Planning and Zoning: South Dakota Compiled Laws

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South Dakota Compiled Laws
Title II Chapters 1, 1A, 2, 3, 4 and 6
which Cover Provisions of Law Dealing with

PLANNING AND ZONING

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TITLE 11
PLANNING AND ZONING

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CHAPTER 11-1
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CHAPTER 11-1

STATE DEVELOPMENT PLAN AND PLANNING AGENCY

11-1-1. Definition of terms.—As used in this chapter, unless the context otherwise requires, the following definitions are prescribed:

(1) "State comprehensive development plan" means the plan or plans for the orderly and co-ordinated growth and development of the state. Such plan shall be based upon physical, social, cultural, economic, governmental and other data relating to state development, and shall include plans for natural resources, land use, and related activities.

(2) "Unit of local government" means a county, city, town, township, metropolitan regional agency, authority, school district, or other special district.


11-1-2. Planning agency established—Purposes—Director as administrative head—Appointment, qualifications, tenure and salary of director.—There is hereby established in the office of the Governor, the state planning agency for the purpose of effectuating, directing and correlating the state and local planning activities in furtherance of the purposes of this chapter. The administrative head of the state planning agency shall be the state director of planning, appointed by the Governor to serve at his pleasure. No person shall be eligible for appointment as state director of planning who is not qualified by training or experience in state and local planning. The salary of the director shall be fixed by the Governor.

Source: SL 1966, ch 226, § 3.

11-1-2.1. Agency as bureau within office of executive management—Functions performed by executive office.—The former state planning agency shall comprise the state planning bureau within the office of executive management, and all its functions shall be performed by the office of executive management as provided by § 1-33-6, except that the state planning commission shall retain, and be limited to, advisory functions (as defined in § 1-32-1) with respect to programs associated with it.

11-1-3. Planning commission created—Composition.—There is hereby created within the state planning bureau a state planning commission to advise and assist the commissioner in the performance of his duties. The state planning commission shall consist of the heads of the following departments:

(1) Department of public safety
(2) Department of commerce and consumer affairs
(3) Department of social services
(4) Department of manpower affairs
(5) Department of natural resource development
(6) Department of environmental protection
(7) Department of game, fish and parks
(8) Department of health
(9) Department of agriculture
(10) Department of economic and tourism development
(11) Department of transportation
(12) Department of military and veterans affairs
(13) Department of revenue
(14) Department of education and cultural affairs


11-1-4. Commission chairman and assistants.—The commission shall elect a chairman who shall hold office for two years, and appoint such secretaries and other assistants as it may elect.


11-1-5. Expenses of commissioners.—Travel and other expenses of the commission shall be paid by their respective departments and agencies.


11-1-6. Employment and compensation of other personnel.—The director of planning is hereby authorized with the approval of the Governor to employ and fix the salaries of such other personnel and agents as he may deem necessary to discharge the duties prescribed by this chapter.

Source: SL 1966, ch 226, § 3 (1).

11-1-7. Travel expenses of planning agency personnel.—The state director of planning and other personnel in the state planning
agency shall be allowed their actual and necessary travel and subsistence expenses, at the same rate as for other employees of state government.

Source: SL 1966, ch 226, § 3 (1).

11-1-8. Equipment and supplies for planning agency.—The director of planning is authorized with the approval of the Governor to purchase and acquire equipment and supplies he deems necessary to perform his duties.

Source: SL 1966, ch 226, § 3 (1).

11-1-9. Preparation and maintenance of state comprehensive development plan—Co-operation of public agencies—Transmittal to Governor and Legislature—Revisions and changes.—The state planning agency, under the direction and control of the Governor and in consultation with the state planning commission, shall prepare and maintain the state comprehensive development plan, or plans or parts of plans which comprise the state comprehensive development plan. Such plan shall be prepared in co-operation with the various departments and agencies of the state and representatives of units of local government. Upon completion and approval by the state planning commission of the plan or any substantial phase thereof, copies shall be transmitted to the Governor and to the Legislature. Subsequent revisions and changes in the plan or parts of the plan shall be made as necessary, utilizing the same procedure as for preparation of state comprehensive development plans herein provided.


11-1-10. Co-ordination of planning activities of state agencies—Review of departmental plans—Basis for budget recommendations.—The state planning agency, under the direction and control of the Governor and in consultation with the state planning commission, shall co-ordinate the planning activities of other state agencies and departments in regard to the physical and economic development of the state. To this end, all plans prepared by other state departments and agencies, shall be submitted for review and comment by the state planning agency, with a view towards improving co-ordination and preventing duplication of efforts. Such plan shall be considered as a basis for budget recommendations to the Legislature under the provisions of chapter 4-7.

11-1-11. Assistance in and co-ordination of local planning activities—Scope of assistance—Reimbursement of expenses.—The state planning agency, under the direction and control of the Governor and in consultation with the state planning commission, shall assist, upon request of the governing body of any unit of local government, in developing comprehensive planning for such units of local government and shall co-ordinate such efforts with the state comprehensive development plan. Such local planning assistance shall include, but not be limited to, surveys, land use studies, urban renewal, and technical services relating to planning. Any expenses incurred by the state planning agency in providing such planning assistance shall be reimbursed by the unit of local government requesting and receiving such assistance.


11-1-12. Co-operation with federal agencies and other states.— The state planning agency, under the direction and control of the Governor and in consultation with the state planning commission, shall co-operate with other states and the federal government and its agencies to facilitate co-ordination in planning and economic development.


11-1-13. Acceptance and expenditure by planning agency of funds and grants from governmental and other sources—Contracts with other agencies.—The state planning agency may receive and expend funds from municipal, county, regional and other units of government and may accept and disburse grants and other aids for any appropriate planning purpose from the federal government and from other public or private sources, and may enter into contracts with agencies of the federal government, local government units, and private persons or others as may be necessary in the planning assistance functions of the agency.


11-1-14. State agency reports on implementation of development plan—Evaluation of reports and recommendations to Governor and budget officer.—Departments and agencies of the state shall submit semiannually to the state planning agency, a report on methods of, progress on, and implementation of the development plan in their respective functional areas. The director shall eval-
uate the reports and submit to the Governor any recommendations necessary for furthering the implementation of the plan. The agency shall co-ordinate the physical and economic development of the state through its comments and recommendations to the Governor and the state budget officer.


11-1-15. State and local planning revolving fund established—Receipts and disbursements.—Such moneys as may be received by the state planning agency pursuant to this chapter, shall be deposited in a revolving fund in the state treasury which is hereby established and designated as the state and local planning revolving fund. All receipts therein are hereby appropriated to the state planning agency to be used for the purposes for which such moneys have been received. All payments required to be made to carry out the purposes of this chapter shall be paid out by warrant of the state auditor upon vouchers approved by the director of planning.


11-1-16. Rules and regulations.—The state director of planning is hereby authorized with the approval of the state planning commission and the Governor to issue such rules and regulations as deemed necessary for the carrying out of the provisions and intent of this chapter.

Source: SL 1966, ch 226, § 3 (2).

11-1-17. Annual report to Governor and Legislature—Contents—Information furnished on request.—The state planning agency shall submit an annual report to the Governor and the Legislature. Such report shall contain summaries of those actions which have affected, amended, revised, added to or deleted from the state comprehensive development plan, during the preceding year, and the nature of all such amendments, revisions, additions and deletions shall be clearly indicated. The annual report shall also contain summaries of the work of the state planning agency and of the state planning commission. The agency shall furnish any information, data, or statistics which it has compiled to the Governor, the Legislature, or the legislative research council upon request.

11-1-18. Planning powers of state and local agencies unimpaired.—Nothing contained in this chapter shall operate in deroga-
tion of planning powers conferred by the Constitution or laws of
this state upon departments, boards, commissions, agencies, or in-
strumentalities of state, county or municipal government.

11-1-19. Citation of chapter.—This chapter shall be known and
may be cited as the “State Planning Act.”

CHAPTER 11-1A
ENVIRONMENTAL IMPACT OF GOVERNMENTAL ACTIONS

Section
11-1A-1. Definition of terms.
11-1A-2. Actions subject to chapter.
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Purpose.
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CHAPTER 11-1A
ENVIRONMENTAL IMPACT OF GOVERNMENTAL ACTIONS

11-1A-1. Definition of terms.—Terms as used in this chapter, unless the context otherwise requires, mean:

(1) "Agency," the executive and administrative departments, offices, boards, commissions, and other units of the state government;

(2) "Board," the board of environmental protection;

(3) "Draft environmental impact statement," a preliminary statement prepared pursuant to § 11-1A-5;

(4) "Environment," the physical conditions which will be affected by a proposed action, including land, air, water, minerals, flora, fauna, noise, objects of historic or aesthetic significance, existing patterns of population concentration, distribution, or growth, and existing community or neighborhood character;

(5) "Environmental impact statement," a detailed statement setting forth the matters specified in § 11-1A-7. It includes any comments on a draft environmental statement which are received pursuant to § 11-1A-8, and the agency's response to such comments, to the extent that they raise issues not adequately resolved in the draft environmental statement;

(6) "Secretary," the secretary of the department of environmental protection.


11-1A-2. Actions subject to chapter.—As used in this chapter, unless the context otherwise requires, "actions" include:

(1) New and continuing projects or activities directly undertaken by any public agency; or supported in whole or part through contracts, grants, subsidies, loans, or other forms of funding assistance from one or more public agencies; or involving the issuance of a person of a lease, permit, license, certificate or other entitlement for use by one or more public agencies; or

(2) Policy, regulations and procedure-making.

Source: SL 1974, ch 245, § 1 (2).
11-1A-3. Actions not subject to chapter.—As used in this chapter, unless the context otherwise requires, “actions” do not include:

(1) Enforcement proceedings or the exercise of prosecutorial discretion in determining whether or not to institute such proceedings;

(2) Actions of a ministerial nature, involving no exercise of discretion;

(3) Emergency actions responding to an immediate threat to public health or safety;

(4) Proposals for legislation; or

(5) Actions of an environmentally protective regulatory nature.

Source: SL 1974, ch 245, § 1 (3).

11-1A-4. Environmental impact statement required on major actions—Purpose.—All agencies shall prepare, or cause to be prepared by contract, an environmental impact statement on any major action they propose or approve which may have a significant effect on the environment. The purpose of an environmental impact statement is to provide detailed information about the effect which a proposed action is likely to have on the environment, to list ways in which any adverse effects of such an action might be minimized, and to suggest alternatives to such an action.


11-1A-5. Draft impact statement—Contents.—As early as possible in the formulation of a proposal for action that is likely to require the preparation of an environmental impact statement, the responsible agency shall prepare or cause to be prepared a draft environmental statement describing in detail the proposed action and reasonable alternatives to the action, and briefly discussing, on the basis of information then available to the agency, the remaining items set forth in § 11-1A-7.

Source: SL 1974, ch 245, § 3.

11-1A-6. Purpose of draft impact statement—Form and contents.—The purpose of a draft environmental statement is to inform the public and other public agencies as early as possible about proposed actions that may significantly affect the quality of the environment, and to solicit comments which will assist the agency in determining the environmental consequences of the proposed action. The draft statement should resemble in form and content...
the environmental impact statement to be prepared after comments have been received and considered pursuant to § 11-1A-9; however, the length and detail of the draft environmental statement will necessarily reflect the preliminary nature of the proposal and the early stage at which it is prepared.

Source: SL 1974, ch 245, § 3.

11-1A-7. Contents of environmental impact statement.—An environmental impact statement shall include a detailed statement setting forth the following:

(1) A description of the proposed action and its environmental setting;
(2) The environmental impact of the proposed action including short-term and long-term effects;
(3) Any adverse environmental effects which cannot be avoided should the proposal be implemented;
(4) Alternatives to the proposed action;
(5) Any irreversible and irrevocable commitments of resources which would be involved in the proposed action should it be implemented;
(6) Mitigation measures proposed to minimize the environmental impact; and
(7) The growth-inducing aspects of the proposed action.


11-1A-8. Circulation of draft statement for comment. — The draft statement shall be circulated for comment among other public agencies which have jurisdiction by law or special expertise with respect to any environmental impact involved and shall be made available for comment by relevant federal agencies and interested members of the public.

Source: SL 1974, ch 245, § 3.

11-1A-9. Filing of impact statement and comments before taking action—Responses to comments.—The environmental impact statement, prepared pursuant to § 11-1A-4, together with the comments of public and federal agencies and members of the public, shall be filed with the office of the secretary and made available to the public at least thirty days prior to taking agency action on the proposal which is the subject of the environmental impact state-
ment. Such a statement shall also include copies or a summary of the substantive comments received by the agency pursuant to § 11-1A-8, and the agency response to such comments.


11-1A-10. Findings required as to compliance and actions to minimize environmental problems.—When an agency decides to carry out or approve an action which has been the subject of an environmental impact statement, it shall make an explicit finding that the requirements of this chapter have been met and that all feasible action will be taken to minimize or avoid environmental problems that are revealed in the environmental impact statement process.


11-1A-11. Impact statement not required if federal statement required.—In order to avoid duplication of effort and to promote consistent administration of federal and state environmental policies, the environmental impact statement required by this chapter need not be prepared with respect to actions for which a detailed statement is required to be prepared pursuant to the requirements of the National Environmental Policy Act of 1969 and implementing regulations thereto; provided that such statement complies with the requirements of this chapter and the guidelines adopted pursuant thereto.


11-1A-12. Prospective application of chapter.—The requirements of this chapter shall not apply to actions undertaken or approved prior to March 2, 1974.


11-1A-13. Citation of chapter.—This chapter may be cited as the South Dakota Environmental Policy Act.

CHAPTER 11-2
COUNTY PLANNING AND ZONING

Section
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11-2-3.1. Meetings of planning commission.
11-2-4. Employment of planning staff—Contract for planning services.
11-2-5. Joint planning by counties—Sharing of expenses—Objectives of joint planning.
11-2-7. Contracts to provide planning and zoning services to municipalities—Municipal powers exercised by county board.
11-2-8. Joint county-municipal planning activities—County planning commission as municipal planning commission.
11-2-9. Funds, equipment and accommodations provided by county—Expenses of planning commission members.
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CHAPTER 11-2
COUNTY PLANNING AND ZONING

11-2-1. Definition of terms.—The words or terms as used in this chapter unless a different meaning is clearly indicated by the context shall mean:

(1) “Board,” the board of county commissioners;

(2) “Governing body,” the board of county commissioners, the city council or city commission;

(3) “Municipality,” a city or town however organized;

(4) “Unit of local government,” a municipality, township, conservancy subdistrict, school district or other special district;

(5) “Commission,” “planning and zoning commission,” “zoning commission,” or “planning commission,” any county planning and zoning commission created under the terms of this chapter;

(6) “Comprehensive plan,” a document which describes in words, and may illustrate by maps, plats, charts, and other descriptive matter, the policy, goals and objectives of the board to interrelate all functional and natural systems and activities relating to the development of the territory under its jurisdiction;

(7) “Zoning map,” the map adopted by resolution of the board that delineates the extent of each district or zone established in the zoning resolution;
(8) "Subdivision ordinance," the ordinance adopted by the board to regulate the subdivision of land so as to provide co-ordination of streets with other subdivisions and the major street plan, adequate areas set aside for public uses, water and sanitation facilities, drainage and flood control, and conformity with the comprehensive plan;

(9) "Official controls," any ordinance, regulation, standard, map, or procedure adopted by the board to regulate the development of the territory so as to carry out the comprehensive plan;

(10) "Zoning ordinance," the ordinance adopted by the board to regulate by districts or zones the location, height, bulk, and size of buildings and other structures, and accessory uses, percentage of lot which may be occupied, the size of lots, courts, and other open spaces, the density and distribution of population, the location and use of buildings, and structures for trade, advertising uses, industry, residence, recreation, public activities, or other purposes, and, the uses of land for trade, industry, recreation, or other purposes.


11-2-2. Appointment of county planning commission—Number of members—Acting as zoning commission.—For the purpose of promoting health, safety, morals and the general welfare of the county, the board of county commissioners of each county in the state, shall appoint a commission of three or more members, the total membership of which shall always be an uneven number and at least one member of which shall be a member of the board, to be known as the county planning commission. Such commission shall also be the county zoning commission.


11-2-3.1. Meetings of planning commission.—The planning commission shall meet at such times as may be necessary to accomplish the purposes of this chapter, but, in no event, shall the commission meet less than once every three months.

11-2-3. Term of office of appointive commission members—Removal for cause—Ex officio members.—The term of each of the appointed members of the county planning commission shall be for five years; provided, that when the planning commission is first appointed, the lengths of the terms shall be varied so that no more than one-third of the terms shall expire in the same year. Any appointed member of the county planning commission may be removed for cause, after hearing prior to the expiration of his term by a majority vote of the elected members of the board of county commissioners. Administrative officials of the county may be appointed as ex officio members of the commission.


11-2-4. Employment of planning staff—Contracts for planning services.—To carry out the purposes of this chapter, the board may employ a planning director and inspector or either of them and such staff as it deems necessary; or the board may contract with a planning agency, authority, or commission, or with planning consultants, or with other specialists for such services as it requires.


11-2-5. Joint planning by counties—Sharing of expenses—Objectives of joint planning.—The boards of two or more county commissioners may direct their planning commissions to plan jointly. Expenses incurred in connection with joint planning, including but not limited to contracted services, shall be shared equitably among the counties involved. Encouraging regional economic development, including but not limited to the creation of compatible controls in neighboring counties, shall be the objective of joint planning.


11-2-6. Grants from and agreements with federal and state agencies.—Any county providing for county planning activities may receive grants-in-aid from or enter into reasonable agreements with any department or agency of the government of the United States or state of South Dakota, to arrange for the receipt of federal or state funds in the interest of furthering the planning program.

11-2-7. Contracts to provide planning and zoning services to municipalities—Municipal powers exercised by county board.—The governing body of any municipality may contract with the board of planning and zoning services to be provided by the county, and the contract may provide that the municipality shall pay such fees as are agreed for the services performed. Under the provisions of the contract the municipal governing body may authorize the county planning and zoning commission, on behalf of the city, to exercise any of the powers otherwise granted to municipal planning and zoning commissions under chapters 11-4 and 11-6.


11-2-8. Joint county-municipal planning activities—County planning commission as municipal planning commission.—The contract between the governing body of the municipality and the board may provide among other things for joint county-municipal planning activities, or it may designate the county planning commission as the planning commission for the municipality.

Source: SL 1967, ch 20, § 9; 1975, ch 113, § 3.

11-2-9. Funds, equipment and accommodations provided by county—Expenses of planning commission members.—The board of county commissioners shall provide the funds, equipment, and accommodations necessary for such planning activity as the board determines. Such appropriation may include payment for actual expenses of the members of the planning commission or payment on a per diem basis as determined by the board.


11-2-10. Temporary zoning controls—Purpose—Public hearing required—Duration of controls—Renewal.—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 which shall be given at least ten days in advance by publication
in a newspaper having general circulation in the county. Such measures shall be limited to one year from the date they become effective and may be renewed for one year. In no case shall such measures be in effect for more than two years.


11-2-11. Preparation of comprehensive county plan and official controls—Municipalities included.—The county planning commission shall prepare, or cause to be prepared, not later than July 1, 1976, 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. It shall be the duty of the commission to also develop official controls for the implementation of the comprehensive plan.


11-2-12. Purposes of comprehensive county plan.—The comprehensive plan shall be for the purpose of protecting and guiding the physical, social, economic, and environmental development of the county; to protect the tax base; to encourage a distribution of population or mode of land utilization that will facilitate the economical and adequate provisions of transportation, roads, water supply, drainage, sanitation, education, recreation, or other public requirements; to lessen governmental expenditure; and to conserve and develop natural resources.


11-2-13. Division of county into zoning districts.—Official controls may include the establishment of zoning districts within which the use of land for agriculture, forestry, recreation, residence, industry and commerce, soil conservation, water supply, sanitation and additional uses of land may be encouraged, regulated or prohibited and for such purposes the board may divide the county into districts of such number, shape and area as may be deemed best suited to carry out the comprehensive plan.

Source: SL 1941, ch 216, § 2; SDC Supp 1960, § 12.20A02; SL 1967, ch 20, § 3 (1).
11-2-14. District zoning provisions—Matters regulated—Uniformity within district.—For each zoning district zoning ordinances, or regulations may be adopted designating or limiting the location, height, bulk, number of stories, size of, and the specific uses for which dwellings, buildings and structures may thereafter be erected or altered; the minimum and maximum size of yards, or other open spaces; sanitary, safety and protective measures that shall be required for such dwellings, buildings and structures; the area required to provide for off-street loading and parking facilities; flood plain areas; and to avoid too great concentration or scattering of the population. All such provisions shall be uniform for each class of land or building throughout each district, but the provisions in one district may differ from those in other districts.

Source: SL 1967, ch 20, § 3 (2); 1975, ch 113, § 7.

11-2-15. Highway, road and street maps—Features included—Setbacks.—Official controls may include maps for highways, roadways, parkways, roads, and streets showing the exact alignments, gradients, dimensions, and other pertinent features, and including specific controls for setbacks from the right of way against encroachment by buildings or other physical structures or facilities.

Source: SL 1967, ch 20, § 3 (3).

11-2-16. Maps for public buildings and facilities—Protection of future sites.—Official controls may include maps for other public facilities such as parks, playgrounds, schools, and other public buildings showing exact location, size, boundaries, and other related features including appropriate regulations protecting such future sites against encroachment by buildings and other physical structures or facilities.

Source: SL 1967, ch 20, § 3 (4).

11-2-17. Land development and subdivision regulations—Dedications for public purposes.—Official controls may include specific regulations and controls pertaining to other elements incorporated in the comprehensive plan or establishing standards and procedures to be employed in land development including, but not limited to, subdividing of land and the approval of land plats and the preservation of streets and land for other public purposes requiring fu-
ture dedication or acquisition and general design of physical improvements.

Source: SL 1967, ch 20, § 3 (5).

11-2-18. Official controls not limited to enumerated measures.—Official controls are not limited to the features set forth in §§ 11-2-13 to 11-2-17, inclusive.

Source: SL 1967, ch 20, § 3.

11-2-19. Submission of proposed comprehensive plan to state planning bureau—Publication of notice of hearing.—After receiving the proposed comprehensive plan drafted by the planning commission, which plan shall include official controls, the board of county commissioners shall submit the plan to the state planning bureau for review and comment and shall direct the county auditor to publish once a week for at least two successive weeks in a newspaper of general circulation in the area affected, a notice of hearing, the time and place when and where such hearing shall be held, and a notice that all interested persons may appear and be heard.


11-2-20. Adoption of comprehensive plan by resolution or ordinance—Majority vote of commissioners required.—Based on the results of the hearing or hearings, the adoption of the comprehensive plan or any part, adjunct, amendment or additions, shall be by resolution or ordinance, as appropriate, carried by the affirmative votes of not less than a majority of all the members of the board of county commissioners.


11-2-21. Filing of board action adopting comprehensive plan—Publication of summary—Public inspection.—The action of the board of county commissioners shall be filed with the county auditor and a copy shall be sent to the state planning bureau. A summary of the same shall be prepared by the county planning commission, reviewed by the state's attorney, and published once in the official newspaper or newspapers in such 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 thereto at the office of the county auditor during regular business hours.


11-2-22. Petition to place comprehensive plan or adjunct on ballot—Notice and preparation of ballots.—Ten per cent of the electors as determined by the total number of votes cast for Governor in the county at the last gubernatorial election, may petition to have the question of adoption or rejection of the county comprehensive plan or any adjunct thereto placed upon the ballot at the next primary or general election, whichever occurs first, following the filing of the petition with the county auditor. The county auditor shall give notice of the fact that such question will be on the ballot at the primary or general election as provided by law for such elections and prepare official ballots therefor according to the provisions of this code relating to elections and the submission of questions to the voters.

Source: SL 1970, ch 84, § 3; 1972, ch 73, § 1; 1975, ch 113, § 10.

11-2-22.1. Revision of plan or adjunct after rejection by voters.—If the voters shall reject the proposed comprehensive plan or adjunct thereto, the board of county commissioners may cause the planning commission to revise the plan or parts thereof or adjunct thereto and adopt the same as revised, and file and publish the same as required by § 11-2-21.


11-2-23. Ordinances and official controls filed with register of deeds and state planning bureau.—Upon adoption of any ordinance or other official control including any maps or charts the county auditor shall file a certified copy thereof with the register of deeds and the state planning bureau.

11-2-24. Construction to be approved by planning commission when covered by comprehensive plan—County commissioners overruling commission's disapproval.—Whenever any board of county commissioners shall have adopted the comprehensive plan or any part thereof, then and thenceforth, no street, road, park, or other public way, ground, place, space, no public building or structure, no public utility, whether publicly or privately owned, if covered by the comprehensive plan or any adopted part thereof or adjunct thereto, shall be constructed or authorized in the county or within its subdivision jurisdiction, until and unless the location and extent thereof shall have been submitted to and approved by the planning commission, provided that in case of disapproval, the commission shall communicate its reasons to the board. By vote of not less than two-thirds of its entire membership, the board shall have power to overrule such disapproval.


11-2-24.1. Approval by failure of planning commission to act in time—Exception if longer period granted.—The failure of the planning commission to act within sixty-five days from and after the date of official submission to it under the provisions of § 11-2-24, shall be deemed approval, unless a longer period be granted by the board or other submitting official.


11-2-25.1. Appointment of commission as board of adjustment—Special exceptions and variances to avoid hardship.—The board of county commissioners may provide for the appointment of the planning and zoning commission to serve as a board of adjustment, and in the regulations and controls adopted pursuant to this chapter may provide that the said board of adjustment may in specific cases, in order that unwarranted hardship, which constitutes an unreasonable deprivation of use as distinguished from the mere grant of a privilege, may be avoided, make, upon an affirmative vote of three-fourths of the full membership of the board of adjustment, special exceptions or grant variances to the terms of the regulations or controls, subject to appropriate conditions or safeguards being adopted by the board of county commissioners.

11-2-26. Continuance of nonconforming uses permitted—Discontinuance.—The lawful use or occupancy of land or premises existing at the time of the adoption of an official control hereunder may be continued, although such use or occupation does not conform to the provisions thereof, but if such nonconforming use or occupancy is discontinued for a period of more than one year, any subsequent use or occupancy of the land or premises shall be in conformance with the official controls.


11-2-27. Regulations for control and elimination of nonconforming uses—Continuation of existing uses—Gradual elimination of discontinued nonconforming uses.—The board may by resolution as provided in § 11-2-25 prescribe such regulations not contrary to law or § 11-2-26, as it deems desirable or necessary to regulate and control, or reduce the number or extent of or bring about the gradual elimination of nonconforming uses and occupancies. Provided, however, that in accordance with the provisions of § 11-2-26, the lawful use or occupancy of land or premises existing at the time of the adoption of an official control may be continued, although such use or occupancy does not conform to the provisions of such official control. If such use or occupancy is discontinued for more than one year, the board may adopt, after notice by certified mail to the property owners, an amortization schedule to bring about the gradual elimination of such nonconforming use or occupancy.


11-2-28. Changes in comprehensive county plan or adjuncts—Initiation by county commissioners or petition of landowners.—Regulations, restrictions, and boundaries, or enforcement provisions established in the comprehensive plan or adjuncts thereto adopted by the board of county commissioners may from time to time be amended, supplemented, changed, modified, or repealed by action of the board of county commissioners as outlined in this chapter. Such amendment, supplement, change, modification, or repeal may be requested through a petition by thirty per cent of the landowners in the zoning district or districts requesting change.

11-2-28.1. Petition by individual landowner for change in zoning—Notice to abutting landowners.—An individual landowner may also petition the board to change the zoning of all or any part of his property. Such petitioning landowner shall also notify all other abutting landowners by registered mail of the petitioned zoning change at least one week 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.

Source: SDCL, § 11-2-28 as added by SL 1975, ch 113, § 17.

11-2-28.2. Public hearing on petition by landowners—Consideration and recommendation by county planning commission.—Following receipt of any petition as provided in § 11-2-28 or § 11-2-28.1, the board shall hold a public hearing, subject to the requirements of § 11-2-19, and take action upon the petitioned request. Within forty-five days of receipt by the board of any such petition, the county planning commission shall consider the requested action and make a recommendation thereon to the board.

Source: SDCL, § 11-2-28 as added by SL 1975, ch 113, § 17.

11-2-29. Hearing by planning commission on proposed change—Publication of notice.—Upon such filing or upon separate request by the board, the planning commission shall hold a public hearing not less than fifteen days after notice published in a newspaper of general circulation in the area affected. At such public hearing, any person may appear and request or protest the requested change.


11-2-30. Adoption or rejection by county commissioners—Publication of change—Referendum applicable.—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 of the same shall be prepared by the county planning commission, reviewed by the state's attorney, and published once in the official newspaper in such county and take
effect on the twentieth day after its publication. The provisions of § 11-2-22 shall be applicable hereto.

Source: SDCSupp 1960, § 12.20A06
as added by SL 1961, ch 37, § 2; 1967, ch 20, § 6; 1975, ch 113, § 18.

11-2-31. Preparation by county commission of municipal plans and controls—Adoption by municipality.—The governing body of any municipality may request a county planning commission to submit to such governing body a comprehensive plan for the municipality setting forth such provisions as the planning commission deems applicable to the municipality for its best interests, or to prepare official controls to apply to the area within the municipality. Notwithstanding the adoption of the comprehensive plan and recommendations for the municipality, the plan and recommendations shall not become binding until official controls are adopted by the municipality in accordance with the plan.


11-2-32. Municipal planning and zoning powers unimpaired—Area of joint zoning authority.—Nothing in this chapter shall be construed to prevent or modify the powers of an incorporated municipality, with a duly authorized planning commission, from exercising planning and zoning jurisdiction within the corporate limits and from exercising jointly with the county planning commission the planning and zoning authority within three miles of the corporate limits, as provided in §§ 11-6-11 and 11-6-12, and in chapter 11-4.


11-2-33. Violation of chapter or regulations as misdemeanor—Penalty—Disposition of fines.—It is declared unlawful for any person to violate any of the terms and provisions of this chapter or the provisions of any ordinance, regulation, or other official control adopted by the board pursuant thereto. Violation thereof shall be a misdemeanor and may be punishable by a fine up to one hundred dollars for each and every day that any violator fails to comply with the provisions of this chapter or any ordinance or regulation adopted pursuant to this chapter. All fines for violation shall be paid to the county and shall be credited to the general revenue fund.
11-2-34. Injunction proceedings to prevent or abate violations. —In the event of a violation or a threatened violation of the regulations or restrictions of an ordinance adopted pursuant to this chapter, the board of county commissioners or any member thereof, in addition to other remedies, may institute an appropriate action or proceedings to seek an injunction in a court of competent jurisdiction to prevent, restrain, correct or abate such violation or threatened violation and it is the duty of the state’s attorney to institute such action.


11-2-35. Mandamus proceedings instituted by taxpayer.—Any taxpayer of the county may institute mandamus proceedings in circuit court to compel specific performance by the proper official or officials of any duty required by this chapter and by any ordinance adopted thereunder.

CHAPTER 11-3

PLATTING OF TOWNSITES, ADDITIONS AND SUBDIVISIONS

Section
11-3-1. Townsite survey and plat required—Contents of plat.
11-3-2. Base line for townsite—Fixing on ground and marking on plat.
11-3-3. Numbering and description of lots—Measurements shown and streets marked.
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11-3-5. Surveyor's fee for plat.
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11-3-16. Vacation of plat before sale of lots—Recording of instrument—Vacation by joinder of owners of lots sold.
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11-3-22. Circuit court order setting time and place for hearing on petition.
11-3-23. Service, publication and posting of petition to vacate recorded plat.
11-3-24. Hearing and order of circuit court vacating recorded plat.
11-3-25. Filing and recording of order vacating recorded plat.
11-3-26. Replatting after vacation of plat.
PLATTING OF TOWNSITES, ADDITIONS AND SUBDIVISIONS

11-3-1. Townsite survey and plat required—Contents of plat.— When any person wishes to lay out a townsite, such person shall cause the same to be surveyed and a plat thereof made, which shall particularly describe and set forth all the streets, alleys, commons, or public grounds, and all in and outlots or fractional lots within such town, giving the names, width, courses, boundaries, and extent of all such streets and alleys.

Source: PolC 1877, ch 26, § 1; CL 1887, § 1095; RPolC 1903, § 1490; RC 1919, § 6537; SDC 1939, § 45.2801.

11-3-2. Base line for townsite—Fixing on ground and marking on plat.—The proprietor of the townsite, by himself or agent, shall at the time of surveying and laying out of the same cause to be planted and firmly fixed in the ground on the line of the main street of such townsite two good and sufficient stones of such size and dimension as the surveyor shall direct, to be at least two hundred fifty yards apart. The line thus formed shall be a base line from which to make future surveys; and the point or points where the same may be found shall be distinguished on the plat or map.

Source: PolC 1877, ch 26, § 3; CL 1887, § 1097; RPolC 1903, § 1492; RC 1919, § 6539; SDC 1939, § 45.2803.

11-3-3. Numbering and description of lots—Measurements shown and streets marked.—All the inlots intended for sale shall be numbered in progressive numbers or by squares in which they are situated, and their precise length and width shall be stated on such map or plat. Outlots shall in like manner be surveyed and numbered and their precise length and width stated on the plat or map, together with any streets, alleys, or roads which shall divide or border the same.

Source: SL 1887, ch 106, § 1; CL 1887, § 1096; RPolC 1903, § 1491; RC 1919, § 6538; SDC 1939, § 45.2802.

11-3-4. Certification, acknowledgment and recording of plats.—Every plat provided for in this chapter shall be certified by the
surveyor as being in all respects true and correct and by the proprie
tor, or his duly authorized agent, as having been made at his request and under his direction for the purposes indicated therein, that he is the owner of all the land included therein. Such certificates shall be acknowledged before some officer authorized to take the acknowledgment of deeds and, with the certificate of such acknowledgment, shall be endorsed on or attached to the plat and be recorded as a part thereof in the office of the register of deeds of the proper county.

No such plat shall be recorded until all the provisions of this section have been fully complied with.

Source: PolC 1877, ch 26, § 4; CL 1887, § 1098; RPolC 1903, § 1493; SL 1913, ch 342; RC 1919, § 6540; SDC 1939, § 45.2804; SL 1967, ch 224, § 1.

11-3-5. Surveyor's fee for plat.—The surveyor who shall lay out, survey, and plat any townsite, addition, or subdivision shall be entitled to receive twenty-five cents for each and every in and out-lot the same may contain, unless otherwise agreed.

Source: PolC 1877, ch 26, § 8; CL 1907, ch 238, § 1; RC 1919, § 6543; 1887, § 1102; RPolC 1903, § 1496; SDC 1939, § 45.2807.

11-3-6. Municipal approval for addition or subdivision within or adjoining municipality—Streets and alleys to conform to existing plat—Taxes and special assessments to be paid.—The provisions of this chapter shall apply to every addition to, or subdivision within, any city, town, or unincorporated town, provided that if the land or any part thereof included in any such addition or subdivision is within, adjoining, or contiguous to the boundaries of any city or town, the plat thereof, before being recorded, shall be submitted to the governing body thereof, which shall thereupon examine the same, and if it shall appear that the system of streets and alleys set forth therein conforms to the system of streets and alleys of the existing plat of such city or town, and that all taxes and special assessments, if any, upon the tract or subdivision have been fully paid, and that such plat and the survey thereof have been executed according to law, such governing body shall, by resolution, approve the same, and the auditor or clerk shall endorse on such plat a copy of such resolution and certify to the same thereon.

No plat of any such addition or subdivision so situated shall be entitled to record or be recorded unless the same bears a copy of
such resolution and certificate of the auditor or clerk.


11-3-7. Naming of additions and subdivisions.—Every addition or subdivision within a county shall be named as follows, to wit: Addition to the city (or town) of or Addition in the county of . No plat which does not comply with this section shall be entitled to record or be recorded.

Source: SDC 1939, § 45.2806 as added by SL 1967, ch 224, § 2; 1973, ch 66.

11-3-8. County commissioners’ approval required for plats outside municipalities.—Whenever any person wishes to plat any lands lying outside the boundaries of a municipality which are not included in an addition or subdivision thereof as specified in § 11-3-6, he shall be governed by and proceed in accordance with the provisions of this chapter, except that before recording his plat in accordance with § 11-3-6, he shall submit the same only to the board of county commissioners of the county wherein such lands are situated, provided, however, that the approval of the board of county commissioners pursuant to this section is not required for a plat as specified in § 11-6-26.

Source: SL 1959, ch 272, § 1; SDC 1939, § 45.2806 as added by SL 1959, ch 272, § 2; SDCSupp 1960, § 45-2806-1.

11-3-9. Director of equalization to receive copy of plat—Treasurer’s certificate of tax payment to be attached.—Plats specified in §§ 11-3-6 and 11-3-8 shall not be entitled to record or be recorded unless the same bear a copy of the certificate of the county director of equalization that he has received a copy of such plat. There shall also be endorsed thereon or attached to every plat provided for in this chapter the certificate of the county treasurer that all taxes which are liens upon any land included in such plat, as shown by the records of his office, have been fully paid. No such plat shall be recorded until all the provisions of this section have been fully complied with.
11-3-10. Uniform size of plats filed with register of deeds.—
All real estate plats filed with the register of deeds shall be of
uniform size, fifteen by twenty-six inches or eight and one-half
by fourteen inches. No other such plat shall be recorded.

Source: SDC 1939, § 45.2804 as enacted by SL 1967, ch 224, § 1; 1970,
ch 85.

11-3-11. Recording fee of register of deeds—Acceptance by
county commissioners required. — The register of deeds of the
county recording the plat of any townsite, addition, or subdivision
shall receive the sum of two dollars for each and every plat, pro-
vided that such plat has been first examined and accepted by the
county commissioners.

Source: PolC 1877, ch 26, § 8; CL 1887, § 1102; RPolC 1903, § 1496; SL
1907, ch 258, § 1; RC 1919, § 6543;
SDC 1939, § 45.2807; SL 1974, ch 110.

11-3-12. Recorded plat as conveyance of dedications and grants
marked on plat—General warranty—Use of land intended for
streets and other public uses.—When the plat or map shall have
been made out, certified, acknowledged, and recorded as provided
in this chapter, every donation or grant to the public, or any indi-
vidual, religious society, corporation, or body politic, marked or
noted as such on such plat or map, shall be deemed a sufficient con-
veyance to vest the fee simple title of all such parcel or parcels of
land as are therein expressed, and shall be considered to all in-
tents and purposes a general warranty against the donor, his heirs,
and representatives, to the donee or grantee, his heirs or represen-
tatives, for the uses and purposes therein expressed and intended,
and no other use and purpose whatever. The land intended to be
used for the streets, alleys, ways, commons, or other public uses
shall be held in trust to and for the uses and purposes expressed or
intended.

Source: PolC 1877, ch 26, § 5; CL 1887, § 1099; RPolC 1903, § 1494; RC
1919, § 6541; SDC 1939, § 45.2805.
11-3-13. Circuit court authorized to alter or vacate plat on application by proprietor.—The circuit court, within the proper county, is authorized on application of the proprietor of any unincorporated town to alter or vacate the plat or map of such town or any part thereof.

Source: PolC 1877, ch 26, § 13; CL 1887, § 1106; RPolC 1903, § 1500; RC 1919, § 6547; SDC 1939, § 45.2808.

11-3-14. Notice of intention to alter or vacate plat—Posting and publication.—If any proprietor of an unincorporated town shall be desirous of altering or vacating the plat or map of any such town or any part thereof, such proprietor shall give notice in writing of such intended application in at least two of the most public places in the county wherein such town may be situated, and insert a copy thereof in a newspaper printed or in circulation in such county, if there be one, at least forty days prior to the sitting of the court to which he intends to make such application.

Source: PolC 1877, ch 26, § 14; CL 1887, § 1107; RPolC 1903, § 1501; RC 1919, § 6548; SDC 1939, § 45.2809.

11-3-15. Circuit court hearing and determination on petition to alter or vacate plat—Recording of order.—If such applicant shall produce to the court satisfactory evidence that the notice required by § 11-3-14 has been given, the court shall proceed to hear and determine such petition, and may alter or vacate the plat or map of such town or any part thereof.

A certified copy of the order altering or vacating the same shall be recorded in the office of the register of deeds.

Source: PolC 1877, ch 26, § 15; CL 1887, § 1108; RPolC 1903, § 1502; RC 1919, § 6549; SDC 1939, § 45.2810.

11-3-16. Vacation of plat before sale of lots—Recording of instrument—Vacation by joinder of owners of lots sold.—Any plat of any municipality or addition thereto, or any subdivision of land therein, may be vacated by the proprietor thereof at any time before the sale of any lots therein, by a written instrument declaring the same to be vacated, duly executed, acknowledged, or proved, and recorded in the office with the plat to be vacated. The executing and recording of such writing shall operate to destroy the force and effect of the recording of the plat so vacated, and to divest all
public rights in the streets, alleys, commons, and public grounds laid out as described in such plat.

In cases where any lots have been sold, the plat may be vacated as herein provided by all the owners of lots in such plat joining in the execution of the writing aforesaid.

Source: SL 1887, ch 109, § 1; CL 1887, § 1109; RPolC 1903, § 1503; RC 1919, § 6550; SDC 1939, § 45.2811.

11-3-17. Vacation of part of plat—Closing of public highways not authorized—Inclosure of public grounds adjoining lots.—Any part of a plat may be vacated under the provisions and subject to the conditions of this chapter if such does not abridge or destroy any of the rights and privileges of other proprietors in such plat. Nothing contained in this section shall authorize the closing or obstructing of any public highways laid out according to law.

When any part of a plat shall be vacated as aforesaid, the proprietors of the lots so vacated may inclose the streets, alleys, and public grounds adjoining such lots in equal proportion.

Source: SL 1887, ch 109, §§ 2, 3; CL 1887, §§ 1110, 1111; RPolC 1903, §§ 1504, 1505; RC 1919, §§ 6551, 6552; SDC 1939, § 45.2812.

Cross-Reference.
Chapter 31-3.
Laying out of public highways, § 31-3-1.

11-3-18. Register of deeds to mark vacated plat—Reference to instrument of vacation.—The register of deeds in whose office the plats aforesaid are recorded shall write in plain, legible letters across that part of the plat so vacated the word "vacated," and also make a reference on the plat to the volume and page in which the instrument of vacation is recorded.

Source: SL 1887, ch 109, § 4; CL 1887, § 1112; RPolC 1903, § 1506; RC 1919, § 6553; SDC 1939, § 45.2813.

11-3-19. Validation of prior vacations by instrument.—Any proceedings conducted before January 28, 1964, for the vacation of any plat, or any portion or part thereof, which plat was laid out pursuant to this chapter, whether the land included in said plat, or any portion or part thereof, is or was, at the time of said proceedings for vacation of said plat, or any portion or part thereof, within or without the boundaries of a municipality, and which plat, or any portion or part thereof has, before January 28, 1964, in said proceedings, been vacated in accordance with § 11-3-16 or § 11-3-17.
is hereby declared to be, and to have been, a valid vacation of said plat, or any portion or part thereof, and the proprietors of the lots so vacated may inclose the streets, alleyways and public grounds adjoining such vacated lots, and all public rights thereto divested.


11-3-20. General procedure for vacation of plats—Supplemental to vacation by instrument.—Sections 11-3-20.1, 11-3-20.2 and 11-3-21 to 11-3-25, inclusive, are prescribed as the procedures to be followed for the vacation of part or all of any recorded plat of the state of South Dakota. Said sections are intended as supplemental to § 11-3-16 and only direct the procedure to be followed where and when the facts and conditions, at the time of vacation, are other than as specifically set forth in § 11-3-16.

Source: SL 1947, ch 212; 1963, ch 266, § 1; SDCSupp 1960, § 46.2815 (6); SL 1974, ch 109, § 1.

11-3-20.1. Vacation of plat within municipal platting jurisdiction.—If a plat sought to be vacated lies within the platting jurisdiction of a municipality which has in existence a statutory planning commission, said plat may be vacated pursuant to the procedures outlined in §§ 11-3-20.2 to 11-3-20.4, inclusive.

Source: SL 1974, ch 109, § 3.

11-3-20.2. Vacation by new plat—Specific statement of plats vacated.—The new plat shall specifically describe all previous plats sought to be vacated including the book and chapter number of all existing prior plats in the register of deeds office, and shall specifically state on the plat that all previous plats so listed are to be vacated in whole or in part.


11-3-20.3. Information required for vacation and replatting.—Upon receipt of a plat, as described in § 11-3-20.2, by the planning commission of any municipality, said planning commission shall require that the person seeking said vacation and replat provide the following information:

(1) The names and addresses of the record owner of the plat or part thereof sought to be vacated,

(2) The legal description of the same,

(3) The names of the legal voters, if any, who reside upon the same,
(4) The character and use of the same,
(5) A description of any public highway located thereon,
(6) Any other facts pertinent to the application, including but not limited to any other facts necessary by municipal ordinance for the recordation of any plat.


11-3-20.4. Final approval of new plat—Recording—Vacation of previous plats.—Upon approval of the final plat by the municipality, said plat shall be filed in the office of the register of deeds of the county wherein the property is located and the register of deeds shall record said plat and shall vacate all previous plats in the same manner as prescribed by § 11-3-18.


11-3-21. Vacation of plat outside municipal platting jurisdiction.—Any person interested in the vacation of part or all of any recorded plat where said plat lies outside a municipality which has a statutory planning commission may file a petition in the office of the clerk of the circuit court of the county wherein the platted property or some part thereof is situated, setting forth,

(1) The names and addresses of the record owner of the plat or part thereof sought to be vacated,
(2) The legal description of the same,
(3) The names of the legal voters, if any, who reside upon the same,
(4) The character and use of the same,
(5) A description of any public highway located thereon,
(6) Any other facts pertinent to the application.

Source: SL 1947, ch 212; SDCSupp 1960, § 45.2815 (1); SL 1974, ch 109, § 2.

11-3-22. Circuit court order setting time and place for hearing on petition.—An order shall be made by the circuit court setting a time and place for hearing said petition, which shall not be less than thirty days after the filing of the petition.

Source: SL 1947, ch 212; SDCSupp 1960, § 45.2815 (2).

11-3-23. Service, publication and posting of petition to vacate recorded plat.—The order required by § 11-3-22 shall contain a
concise statement of the contents of the petition and direct that
the same be served as a summons upon all persons having an
interest in said matter or affected thereby, including any munici­
pality affected thereby. And that the same be published once
each week for at least two successive weeks in a legal newspaper
published in the county wherein said petition is filed, and if
there is no newspaper published in said county, the same shall
be posted in three of the most public places in said county at
least ten days before said hearing.

Source: SL 1947, ch 212; SDCSupp
1960, § 45.2815 (3); SL 1972, ch 51,
§ 4.

11-3-24. Hearing and order of circuit court vacating recorded
plat.—If the court is satisfied from the evidence produced upon the
hearing referred to in § 11-3-22 that the granting of the petition
will not abridge or destroy any of the rights and privileges of
other proprietors of such plat and will not authorize the closing
or obstruction of any public highway laid out according to law,
an order may be made vacating the property sought by the petition to
be vacated.

Source: SL 1947, ch 212; SDCSupp
1960, § 45.2815 (4).

11-3-25. Filing and recording of order vacating recorded plat.—
Such order shall be filed in the office of the clerk of courts in the
county where such plat is recorded and a certified copy thereof re­
corded in the office of the register of deeds of said county.

Source: SL 1947, ch 212; SDCSupp
1960, § 45.2815 (5).

11-3-26. Replatting after vacation of plat.—The owner of any
land within any plat vacated pursuant to this chapter may cause
the same to be again platted in the manner provided for the original
platting of townsites, additions, and subdivisions.

Source: SL 1887, ch 109, § 5; CL
1887, § 1113; RPolC 1903, § 1507; RC
1919, § 6554; SDC 1939, § 45.2814.
CHAPTER 11-4
MUNICIPAL PLANNING AND ZONING

Section
11-4-1. Regulatory powers of municipalities.
11-4-1.1. Definition of terms.
11-4-2. Division of municipality into districts—District regulations—Uniformity within district.
11-4-3. Comprehensive plan required—Purposes of plan—Factors considered in regulations.
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CHAPTER 11-4
MUNICIPAL PLANNING AND ZONING

11-4-1. Regulatory powers of municipality.—For the purpose of promoting health, safety, morals, or the general welfare of the community the governing body of any municipality is hereby empowered to regulate and restrict the height, number of stories, and size of buildings and other structures, the percentage of lot that may be occupied, the size of the yards, courts, and other open spaces, the density of population, and the location and use of buildings, structures, and land for trade, industry, residence, flood plain, or other purposes.

Source: SL 1927, ch 176, §1; SDC 1939, § 45.2601; SL 1974, ch 111.

11-4-1.1. Definition of terms.—The definitions set forth in § 11-6-1 shall be applicable to this chapter.

Source: SL 1975, ch 114, § 1.

11-4-2. Division of municipality into districts—District regulations—Uniformity within district.—For any or all of said purposes the governing body may divide the municipality into districts of such number, shape, and area as may be deemed best suited to carry out the purposes of this chapter; and within such districts it may regulate and restrict the erection, construction, reconstruction, alteration, repair, or use of buildings, structures, or land. All such regulations shall be uniform for each class or kind of buildings throughout each district, but the regulations in one district may differ from those in other districts.

Source: SL 1927, ch 176, §2; SDC 1939, § 45.2602.

11-4-3. Comprehensive plan required—Purposes of plan—Factors considered in regulations.—Such regulations shall be made in accordance with a comprehensive plan and designed to lessen congestion in the streets; to secure safety from fire, panic, and other dangers; to promote health and the general welfare; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; to facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements.
Such regulations shall be made with reasonable consideration, among other things, to the character of the district, and its peculiar suitability for particular uses, and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout such municipality.

Source: SL 1927, ch 176, § 3; SDC 1939, § 45.2603.

11-4-3.1. Temporary zoning controls — Adoption — Purpose — Hearing and notice—Duration and renewal.—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 which shall be given at least ten days in advance by publication in a newspaper having general circulation in the municipality. Such ordinance shall be limited to one year from the date it becomes effective and may be renewed for one year. In no case shall such ordinance be in effect for more than two years.


11-4-4. Preliminary survey and plan—Publication of proposed ordinance—Hearing and action by governing body.—The governing body shall be authorized to adopt the necessary regulations for preparing a preliminary survey and plan designating the proposed restrictions and district boundaries. Such proposed district and restrictions shall be definitely set forth in a proposed ordinance. Such ordinance shall be adopted as other ordinances, except that the auditor or clerk shall cause to be published once a week for at least two successive weeks prior to the date of the adoption of the ordinance, a notice of the time and place when and where all persons interested shall be given a full, fair, and complete hearing, and the governing body may refuse or adopt, with or without amendment, such ordinance.

Source: SL 1927, ch 176, § 4; 1927
11-4-5. Publication and effectiveness of ordinance adopted—Protest by landowners in district—Flood plain ordinance not subject to protest.—If such ordinance be adopted, the same shall be published and take effect as other ordinances unless the referendum be invoked, or unless a written protest be filed with the auditor or clerk, signed by at least forty per cent of the owners of equity in the lots included in any proposed district and the lands within one hundred fifty feet from any part of such proposed district measured by excluding streets and alleys. A corporation shall be construed to be a sole owner, and when 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. In the event such a protest be filed, the ordinance shall not become effective as to the proposed district against which the protest has been filed. Such written protest shall not be allowed as to any ordinance regulating or establishing flood plain areas.

Source: SL 1927, ch 176, § 4; 1927 (SS), ch 18, § 1; SDC 1939, § 45.2604; SL 1949, ch 192; 1972, ch 72, § 2.

11-4-6. Conflict with other regulations—More stringent regulations govern.—Whenever the regulations made under authority of this chapter require a greater width or size of yards, courts, or other open spaces, or require a lower height of building or less number of stories, or require a greater percentage of lot to be left unoccupied, or impose other higher standards than are required in any other statute or local ordinance or regulation, the provisions of the regulations made under authority of this chapter shall govern.

Wherever the provisions of any other statute or local ordinance or regulation require a greater width or size of yards, courts, or other open spaces, or require a lower height of building or a less number of stories, or other higher standards than are required by the regulations made under authority of this chapter, the provisions of such statute or local ordinance or regulation shall govern.

Source: SL 1927, ch 176, § 9; SDC 1939, § 45.2610.

11-4-7. Proceedings by municipal authorities to prevent violation of regulations.—In case any building or structure is erected,
constructed, reconstructed, altered, repaired, converted, or main­
tained, or any building, structure, or land is used in violation of
this chapter or of any ordinance or other regulation made under
authority conferred thereby, the proper local authorities of the
municipality, in addition to other remedies, may institute any ap­
propriate action or proceedings to prevent such unlawful erection,
construction, reconstruction, alteration, repair, conversion, mainte­
nance, or use, to restrain, correct, or abate such violation, to pre­
vent the occupancy of said building, structure, or land, or to pre­
vent any illegal act, conduct, business, or use in or about such
premises.

Source: SL 1927, ch 176, § 8; SDC 1939, § 45.2609.

11-4-8. Changes in regulations—Notice and procedure.—Regu­
lations, restrictions, and boundaries adopted pursuant to this chap­
ter may from time to time be amended, supplemented, changed,
modified, or repealed, provided that such modification or repeal
shall in each instance be proposed in an ordinance presented to the
governing body for adoption in the same manner and upon the
same notice as required for the adoption of the original ordinance.

Source: SL 1927, ch 176, § 5; 1927 (SS), ch 18, § 2; SDC 1939, § 45.2605;
SL 1941, ch 201.

11-4-9. Requiring consent of landowners to change in zoning
ordinance.—The governing body may by ordinance require as a con­
dition precedent to the introduction of any ordinance proposing
changes in the zoning ordinance that there be first filed with
the city auditor or clerk the written consent of the owners of not
exceeding sixty per cent of the aggregate area having the right of
protest against such proposed ordinance if adopted, determined as
provided by § 11-4-5.

Source: SDC 1939, § 45.2605 as
added by SL 1941, ch 201.

11-4-10. Referendum and protests against changes in zoning
ordinance.—The referendum and the right of protest may be in­
voked against an ordinance making changes in the zoning ordinance
in like manner as against the original ordinance.

Source: SL 1927, ch 176, § 5; 1927
(SS), ch 18, § 2; SDC 1939, § 45.2605;
SL 1941, ch 201.
11-4-11. Appointment of planning and zoning commission—Same as city planning and zoning commission.—In order to avail itself of the powers conferred by this chapter, the governing body shall appoint a commission to be known as the planning and zoning commission to recommend the boundaries of the zoning districts and appropriate regulations to be enforced therein.

The planning and zoning commission provided herein shall be the same planning and zoning commission provided under the provisions of chapter 11-6.

Source: SL 1927, ch 176, § 6; SDC 1939, § 45.2606; SL 1975, ch 114, § 3.

11-4-12. Preliminary report of planning and zoning commission—Hearings and notice—Final report.—The planning and zoning commission, when appointed, shall make a preliminary report, and hold public hearings, subject to the same notice requirements as provided in § 11-4-4, thereon before submitting its final report, and the governing body shall not hold its public hearings or take action until it has received the final report of such commission.


11-4-13. Board of adjustment to be provided—Planning and zoning commission as adjustment board—Power to grant special exceptions or variances.—Except as otherwise provided by § 11-4-24, the governing body shall provide for the appointment of a board of adjustment, or for the planning and zoning commission to act as a board of adjustment, and in the regulations and restrictions adopted pursuant to the authority of this chapter, shall provide that the said board of adjustment may, in appropriate cases and subject to appropriate conditions and safeguards, make special exceptions or grant variances to the terms of the ordinance with general or specific rules therein contained.

Source: SL 1927, ch 176, § 7; SDC 1939, § 45.2607; SL 1975, ch 114, § 5.

11-4-14. Appointment and terms of board of adjustment other than commission—Removal—Vacancies.—A board of adjustment, other than the planning and zoning commission acting as a board of adjustment, shall consist of five members, each to be appointed for a term of three years and removable for cause by the appointing authority upon written charges and after public hearing. Vacan-
cies shall be filled for the unexpired term of any member whose term becomes vacant.


11-4-15. Meetings of board of adjustment—Administration of oaths and attendance of witnesses.—Meetings of the board of adjustment shall be held at the call of the chairman and at such other times as the board may determine. Such chairman or, in his absence, the acting chairman may administer oaths and compel the attendance of witnesses. All meetings of such board shall be open to the public.

Source: SL 1927, ch 176, § 7; SDC 1939, § 45.2607.

11-4-16. Minutes and records of board of adjustment.—The board of adjustment 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.

Source: SL 1927, ch 176, § 7; SDC 1939, § 45.2607.

11-4-17. Appeals to board of adjustment—Exceptions and variances.—The 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 chapter or of any ordinance adopted pursuant thereto;

(2) To hear and decide special exceptions to the terms of the ordinance upon which such board is required to pass under such ordinance;

(3) To authorize upon appeal in specific cases such variance from terms of the ordinance as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provisions of the ordinance will result in unnecessary hardship and so that the spirit of the ordinance shall be observed and substantial justice done.

Source: SL 1927, ch 176, § 7; SDC 1939, § 45.2607.

11-4-18. Rules of board of adjustment.—The board of adjustment shall adopt rules in accordance with the provisions of any
ordinance adopted pursuant to this chapter.

Source: SL 1927, ch 176, § 7; SDC 1939, § 45.2607.

11-4-19. Taking of appeals to board of adjustment—Notice—Transmittal of papers to board.—Appeals to the board of adjustment may be taken by any person aggrieved or by any officer, department, board, or bureau of the municipality affected by any decision of the administrative officer. Such appeal shall be taken within a reasonable time, as provided by the rules of such board, 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.

Source: SL 1927, ch 176, § 7; SDC 1939, § 45.2607.

11-4-20. Stay of proceedings by appeal to board of adjustment—Certificate of imminent peril to life or property—Restraining order staying proceedings.—An appeal to the board of adjustment stays all proceedings in the action appealed from, unless the officer from whom the appeal is taken shall file a certificate that by reason of facts stated in the certificate a stay would in his opinion cause imminent peril to life or property. In such case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the 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.

Source: SL 1927, ch 176, § 7; SDC 1939, § 45.2607.

11-4-21. Notice and hearing by board of adjustment—Appearance at hearing.—The board of adjustment shall fix a reasonable time for the hearing of the appeal, give public notice thereof, as well as due notice to the parties in interest and decide the same within a reasonable time. Upon the hearing any party may appear in person or by agent or by attorney.

Source: SL 1927, ch 176, § 7; SDC 1939, § 45.2607.

11-4-22. Disposition of appeals by board of adjustment.—In exercising the powers mentioned in § 11-4-17, the board of adjustment may, in conformity with the provisions of this chapter, 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.

Source: SL 1927, ch 176, § 7; SDC 1939, § 45.2607.

11-4-23. Vote required to reverse or to grant exception or variance.—The concurring vote of three-fourths of the members of the board of adjustment 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 ordinance, or to effect any variation in such ordinance.


11-4-24. Governing body acting as board of adjustment—Chairman of board—Vote required for reversal, exception or variance.—In lieu of appointing the board of adjustment provided by § 11-4-13 the governing body of any municipality having adopted and in effect a zoning ordinance may act as and perform all the duties and exercise the powers of such board of adjustment. The mayor or president of the board of trustees shall be chairman of the board of adjustment as so composed. The concurring vote of at least two-thirds of the members of such board as so composed shall be necessary to reverse any order, requirement, decision, or determination of any administrative official, or to decide in favor of the appellant on any matter upon which it is required to pass under any zoning ordinance, or to effect any variation in such ordinance.


11-4-25. Petition to court alleging illegality of decision by board of adjustment—Time of filing.—Any person or persons, jointly or severally, aggrieved by any decision of the board of adjustment, or any taxpayer, or any officer, department, board, or bureau of the municipality, 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 thirty days after the filing of the deci-
11-4-26. Writ of certiorari to review decision of board—Time of return—Restraining order to stay proceedings.—Upon the presentation of such petition the court may allow a writ of certiorari directed to the board of adjustment to review such decision of the board of adjustment and shall prescribe therein the time within which a return thereto must be made and served upon the relator's attorney, which shall not be less than ten days and may be extended by the court.

The allowance of the writ shall not stay proceedings upon the decision appealed from, but the court may, on application, on notice to the board and on due cause shown, grant a restraining order.

Source: SL 1927, ch 176, § 7; SDC 1939, § 45.2608.

11-4-27. Certified copies returned on certiorari—Contents of return.—The board of adjustment shall not be required to return the original papers acted upon by it, but it shall be sufficient to return certified copies thereof, or of such portions thereof as may be called for by such 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.

Source: SL 1927, ch 176, § 7; SDC 1939, § 45.2608.

11-4-28. Evidence heard by court on certiorari—Referee.—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.

Source: SL 1927, ch 176, § 7; SDC 1939, § 45.2608.

11-4-29. Disposition by court on certiorari—Costs.—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 board of adjustment unless it shall appear to the court that it acted with gross negligence, or in bad faith, or with malice in making the decision appealed from.

Source: SL 1927, ch 176, § 7; SDC 1939, § 45.2608.
CHAPTER 11-6

COMPREHENSIVE CITY PLANNING

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CHAPTER 11-6
COMPREHENSIVE CITY PLANNING

11-6-1. Definition of terms.—Terms used in this chapter, unless the context otherwise plainly requires, shall mean:

1. The term "municipal" or "municipalities," "city" or "cities," includes and relates to all incorporated cities and towns;

2. "Mayor," the chief executive of the municipality, whether the official designation of such official be mayor, city manager or otherwise;

3. "Council," the chief legislative body or governing body of the municipality;

4. The term "street" or "streets," relates to and includes all streets, avenues, boulevards, roads, lanes, alleys or other ways;

5. "Subdivision," the division of any tract or parcel of land into two or more lots, sites or other division for the purpose, whether immediate or future, of sale or building development and includes resubdivision. This definition shall not apply to the conveyance of a portion of any previously platted tract, parcel, lot or site; provided, however, that such conveyance does not cause the tract, parcel, lot, or site from which the portion is severed to be in violation of any existing zoning ordinance or subdivision regulation applying to such tract, parcel, lot, or site;

6. "Commission," "planning and zoning commission," or "planning commission," any city planning and zoning commission created under the terms of this chapter;

7. "Comprehensive plan," a document which describes in words, and may illustrate by maps, plats, charts, and other descriptive matter, the policy, goals and objectives of the municipality to interrelate all functional and natural systems and activities relating to the development of the territory under its jurisdiction;

8. "Zoning map," the map adopted as an ordinance by the municipality that delineates the extent of each district or zone established in the zoning ordinance;

9. "Subdivision ordinance," the ordinance adopted by the municipality to regulate the subdivision of land so as to provide: co-ordination of streets with other subdivisions and
uses, water and sanitation facilities, drainage and flood control, and conformity with the comprehensive plan;

(10) “Official controls,” any regulation, standard, map, or procedure adopted by the municipality to regulate the development of the territory so as to carry out the comprehensive plan;

(11) “Zoning ordinance,” the ordinance adopted by the municipality to regulate by districts or zones the location, height, bulk and size of buildings and other structures and accessory uses, percentage of lot which may be occupied, the size of lots, courts, and other open spaces, the density and distribution of population, the location and use of buildings, and structures for trade, advertising uses, industry, residence, recreation, public activities, or other purposes, and, the uses of land for trade, industry, recreation, or other purposes.


11-6-2. Planning and zoning commission required in municipality—Comprehensive plan to be effected.—For the purpose of promoting the health, safety and general welfare of the municipality, each municipality of the state shall provide by ordinance for a planning and zoning commission, including the appropriation of money to a fund for the expenditures of such commission. Municipalities shall, as soon as possible, make, adopt, amend, extend, add to or carry out a general municipal plan of development, such plan to be referred to as the comprehensive plan.

Source: SDCL, § 11-6-2 as enacted by SL 1975, ch 116, § 2.

11-6-3. Contract for county planning and zoning services—Fees—Powers of county commission—Designation of planning commission—Contracts for special services.—The governing body of any municipality may contract with the board of county commissioners for planning and zoning services to be provided by the county, and the contract may provide that the municipality shall pay such fees as are agreed for the services performed. Under the provisions of the contract the municipal governing body may authorize the county planning and zoning commission, on behalf of the city, to exercise any of the powers otherwise granted to municipal planning and zoning commissions under this chapter and chapter 11-4. The contract between the governing body of the
municipality and the county may provide among other things for joint county-municipal planning activities, or it may designate the county planning commission as the planning commission for the municipality. The municipality may also contract with a planning agency, authority or commission, or with planning consultants, or with other specialists for such services as it requires.

Source: SDCL, § 11-6-3 as enacted by SL 1975, ch 116, § 3.

11-6-4. Composition, appointment and terms of planning commission members—Ex officio members—Vacancies—Removal of member.—Any planning commission created under the terms of this chapter shall consist of not less than five members appointed by the mayor of such municipality and confirmed by the council or governing body of such municipality. The term of each of the appointed members shall be for five years except that when the planning commission is first appointed, approximately one-half of the members shall be appointed for three years and the balance of the members shall be appointed for five years. Thereafter, appointment of each member shall be for terms of five years so that there will be an overlapping of tenures. Administrative officials of the city may be appointed as ex officio members of the commission. Any vacancy in a membership shall be filled for the unexpired term by the mayor in the same manner as for appointment, and the mayor, with the confirmation of the council, shall after public hearing, have authority to remove any member for cause, which said cause shall be stated in writing and made a part of the record of such hearing.


11-6-4.1. Temporary addition to planning commission of resident of affected outside area.—For the purpose of carrying out any of the provisions of §§ 11-6-26 to 11-6-38, inclusive, the city council may temporarily add as a member of the city planning and zoning commission a resident of the area to be affected by proposed official municipal controls outside the corporate limits of the municipality.


11-6-4.2. Joint city-county planning and zoning commission for zoning within three miles of city limits—Powers—Procedures. —Notwithstanding the provisions of §§ 11-6-10 to 11-6-12, inclusive, the city council and the board of county commissioners may
by resolution adopted by a majority vote of the full membership of both governing bodies establish a joint planning and zoning commission to consider and make recommendations to the two governing bodies for zoning within the area within three miles in all directions of the municipality's corporate limits. The joint commission shall have such powers and follow such procedures as may be agreed to in the resolution creating the commission; provided, however, that such powers and procedures shall be within the scope of powers and procedures provided in chapters 11-2, 11-4 and this chapter.


11-6-5. Chairman and officers of planning commission.—Such planning commission shall elect its chairman from among its members for a term of one year with eligibility for re-election, and may fill such other of its offices as it may create in a manner prescribed by the rules of such commission.


11-6-6. Meetings of planning commission—Rules—Record of proceedings.—The planning commission shall hold at least one regular meeting each month and shall adopt rules for transaction of its business and keep a record of its resolutions, transactions, findings and determinations which shall be a public record.


11-6-7. Employees appointed by city council—Contracts for special services.—The city council may appoint such employees as it may deem necessary for its work, whose appointment, promotion, demotion and removal shall be subject to the same provisions of law, including civil service regulations, as govern other corresponding civil employees of the municipality. The city council may also contract with city planners, engineers, architects, and other consultants as well as federal, state, and local agencies for such services as it may require.


11-6-8. Information furnished by public officials—Examinations and surveys—General powers of commission.—All public officials shall, upon request, furnish to the planning commission, within a
reasonable time, such available information as it may require for its work. The commission, its members and employees, in the performance of its functions, may enter upon any land, make examinations and surveys and place and maintain necessary monuments and marks thereon. In general, the commission shall have all such powers as may be necessary to enable it to fulfill and perform its functions, promote municipal planning or carry out all the purposes of this chapter.


11-6-9. Expenditures of planning commission—Funds, equipment and accommodations.—The expenditures of the planning commission, exclusive of those made from funds received by gift, shall be within the amounts appropriated for the purpose by the local legislative body, which shall provide the funds, equipment, and accommodations necessary for the commission's work.


11-6-10. Territorial extent of powers granted by chapter — Electrical service areas not affected.—The legislative body of any incorporated municipality may exercise the comprehensive planning and zoning powers granted in this chapter and chapter 11-4 not only within its corporate limits, but also, subject to the provisions of § 11-6-12, within three miles in all directions of its corporate limits and not located in any other municipality; provided, that nothing contained in this chapter shall be construed to amend or repeal any provisions of chapter 49-34A.


11-6-11. Territorial extent of general zoning powers—Express provision as to extraterritorial operation—Division of overlapping extraterritorial zones.—The legislative body of any incorporated municipality may exercise all zoning powers granted in chapter 11-4, in the zoning of all land not only within its corporate limits, but also, subject to the provisions of § 11-6-12, may zone all property within three miles in all directions of its corporate limits not located in any other municipality; provided, however, any ordinance intended to have application beyond the corporate limits of the municipality shall expressly so provide and any such ordinance shall be adopted in accordance with the provisions of chapter
11-4; however, in the case of such extra municipal land lying within three miles of more than one city having a planning commission, the jurisdiction of each municipality, shall terminate at a boundary line equidistant from the respective corporate limits of such cities, unless otherwise agreed to by a majority vote of the governing body of each such city.


11-6-12. Joint zoning in concurrent jurisdiction of city and county—Recommendation of each planning commission required—Time allowed for recommendation.—Whenever a municipality assumes zoning jurisdiction in any area outside the limits of such municipality the county zoning commission of the county in which such area lies, shall sit with the city planning commission on all matters pertaining to the planning and regulation of such area and no zoning powers provided by this chapter or chapter 11-4 shall be effective in any such area until each of the commissions makes a recommendation to the city council and the board of county commissioners. Each planning commission shall make such recommendation to the council and commissioners within ninety days of a request by the city planning commission that the county planning commission sit with them for purposes of zoning in the area outside the corporate limits of the municipality.


11-6-12.1. Joint meeting to act on recommendations—County concurrence required for municipal extraterritorial powers.—Following notice and public hearing as required by §§ 11-2-19 and 11-4-4, the board of county commissioners and the city council shall meet jointly and take action upon the recommendations from the two planning commissions. Unless otherwise provided by law, no zoning powers shall be exercised by a city within the three mile area outside of its corporate limits unless the board of county commissioners, by majority vote of its full membership, relinquishes zoning jurisdiction in such area to the municipality, or unless the city council and the board of county commissioners, by majority vote of the full membership of each, approve a substantially identical zoning ordinance for zoning of such area.

Source: SDCL, § 11-6-12 as added by SL 1975, ch 116, § 7.

11-6-13.1. Action on recommendations of joint commission — Concurrence of both boards required.—Following notice and public hearing as required by §§ 11-2-19 and 11-4-4, the board of county commissioners and the city council shall meet together and take action upon the recommendations from the joint planning and zoning commission. Action shall be taken upon such zoning recommendations only by both governing bodies adopting by a majority vote of the full membership of each, a substantially identical zoning ordinance for the zoning of such area.


11-6-13.2. Referendum applicable—Time of election on referred measures.—The referendum provisions of chapter 11-2 shall apply to such zoning ordinances, provided however, that notwithstanding the provisions of § 11-2-22, if a referendum petition is filed with the county auditor, the question of adoption or rejection of the zoning ordinance shall be considered at a special election to be held for that purpose within sixty days after the filing of a petition; except that when such petition is filed within three months prior to the next primary or general election, whichever occurs first, such ordinance shall be submitted at such primary or general election if there is time to give notice thereof.


11-6-14. Preparation of comprehensive plan for municipal development—Contents of plan—Changes or additions.—It shall be a function and duty of the planning commission to propose a plan for the physical development of the municipality, including any areas outside the boundary and within its planning jurisdiction which, in the commission's judgment bear relation to the planning of the municipality. The comprehensive plan, with the accompanying maps, plats, charts and descriptive and explanatory matter, shall show the commission's recommendations for the said physical development and may include, among other things, the general location, character, and extent of streets, bridges, viaducts, parks, parkways, waterways and waterfront developments, playgrounds, airports, and other public ways, grounds, places and spaces; the general location of public schools, of public buildings and other public property; a zoning ordinance for the regulation of the height, area, bulk, location, and use of private and public structures and premises, and of population density as may be provided by law.
may be included as an adjunct to the comprehensive plan; the
general location and extent of public utilities and terminals,
whether publicly or privately owned, for water, light, power, heat,
sanitation, transportation, communication, and other purposes;
the acceptance, widening, removal, extension, relocation, narrow­
ing, vacation, abandonment, or change of use of any of the fore­
going public ways, grounds, places, spaces, buildings, properties,
utilities, or terminals; the general location, character, layout, and
extent of community centers and neighborhood units, and the
general character, extent, and layout of the replanning of blighted
districts and slum areas. The commission may from time to time
propose amendments, extensions, or additions to the plan or carry
any of the subject matter into greater detail.

Source: SL 1949, ch 198, § 5; SDC
Supp 1960, § 45.3305; SL 1966, ch 145;

11-6-15. Surveys and studies in preparation of comprehensive
plan—Purposes of plan.—In the preparation of the comprehensive
plan, the planning commission shall make careful and comprehen­
sive surveys and studies of the existing conditions and probable
future growth of the municipality and its environs. The plan shall
be made with the purpose of guiding and accomplishing a co-ordi­
nated, adjusted, and harmonious development of the municipality,
which will, in accordance with existing and future needs, best pro­
mote health, safety, morals, order, convenience, prosperity or the
general welfare, as well as efficiency and economy in the process
of development.

Source: SL 1949, ch 198, § 6; SDC

11-6-16. Plan proposed as a whole or in part.—The planning
commission shall propose to the council the comprehensive plan
as a whole by a single resolution, or, as the work of making the
whole comprehensive plan progresses, may from time to time
propose a part or parts thereof, any such part to correspond
generally with one or more of the functional subdivisions of the
subject matter of the plan.

Source: SL 1949, ch 198, § 7; SDC
Supp 1960, § 45.3307; SL 1966, ch 145;

11-6-17. Public hearing required before recommendation of plan
to council—Notice—Submission to state planning bureau.—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 which shall be given at least fifteen days in advance by publication in a newspaper having general circulation in the community. The planning commission shall submit the recommended comprehensive plan or part thereof to the state planning bureau for its information, at the same time it is submitted to the city council.


11-6-18. Vote required for adoption of plan—Notice and hearing—Reference to maps and descriptive matters—Signature of mayor—Ordinance subject to publication and protest provisions.—The adoption by the municipal council of the plan or any part, amendment or additions, shall, following the same type of notice and public hearing as required by § 11-6-17, be by resolution carried by the affirmative votes of not less than a majority of all the members of the council. The resolution shall refer expressly to the maps, descriptive matter, and other matters intended by the council to form the whole or part of the plan, and the action taken shall be recorded on the adopted plan or part thereof, by the identifying signature of the mayor of the municipality. If a zoning ordinance is included as an adjunct to the comprehensive plan, or any part, amendment or addition, that zoning ordinance shall be subject to the provisions of § 11-4-5.


11-6-18.1. Filing of action adopting comprehensive plan.—The action of the city council, in adopting the comprehensive plan, shall be filed with the auditor or clerk and a copy of such action shall be sent to the state planning bureau.


11-6-18.2. Summary of adoption action to be published—Notice of public inspection.—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 the official newspaper of the city 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.


11-6-18.3. Referendum applicable to comprehensive plan—Revision of rejected plan—Adoption.—The referendum provisions of §§ 9-20-6 to 9-20-16, inclusive, shall be applicable to the action of the city council. If the voters shall reject the proposed comprehensive plan, the city council may cause the planning and zoning commission to revise the plan or parts thereof and the council may adopt the same as revised and file and publish the same as required above.


11-6-19. Planning commission approval required for construction in area covered by comprehensive plan.—Whenever any such municipal council shall have adopted the comprehensive plan of the municipality or any part thereof, then and thenceforth, no street, park, or other public way, ground, place, space, no public building or structure, no public utility, whether publicly or privately owned, if covered by the comprehensive plan or any adopted part thereof, shall be constructed or authorized in the municipality or within its subdivision jurisdiction as defined in § 11-6-26, until and unless the location and extent thereof shall have been submitted to and approved by the planning commission.


11-6-20. Reasons for planning commission disapproval of construction communicated to municipal council—Vote required for council to overrule.—In case of disapproval of any construction or authorization submitted under § 11-6-19, the planning commission shall communicate its reasons to the council, and the council, by vote of not less than two-thirds of its entire membership, shall have the power to overrule such disapproval and, upon such overruling the council or the appropriate board or officer shall have the power to proceed.


11-6-21. Action by public bodies other than municipal council having jurisdiction over construction.—If the public way, ground,
place, space, building, structure, or utility referred to in § 11-6-19 be one the authorization or financing of which does not, under the law or charter provisions governing the same, fall within the province of the council or other body or official of the municipality, then the submission of such to the planning commission shall be by the board or official having such jurisdiction, and the planning commission’s disapproval may be overruled by said board by a vote of not less than two-thirds of its entire membership or by said official.


11-6-22. Submission and approval of street and public improvement projects.—The acceptance, widening, removal, extension, relocation, narrowing, vacation, abandonment, change of use, acquisition of land for any street or other public way, ground, place, property, or structure, shall be subject to submission and approval similar to that provided in §§ 11-6-19 to 11-6-21, inclusive, and the failure to approve may be similarly overruled.


11-6-23. Failure of planning commission to act deemed approval of construction.—The failure of the planning commission to act within sixty-five days from and after the date of official submission to it shall be deemed approval, unless a longer period be granted by the council or other submitting official.


11-6-24. Recommendation and adoption of building and setback regulations—Public hearing and notice required.—From and after the time when the city council of any municipality shall have adopted a comprehensive plan which includes at least a major street plan or shall have progressed in its comprehensive planning to the stage of the making and adoption of a major street plan, the planning commission may recommend and the city council is hereby authorized and empowered by ordinance to establish, regulate and limit, and to change and amend, building or setback lines on such streets and to prohibit any new building being located within such building or setback lines. The regulations authorized by this section shall not be adopted, changed or amended until a public hearing has been held thereon, following the same notice
as provided in § 11-5-17.


11-6-25. Board of adjustment to consider variances in hardship cases—Municipal planning and zoning adjustment provisions apply.—The city council may provide for a board of adjustment, or may authorize the planning and zoning commission to serve as a board of adjustment to make special exceptions or grant variances to the regulations adopted under § 11-6-24 in specific cases, in order that unwarranted hardship, which constitutes an unreasonable deprivation of use as distinguished from the mere grant of a privilege, may be avoided. The provisions of §§ 11-4-13 to 11-4-29, inclusive, shall apply to any actions under this section.


11-6-26. Subdivision plats to be approved after major street plan adopted—Extraterritorial jurisdiction of municipality—Reports and recommendations by planning commission.—From and after the time when the city council of any municipality shall have adopted a comprehensive plan which includes at least a major street plan or shall have progressed in its comprehensive planning to the stage of making and adoption of a major street plan, and shall have filed a certified copy of such major street plan in the office of the register of deeds of the county in which the municipality is located, no plat of a subdivision of land lying within the municipality, or of land within three miles of its corporate limits and not located in any other municipality, shall be filed or recorded until it shall have been submitted to and a report and recommendations thereon made by the planning and zoning commission to the city council and the council has approved the plat. This provision shall be applicable to land within three miles of the corporate limits of the municipality and not located in any other municipality only if the comprehensive plan or major street plan includes such land. However, in the case of such extra municipal land lying within three miles of more than one city, the jurisdiction of each municipality shall terminate at a boundary line equidistant from the respective corporate limits of such cities, unless otherwise agreed to by a majority vote of the governing body of each such city. Such plats shall, after report and recommendations of the commission are made and filed, be approved or disapproved by the
city council. The commission shall make its recommendation to the council within sixty days of submission.

Source: Amd. SL 1975, ch 116, § 16.

11-6-26.1. Review and recommendation by county commission when land subject to joint municipal-county jurisdiction—Vote of city council required upon disapproval by county commission.—In the case of land over which there is joint municipal-county zoning jurisdiction, such plats shall not be filed or recorded until also having been submitted to the county planning and zoning commission for review and recommendation to the city council. The county planning and zoning commission shall make its recommendation to the city council within forty-five days of submission. If the county planning and zoning commission recommends disapproval of any such plats, a two-thirds vote of the entire membership of the city council shall be required to approve any such plats.

Source: SDCL, § 11-6-26 as added by SL 1975, ch 116, § 16.

11-6-27. Recommendation and adoption of subdivision regulations—Purposes of regulations—Public hearing required.—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 co-ordination 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, a public hearing thereon shall be held by the council.


11-6-28. Streets and utilities covered by subdivision regulations—Provision for tentative approval of plats.—Subdivision regulations may include requirements as to the extent to which and the manner in which the streets of the subdivision shall be graded and improved, and water, sewer, and other utility mains, piping, con-
nections, or other facilities shall be installed as a condition precedent to the approval of the subdivision. The regulations may provide for the tentative approval of the plat previous to such improvements and installation; but any such tentative approval shall not be entered on the plat.


11-6-29. Bond for completion of subdivision work—Remedies for enforcement of bond.—Subdivision regulations may provide that, in lieu of the completion of such work and installations previous to the final approval of a plat, the council may accept a bond, in an amount and with surety and conditions satisfactory to it, providing for and securing to the municipality the actual construction and installation of such improvements and utilities within a period specified by the council and expressed in the bond; and the municipality is hereby granted the power to enforce such bonds by all appropriate legal and equitable remedies.


11-6-30. Special assessment provisions in lieu of bond for completion of subdivision work.—Subdivision regulations may provide in lieu of the completion of such work and installations previous to the final approval of a plat for an assessment or other method whereby the municipality is put in an assured position to do said work and make said installations at the cost of the owners of the property within the subdivision.


11-6-31. Subdivision plats or replats to be submitted to planning commission—Recommendation to council—Contents of plat—Hearing and notice.—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. Any plat submitted shall contain the name and address of a person to whom notice of hearing may be sent; and no plat shall be acted upon by the council without affording a hearing thereon, notice of the time and place of which shall be sent by mail to said address not less than five days before the date fixed therefor.
11-6-32. Time allowed for approval or disapproval of plat—Plat deemed approved in absence of action—Ground of disapproval stated.—The plat shall be approved or disapproved within ninety days after submission thereof; otherwise such plat shall be deemed to have been approved and a certificate to that effect shall be issued by the council on demand; provided, however, that the applicant for the approval may waive this requirement and consent to the extension of such period. The ground of disapproval of any plat shall be stated upon the records of the council.


11-6-33. Dedication not accepted by approval of plat.—The approval of a plat by the council shall not be deemed to constitute or effect an acceptance by the municipality or public of the dedication of any street or other ground shown on the plat.


11-6-34. Register of deeds not to record plat unless approved by city council.—When any map, plan, plat or replat is tendered for filing in the office of the register of deeds, it shall be the duty of any such officer to 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, and no register of deeds or deputy shall accept for record, or record, any such map, plan, plat or replat unless and until the same shall have been approved by the city council of such municipality as required by § 11-6-26.


11-6-35. Penalty for sale of lots before approval and recording of plat—Injunction or action for recovery of penalty.—Whoever being the owner or agent of the owner of the land located within platting jurisdiction of any municipality as described in § 11-6-26, knowingly or with intent to defraud, transfers or sells or agrees to sell or negotiates to sell such land by reference to or exhibition of or by other use of a subdivision of such land before such plat has been approved by the council and recorded in the office of the regis-
the platting jurisdiction of any municipality shall have attached by reason of the adoption of a major street plan as provided in § 11-6-26, no building permit shall be issued for or no building shall be erected on any lot within the territorial jurisdiction of said commission as provided in § 11-6-26, unless the street giving access to the lot upon which said building is proposed to be placed shall be accepted as opened as, or shall have 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 subdivision plat approved by said council or on a street plat made and adopted by said commission or with a street located or accepted by council, or, in the case of territory outside of the municipal corporation, by the governing body thereof, after submission to said commission, and, in case of said commission's disapproval, by the favorable vote required in § 11-6-37. Any building erected in violation of this section shall be deemed an unlawful structure, and the municipality or governing body may bring action to enjoin such erection or cause it to be vacated or removed.


11-6-36. Approved plat required for street or utility work after attachment of platting jurisdiction.—From and after the time when the platting jurisdiction of any municipality shall have attached by virtue of the adoption of a major street plan as provided in § 11-6-26, the municipality or other public authority shall 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 shall have been accepted or opened as, or shall have 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 said council or on a street plat made by the planning commission and adopted by the council.


11-6-37. Street construction specifically authorized by ordinance —Vote required to overrule planning commission.—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; and a street approval by the commission upon such submission, or constructed or accepted by said two-thirds vote after disapproval by the commission, shall have 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.


11-6-38. Buildings prohibited on unapproved streets—Action to enjoin erection or remove building.—From and after the time when the platting jurisdiction of any municipality shall have attached by reason of the adoption of a major street plan as provided in § 11-6-26, no building permit shall be issued for or no building shall be erected on any lot within the territorial jurisdiction of said commission and council as provided in § 11-6-26, unless the street giving access to the lot upon which said building is proposed to be placed shall be accepted as opened as, or shall have 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 subdivision plat approved by said council or on a street plat made by said 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 said commission, and, in case of said commission's disapproval, by the favorable vote required in § 11-6-37. Any building erected in violation of this section shall be deemed an unlawful structure, and the municipality or governing body may bring action to enjoin such erection or cause it to be vacated or removed.

Source: Amd. SL 1975, ch 116, § 22.

11-6-39. Regulations to control nonconforming uses—Continuation of lawful uses existing when control adopted—Amortization schedule to eliminate nonconforming uses discontinued after one
year—Notice.—The city council may prescribe such regulations not contrary to law as it deems necessary to regulate and control nonconforming uses existing at the time of adoption of an official control hereunder or under chapter 11-4, and to reduce the number or extent of nonconforming uses and occupancies. Provided however, that the lawful use of land or premises existing at the time of the adoption of an official control may be continued, although such use does not conform to the provisions of such official control. If such use is discontinued for more than one year, the city council may adopt, after notice by certified mail to the property owners, an amortization schedule to bring about the gradual elimination of such nonconforming use.
