subdividers to evade those requirements by describing the property by metes and bounds. Therefore, this provision.

<sup>86</sup> "*action*": The punishment for violation of this provision is a civil penalty of \$100 for each offense, to be sued for and recovered in a civil action.

<sup>87</sup> "*county recorder*": The title of this public official will vary in different States, but the term here used is sufficiently descriptive to be understood.

or light any street, or lay or authorize<sup>88</sup> water mains or sewers or connections to be laid in any street, within any portion of territory for which the planning commission shall have adopted<sup>89</sup> a major street plan, unless such street (a) shall have been accepted or opened as or shall otherwise have received the legal status of a public street prior to the adoption of such plan, or unless such street (b) corresponds with a street shown on the official master plan or with a street on a subdivision plat approved by the planning commission or with a street on a street plat<sup>90</sup> made by and adopted by the commission. Council may, however, accept any street not shown on or not corresponding with a street on the official master plan or on an approved subdivision plat or an approved street plat, provided the ordinance or other measure accepting such street be first submitted to the municipal planning commission for its approval and, if approved by the commission, be enacted or passed by not less than a majority of the entire membership of council or, if disapproved by the commission, be enacted or passed by not less than two-thirds of the entire membership of council. A street approved by the planning commission upon submission by council, or a street accepted by a two-thirds vote after disapproval by the planning commission, shall thereupon have the status of an approved street as fully as though it had been originally shown on the official master plan or on a subdivision plat approved by the commission or had been originally platted by the commission.<sup>91</sup>

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<sup>88</sup> "*authorize*": As the promoter of the subdivision usually or often needs a permit of some kind from the city before he can carry out his project, this prohibition will indirectly force him to submit his plat to the planning commission; which is, of course, the main object that this section of the act has in mind.

<sup>89</sup> "*adopted a major street plan*": For reasons which have been stated in note 66, there can not be any reasonable and intelligent control of subdivisions until the commission shall have made and adopted at least a major street plan of the territory in which the subdivision lies. Consequently, all sanctions behind this control, such as those provided in section 18, should not go into effect until the city planning commission's accomplishments have reached at least this stage of a major street plan.

<sup>90</sup> "*street plat*": The term "street plat" refers to the type of plat made by the commission and approved by a council provided for in section 21.

<sup>91</sup> "*commission*": This final and ultimate power granted to council to accept a street by a two-thirds vote, even in the face of the disapproval of the planning commission, is in line with and consistent with analogous provisions in other parts of the statute, such as the provision in section 9 which permits council to overrule the planning commission on questions of the location of public buildings, works, and utilities. The theory of this has been discussed at some length in note 47. Council should be required, on all problems which relate themselves to planning, to submit the proposal to the planning commission; but, consistently with fundamental principles of democracy, the ultimate and final power of decision should rest with council. The requirement of a vote greater than an ordinary majority is fully consistent with these principles, as is evidenced by



SEC. 19. ERECTION OF BUILDINGS.—From and after the time when a planning commission shall have adopted a major street plan of the territory within its subdivision jurisdiction or part thereof, no building shall be erected <sup>92</sup> on any lot within such territory or part, nor shall a building permit be issued therefor unless the street giving access to the lot upon which such building is proposed to be placed (a) shall have been accepted or opened as or shall otherwise have received the legal status of a public street prior to that time, or unless such street (b) corresponds with a street shown on the official master plan or with a street on a subdivision plat approved by the planning commission or with a street on a street plat <sup>93</sup> made by and adopted by the commission or with a street accepted by council, after submission to the planning commission, by the favorable vote required in section 18 of this act. Any building erected in violation of this section shall be deemed an unlawful structure, and the building inspector or other appropriate official <sup>94</sup> may cause it to be vacated and have it removed.

SEC. 20. STATUS OF EXISTING PLATTING STATUTES.<sup>95</sup>—From and after the time when a planning commission shall have control over

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similar requirements in the case of a veto by the mayor or the chief executive or similar requirements governing the issuance of bonds.

A practical effect of the provisions of section 18 is to abolish the common law or implied acceptance of future streets. Any State which has on its statute books express provisions inconsistent with these provisions of section 18 should incorporate in the act an express repeal of such inconsistent provisions.

<sup>92</sup> "*shall be erected*": This prohibition of buildings on unapproved streets may seem drastic, but experience has shown the necessity for such provision. The city plan can not be protected in its integrity unless the control of subdivisions be substantially complete and effective. There is both danger to the city plan and an unfairness to those subdividers who do submit their plats if other subdividers succeed in escaping from this supervision. Every reasonable method of forcing all subdivisions to be submitted to the commission should be taken. There is nothing unreasonable about this requirement. If neither the approval of the planning commission nor of two-thirds of council be obtainable, that certainly indicates that there is something wrong about the proposed street location.

There might be difficulty in enforcing this section in municipalities which do not have any system of building permits. Where there is provision in the statute or ordinance for appeals from refusals of building permits, such provision should apply to cases arising under this section.

<sup>93</sup> See footnote 90, p. 32.

<sup>94</sup> "*official*": Instead of relying upon a blanket phrase, such as "other appropriate official," it would be well for each State to designate by official title such official, or officials, as is or are appropriate to this function.

<sup>95</sup> "*Status of existing platting statutes*": Many States, at the time of enacting a general city planning act, may have on the statute books provisions for control of plats. The intention of this section is that, from the time that the planning commission puts itself in position to become the platting authority, the entire platting control should be transferred to that commission, and any existing statutory provisions which would stand in the way of such a transfer should be repealed. Up to that time, however, the existing platting statutes would remain in force and effect.

subdivisions as provided in section 13 of this act, the jurisdiction of the planning commission over plats shall be exclusive within the territory under its jurisdiction, and all statutory control over plats or subdivisions of land granted by other statutes shall in so far as in harmony with the provisions of this act be deemed transferred to the planning commission of such municipality, and, in so far as inconsistent with the provisions of this act, are hereby repealed.

### TITLE III.—BUILDINGS IN MAPPED STREETS <sup>96</sup>

SEC. 21. RESERVATION OF LOCATIONS OF MAPPED STREETS FOR FUTURE PUBLIC ACQUISITION.—Any municipal planning commission

<sup>96</sup> "*Buildings in mapped streets*": The master plan will indicate the general location of arterial and major highways, furnishing reasonable guidance, both for future highway development and for other types of developments of the territory covered by the plan. As a next succeeding step in the carrying out of the plan, the actual specific locating of the lines of the streets will become necessary. Consequently, in the process of carrying out the street and highway system part of the plan, it will become necessary to plat the streets, both major and to some extent minor, in the various portions of the territory. This involves surveys and the definite locating of the lines of the streets. This process applies to the widening of existing streets as well as to the locating of new streets. This definite platting of the future streets and street widenings by the municipality is an important intermediate step between the making of the master plan, on the one hand, and the establishment, opening, and improving of the streets, on the other.

As it is desirable, from the point of view of the protection of the integrity of the plan, that both private subdivisions and the distribution of residences, business, industry, and other physical developments shall be adjusted to and not dislocate the plan, the consequence is that the platting of the streets should precede by many years the actual opening of the streets and actual laying out of the streets on the ground. During those years the strips of land platted as the location of the future streets and street widenings remain private property, and if built upon, then when the city actually comes to the stage of taking the land for the streets, the municipality would have to pay for buildings which may be built on the locations of the platted streets during these intervening years. The cost of opening the streets, therefore, might well become and usually does become prohibitive, with the result that, rather than pay these excessive costs, the municipality feels compelled to permit its plan to be dislocated and impaired.

One of the most pressing legislative problems in city planning, therefore, the problem which along with regional planning is the most pressing of the still unsolved problems of legislation, is that of devising methods whereby the platted or mapped streets may be kept free of buildings.

There may be said to be two schools of thought on this subject. One of these advocates that the problem be solved by means of the exercise of the power of eminent domain. By this is meant that the municipality, at the time it maps or plats the street, shall take, by the exercise of the power of eminent domain, the right to keep the location of the mapped street free of buildings for a specified period.

While general eminent domain statutes may, in some States, be interpreted to include such reservations, and some States have enacted building line statutes under eminent domain power, still no State has, as yet, developed comprehensive legislation specifically dealing with this reservation of mapped streets by eminent domain. Philip Nichols, of Boston, a leading American authority on the law of

is empowered, after <sup>97</sup> it shall have adopted a major street plan of the territory within its subdivision jurisdiction <sup>98</sup> or of any major section or district thereof, to make or cause to be made, from time to time, surveys for the exact location of the lines of a street or streets in any portion of such territory and to make a plat of the area or district thus surveyed, showing the land which it recommends be reserved for future acquisition <sup>99</sup> for public streets. The com-

eminent domain, has drafted a statute on the subject for introduction in the Massachusetts Legislature, with the consequence that this eminent-domain method has come to be spoken of in the city planning world as the "Massachusetts plan."

The police-power method proposes to prevent or reduce the building on mapped streets by the prohibition or regulation of such development. It does not involve the payment of compensation by the public to the property owners through appropriation proceedings. This method is embodied in certain statutes recently enacted in the Legislature of New York and has come, in the city planning world, to be called the New York method.

An excellent discussion of the New York method will be found in a paper entitled "The Preservation of the Integrity of the City Plan," by Edward M. Bassett and Frank B. Williams, in the *National Municipal Review*, March, 1925. The text of the New York laws and a brief discussion are given in a pamphlet entitled "Recent New York Legislation for the Planning of Unbuilt Areas," by Edward M. Bassett, published by Regional Plan of New York and its Environs. The Massachusetts method has been admirably presented in a pamphlet, "Protecting the City Plan—The Next Steps," by Philip Nichols, Bulletin No. 16, Massachusetts Federation of Planning Boards, November, 1924.

The eminent-domain method has been adopted in the text. Experience has not yet furnished an adequate test as to which method will prove the more practicable and effective in practice. Footnote 122, p. 42, contains a model for use in drafting a statute on the basis of the police-power method.

<sup>97</sup> "after": Street planning is not the whole of city planning, just as the planning of the halls and stairways of a house would not constitute the whole planning of the house. The sooner the comprehensive plan is made the more intelligently will the planning commission be enabled to solve the problems that arise; but in actual practice the making of the comprehensive plan is often delayed, and, in the meantime, the municipality may desire to commence the control of buildings in mapped streets. As a very minimum condition precedent to the exercise of this control, a major street plan should be completed.

<sup>98</sup> "within its subdivision jurisdiction": The city is likely to grow so that in the future its territory will include areas which, at the time of the platting of the streets, are still outside the city limits. Even if the city limits be not changed, the street plan of the territory immediately outside the city limits needs the same protection as the street plan within the city limits. Ultimately, perhaps, this jurisdiction over the outside areas will come to be in regional governmental organs, but the control of the mapped streets should not be postponed. The territory covered by the platting jurisdiction is the logical territory for this control of buildings in mapped streets.

<sup>99</sup> "reserved for future acquisition": The reservation is not the actual taking of any land for use as streets; and, as appears later in the text of the act, after the reservation is acquired and during the whole period of the reservation the owner has the same freedom to use his land as before, even including the freedom to erect buildings. The whole effect of the reservation is that the city will not have to pay for buildings erected during the period of the reservation; and it is this right to be free from this payment for which the community compensates the owner of the land.



mission, before adopting any such plat, shall hold a public hearing<sup>100</sup> thereon, notice of the time and place of which, with a general description of the district or area covered by the plat, shall be given not less than 10 days previous to the time fixed therefor by one publication in a newspaper of general circulation in the municipality if the district or area be within the municipality, or of general circulation in the county if the district or area be outside of the municipality. After such a hearing the commission may transmit the plat, as originally made or modified as may be determined by the commission, to council, together with the commission's estimate of the time<sup>101</sup> or times within which the lands shown on the plat as street locations should be acquired by the municipality. Thereupon by resolution, council may approve and adopt or may reject<sup>102</sup> such plat or may modify it with the approval of the planning commission, or, in the event of the planning commission's disapproval, council may, by a favorable vote of not less than two-thirds<sup>103</sup> of its entire membership, modify such plat and adopt the modified plat. In the resolution of adoption of a plat council shall fix the period of time for which the street locations shown upon the plat shall be deemed reserved for future taking or acquisition for public use. Upon such adoption the clerk of council shall transmit one attested copy of the plat to the county recorder of each county in which the platted land is located and retain one copy for the purpose of public examination and hearings of claims for compensation. Such approval and adoption of a plat shall not, however, be deemed the opening

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<sup>100</sup> "*public hearing*": The procedure is quite simple. The commission makes its recommendations after holding public hearings, so as to give all persons who have an interest in the property in question, as well as citizens generally, an opportunity to be heard and to present their views. It then transmits its recommendations to the council, showing the lines of the proposed streets and also the time within which such acquisition should be made.

<sup>101</sup> "*of the time*": This time element is, of course, of great importance in that it is an influential factor in determining the compensation to be paid the owner of the land. It is also an official estimate, at the least, of the time within which the street will be built and, consequently, this time element can be taken into account in the whole development of the community, both by the public and by the owners of private property.

<sup>102</sup> "*council may adopt or reject*": As the action of the city involves the taking of private rights for public use and the expenditure of public funds, it falls typically and appropriately within the province of the legislative organ of the government. Therefore, the act provides that council may either approve the recommendations or may reject them finally or may modify them.

<sup>103</sup> "*two-thirds*": If council does not approve the plat and desires to modify it, the scheme should go back to the planning commission to consider council's modifications. In the event of disagreement between the two bodies, not less than two-thirds of council's entire membership is required for overruling the opinion of the commission. This is consistent with analogous provisions in other parts of the act.

or establishment of any street,<sup>104</sup> nor the taking of any land for street purposes, nor for public use, nor as a public improvement, but solely as a reservation of the street locations shown thereon, for the period specified in the council resolution, for future taking or acquisition for public use. The commission may, at any time, negotiate for or secure from the owner or owners of any such lands releases of claims for damages or compensation for such reservations or agreements indemnifying the municipality from such claims by others, which releases or agreements shall be binding upon the owner or owners executing the same and their successors in title.<sup>105</sup> At any time after the filing of a plat with the county recorder, and during the period specified for the reservation, the planning commission and the owner of any land containing a reserved street location may agree upon a modification<sup>106</sup> of the location of the lines of the proposed street, such agreement to include a release by said owner of any claim for compensation or damages by reason of such modification; and thereupon the commission may make a plat corresponding to the said modification and transmit same to council; and if such modified plat be approved by council, the clerk of council shall transmit an attested copy thereof to the said county recorder or recorders, and said modified plat shall take the place of the original plat. At any time council may, by resolution, abandon<sup>107</sup> any reservation

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<sup>104</sup> "*establishment of any street*": It can not be made too plain that the mere declaration and reservation of the location of a future street through certain property does not in any sense constitute the opening or establishment of the street or the taking of land for street purposes. The actual opening and improvement of the street may or may not be carried out; and the city requires only a reservation of the land necessary to carry out the street plan as long as it remains on the official street plan.

<sup>105</sup> "*title*": Very often, for the advantage of having a future street located through their property, the owners will be glad to give the reservations without compensation or for a nominal compensation. After the proceedings have arrived at an advanced stage, the obtaining of these reservations for little or no cost tends to become increasingly difficult. There should, therefore, be reposed in some officials the power to institute negotiations at an early stage; and, as the planning commission locates the proposed streets in the first instance, it is the appropriate body in which to repose this power.

<sup>106</sup> "*modification*": During the period of the reservation and before the building of the street is decided upon developments may occur in the light of which the planning commission may desire to make some change in the proposed street location. If the property owners involved will not voluntarily agree to the change, then, to carry out the change, the old reservation will have to be abandoned and proceedings for a new reservation instituted and carried through. Often, however, the change is one desired by the property owners for their own benefit, and the section gives council and the planning commission authority to agree to such a change.

<sup>107</sup> "*abandon*": The power to abandon at any time is of importance. Where extravagant claims are filed, the mere announcement of the abandonment of the plat should serve as a means of causing such claims to be withdrawn or scaled down to a reasonable basis.

and shall certify any such abandonment to the said county recorder or recorders.

SEC. 22. COMPENSATION FOR SUCH RESERVATIONS.—In the resolution of adoption of a plat council shall appoint a board of three appraisers<sup>108</sup> and shall fix the time and place of meetings for hearings by said board upon the amounts of compensation to be paid for such reservations. Thereupon the clerk of council shall publish in at least two newspapers of general circulation in the municipality once a week for four consecutive weeks a notice<sup>109</sup> which shall contain a general description of the land thus reserved, as shown on the plat, the provisions of the resolution of council including the period of time for which such reservations are made, the time within which claims for compensation may be filed, which shall be not less than three months nor more than six months<sup>110</sup> from the date of the notice, and the time and place of hearings by the board of appraisers. The first hearing shall not be set earlier than 30 days after the date of the first of such publications. Such notice shall also be posted in at

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<sup>108</sup> "*appraisers*": The constitutions of the various States differ as to the type of tribunal which finally fixes the compensation for property taken for public use, as, for instance, in some States a court with a jury and in others a court without a jury and in others appointive boards. Whatever the nature of this tribunal specified in the constitution of a State, the preliminary appraisalment provided for in the text of the act may be made by a board especially appointed for the purposes as provided in the act. There may be States, however, which have existing boards of viewers or appraisers to whom this function may be committed.

Where the owners of the land are satisfied with the amount thus fixed, the matter is ended. Where, however, the owner is dissatisfied, he then has, under the provisions of section 24, the right to appeal to a court which thereupon fixes the amount of compensation to be paid to the appellant, following the procedure which prevails in that State in connection with the taking of property for public use for streets. Appraisals by a special board of appraisers, with right of appeal to the constitutional tribunal, complies with the constitutional requirements. This method of appointing appraisers is in no sense novel. It is quite customary in many States to appoint viewers and appraisers of property that is to be acquired and for which compensation is to be paid. The constitutionality of the method of fixing compensation incorporated into the act, namely, appraisalment by a board of appraisers, with the right of appeal to a court and trial in that court in accordance with the constitutional system, is recognized by all the leading authorities. (See *Reckner v. Warner*, 22 Ohio State, 275; *People ex rel. Eckerson v. Trustees of Haverstraw*, 80 Hun. 385, and *Tharp v. Witham*, 65 Iowa 566. See also 2 Lewis on Eminent Domain, 3d edition, p. 926, sec. 510, and 2 Nichols on Eminent Domain, 2d edition, p. 943, sec. 340, and cases cited.)

<sup>109</sup> "*publish a notice*": This system of notice by publication is probably constitutional in every State. It has been upheld by the Supreme Court of the United States in case of *North Laramie Land Co. v. Hoffman*, 268 U. S. 276, 45 Sup. Ct. Rep. 491.

<sup>110</sup> "*six months*": Owners should be given a reasonable time within which to file their claims. Three to six months would seem a sufficient time for this purpose.



least three public places in the neighborhood of or along the line of the location of the reservation.

The board of appraisers shall fix the amounts of compensation to be paid, respectively, to the owners <sup>111</sup> of lands reserved for the period of time as shown on the plat and in the resolution adopted by council. Whenever the clerk of council receives, within the period fixed for the same, any claim for such compensation, he shall transmit it to the board of appraisers. At the time and place fixed for such hearings the board of appraisers shall hear and consider all claims presented to it in writing or in person, including all evidence which may be presented by the claimants or other persons. The board of appraisers shall have the right on its own initiative <sup>112</sup> to investigate and ascertain data or evidence relevant to the question of such compensation. In case of the abandonment of a reservation prior to the time fixed for payment of compensation, the municipality shall be liable to the owner of the land included within the abandoned reservation for the expenses, <sup>113</sup> if any, incurred by such owner by reason of such reservation.

SEC. 23. REPORT OF APPRAISERS AND COUNCIL'S ACTION.<sup>114</sup>—The board of appraisers shall, within 90 days after the time fixed for the filing of claims, file its tentative report with the clerk of council, setting forth its findings as to the amounts of compensation to be

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<sup>111</sup> "owners": It will be noticed that the text of the act provides for compensation to every owner of land within the reserved street location, whether he file a claim for compensation or not. This would satisfy the most extreme constitutional requirements and goes beyond what may be required by the constitutional law of many of the States. In many of the States it would probably be held constitutional if the payment of compensation be limited to those owners who file claims. As this more lenient requirement would make the reservations less costly to the city, the text should be modified in this respect in all States in which the text of the constitution or the existing judicial decisions indicate that the statute would be upheld if it provides for compensation for all who file claims.

<sup>112</sup> "on its own initiative": As the board is a board of appraisers and not a judicial tribunal, it should not be limited to evidence brought before it in a formal manner but should be free to obtain data bearing on the valuation wherever it can find same. The property owner has the right of appeal to a judicial tribunal where the evidence would be limited by formal rules of law. Furthermore, under the act the board is required to make findings in the cases in which no claim is made, and, of course, in such cases the only data the board will have will be those it obtains upon its own initiative.

<sup>113</sup> "for the expenses": It is obvious that where a reservation has been abandoned prior to the time fixed for payment of compensation, the owner who has been put to expense in the matter, lawyer's fees or otherwise, should be reimbursed to the extent of his reasonable costs.

<sup>114</sup> "Report of appraisers and council's action": The procedure specified in the text of the act furnishes ample opportunity for presentations of claims, hearings upon claims, and all the other requirements of due process.

paid the respective owners of the lands included within the lines of such reservations as located on the approved plat. Thereupon the clerk of council shall publish once a week for two consecutive weeks in at least two newspapers of general circulation in the municipality the fact of the filing of the report of the appraisers and specify a period of 30 days from and after the date of the first such publication within which objections to the report may be filed with the clerk of council. If objections be filed within said period, then the clerk of council shall cause the board of appraisers to hold a meeting, at which said objections shall be transmitted to the board, and the board may modify its report. The report in its original form or, if modified, in its modified form, shall be transmitted to council by its clerk. Before passing on the report, council may return it to the board of appraisers for reconsideration, and the board may upon further consideration transmit its former or a modified report to council. Council may approve or disapprove the report. If the report be approved by council, council shall provide for the payment of the amounts of compensation set forth in the report within 90 days after the filing of the report with council. In the case of those property owners who file claims payment shall be made through the clerk of council, who shall notify the claimants at the addresses given upon the claims filed with him. Payments to all other persons shall be made through the clerk of the court of common pleas<sup>115</sup> of the county in which the reserved location is situated, by the payment to said clerk of the amounts awarded to such persons; notice of distribution to such persons to be given and made as may be provided by a rule or order of said court. Payments made as aforesaid to the clerk of council or clerk of said court within said 90 days shall be deemed compliance with the above requirement for payment within 90 days. If council disapprove<sup>116</sup> the report or fail to provide for such payment within said 90 days, such disapproval or failure shall be deemed a dismissal of the proceedings and a cancellation of the plat and an abandonment of the reservations of the street locations as shown on the plat, with the same liability of the municipality for expenses as above provided in the case of abandonment by resolution; and thereupon the clerk of council shall cause to be transmitted to the recorder of the county an attested statement of such abandonment.

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<sup>115</sup> "*court of common pleas*": Each State should at this point use the official name of the court to which it desires to give this jurisdiction.

<sup>116</sup> "*If council disapprove*": If council disapprove the recommendations of the appraisers for the award of compensation, or, even though council may have approved it, if there be failure to provide for the payment of such awards within a period of 90 days, the plat is canceled and the reservation is not made or is abandoned. In such cases the municipality is made liable to property owners for any costs which they may have incurred, but for no further liability.

SEC. 24. APPEAL <sup>117</sup> FROM COMPENSATION AWARDS.—Within 20 days after the approval of any such report by council, any person dissatisfied with the award of compensation therein contained may file with the clerk of council notice of appeal to a court <sup>118</sup> of the county in which the appellant's land is located having jurisdiction of actions by municipalities to assess compensation for property taken or appropriated for public use for streets. Thereupon, and within 10 days of such notice, the clerk of council shall file with the clerk of said court the report of the board of appraisers approved by council, together with certified copies of the resolution of council and of the notice of appeal. Within five days thereafter the appellant shall give and file with the clerk of said court an appeal bond, running to the municipality and for such amount as may be fixed by the court, to secure the municipality against the costs of the appeal case in the event that appellant fails to obtain an award of compensation greater than that fixed in the said report.<sup>119</sup> Thereupon said appeal case shall be deemed to be filed and pending as a case brought by the municipality to appropriate and assess the compensation to be paid for the reservation of the land of the appellant as shown on the approved plat for the period fixed in the resolution of council, and the procedure shall be in accordance with the procedure specified by law in proceedings for the taking or appropriation of property for public use for streets;<sup>120</sup> and the municipality shall pay the appellant the amount fixed in said case, or, in case it abandons the reservation, the amount of costs and expenses incurred by the appellant in said case.

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<sup>117</sup> "*Appeal*": This procedure furnishes each property owner with the right, by means of an appeal, to have the compensation finally fixed by that tribunal which the constitution or statutes of the State specify as the tribunal for fixing compensation for property taken for public use.

<sup>118</sup> "*court*": The text of the act uses a general formula for the designation of the court which is to have jurisdiction of these appeals, the intention being that the court be the one which has jurisdiction of condemnation cases. Each State, however, should insert, in place of this general formula, the correct official designation of the court intended; and where compensation cases are tried not by a court but by a board or commissioners, such board or commissioners should be designated at this point.

<sup>119</sup> "*report*": If, in any State, this requirement of an appeal bond be deemed unconstitutional, this sentence can be omitted without impairing the completeness or symmetry of the remainder of the act.

<sup>120</sup> "*streets*": Here, again, a general formula has been used to the effect that the procedure should be the same as provided by law for procedure in condemnation cases. In each State, however, instead of using a general formula of this nature, it would be better to insert at this point a specific reference to the specific sections of the statutes which govern and provide for this procedure.



SEC. 25. NO COMPENSATION FOR BUILDINGS <sup>121</sup> IN RESERVED STREET LOCATIONS.—The reservation of a street location, as provided in section 21 of this act, shall not be deemed to prohibit or impair in any respect the use of the reserved land by the owner or occupant thereof for any lawful purpose, including the erection of buildings thereon; but no compensation, other than the compensation awarded in the final report of said board of appraisers as approved by council as provided in section 23 of this act or, in the case of an appeal, as awarded on such appeal as provided in section 24 of this act, shall at any time be paid by the municipality or public to or recovered from the municipality or public by any person for the taking of or injury to any building or structure built or erected within the period fixed in the resolution of council upon any such reserved location.<sup>122</sup> No compensation or damages for any such

<sup>121</sup> "*No compensation for buildings*": The essence of this entire system of mapped streets is found in this section, which provides that no compensation of any kind shall be paid to or recovered by any person for the taking of a building or injury or damage to a building, or other improvements which may be built within the period fixed in the resolution of council upon the land included within the street location indicated on the official plat. This means that an owner, having had notice that in all probability a street will run within certain lines included in his property and having been paid full compensation for the damage, if any, which he may have suffered in not being able to utilize freely and safely that portion of his property by the erection of buildings of a permanent nature, can, however, erect as many buildings as he desires in the bed of the proposed street, with the knowledge that, when the time comes actually to open the street in question and make it a public street, he will receive no compensation for such buildings, though he may get a very valuable use out of them in the interim. He is perfectly free to make any use of the bed of the mapped street.

<sup>122</sup> *Reservation of mapped streets by exercise of police power*: To aid in the drafting of the statute in those States which may desire to include the police-power method, either exclusively or as an alternative to the eminent-domain method, the text of the section of the New York statute is given here. It is sec. 35 of ch. 690 of the laws of 1926 of the State of New York, entitled: "An Act to Amend the General City Law in Relation to Official Maps and Planning Boards," and reads:

"35. Permits for building in bed of mapped streets. For the purpose of preserving the integrity of such official map or plan no permit shall hereafter be issued for any building in the bed of any street or highway shown or laid out on such map or plan: *Provided, however*, That if the land within such mapped street or highway is not yielding a fair return on its value to the owner, the board of appeals or other similar board in any city which has established such a board having power to make variances or exception in zoning regulations shall have power in a specific case by the vote of a majority of its members to grant a permit for a building in such street or highway which will as little as practicable increase the cost of opening such street or highway, or tend to cause a change of such official map or plan, and such board may impose reasonable requirements as

reservation shall be paid or recovered except as provided in sections 22, 23, and 24 of this act.

a condition of granting such permit, which requirements shall inure to the benefit of the city. Before taking any action authorized in this section, the board of appeals or similar board shall give a hearing at which parties in interest and others shall have an opportunity to be heard. At least fifteen days' notice of the time and place of such hearing shall be published in an official publication of said city or in a newspaper of general circulation therein. Any such decision shall be subject to review by certiorari order issued out of a court of record in the same manner and pursuant to the same provisions as in appeals from the decisions of such board upon zoning regulations."

As the language of this New York section may be found too special to New York legislation to be followed in other States, the following has been drafted as another model for a section providing for the police-power method:

SEC. 22A. CONTROL OF BUILDING IN THE BED OF MAPPED STREETS.—From and after the recording of any street plat approved by council, as provided in section 21 of this act, no permit shall be issued for any building on any part of the land between the lines of a proposed street as thus platted: *Provided, however,* That the board of zoning appeals of the municipality in which the location of such platted street lies, or a special board of appeals which may be created for the purpose by the council of the municipality, shall have the power, upon an appeal filed with it by the owner of any such land and by a vote of a majority of its members, to grant a permit for a building in such platted street location in any case in which such board finds, upon the evidence and arguments presented to it upon such appeal: (a) That the entire property of the appellant, of which such reserved street location forms a part, can not yield a reasonable return to the owner unless such permit be granted; and (b) that, balancing the interest of the municipality in preserving the integrity of such street plat and of the municipal plan and the interest of the owner of the property in the use of his property and in the benefits of the ownership thereof, the grant of such permit is required by considerations of reasonable justice and equity. Before taking any such action the board of appeals shall give a hearing at which the parties in interest shall have an opportunity to be heard. At least fifteen (15) days' notice of the time and place of such hearing shall be given to the appellant by mail at the address specified by the appellant in his appeal petition and shall be published in a newspaper of general circulation in the municipality. In the event that the board of appeals grants a building permit in any such appeal it shall specify the exact location, ground area, height, and other details as to the extent and character of the building for which the permit is granted.

It will be noticed that the New York section contains several words, as, for instance, "bed," "official map," "highway," which, while appropriate to the terminology used in the whole New York statute, are inappropriate to the terminology of this act. Therefore, if the New York provisions be inserted by any State, care must be taken to vary the phraseology to fit into the terminology of the act, as has been done in the foregoing section 22A. Other than this matter of terminology the only substantial distinction between the New York section and the above section 22A is that of the standards or tests to be applied by the appeal board in determining whether or not to permit the erection of a building.

TITLE IV. REGIONAL PLANNING <sup>123</sup> AND PLANNING COMMISSIONS

SEC. 26. CREATION OF COMMISSION.—The planning commission of any municipality or the county commissioners of any county or any 100 citizens, by signed petition, may apply to the governor for the establishment of a region <sup>124</sup> for planning purposes and the appoint-

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<sup>123</sup> "*Regional Planning*": The actual territory of urban development seldom corresponds, in its location or extent, with the legal or political boundaries of any single municipality. Our urban communities consist usually of a large or major city with one, two, or many tributary or satellite towns, villages, and cities, with also a fringe, at least, of compactly built or rapidly building unincorporated territory; or sometimes there are groups or series of municipalities strung along a highway or railroad or waterway, none of such municipalities being the central or major one, but all of them together constituting a more or less compactly developing urban community.

The consequence is that there are few problems of development the factors of which are all located within the confines of a single municipality or the solution of which falls within the control of the government of any single municipality. Sewer systems, highway systems, transportation systems, park systems, all need to be planned from the point of view of the whole urban district, and the ultimate intelligent development will be dependent either upon the cooperative action of many municipalities or upon the creation of regional or metropolitan governmental organs.

For the reasons here outlined, there are few municipalities for which the municipal plan alone will suffice, and most American urban regions have reached or are rapidly approaching the stage at which the municipal plan needs to be conceived of as a part of or a supplement to or an introduction to the regional or metropolitan plan. Consequently, provision for regional planning forms to-day an integral part of city planning legislation. The sections on this subject have been incorporated into this act in such a way that they can be omitted by any State that does not feel itself ready to take this step; but the committee would not be frank if it did not state that it believes this step to be urgently needed in every State and to be an important part of any general planning legislation.

The usual American practice in dealing with a metropolitan or regional problem has been to create special regional or metropolitan governmental agencies independent of all other local political agencies, such political agencies going ahead with their work without having any master plan as a guide. Metropolitan park commissions, metropolitan sanitary districts, metropolitan transit commissions are illustrations. The same reasons, however, which dictate that the various departments of the municipality, street, transit, park, sewer, etc., should have a master municipal plan as a general means of coordinating and adjusting the various public works and developments, similarly dictate that, in the case of the region or metropolitan district, the logical and intelligent order of events is first the regional planning commission, second the regional plan, and then the creation of the regional and metropolitan boards for the actual execution of the regional or metropolitan public works and development.

<sup>124</sup> "*establishment of a region*": There are two generic methods by which regional planning commissions can be brought into being. Some States will prefer one, some the other. One plan, that of having the governor or some State authority determine the boundaries of a region and appoint the members of the regional planning commission, upon request of a municipality or of a given



ment of a regional planning commission for such region. The

county or of citizens, is the method which will be found adopted in the text of this act. The alternative method may be described as the "cooperative" one. This contemplates the creation of a regional planning commission on the initiative of one or more local planning commissions and the county commissioners of the counties involved, who simply get together when ready, decide on the boundaries of their own region, determine the relative share of the cost of the work to be borne by the respective municipalities and counties, and the size and method of selection of the regional planning commission. The following is a model for the text of a section providing for this cooperative method:

SEC. 26A. COOPERATIVE REGIONAL PLANNING COMMISSIONS.—The planning commissions of one or more municipalities, together with the county commissioners of the county or counties in which such municipalities are located, or of any adjoining counties, are hereby empowered to cooperate in the creation of a regional planning commission for the making of a regional plan for the region defined as may be agreed upon by said planning commissions and county commissioners. The number of members of such commission, their method of appointment, and the proportion of the costs of such regional planning to be borne, respectively, by the various municipalities and counties or parts of counties in the region, shall be such as may be agreed upon by said municipal planning commissions and county commissioners. The said county commissioners are hereby authorized to appropriate and expend their share of such costs as thus agreed upon, and the said municipal corporations are hereby authorized to appropriate from their funds to pay their respective shares of such costs as thus agreed upon. Within the amounts thus agreed upon and duly appropriated, said regional planning commission shall have authority to employ such employees or contract with such engineers and experts as it may deem necessary.

Some States might deem it desirable to include both methods in the same enabling act, as there might be different regions within the same State which could more easily be created by the one or other method. In many situations the necessary cooperation between the planning agencies of neighboring municipalities may be more easily accomplished and made more fruitful by means of a cooperative regional planning board than by means of one created and, to some extent, imposed by State authority. On the other hand, there are many urban regions containing so many separate municipalities as to make the voluntary creation of a region almost prohibitively difficult, and such regions peculiarly need regional planning. In every region of this kind there is likely to be some single planning commission or some single municipality or some group of citizens which is in advance of its neighbors in realizing the need of regional planning. In such cases there ought to be means provided by statute for the creation of a region and the appointment of a planning commission. In the one situation the cooperative method is the more appropriate; in the other, the State method. The two methods of creating a region, namely, those set forth in section 26 and in section 26A, do not conflict and are not mutually exclusive, and both sections may and in some States should be included in the act. If the cooperative method be adopted as the exclusive method, then a section corresponding to the above section 26A would become section 26 of the act in place of section 26 as now written. If both the cooperative and State methods, as alternative methods, be included, then section 26A should be added to the act as section 27 and the later sections of the act correspondingly renumbered.

governor <sup>125</sup> shall hold at least one public hearing upon any such application or petition, the time and place of which he shall officially proclaim. If the governor find that, by reason of urban growth and development not corresponding to existing municipal boundary lines or by reason of other developments or trends in the growth and distribution of population, commerce, and industry, or by reason of topographic or other conditions, two or more separate municipalities or the territory of one or more municipalities and neighboring non-municipal territory have overlapping and interrelated or common problems of such nature as not to be capable of intelligent, economical, and adequate solution by means of the separate planning of each separate political unit and require, for such solution, a general plan of the physical development of the entire area of such municipalities or territories as a whole, and that, consequently, it is to the public interest that a region be established for planning purposes, <sup>126</sup> he shall

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<sup>125</sup> "*governor*": The first problem to be decided is the locating of the power to define a region and appoint a regional planning commission. The question of attempting to achieve regional planning on the geographical basis of the county and through county planning commissions has been very carefully considered but has been rejected. A county is seldom the logical unit from the standpoint of planning. Under contemporary conditions, the county is becoming increasingly illogical as a governmental or even as an administrative unit; and the trend in political science is toward the creation of the regional or metropolitan planning, administrative, and governmental unit to deal with the important problems of areas which constitute population, commercial, industrial, or social units differing in territorial extent from either the State or the county or any one municipality.

Excluding the county as either the basis for the defining of regions or as the appointing power of regional commissions, the State would seem to be the only existing organism to which to turn and the governor of the State, as the head of its administration, would seem to be the logical public official in whom to repose the power to create the region and to appoint the commission. Naturally, in determining the boundaries of the region and the personnel of the commission, the governor would confer with representatives of all the municipalities and nonmunicipal territory to be included, and, in the end, the boundaries of the region and the personnel of the commission would reflect the views, if not always the voluntary agreement, of all political units within the region.

<sup>126</sup> "*purposes*": As an aid to the governor in passing upon the application for the establishment of a region for planning purposes and, possibly, for reasons of constitutional law, it has been deemed advisable to insert in this section some general statement of the standards or considerations to be applied by the governor in his decision. The basic factors or conditions which call for regional planning are so numerous, varied, and complex that a short statement of them for statutory purposes is difficult; and individual States may desire to extend or vary the formula used in the text. That formula, however, is sufficient to satisfy constitutional requirements and is thought to be an adequate summary of the factors or conditions which produce the need of a regional plan. It is not intended to compel the governor to appoint a regional planning commission merely because a local planning commission or a group of citizens desires it. The governor should be given the discretion in this matter. If, after holding a public

grant the application and shall define the boundaries of such region and appoint a regional planning commission. Such commission shall consist of nine <sup>127</sup> persons. Members shall be appointed for six years, except that the respective terms of seven of the members first appointed shall be one year, two years, two years, three years, four years, four years, and five years: *Provided, however,* That if at the time of his appointment, the appointee is a public officer or in the public service of the State or any of its political subdivisions, and his incumbency as such public officer or servant expires previous to the term for which he is appointed on the regional planning commission, then his term on the commission shall terminate with the expiration of his incumbency as such public officer or servant, unless it be extended by the governor, in which case such extension shall be for the remainder of the term for which he was originally appointed. The members shall serve without compensation but shall be paid their necessary expenses <sup>128</sup> incurred in the performance of their duties. They may, after a public hearing, be removed <sup>129</sup> by the governor for inefficiency, neglect of duty, or malfeasance in office, and he shall file a written statement of his reasons therefor. Vacancies shall be filled by the governor for the unexpired term. <sup>130 131</sup>

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hearing and studying the matter, he considers there is no great need for a regional plan, he should be free to withhold action. If the advocates of regional planning can not make out a case which convinces the governor, the appointment of a regional planning commission should probably be postponed until the public demand becomes stronger.

<sup>127</sup> "*nine persons*": Generally speaking, the commission should not be too small nor too large. A commission of nine persons is small enough to get things done and large enough to give proper representation to the various interests that are affected. There is no serious harm in having a commission of 11 or 13 or 15 members if such be desired. This is more the case with regional planning commissions than with local commissions, as there are more elements or territorial or political factors involved.

<sup>128</sup> "*necessary expenses*": In the case of a municipal planning commission it was thought unwise to provide for the payment of the ordinary expenses of the members, as they live within the municipality. In the case of a regional planning commission many of the members may have to travel to attend meetings and to carry on the commission's work. Under such circumstances their necessary expenses should be paid.

<sup>129</sup> "*removed*": The same provisions with regard to removal of members of the commission and the filling of vacancies that prevail with regard to municipal commissions apply here.

<sup>130</sup> See footnote 125, p. 46.

<sup>131</sup> "*governor*": It is highly advisable that there be created, as part of the State administration, a bureau whose functions would be to advise and inform the governor on matters which relate to the establishment of, defining the boundaries of, and financing of regions for planning and other regional planning matters which fall within the province of the governor, and also to gather and disseminate information useful to regional commissions. The structure of State administrations varies so much from State to State that it is difficult to frame a section



SEC. 27. ORGANIZATION OF COMMISSION.—Except as otherwise provided in this act, the provisions of this act relative to organization, rules, staff, finances, procedure, and miscellaneous powers and duties of municipal planning commissions shall, so far as applicable, apply to regional planning commissions. The amount<sup>132</sup> which a regional planning commission may expend in any year shall be such as may be determined by said regional planning commission, subject to approval by the governor, who shall fix the proportion of such expenditure to be borne by the respective municipalities, counties, and other taxing districts and political subdivisions within the region.<sup>133</sup> The council of

of this nature as a model for all States. The subject is perhaps too new for the pointing out of precedents. The following will serve as a starting point for those States which desire to attempt the creation of such a bureau:

SEC. —. STATE BUREAU OF REGIONAL PLANNING.—There is hereby created, as a part of the State administration, a bureau of regional planning. The head of such a bureau shall be the director of regional planning, who shall be appointed by the governor and shall have a salary of ——— dollars per annum. The director may appoint such employees and experts as he may deem necessary for the work of the bureau. The expenditures of the bureau shall be within the amounts appropriated for that purpose by the general assembly. The powers and duties of such bureau shall be to gather and transmit to the governor information and data and advise the governor on matters which relate to the establishment and defining of regions for planning purposes, the financing of the work of regional planning commissions, and all matters which relate to regional planning and to carrying out and protecting regional plans; also, to gather and transmit information and data which may assist regional planning commissions in matters relating to the making and carrying out of regional plans.

<sup>132</sup> "amount": As the regional planning commission is best informed on the subject, it should be given the power to prepare the estimate or tentative budget of the amount of money that it will need for its work. In order that the budget may constitute a fair distribution of the burden amongst the various political subdivisions of the region, the budget is made subject to the approval of the governor, who shall apportion the proportion of expenditures to be borne by the respective municipalities and the counties.

<sup>133</sup> "region": In the case of a cooperative commission created in the manner provided in section 26A as set forth in note 124 (p. 45), this requirement of approval by the governor of the amount and distribution of expenditures would be inappropriate. Consequently, if any State adopts the cooperative method as the exclusive method of appointing a regional commission, this sentence should be omitted; and if both methods are put into the statute, then after the word "commission," in the sixth line of the section, the words "appointed by the governor" should be inserted.

That the regional plan shall be paid for by the region is obviously sound policy. No hard and fast rule is laid down in the act for the apportionment of the cost amongst the different subdivisions.

There will probably be cases where one or more cities within a region, more fully awake to the needs of planning than other communities, would be willing to assume a larger share of the expenses during the first years in which a regional planning commission is established. In other cases the simplicity, from a financial point of view, of having the regional commission supported wholly or almost wholly from county treasuries will commend itself, especially when there

each such municipality, the county commissioners of each such county, and the appropriating body of each such taxing district or political subdivision within the region are hereby authorized <sup>134</sup> to appropriate their respective shares of such expenditures. The sums so appropriated shall be paid into the State treasury and shall be paid out on certificate of the regional planning commission.

SEC. 28. POWERS AND DUTIES <sup>135</sup> OF THE COMMISSION.—Any regional planning commission is hereby authorized and empowered to make, adopt, amend, extend, and add to a master regional plan for the physical development of its region. Such plan shall be based on

is doubt as to whether certain municipalities will be willing or able to appropriate their share of the planning expense.

The expense of a regional planning commission, particularly if it receives good cooperation from the local planning commissions and other authorities, is relatively small in proportion to the advantages to be gained and should, therefore, not occasion prolonged disputes or arguments, particularly in the initial stages of the work. British practice suggests the probability that municipalities and county governments will be glad to avail themselves of the opportunity to contract with regional planning boards for expert assistance in the preparation of local plans. The staff of the regional planning commission, with its knowledge of general conditions within the region, will be in an excellent position to do such work economically and with good understanding of the factors involved. In some cases it is probable that regional and municipal planning commissions will cooperate in the employment of experts.

<sup>134</sup> "authorized": This method of meeting the regional commission's expenses would break down if each governing body did not contribute its share. In a State in which such a provision would be constitutional appropriations may be made mandatory by substituting the word "shall" for the words "are hereby authorized." The governor may, of course, require assurances that the amounts which he fixes will actually be appropriated and provided.

<sup>135</sup> "Powers and duties": So far as the legal status of the regional plan is concerned, the act gives it substantially the same force as a municipal plan made by a municipal planning commission, with this exception that, within a municipality, the regional plan has no force other than its own inherent advisory influence until it is adopted by the municipal planning commission. The regional planning commission, however, has not been given any control of the subdivision of land. The reason for this is that, as regional planning is comparatively new and in a fairly early stage of experimentation, provision for the making, the adopting, and the fixing of the legal status of the regional plan was thought to be as far as the first enabling statute should go.

The regional planning commission is granted the power to include a zoning plan in its regional plan. There has, however, been no provision included in the act for the enactment of the zoning plan into legislation effective in the nonmunicipal territory. This matter of the zoning of nonmunicipal territory presents some perplexing problems, as, for instance, shall the power to enact the zoning plan into legislation be reposed in the State general assembly or in the county commissioners or shall the zoning regulation of nonmunicipal territory wait until a regional legislative organ is created? Shall a system of building permits in the nonmunicipal territory be created as a method of enforcement of zoning legislation in nonmunicipal territory? These are illustrations of problems which will have to be solved in the near future.

comprehensive studies of the present and future development of the region, with due regard to its relation to neighboring regions and the State as a whole and to neighboring States. Such plan, including maps, charts, diagrams, and descriptive matter, shall show the commission's recommendations for the physical development of the region and may include among other things the general location, extent and character of streets, parks and other public ways, grounds and open spaces, public buildings, and properties and public utilities (whether publicly or privately owned or operated) which affect the development of the region as a whole or which affect more than one political subdivision of the State within the region; also, the general location of forests, agricultural and open development areas <sup>136</sup> for purposes of conservation, food and water supply, sanitary and drainage facilities, or the protection of future urban development; also, a zoning plan for the control of the height and area, or bulk, location, and use of buildings and premises, and of the density of population. Such master plan shall be made with the general purpose of guiding and accomplishing a coordinated, adjusted, and harmonious development of the region and of public improvements and utilities which do not begin and terminate within the boundaries of any single municipality or which do not relate exclusively to the development of any single municipality, and which will, in accordance with the present and future needs of the region and the State, best promote health, safety, morals, order, convenience, prosperity, and general welfare, as well as efficiency and economy in the process of development.

SEC. 29. CERTIFICATION OF THE REGIONAL PLAN.—The regional planning commission, after adopting the regional plan, shall certify <sup>137</sup>

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<sup>136</sup> "areas": As a means of controlling to some degree the food supply, the water supply, the drainage system, and the future building development of the growing region, open development areas or belts represent a proposal which has found much favor amongst students of the subject. During the period of development of the region, these areas or belts will remain agricultural, or of an open type of development, such as golf courses, but problems may arise from the attempt to locate isolated manufacturing plants and other structures, and some plan for the control of these locations is highly desirable.

<sup>137</sup> "shall certify": As the regional plan will receive its legal status within a municipality only by its adoption by the municipal planning commission, the first obvious step toward such legal status is that of certifying the plan to the municipal planning commissions of all municipalities within the region. As the regional plan will to some extent govern the location of all public structures and works by county commissioners, certification to the county commissioners is also obviously a necessary step. There may be other boards or bodies which have power to erect structures within the region, such as, for instance, a metropolitan park board, a metropolitan sanitary board, and a metropolitan conservation board. By virtue of the intimate relationship between the regional plan and the functions of these boards and the degree of control which the regional plan will have over the locations determined by these boards, the plan should also be certified to such boards.



a copy thereof to the governor, to the planning commission of each municipality within the region, to the council of each municipality not having a planning commission, to the county commissioners of each county wholly or partly included in the region, and to other organized taxing districts or political subdivisions wholly or partly included in the region.

SEC. 30. ADOPTION OF REGIONAL PLAN BY MUNICIPALITIES.—Such plan may be adopted by the municipal planning commission <sup>138</sup> of any municipality within the region to which it is certified by the regional planning commission. Such adoption shall be in accordance with the procedure specified in this act for the adoption of plans by municipal planning commissions. When thus adopted, it shall thereupon have the force and effect within such municipality as is provided in this act for plans made and adopted by municipal planning commissions and shall be deemed an original municipal plan or an amendment of or addition to the municipal plan. Before adopting any amendment of the municipal plan which would constitute a violation of or departure from the regional plan certified to the municipal planning commission by the regional planning commission, the municipal planning commission shall submit such proposed amendment to the regional planning commission, which latter commission shall certify to the municipal commission its approval, disapproval, or other opinion concerning the proposed amendment.

SEC. 31. LEGAL STATUS OF REGIONAL PLAN.—After the adoption of the regional plan by the regional planning commission, no street, park or other public way, ground or open space, no public building or other public structure, and no public utility, whether publicly or privately owned or operated, shall be constructed or authorized in nonmunicipal territory <sup>139</sup> within the region until the location, character, and extent thereof shall have been submitted to and approved by the regional planning commission of the region. This prohibition shall not be interpreted as requiring the approval

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<sup>138</sup> "*municipal planning commission*": Until the region comes to be a complete political unit with its own executive and legislative organs, the regional plan should not be granted any legal effect within a municipality, other than a purely advisory status, unless it be adopted by the planning commission of the municipality and thus made the municipal plan or part of the municipal plan. This accords with sound home-rule principles.

<sup>139</sup> "*nonmunicipal territory*": This follows the analogous provision of the section dealing with the municipal plan. Just as, after there is a municipal plan, the general character, extent, and location of public places, structures, and utilities must be submitted to the planning commission for its approval or disapproval, so in nonmunicipal territory the general location, character, and extent of public places, structures, and utilities are required to be submitted to the regional commission. This preserves the logical and, in some States, constitutional boundaries of authority between municipal and nonmunicipal territory and activities.

by the regional planning commission of any subdivision falling within the subdivision jurisdiction of a municipal planning commission, as defined in sections 12 and 13 of this act, and duly approved by such municipal planning commission as provided in section 15 of this act. In case of disapproval by the regional planning commission, such disapproval may be overruled by the board, commission, body, or officer <sup>140</sup> in which or in whom the power to finally determine such location, character, and extent is reposed by law, by a vote, in the case of any such board, commission, or body, of not less than two-thirds of its membership. A statement of its or his reasons for any such overruling shall be spread upon the minutes or records of the board, commission, body, or officer.

#### TITLE V.—MISCELLANEOUS PROVISIONS

SEC. 32. SAVING CLAUSE.—The invalidity of any provision of this act shall not affect the validity of any other provision.

SEC. 33. REPEAL.<sup>141</sup>

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<sup>140</sup> "*board, commission, body, or officer*": A difficult problem is that of where to place the power to overrule the regional planning commission as to location, etc., of public grounds, structures, and utilities in nonmunicipal territory. The locating and constructing of those public works may be in charge of county authorities, such as the county board of commissioners, or of State authorities such as the highway department or public-utilities commission, or of metropolitan authorities, such as the metropolitan sanitary commission or park board, or, to some extent, in charge of municipal authorities, as in the case of park property acquired by a city outside of its own limits.

The question arises whether it be desirable to avoid the complications and maladjustments which might arise if this power to overrule the regional commission be distributed amongst numerous different boards and bodies. But if the power be concentrated in the governor, there would be thrown upon that official numerous problems of the greatest difficulty and importance and for the solution of which he would not have the necessary experience or information at least until after the development of an experienced and adequately equipped State bureau of the character suggested in note 131, p. 47.

The State legislature does not sit continuously throughout the year, and for that reason, as well as by reason of its numerical size and its exacting legislative duties, it is obviously not an appropriate body to deal with problems of the location, character, and extent of numerous public works and projects.

At the present stage of governmental organization, therefore, the solution adopted in the text seems to be the practical and logical one, namely, to leave the final determination in each case to the body which has, by law, the jurisdiction over the locating or constructing of the particular type of public work involved in the case. When regional legislative and administrative organs come to be developed, this particular problem will become more simplified.

<sup>141</sup> "*Repeal*": The clause repealing statutes which may conflict with this act should be phrased to conform to local usage in each State and to specify or refer to the particular statutes repealed or amended. Statutes relating to the dedication of streets which are inconsistent with the principles embodied in this act should be included in the repeal.

SEC. 34. TIME OF TAKING EFFECT.<sup>142</sup>

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<sup>142</sup> "*Effect*": In most States, unless the intention be to fix a specific future date as the time of taking effect of the act, an act takes effect at the earliest period allowed by law and by the constitution. There is no need of any express provision on the subject, except in those States whose constitution may require a section on time of taking effect or whose legislative usage is to incorporate such section in every statute or in which it is desired to fix a definite date of taking effect different from the date at which the statute would go into effect if there were no express provision.



# DEPARTMENT OF COMMERCE

## WASHINGTON

### PUBLICATIONS ON CITY PLANNING, ZONING, BUILDING CODES, HOUSING, AND AIRPORTS

[Printed documents, for which prices are noted in each case, may be obtained from the Superintendent of Documents, Government Printing Office, Washington, D. C., payments to be made by money order or New York draft; currency at sender's risk. Postage or foreign money not accepted. Single copies of mimeographed material may be obtained upon request to the Department of Commerce, Washington, D. C.]

#### City Planning and Zoning.

BH10. *A City Planning Primer*. 18 pages. Price, 5 cents.

BH3. *A Zoning Primer*. 7 pages. Price, 5 cents.

BH5. *A Standard State Zoning Enabling Act*. 13 pages. Price, 5 cents.

The above three publications are by the Advisory Committee on City Planning and Zoning.

*Zoning Progress in the United States*. Part I, Zoning and the Courts; Part II, List of State Zoning Laws, and names of zoned municipalities (mimeographed).

For details of papers relating to zoning and health, lists of zoned municipalities arranged according to size, city planning progress, references to city planning commission enabling acts, and later material, inquire of the division of building and housing, Department of Commerce, Washington, D. C.

#### Building and Plumbing Codes.

BH1. *Recommended Minimum Requirements for Small Dwelling Construction*. 108 pages. Price, 15 cents.

BH6. *Recommended Minimum Requirements for Masonry Wall Construction*. 57 pages. Price, 15 cents.

BH7. *Minimum Live Loads Allowable for Use in Design of Buildings*. 38 pages. Price, 10 cents.

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BH9. *Recommended Building Code Requirements for Working Stresses in Building Materials*. 53 pages. Price, 10 cents.

The above five publications are by the Building Code Committee.

BH2. *Recommended Minimum Requirements for Plumbing in Dwellings and Similar Buildings*. 260 pages. Price, 35 cents. By the Subcommittee on Plumbing.

#### Housing.

BH4. *How to Own Your Home*. 28 pages. Price, 5 cents. By John M. Gries and James S. Taylor, with a foreword by Herbert Hoover.

*Present Home Financing Methods* (mimeographed). By the division of building and housing.

#### Airports.

The following information bulletins and others relating to commercial and municipal airports may be obtained from the air information division, Aeronautics Branch, Department of Commerce, Washington, D. C.:

No. 2. Airport Construction.

No. 5. Airports of the United States, a list.

No. 8. Map of United States Airways.

No. 9. The Airport and the City (mimeographed).

No. 13. Marking of Obstructions.

No. 38. Air Marking for Cities (single-sheet diagram).

No. 41. State Laws, a digest.





