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## Chapter XIV - Zoning

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Dear Reader:

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Please feel free to contact us if you have questions or comments regarding this information or any other CTAS website material.

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## Chapter XIV - Zoning

### Districts - Five Miles of Memphis

### Private Acts of 1931 Chapter 613

**COMPILER'S NOTE:** See Private Acts of 1955, Chapter 353, found in this volume, which amends this act by authorizing the establishment of a Joint City-County Planning Commission.

**SECTION 1.** WHEREAS, By Chapter 162, of the Private Acts of the General Assembly of 1921, it authorized and empowered all municipal corporations having a population in excess of 160,000 inhabitants by the Federal Census of 1920, or by any subsequent Federal Census, to provide for the establishment, government and maintenance of a City Planning Commission in such municipalities, and to prescribe the powers and duties of such planning commissions, and to vest in such commissions jurisdiction over all new subdivisions or re-subdivisions of land within the corporate limits of such municipalities; and

WHEREAS, By Chapter 164, of the Private Acts of the General Assembly of 1921, An Act was passed to provide for the approval by municipal authorities, within the population classification aforesaid of plans, plots, or re-plots of lands lying within cities having a population of 160,000 or over; and,

WHEREAS, By Chapter 165, of the Private Acts of the General Assembly of 1921 municipalities having a population in excess of 160,000 inhabitants by the Federal Census of 1920, or by any subsequent Federal Census, were authorized to provide for the establishment of districts or zones within the corporate limits, and to empower such municipalities by ordinance to regulate within such zones or districts, the use or uses of land, the height, the area, the size and the location of buildings, the required open spaces for light and ventilation of such buildings and the density of population, and for other purposes incident to the carrying out of said objects of the police power; and,

WHEREAS, the General Assembly of 1925, by its several Acts hereinafter referred to deemed the regulations insufficient to carry out, provide for and maintain the orderly growth of cities within said population classification; and

WHEREAS, By Chapter 408, of the Private Acts of the General Assembly of 1925 it undertook to regulate the conveyance of parcels of ground of less than two acres within the corporate limits of a city of the above population classification or within five miles of such limits, so as to prevent land speculators from selling off lots by metes and bounds without adequate access to public streets; and

WHEREAS, By Chapter 409, of the Private Acts of the General Assembly of 1925, it provided for the joint approval by city and county authorities of subdivision of plots of land situated outside of but within five miles of the corporate limits of cities of the population classification aforesaid; and

WHEREAS, By Chapter 405, of the Private Acts of the General Assembly of 1925, it undertook among other things to provide for the regulation of the establishment of enlargement of cemeteries, and to provide under certain contingencies for the joint approval of the location thereof within such five miles zone by county and city authorities; and,

WHEREAS, The General Assembly of the State of Tennessee is advised and finds that municipal corporations having a population in excess of 160,000 inhabitants by the Federal Census of 1920, and subsequent censuses, have availed themselves of the powers granted by the several Acts above mentioned, in order to preserve, protect and further the public safety, health, prosperity, convenience, morals and general welfare of such municipalities; and

WHEREAS, the General Assembly is advised and finds that the cities having a population in excess of 160,000 inhabitants by the Federal Census of 1920, or by any subsequent Federal Census, have cooperated with the counties in which they are situated to carry out the powers granted to them, and to the counties in which they are situated, to preserve, protect and foster the general welfare; and,

WHEREAS, the General Assembly is advised and finds that there has been a rapid and unprecedented growth in the past decade of cities of the population classification aforesaid, and that there is likely to be a continued growth of such cities, so that from time to time said cities will extend their corporate limits and jurisdiction into unincorporated territories adjacent and contiguous thereto; and,

WHEREAS, the General Assembly is advised and finds that the presently authorized exercise of the police power of the State, and that delegated to such cities and counties within the

unincorporated territory adjacent to the cities of the population classification aforesaid is inadequate to protect, safeguard and foster the public health, safety, morals, welfare, convenience and amenities within such zone or district, in view of the probability that such lands will shortly be incorporated within the corporate limits and jurisdiction of such cities, and the General Assembly being advised that it is to the manifest public interest and welfare that further restrictions as to the uses of lands, the height, area, size and location of buildings, the required open spaces for light and ventilation of such buildings and the density of population within such areas should be further regulated to the end that the orderly growth of such cities, having in view of the extension of public streets and highways, safety from fire and other hazards, provision for recreation and education, and the extension of service of public utility corporations, such as street railways, gas lines, telephone, sewers, water mains, etc., should be secured in order to protect the public health, morals, safety, convenience and prosperity not only of the residents of the cities of the population classification aforesaid, but of the people residing within the five miles zone about such cities;

**SECTION 2.** (deleted)

As amended by: Private Acts of 2015, Chapter 17

**SECTION 3.** (deleted)

As amended by: Private Acts of 1973, Chapter 71  
Private Acts of 2015, Chapter 17

**SECTION 4 - 6.** (deleted)

As amended by: Private Acts of 2015, Chapter 17

**SECTION 7.** That in order to carry out the purposes of this Act, a County Planning Commission is hereby created to be composed of the members of the Planning Commission of any municipality within the population classification herein provided for, and the Board of County Commissioners and Chairman of the Quarterly County Court of counties within the population classification herein provided for, and before any plan for such five mile zone shall be adopted, such County Planning Commission shall recommend boundaries or districts and appropriate regulations to be enforced therein. Such commission shall make a tentative report and hold public hearings thereon, at such times and places and upon such notice as it may fix, before submitting its final report. Said legislative bodies shall not determine the boundaries of any district, nor impose any regulations until after the final report of such County Planning Commission.

After such final report is submitted to both legislative bodies as aforesaid, and final adoption of regulations by each, said legislative bodies may, from time to time, amend, supplement or change the boundaries or regulations so adopted, but not without consent of each. Notice of the adoption of such amendment, supplement or change in the regulations, shall be given by publishing such notice one time in some daily newspaper of general circulation in the city of the population classification hereinbefore set forth within such county. Such notice shall state the time and place, not earlier than ten days from date of publication, at which the legislative bodies shall meet in joint session to hear remonstrances or protests against the making of such amendment, supplement or change. At the time and place thus appointed, said legislative bodies shall meet in joint session, and all persons whose property will be affected by such amendment, supplement, or change, may appear in person or by attorney or by petition, and protest against making of such amendment, supplement or change, and after hearing such protests, if any, such legislative bodies, in the manner hereinbefore provided, may confirm, modify or rescind such regulations in whole or in part. If, however, a protest against such amendment, supplement or change be presented in writing to either legislative body, within ten days from date of publication, duly signed and acknowledged by the owners of 20% or more of any frontage proposed to be altered, or by the owners of 20% of the frontage immediately in the rear thereof, or by the owners of 20% of the frontage directly opposite the frontage proposed to be altered, such amendment, supplement or change shall not be passed except by a four-fifths vote of each such legislative body.

In the event that any county coming within the provisions of this Act shall, under the provisions of any Act enacted by this General Assembly or by any future General Assembly, having a county planning commission having county wide jurisdiction, all the duties and powers to be exercised and enjoyed by the county planning commission created under Section 7 of Chapter 613 of the Private Acts of 1931, shall be exercised and enjoyed by the county planning

commission with county wide jurisdiction created under the provisions of any Act of this General Assembly or of any future General Assembly.

Provided, however, that at any time a county and city so elects they may hold separate sessions upon such terms and conditions as shall be set out in a resolution/ordinance specifying the times, dates, and final disposition of matters, but such actions shall be "subject to concurrence" by both entities.

As amended by:

Private Acts of 1935, Chapter 707

Private Acts of 1979, Chapter 99

**SECTION 8.** That the lawful use of a building existing at the time of adoption of regulations under the provisions of this Act, which shall not be effective until the approval of both legislative bodies as hereinbefore provided for, although such use does not conform to the provisions of such regulations, may be extended throughout the building, provided no structural alterations except those required by the law are made therein.

Where no structural alterations are made in a building of a non-conforming use, such use may be changed to a use of a similar or higher classification, according to the provisions of the regulations adopted under the authority of this Act.

The lawful use of premises existing at the time of adoption of the regulations under the provisions of this Act, although such use does not conform to the provisions thereof, may be continued; but if such non-conforming use is discontinued, any future use of said premises shall be in conformity with the provisions of the regulations adopted pursuant to the authority of this Act.

Where structural alterations are made in a building of non-conforming use, such building shall be changed in conformity with the provisions of the regulations adopted under the authority of this Act, for the district in which such building is located. When the boundary line of any such district divides a parcel of ground in common ownership, at the time of the adoption of the regulations under the provisions of this Act, nothing herein contained shall be construed to prevent the extension of the use existing on either portion of ground to the entire parcel, but for a distance of not greater than twenty-five feet.

Nothing in this Act shall be taken to prevent (a) the erection of a building for which a permit shall have been issued previous to the final adopting of regulations under the provisions of this Act; (b) the restoration of a building destroyed to the extent of not more than 75% of its reasonable value, by fire, explosion, an act of God or the public enemy, and the occupancy or use of such building or part thereof, if such use existed at the time of such partial destruction; (c) the restoration of a wall declared unsafe by any officer thereunto duly authorized.

**SECTION 9.** (deleted)

As amended by:

Private Acts of 1935, Chapter 707

Private Acts of 2015, Chapter 17

**SECTION 10.** (deleted)

As amended by: Private Acts of 2015, Chapter 17

**SECTION 11.** That there is hereby created a County Board of Adjustment which shall consist of seven members of which number the Chairman and Secretary of the Board of County Commissioners, the Chairman of the Quarterly County Court and the Chairman of the Board of Adjustment of any city, within the population classification above referred to, and duly appointed and elected in pursuance of the provisions of Chapter 428, of the Private Acts of the General Assembly of 1925 shall be ex-officio members. The remaining three members of said Board shall be chosen and elected by resolution of the legislative body of such city within such county, one of whom shall be elected for one, another for two and the last for three years. And after appointment of the first Board the members other than ex-officio members shall be appointed for terms of three years each, and it shall be no objection to the validity of the organization of the County Board of Adjustment that the term of any member of the City Board of Adjustment other than the chairman thereof, shall have expired. Vacancies in the membership of the County Board of Adjustment, other than the ex-officio members, shall be filled for the unexpired term of the vacant member by the legislative body of such municipality. All members of the Board, other than the ex-officio members, shall be removable for cause by the appointing authority upon written charges and after hearing.

In the event that any county within the population classification of this Act, shall, pursuant to an Act of the General Assembly of the State of Tennessee, have a county board of adjustment with county wide jurisdiction, then the board of adjustment created by Section 11 of

said Act shall be composed of the chairman of the Quarterly County Court, the chairman of the board of commissioners of such county, the chairman of the board of adjustment of any municipality in said county having a population in excess of 160,000 inhabitants by the federal census of 1930, or any subsequent federal census, all of whom shall be ex-officio members of said board of adjustment; and four other members, three of whom are to be chosen from among the members of such city board of adjustment by the legislative body of such municipality, the other to be appointed by the Quarterly County Court from among the members of the County board of adjustment. Said board shall have the right to adopt a name which shall be distinctive so that said board shall not be confused with any other county or city board of adjustment. The members of said board of adjustment, and the board as such, shall have, exercise and enjoy all the powers, duties, liabilities and privileges set out in said Chapter 613 of the Private Acts of 1931.

Said city and county legislative bodies shall have power to appropriate monies to pay for clerical help and other necessary expenses of such Board, but no member thereof shall receive any compensation for his services.

The Board shall elect its own chairman, who shall serve for one year, and shall elect its Secretary, who may or may not be a member thereof, and who may receive such compensation as may be fixed by the joint action of the legislative bodies of such city and county; provided, however, that said Board of Adjustment may designate and appoint the Secretary of the City Board of Adjustment as the Secretary, and who shall hold office at the will and pleasure of the Board, whose compensation shall be fixed by the County Board of Adjustment subject to the approval of the county and city legislative authorities aforesaid.

The Board shall adopt rules in accordance with the provisions of any regulations adopted pursuant to this Act, and may adopt any not in conflict with the provisions of such regulations or with the provisions of this Act. Meetings of the Board shall be held at the call of the chairman and at such other times as the Board may determine, but said Board shall meet not less than once each month. The Chairman, or in his absence, the acting Chairman, may administer oaths and compel the attendance of witnesses. All meetings of the Board shall be open to the public. The Board shall keep minutes of its proceedings showing the vote of each member upon each question, or, if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the Board and shall be a public record.

Appeals to the Board of Adjustment may be taken by any person aggrieved or by any officer, department, board or bureau of the city or county affected by any decision of the County Building Commissioner, or other administrative officer. Such appeal shall be taken within five days, by filing with the officer from whom the appeal is taken and with the Board of Adjustment a notice of appeal specifying the grounds thereof. The officer from whom the appeal is taken shall forthwith transmit to the Board all the papers constituting the record upon which the action appealed from was taken.

An appeal shall stay all proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the Board of Adjustment after the notice of appeal shall have been filed with him that by reason of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life and property. In such case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the County Board of Adjustment or by a Court of Record on application on notice to the officer from whom the appeal is taken and on due cause shown.

Said County Board of Adjustment shall fix a reasonable time for the hearing of the appeal, and decide the same within a reasonable time.

Said Board of Adjustment shall have the following powers:

1. To hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement of this Act or of any regulation adopted pursuant thereto.
2. To hear and decide all matters referred to it upon which it is required to pass under such regulations.
3. In passing upon appeals, where there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of such regulations, to vary or modify the application of any of the regulations passed pursuant to this Act, relating to the use, construction or alteration of buildings or structures or the use of land so that the spirit of the regulations and this Act shall be observed, the public health, safety, morals, convenience and welfare secured and substantial justice done.

In exercising the above mentioned powers such Board may, in conformity with the provisions of this Act, reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination appealed from and may make such order, requirement, decision, or determination as ought to be made, and to that end shall have all the powers of the officer from whom the appeal is taken.

The concurring vote of five-sevenths of the members of the Board shall be necessary to reverse any order, requirement, decision or determination of any such administrative official, or to decide in favor of the applicant on any matter upon which it is required to pass under any such regulations, or to effect any variation in such regulations.

Any person or persons, jointly or severally, aggrieved by any decision of the County Board of Adjustment, may present to the Circuit Court of such county a petition for certiorari, 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 thirty days after the filing of the decision of the Board.

Upon presentation of such petition the Circuit Court may allow a writ of certiorari directed to the County Board of Adjustment a review its decision, and shall prescribe therein the time within which a return thereto must be made, which shall not be less than ten days and may be extended by the Court. The allowance of the writ shall not stay the proceedings upon the decision appealed from, but the Court may, on application, and on notice to the Board and on due cause shown, grant a restraining order, or supersedeas, on such conditions as it may fix.

The County Board of Adjustment shall not be required to return the original papers acted upon by it, but it shall be sufficient to return sworn copies thereof or of such portion thereof as may be called for by the writ. 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 additional evidence or appoint a referee to take such evidence as it may direct and report same to the Court with his findings of fact and conclusion 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, or may remand the matter to the County Board of Adjustment for further proceedings under such orders and directions as it may make.

All issues in any proceeding under this Section shall have preference over all other civil actions and proceedings except such as may be given prior preference by other provisions of law.

As amended by: Private Acts of 1935, Chapter 707.

**SECTION 12.** (deleted)

Private Acts of 1937, Chapter 377

As amended by:

Private Acts of 2015, Chapter 17

**SECTION 13 - 14.** (deleted)

As amended by: Private Acts of 2015, Chapter 17

**SECTION 15.** That should any Section or provisions of this Act, of the regulations adopted pursuant to the authority hereof be held to be unconstitutional or invalid, the same shall not affect the validity of this Act, or of such regulations, as a whole or any part thereof, other than the part so held to be unconstitutional.

**SECTION 16.** That this Act take effect from and after its passage, the public welfare requiring it.

Passed: June 25, 1931.

## Districts - Unincorporated Areas

### Private Acts of 1935 Chapter 625

**SECTION 1.** *Grant of Power.* - The Quarterly County Court (hereinafter designated legislative body) of any county in this state having a population of 300,000 or more inhabitants by the Federal Census of 1930, or by any subsequent Federal Census, is hereby empowered, in accordance with the conditions and the procedure specified in the subsequent sections of this Act, to regulate in the unincorporated portions of such county the location, height, bulk, number of stories, and size of buildings and other structures, the

percentage of lot which may be occupied, the sizes of yards, courts, and other open spaces, the density and distribution of population, the uses of buildings and structures for trade, industry, residence, recreation, public activities, or other purposes, and the uses of land for trade, industry, residence, recreation, agriculture, forestry, soil conservation, water-supply conservation, or other purposes.

**SECTION 2. Zoning Plan and Ordinance.** - From and after the time when the county planning commission of any county makes and certifies to the legislative body of such county a zoning plan, including both the full text of the zoning ordinance and maps, and representing the recommendations of the commission for the regulation by districts or zones of the location, height, bulk, number of stories, and size of buildings and other structures, the percentage of lot which may be occupied, the sizes of yards, courts, and other open spaces, the density and distribution of population, the location and uses of buildings and structures for trade, industry, residence, recreation, public activities, or other purposes, and the uses of land for trade, industry, residence, recreation, agriculture, forestry, soil conservation, water supply conservation, or other purposes, then said legislative body may by resolution, exercise the powers granted to it in section one of this Act and, for the purpose of such exercise, may divide the unincorporated territory of such county into districts or zones of such number, shape, and area as it may determine, and within such districts may regulate the erection, construction, reconstruction, alteration, and uses of buildings and structures and the uses of land. All such regulations shall be uniform for each class or kind of buildings throughout any district, but the regulations in one district may differ from those in other districts. The planning commission may make and certify a single plan for the entire unincorporated portion of the county, or separate and successive plans for those parts which it deems to be urbanized or suitable for urban development and those parts which, by reason of distance from existing urban communities or for other causes, it deems suitable for nonurban development; and any ordinance enacted by the legislative body may cover and include the unincorporated territory covered and included in any such single plan or in any such separate and successive plans. No resolution covering more or less than the territory covered by any such certified plan shall, however, be enacted or put into effect until and unless it be first submitted to the planning commission which had certified the plan to the legislative body and be approved by said body or, if disapproved, receive the favorable vote of not less than two-thirds of the entire membership of said body. Provided however, the legislative body may by resolution provide for approval of planned developments on parcels of not less than three (3) acres in which the heights, areas, densities and uses may be as set out on a recordable plat although they may not be uniform with those in the district in which located. Such a plan shall first be submitted to and a recommendation made by the Planning Commission. Such plats shall show the street and road patterns, dedications, if any, set-backs, heights, density, uses, building separation, open areas and screenings as proposed by the applicant and their conformity with standards set by the Planning Commission as approved by the legislative body, so as to carry out the intention of the applicable zoning resolutions and preserve the character of the neighborhood. Upon approval and enactment by the legislative body such conditions shall be binding upon the applicant/owner until relieved by amendment or repeal. Building permits may be issued in accordance with the approved plan even though more than one structure is to be located thereon.

Private Acts of 1973, Chapter 72.

As amended by:

Private Acts of 2015, Chapter 17

**SECTION 3. Purposes of Zoning Regulation.** - Such regulations shall be designed and enacted for the purpose of promoting the health, safety, morals, convenience, order, prosperity, or welfare of the present and future inhabitants of the State of Tennessee, including, amongst other things, lessening congestion in the streets or roads or reducing the wastes of excessive amounts of road; securing safety from fire and other dangers; providing adequate light and air; preventing, on the one hand, excessive concentration of population and, on the other hand, excessive and wasteful scattering of population or settlement; promoting such distribution of population and such classification of land uses and distribution of land development and

utilization as will tend to facilitate and conserve adequate provisions for transportation, water flowage, water supply, drainage, sanitation, educational opportunity, recreation, soil fertility, food supply, and the protection of both urban and non-urban development.

**SECTION 4. Method of Procedure.** - After receiving the certification of a zoning plan from the planning commission and before the enactment of any such zoning ordinance, the legislative body shall hold a public hearing thereon, of the time and place of which at least ten (10) days' notice shall be given by one publication in a newspaper of general circulation in the county. Such notice shall state the place at which the text and maps as certified by the planning commission may be examined. No change in or departure from the text or maps as certified by the county shall be made, unless such change or departure be first submitted to the certifying planning commission for its approval, disapproval, or suggestions, and, if disapproved, shall

receive the favorable vote of not less than two-thirds of the entire membership of the legislative body; and the planning commission shall have thirty (30) days from and after such submission within which to send its report to the legislative body.

**SECTION 5.** Amendments. - The legislative body may from time to time amend the number, shape, boundary, or area of any district or districts, or any regulation of or within such district or districts, or any other provision of the zoning ordinance; but any such amendment shall not be made or become effective unless the same shall have been proposed by or be first submitted for approval, disapproval, or suggestions to the county commissions which had originally certified the zone plan; and, if disapproved by such commission within thirty (30) days after such submission, such amendment, to become effective, shall receive the favorable vote of not less than two-thirds of the entire membership of the legislative body. Before finally adopting any such amendment, the legislative body shall hold a public hearing thereon, at least ten (10) days' notice of the time and place of which shall be given by at least one publication in a newspaper of general circulation in the county.

**SECTION 6.** - For every county which enacts zoning regulations under the authority of this Act there is hereby created a county board of adjustment which shall consist of seven (7) members of which the chairman of the Board of County Commissioners, and the chairman of the Quarterly County Court shall be ex-officio members. The remaining five (5) members of said board shall be chosen and elected by resolution of the legislative body of the county, two of which shall be elected for one year, two for two years, and the fifth for three years. After the appointment of the first board the members, other than ex-officio members, shall be appointed for terms of three years each. Vacancies in the membership of the county board of adjustment, other than ex-officio members, shall be filled for the unexpired term of such member by the legislative body of the county. All appointive members of the board shall be removable for cause by the appointing authority upon written charges and after hearing.

No member of such board shall receive compensation for his services but county legislative bodies of such counties are hereby authorized and empowered to appropriate moneys to pay for clerical help and other necessary expenses of such board.

The board shall elect its own chairman who shall serve for one year, and shall elect its secretary who may or may not be a member thereof, and who may receive such compensation as may be fixed by the joint action of the legislative body of such county.

The board shall adopt rules in accordance with the provisions of any regulations adopted pursuant to this Act, and may adopt any not in conflict with the provisions of such regulations or with the provisions of this Act. Meetings of the Board shall be held at the call of the chairman and at such other times as the board may determine, but said board shall meet not less than once each month. The chairman, or in his absence, the acting chairman, may administer oaths and compel the attendance of witnesses. All meetings of the board shall be open to the public. The board shall keep minutes of its proceedings showing the vote of each member upon each question, or, if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the Board and shall be a public record.

Appeals to the Board of Adjustment may be taken by any person aggrieved or by any officer, department, board or bureau of the county affected by and decision of the County Building Commissioner, or other administrative officer. Such appeal shall be taken within five (5) days by filing with the officer from whom the appeal is taken a written appeal or application for variation from the strict requirements of the zoning resolution, specifying the grounds thereof. The officer from whom the appeal is taken shall forthwith transmit to the board of the papers constituting the record upon which the action appealed from was taken.

An Appeal shall stay all proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the Board of Adjustment after the notice of appeal shall have been filed with him that by reason of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life and property. In such case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the county board of adjustment or by a court of record on application on notice to the officer from whom the appeal is taken and on due cause shown.

Said county board of adjustment shall fix a reasonable time for the hearing of the appeal, and decide the same within a reasonable time.

Said board of adjustment shall have the following powers:

1. To hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by an administrative official in the enforcement of this Act or of any regulation adopted pursuant thereof.

2. To hear and decide all matters referred to it upon which it is required to pass under such regulations.

3. In passing upon appeals, where there are practical difficulties or unnecessary hardships in the way in carrying out the strict letter of such regulations, to vary or modify the application of any of the regulations passed pursuant to this Act, relating to the use, construction or alteration of buildings or structures or the use of land so that the spirit of the regulations and this Act shall be observed, the public health, safety, morals, convenience and welfare secured and substantial justice done.

In exercising the above mentioned powers such board may, in conformity with the provisions of this Act, reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination appealed from and may make such order, requirement, decision, or determination as ought to be made, and to that end shall have all the powers of the officer from whom the appeal is taken.

The concurring vote of four of the members of the board shall be necessary to reverse any order, requirement, decision or determination of any such administrative official, or to decide in favor of the applicant on any matter upon which it is required to pass under any such regulations, or to effect any variation in such regulations.

Any person or persons, jointly or severally, aggrieved by any decision of the county board of adjustment, may present to the Circuit Court of such county a petition for certiorari, 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 thirty (30) days after the filing of the decision of the board.

Upon presentation of such petition the Circuit Court may allow a writ of certiorari directed to the county board of adjustment to review its decision, and shall prescribe therein the time within which a return thereto must be made, which shall not be less than ten (10) days and may be extended by the court. The allowance of the writ shall not stay the proceedings upon the decision appealed from, but the court may, on application, and on notice to the board and on due cause shown, grant a restraining order, or supersedeas, on such conditions, as it may fix.

The county board of adjustment shall not be required to return the original papers acted upon by it, but it shall be sufficient to return sworn copies thereof or of such portion thereof as may be called for by the writ. 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 additional evidence or appoint a referee to take such evidence as it may direct and report same to the court with his findings of fact and conclusion 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, or may remand the decision brought up for review, or may remand the matter to the county board of adjustment for further proceedings under such orders and directions as it may make.

All issues in any proceeding under this section shall have preference over all other civil actions and proceedings except such as may be given prior preference of other provisions of law.

a. Whenever it becomes known that one of the regularly appointed members of said Board of Adjustment will be unable to attend any public hearing, the Chairman of the Quarterly County is authorized to name a replacement to serve in the place and stead of the absent member, with full power to vote and exercise all the rights and responsibilities of the absent member, for such time as the Chairman of the Quarterly County Court shall specify in writing to the Chairman or Acting Chairman of said Board of Adjustment, but such authority shall expire upon the appearance of such absent member at any public hearing or upon notification in writing to the Chairman of the Quarterly County court that the absent member has returned and is available to serve. All matters acted upon by said Board of Adjustment with such temporary replacement

participating shall be of full value and effect as if said regular member was in fact present and participating.

As amended by: Private Acts of 1953, Chapter 309.

Private Acts of 1965, Chapter 240.

**SECTION 7. *Building Commissioner.*** - The legislative body may provide for the enforcement of the zoning regulations by means of the withholding of building permits, and, for such purpose, may establish and fill a position of county building commissioner and may fix the compensation attached to said position. From and after the establishment of such position and the filing of the same, it shall be unlawful to erect, construct, reconstruct, alter, or use any building or other structure within the unincorporated territory covered by such zoning regulations without obtaining a building permit from such county building commissioner, and such building commissioner shall not issue any permit unless the plans of and for the proposed erection, construction, reconstruction, alteration, or use fully conform to all zoning regulations then in effect.

**SECTION 8. *Other Enforcement and Remedies.*** - In case any building or structure is or is proposed to be erected, constructed, reconstructed, altered, maintained, or used, or any land is or is proposed to be used in violation of this Act or of any regulation or provision enacted or adopted by any legislative body under the authority granted by this Act, such body, the attorney of the county, the county building commissioner, planning commission or other board or officer, or any adjacent or neighboring property owner who would be specially damaged by such violation, in addition to other remedies provided by law, may institute injunction, mandamus, abatement, or any other appropriate action, actions, proceeding, or proceedings to prevent or enjoin or abate or remove such unlawful erection, construction, reconstruction, alteration, maintenance, or use.

**SECTION 9.** Any person, firm or corporation violating any of the provisions of this Act, or of any of the regulations established pursuant to the authority hereof, shall be guilty of a misdemeanor, and shall be fined not less than \$5.00, nor more than \$50.00, for each offense. Each day that any violation of any of such provisions or regulations shall continue shall be deemed a separate offense. Violations of the provisions of this Act or of any of the regulations lawfully adopted pursuant thereto shall be deemed to come under the provisions of the small offense law, and Justices of the Peace and committing Magistrates of the county shall be held to have jurisdiction to hear and try persons accused of violations thereof.

**SECTION 10. *Conflict with Other Laws.*** - Wherever the regulations made under authority of this Act require a greater width or size of yards, courts, or other open spaces, or require a lower height of buildings or smaller number of stories, or require a greater percentage of lot to be left unoccupied, or impose other higher standards than are required in or under any other statute, the provisions of the regulations made under authority of this Act shall govern. Wherever the provisions of any other statute or regulation or resolution of the legislative body require a greater width or size of yards, courts, or other open spaces, or require a greater percentage of lot to be left unoccupied, or impose other higher standards than are required by the regulations made under authority of this Act, the provisions of such statute, regulation or resolution shall govern.

**SECTION 11. *Definitions.*** - For the purpose of this Act, "unincorporated" means situated outside of cities, towns and municipal corporations organized under any general or special Act of the General Assembly of the State of Tennessee, so that when used in connection with "territory", "areas", or the like, it covers, includes and relates to territory or areas which are not within the boundary of any city, town or municipal corporation.

**SECTION 12.** Should any section or provision of this Act, or of the regulations adopted pursuant to the authority hereof be held to be unconstitutional or invalid, the same shall not effect the validity of this Act, or of such regulations, as a whole, or any part thereof, other than the part so held to be unconstitutional.

**SECTION 13.** That this Act take effect from and after its passage, the public welfare requiring it.

Passed: April 18, 1935.

# Joint Planning Commission

## Authority for Establishment

### Private Acts of 1955 Chapter 353

**SECTION 1.** That:

*Whereas*, There now exists in one or more Counties subject to the provisions of Chapter 613 of the Private Acts of the General Assembly of Tennessee of 1931 and all Acts amendatory thereof and appurtenant thereto separate County and City Planning Commissions and separate County and City Boards of Adjustment, the duties of which overlap and to some extent duplicate each other, and the separate functioning of which results in unnecessarily large expenditure of time and money, as well as inefficiency of administration: *It is now, therefore, resolved and deemed proper in the interest of economy and of the general welfare*, That such Counties and Cities be authorized to appoint a joint Planning Commission and Board of Adjustment as herein provided.

**SECTION 2.** That Chapter 613 of the Private Acts of the General Assembly of Tennessee of 1931 and all acts amendatory thereto and all acts appurtenant to the subject matter thereof be and the same hereby are amended by the addition thereto of the following:

**SECTION 3.** That the Quarterly County Court of any County having a population of 300,000 or more by the Federal Census of 1930 or any subsequent Federal Census, be and hereby is authorized by agreement with the governing body of any City within such County having a Planning Commission and a Board of Adjustment to establish a joint City and County Planning Commission and a joint City and County Board of Adjustment, such agreement, if made, to be evidenced by an Ordinance passed by the governing body of the City, the terms of which Ordinance shall be embodied in and concurred in by a resolution of the Quarterly County Court of such County.

**SECTION 4.** That the said Ordinance and Resolution, if agreed upon, shall fix the number of members of both the said joint Planning Commission and the said joint Board of Adjustment, shall provide for the number of such members to be appointed by the governing body of the City and the number of such members to be appointed by the Quarterly County Court of the County, and shall fix the identity of such officials of the City and the County who shall be ex-officio members of both the said Planning Commission and the said Board of Adjustment. The said Ordinance and the said Resolution shall also fix the terms of the members to be appointed by the said governing body of the City and the said Quarterly County Court and shall provide the number of members of each body required to constitute a quorum for the transaction of business and for the election of a Chairman for each body. Vacancies in the membership of either the Planning Commission or the Board of Adjustment caused by death, resignation or inability to serve on the part of a member shall be filled for the unexpired term as fixed by Ordinance and Resolution, the appointment to be made by the governmental authority which originally appointed the member whose position becomes thus vacant. When a quorum is not present at any meeting of either the said joint planning Commission or the said joint Board of Adjustment the Chairman of the Quarterly County Court of the County and the Mayor of any City with whom an agreement has been made pertaining to the said joint Planning Commission and said joint Board of Adjustment may appoint in writing a sufficient number of citizens of the County to act temporarily as members of such body or bodies so as to effect a quorum for the transaction of business.

**SECTION 5.** That if agreement shall be reached by a County and a City to which this Act is applicable for the creation of said joint Planning Commission and said joint Board of Adjustment, the said joint Planning Commission and the said joint Board of Adjustment shall, upon passage of the Ordinance and Resolution herein provided for, have all of the powers, duties, functions and jurisdiction, and shall be subject to all of the law pertaining to the Planning Commissions and Boards of Adjustment of said County or Counties and said City or Cities now provided by law except as may be herein otherwise provided. The said joint Planning Commission and the said joint Board of Adjustment shall have the power to make the publish Rules and Regulations, which Rules and Regulations as promulgated shall be subject to the approval of the governing body of the City when applicable to property within the City and to the approval of the Quarterly County Court of the County as to property within the County outside of the City. Said Ordinances and Resolutions may also provide for the division of expenses as between the City and between the County and for the employment of staff members for the administration jointly of the zoning laws applicable to the City and the County.

**SECTION 6.** That if agreement shall be reached between any City and any County to which this Act is applicable for the creation of a joint Planning Commission and a joint Board of Adjustment, then the present provisions of law in conflict with the provisions hereof shall be inoperative and suspended during

the tenure of such an agreement between such City and such County.

**SECTION 7.** That when the jurisdiction of the said joint Planning Commission and the jurisdiction of the said joint Board of Adjustment are exercised as to property within such City the law and procedure applicable to the City shall govern, and when such jurisdiction is exercised as to property outside of the City and within the County the law and procedure applicable to the County shall govern.

**SECTION 8.** That if any portion of this Act shall be invalid, the remaining portions hereof shall not be affected.

**SECTION 9.** That this Act shall become effective as to any County having a population of 300,000 or more inhabitants by the Federal Census of 1930 or any subsequent Federal Census when the same shall have been approved by the Quarterly County Court of such County by a vote of not less than two-thirds of the members thereof, such approval to be made by said Quarterly County court within sixty (60) days after the sine die adjournment of the General Assembly of the State of Tennessee for the year 1955, the public welfare requiring its becoming effective at that time, and this Act shall not become effective as to any County before such approval by the Quarterly County court of the County. The approval or non-approval of this Act

by the said Quarterly County Court shall be certified by the Chairman of the Quarterly County Court of the County to the Secretary of State.

Passed: March 17, 1955.

## Subdivision Law

### Private Acts of 1967-68 Chapter 470

**SECTION 1.** That Quarterly County Courts in counties of six hundred thousand (600,000) population or more by the Federal Census of 1960, or any subsequent Census, shall have the authority to promulgate, by resolution, subdivision regulations governing the division, subdivision or resubdivision of land into two (2) or more parcels, any of which is four (4) acres or less in size, for the purpose of conveyance of building development. Said regulations shall include as a minimum the manner in which the owner or subdivider shall submit a plat of such proposed division, subdivision or resubdivision; the procedure by which a plat shall be processed; the standards to which such plats shall conform; the extent of site improvements, dedications of land for public use, and reservations of land for public acquisition which may be required; the period of time for which approval of a plat is valid prior to the start of development; standards for the adequate provision of blocks, lots, street grades and alignments, and similar physical design features; standards for accuracy in surveys; conditions under which modification of the strict application of such regulations may be permitted; the amount of any service charge which may be made for processing and recording plats; methods of enforcement for said regulations; and penalties for violation of said regulations.

As amended by: Private Acts of 1972, Chapter 311.

**SECTION 2.** Be it further enacted, That all plats for the division, subdivision or resubdivision of land subject to the regulations shall first be filed with the County Planning Commissions having jurisdiction in said counties. The County Planning Commission shall approve plats which conform to the subdivision regulations and all applicable provisions of the comprehensive plan of the county. Upon approval, the County Planning Commission shall forward such plats to the Board of County Commissioners of said counties for final approval.

As amended by: Private Acts of 2015, Chapter 17

#### **SECTION 3. (deleted)**

As amended by: Private Acts of 2015, Chapter 17

**SECTION 4.** That the owner or subdivider shall enter into a contract with and satisfactory to the Board of County Commissioners relative to the installation of required site improvements at his own expense prior to certification by said Board of the plat for recording. Said owner or subdivider shall make a cash deposit or an acceptable surety bond to ensure completion of the actual installation of and payment for said site improvements within the time specified in such contract. The amount of cash deposit or surety bond, and the surety, must meet with the approval of the Board of County Commissioners and county attorney of the county; provided, however, that separate contracts for the installation of and payment for all necessary site improvements may be executed to permit development of a subdivision in successive

sections or stages.

As amended by: Private Acts of 2015, Chapter 17

**SECTION 5.** That the County Planning Commission and Board of County Commissioners shall approve or disapprove a plat within thirty (30) days after the submission thereof respectively to these bodies; otherwise such plat shall be deemed to have been approved and certificate to that effect shall be issued by said Commission and Board on demand; provided, however, that the owner or subdivider may waive this requirement and consent to an extension of time.

**SECTION 6.** That the recording of a plat shall operate to dedicate to public use all portions of land or interest therein designated thereon for streets, easements, and other specified public uses.

**SECTION 7.** Be it further enacted, That a plat certified for recording shall carry on its face at least a signed acknowledgement by the owner, which shall be notarized; the signature and seal of a registered professional engineer, duly authorized by law to practice in the State of Tennessee; the signatures of the Director of Planning of the County Planning Commission, the Chairman and one other member of the Board of County Commissioners; and the dates of approval. County Register of said County shall not record nor re-record plats which do not contain the required acknowledgments and signatures.

Private Acts of 1980, Chapter 235.

As amended by:

Private Acts of 2015, Chapter 17

**SECTION 8.** That county building officials in said counties shall refuse to issue a building permit for any parcel of land subject to said regulations unless same shall appear upon a properly recorded plat.

**SECTION 9.** That county assessors of said counties may refuse to split back assessments on parcels of land subject to said regulations until same shall appear upon a properly recorded plat.

**SECTION 10.** That violations of this Act and any subdivision regulations promulgated by said Quarterly County Courts in furtherance of its purposes are misdemeanors, punishable by fine of not more than Fifty Dollars (\$50.00). County attorneys of said counties may institute injunctive proceedings to prevent, enjoin or abate such violations.

**SECTION 11.** That Chapter 409 of the Private Acts of 1925, Chapter 130 of the Private Acts of 1945, Chapter 131 of the Private Acts of 1945, and Chapter 445 of the Private Acts of 1953 of the General Assembly of the State of Tennessee, and all other Acts or parts of Acts in conflict herewith, be and the same are hereby repealed.

**SECTION 12.** That if any provision or part of this Act shall for any reason be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not invalidate the remainder of this Act but shall be confined in its operation to the provision or part hereof declared invalid.

**SECTION 13.** That this Act shall have no effect unless approved by a two-thirds ( $\frac{2}{3}$ ) vote of the Quarterly County Court of any county to which this Act may apply not more than one hundred twenty (120) days subsequent to its approval by the Chief Executive of this State or after its otherwise effective date. Its approval or non-approval shall be proclaimed by the presiding officer of the Quarterly County Court and shall be certified by him to the Secretary of State.

**SECTION 14.** That this Act shall be effective from and after its passage, the public welfare requiring it, but the provisions hereof shall not become operative until validated as provided in Section 13 herein and as otherwise provided in this Act.

Passed: March 28, 1968.

## Zoning -- Historical Notes

The following private acts dealt with zoning in Shelby County, but have no current effect. Their listing here is for historical and reference purposes.

1. Private Acts of 1925, Chapter 409, was the first subdivision law for Shelby County. It was amended by Private Acts of 1945, Chapter 130, and Private Acts of 1953, Chapter 445. All of these were repealed by the current subdivision law, Private Acts of 1967-68, Chapter 470, found in this volume.
2. Private Acts of 1945, Chapter 131, was an amendatory act to Private Acts of 1935, Chapter 625, but its provisions were repealed by Private Acts of 1967-68, Chapter 470.
3. Private Acts of 1961, Chapter 410, attempted to give the board of county commissioners authority to delegate to the planning commission the power to amend the zoning map, once a comprehensive zoning plan had been adopted. Its provisions were rejected by the quarterly county court.
4. Private Acts of 1927, Chapter 448 and 509, which amended Private Acts of 1925, Chapter 409, were repealed by Private Acts of 2015, Chapter 17.

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