

## AN ACT

ENTITLED, An Act to standardize publication and hearing requirements for municipal and county planning and zoning procedures.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

Section 1. That § 11-2-10 be amended to read as follows:

11-2-10. If a county is conducting or in good faith intends to conduct studies within a reasonable time, or has held or is holding a hearing for the purpose of considering a comprehensive plan or official controls, the board in order to protect the public health, safety, and general welfare may adopt as an emergency measure a temporary zoning map and temporary zoning ordinance and other temporary official controls, the purpose of which shall be to classify and regulate uses and related matters as constitutes the emergency. Before adoption or renewal of such emergency measure or measures, the board shall hold at least one public hearing. Notice of the time and place of the hearing shall be given once at least ten days in advance by publication in a legal newspaper of the county. Any emergency measure is limited to one year from the date it becomes effective and may be renewed for one year. In no case may such a measure be in effect for more than two years.

Section 2. That § 11-2-11 be amended to read as follows:

11-2-11. The county planning commission may prepare, or cause to be prepared, a comprehensive plan for the county including those municipalities within the county which are either unincorporated or which have requested by resolution of the governing board of such municipality to be included. Zoning ordinances, subdivision ordinances, the official zoning map, and other official controls as deemed necessary, shall be included as adjuncts to and in accordance with the comprehensive plan. The county planning commission shall hold a public hearing subject to the same notice requirements as provided in § 11-2-19.

Section 3. That § 11-2-17.1 be amended to read as follows:

11-2-17.1. The board of county commissioners may enact permanent subdivision ordinances as

defined in subdivision 11-2-1(7). The board need not follow the procedures provided in this chapter for establishing zoning districts or official controls pursuant to the comprehensive plan in implementing this section. This section does not apply to any county that has adopted a comprehensive plan. Before adoption of its subdivision ordinance or any amendment thereto, the commission shall hold at least one public hearing. Notice of the time and place of the hearing shall be given once at least ten days in advance by publication in a legal newspaper of the county. Any interested person shall be given a full, fair, and complete opportunity to be heard at the hearing, and the governing body may refuse or adopt the ordinance, with or without amendment.

Section 4. That § 11-2-19 be amended to read as follows:

11-2-19. After receiving the proposed comprehensive plan drafted by the planning commission, which includes proposed official controls, the board shall hold at least one public hearing. Notice of the time and place of the hearing shall be given once at least ten days in advance by publication in a legal newspaper of the county.

Section 5. That § 11-2-21 be amended to read as follows:

11-2-21. The action of the board of county commissioners shall be filed with the county auditor. A summary shall be prepared by the county planning commission, reviewed by the state's attorney, and published once in a legal newspaper of the county and take effect on the twentieth day after its publication. Any summary published under the provisions of this chapter shall contain a notification that the public may inspect the entire comprehensive plan or any part, adjunct, amendment, or additions at the office of the county auditor during regular business hours.

Section 6. That § 11-2-28.1 be amended to read as follows:

11-2-28.1. An individual landowner may also petition the board to change the zoning of all or any part of the landowner's property. Such petitioning landowner shall also notify all other abutting landowners by registered or certified mail of the petitioned zoning change at least seven days prior to any public hearing held thereon by the board of county commissioners. Property shall be

considered as abutting even though it may be separated from the property of the petitioner by a public road or highway.

Section 7. That § 11-2-29 be amended to read as follows:

11-2-29. Upon such filing or upon separate request by the board, the planning commission shall hold at least one public hearing. Notice of the time and place of the hearing shall be given once at least ten days in advance by publication in a legal newspaper of the county. At such public hearing, any person may appear and request or protest the requested change.

Section 8. That § 11-2-30 be amended to read as follows:

11-2-30. The board of county commissioners shall thereafter by resolution or ordinance, as appropriate, either adopt or reject such amendment, supplement, change, modification, or repeal, and if it is adopted by the board of county commissioners, a summary shall be prepared by the county planning commission, reviewed by the state's attorney, and published once in a legal newspaper of such county and take effect on the twentieth day after its publication. The provisions of § 11-2-22 are applicable to this section.

Section 9. That § 11-3-22.1 be amended to read as follows:

11-3-22.1. The board of county commissioners shall set a time and place for a hearing on a petition filed pursuant to § 11-3-21.1. The hearing shall be held within thirty days of when the petition is filed. The board shall hold at least one public hearing. Notice of the time and place of the hearing shall be given once at least ten days in advance by publication in a legal newspaper of the county.

Section 10. That § 11-4-3.1 be amended to read as follows:

11-4-3.1. If a municipality is conducting or in good faith intends to conduct studies within a reasonable time or has held or is holding a hearing for the purpose of considering a comprehensive plan or official controls, the city council in order to protect the public health, safety, and general welfare may adopt as an emergency measure a temporary zoning map, a temporary zoning ordinance, and other temporary official controls, the purpose of which shall be to classify and regulate uses and

related matters as constitutes the emergency. Before adoption or renewal of such emergency measure, the council shall hold at least one public hearing. Notice of the time and place of the hearing shall be given once at least ten days in advance by publication in a legal newspaper of the municipality. Any emergency ordinance is limited to one year from the date it becomes effective and may be renewed for one year. In no case may such ordinance be in effect for more than two years.

Section 11. That § 11-4-4 be amended to read as follows:

11-4-4. The governing body may adopt the necessary regulations for preparing a preliminary survey and plan designating the proposed restrictions and district boundaries. The proposed district and restrictions shall be definitely set forth in a proposed ordinance. The ordinance shall be adopted as other ordinances. Before adoption or renewal of such ordinance, the council shall hold at least one public hearing. Notice of the time and place of the hearing shall be given once at least ten days in advance by publication in a legal newspaper of the municipality. Any interested person shall be given a full, fair, and complete opportunity to be heard at the hearing, and the governing body may refuse or adopt the ordinance, with or without amendment.

Section 12. That § 11-4-5 be amended to read as follows:

11-4-5. If such an ordinance is adopted, the ordinance is subject to the provisions of § 9-19-7 as a comprehensive regulation unless the referendum is invoked, or unless a written protest is filed with the auditor or clerk, signed by at least forty percent of the owners of equity in the lots included in any proposed district and the lands within two hundred fifty feet from any part of such proposed district. A corporation shall be construed to be a sole owner, and if parcels of land are in the name of more than one person, ownership representation shall be in proportion to the number of signers who join in the petition in relation to the number of owners. If a protest is filed, the ordinance does not become effective unless the ordinance is approved by two-thirds of the governing body of the municipality. The protest provisions of this section do not apply to any ordinance regulating or establishing flood plain areas.

Section 13. That § 11-4-21 be amended to read as follows:

11-4-21. The board of adjustment shall hold at least one public hearing of the appeal. Notice of the time and place of the hearing shall be given once at least ten days in advance by publication in a legal newspaper of the municipality, and due notice shall be given to the parties in interest. The board shall decide the appeal within a reasonable time. Any party may appear at the hearing in person or by agent or by attorney.

Section 14. That § 11-6-17 be amended to read as follows:

11-6-17. Before recommendation to the council of the comprehensive plan or part thereof, the planning commission shall hold at least one public hearing. Notice of the time and place of the hearing shall be given once at least ten days in advance by publication in a legal newspaper of the municipality. The planning commission shall submit the recommended comprehensive plan or part thereof to the municipal council.

Section 15. That § 11-6-18.2 be amended to read as follows:

11-6-18.2. A summary of the action of the city council shall be prepared by the city planning commission, reviewed by the city attorney, and published once in a legal newspaper of the municipality and take effect on the twentieth day after its publication. Any summary published under the provisions of this chapter shall contain a notification that the public may inspect the entire comprehensive plan or any part, adjunct, amendment, or additions thereto at the office of the city auditor or clerk during regular business hours.

Section 16. That § 11-6-27 be amended to read as follows:

11-6-27. In exercising the duties granted to it by this chapter, the planning commission shall recommend and the council shall by ordinance adopt regulations governing the subdivision of land within its jurisdiction as defined in § 11-6-26. Such regulations may provide for the harmonious development of the municipality and its environs; for the coordination of streets within subdivisions with other existing or planned streets or with other features of the comprehensive plan of the

municipality; for adequate open spaces for traffic, recreation, light, and air; and for a distribution of population and traffic which will tend to create conditions favorable to health, safety, convenience, or prosperity. Before an adoption of its subdivision regulations or any amendment thereof, the council shall hold at least one public hearing. Notice of the time and place of the hearing shall be given once at least ten days in advance by publication in a legal newspaper of the municipality. Any interested person shall be given a full, fair, and complete opportunity to be heard at the hearing, and the governing body may refuse or adopt the ordinance, with or without amendment.

Section 17. That § 11-6-31 be amended to read as follows:

11-6-31. Any subdivision of land containing two or more lots, no matter how described, shall be platted or replatted, and must be submitted to the planning commission for their consideration and recommendation to the council for approval or rejection or reviewed and approved in accordance with § 11-3-6.

Section 18. That § 11-6-34 be amended to read as follows:

11-6-34. When any map, plan, plat, or replat is tendered for filing in the office of the register of deeds, the register of deeds or deputy shall determine whether such proposed map, plan, plat, or replat is or is not subject to the provisions of this chapter and whether the endorsements required by this chapter appear thereon. No register of deeds or deputy may accept for record, or record, any such map, plan, plat, or replat unless and until it has been approved by the city council of such municipality as required by § 11-6-26 or reviewed and approved in accordance with § 11-3-6.

Section 19. That § 11-6-36 be amended to read as follows:

11-6-36. From and after the time when the platting jurisdiction of any municipality has attached by virtue of the adoption of a major street plan as provided in § 11-6-26, the municipality or other public authority may not, except as provided by § 11-6-37, accept, lay out, open, improve, grade, pave, or light any street or lay or authorize the laying of water mains, sewers, connections, or other facilities or utilities in any street within the municipality unless such street has been accepted or

opened as, or has otherwise received the legal status of, a public street prior to the adoption of a comprehensive plan, or unless such street corresponds in its location and lines with a street shown on a subdivision plat approved by the council or on a street plat made by the planning commission and adopted by the council or reviewed and approved in accordance with § 11-3-6.

Section 20. That § 11-6-37 be amended to read as follows:

11-6-37. The council, or, in the case of a street outside of the municipality, the governing body of such outside territory, may locate and construct or may accept any other street if the ordinance or other measure for such location and construction or for such acceptance be first submitted to the planning commission for its consideration, and, if disapproved by the commission, be passed by not less than two-thirds of the entire membership of the city council or said governing body. A street approval by the commission upon such submission, or constructed or accepted by a two-thirds vote after disapproval by the commission, has the status of an approved street as fully as though it had been originally shown on a subdivision plat approved by the council or on a plat made by the commission and adopted by the council or reviewed and approved in accordance with § 11-3-6.

Section 21. That § 11-6-38 be amended to read as follows:

11-6-38. From and after the time when the platting jurisdiction of any municipality has attached by reason of the adoption of a major street plan as provided in § 11-6-26, no building permit may be issued for or no building may be erected on any lot within the territorial jurisdiction of the commission and council as provided in § 11-6-26, unless the street giving access to the lot upon which the building is proposed to be placed is accepted as opened as, or has otherwise received the legal status of, a public street prior to that time, or unless such street corresponds in its location and lines with a street shown on a recorded subdivision plat approved by the council or on a street plat made by the commission and adopted by the council or with a street located or accepted by the council, or, in the case of territory outside of the municipal corporation, by the governing body thereof, after submission to the commission, and, in case of the commission's disapproval, by the favorable vote required in

§ 11-6-37. Any building erected in violation of this section is an unlawful structure, and the municipality or governing body may bring action to enjoin such erection or cause it to be vacated or removed.



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I certify that the attached Act  
originated in the

HOUSE as Bill No. 1126

\_\_\_\_\_  
Chief Clerk

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\_\_\_\_\_  
Speaker of the House

Attest:

\_\_\_\_\_  
Chief Clerk

\_\_\_\_\_  
President of the Senate

Attest:

\_\_\_\_\_  
Secretary of the Senate

House Bill No. 1126

File No. \_\_\_\_\_

Chapter No. \_\_\_\_\_

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Received at this Executive Office  
this \_\_\_\_ day of \_\_\_\_\_ ,

19\_\_ at \_\_\_\_ M.

By \_\_\_\_\_  
for the Governor

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The attached Act is hereby  
approved this \_\_\_\_\_ day of  
\_\_\_\_\_, A.D., 19\_\_

\_\_\_\_\_  
Governor

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STATE OF SOUTH DAKOTA,  
ss.

Office of the Secretary of State

Filed \_\_\_\_\_, 19\_\_  
at \_\_\_\_\_ o'clock \_\_ M.

\_\_\_\_\_  
Secretary of State

By \_\_\_\_\_  
Asst. Secretary of State