

State of South Dakota

NINETY-SECOND SESSION
LEGISLATIVE ASSEMBLY, 2017

256Y0079

HOUSE BILL NO. 1075

Introduced by: Representatives Kaiser, Bordeaux, Brunner, Campbell, Dennert, DiSanto, Goodwin, Greenfield (Lana), Howard, Latterell, Lesmeister, Livermont, Marty, May, and Pischke and Senators Frerichs, Jensen (Phil), Nelson, Russell, Stalzer, and Youngberg

1 FOR AN ACT ENTITLED, An Act to repeal the authority of municipalities to exercise
2 planning and zoning powers outside corporate limits of municipalities.

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

4 Section 1. That § 11-6-1 be amended to read:

5 11-6-1. Terms used in this chapter mean:

- 6 (1) "Commission," "planning and zoning commission," or "planning commission," any
7 city planning and zoning commission created under ~~the terms of~~ this chapter;
- 8 (2) "Comprehensive plan," any document ~~which~~ that describes in words, and may
9 illustrate by maps, plats, charts, ~~and~~ or other descriptive matter, the goals, policies,
10 ~~and or~~ objectives of ~~the~~ a municipality to interrelate all functional and natural
11 systems and activities relating to the development of the ~~territory under its~~
12 jurisdiction area within the municipal corporate limits;
- 13 (3) "Council," the chief legislative body or governing body of the municipality;
- 14 (4) "Mayor," the chief executive of ~~the~~ a municipality, whether ~~the official designation~~



1 of such official be officially designated as mayor, city manager, or otherwise;

2 (5) "Municipality" or "city," any incorporated city or town;

3 (6) Deleted by SL 2000, ch 69, § 63;

4 (7) "Street," any street, avenue, boulevard, road, lane, alley, or other roadway;

5 (8) "Subdivision," the division of any tract or parcel of land into two or more lots, sites,

6 or other ~~division~~ divisions for the purpose, whether immediate or future, of sale or

7 building development, and includes resubdivision. ~~This definition~~ The term does not

8 apply to the conveyance of a portion of any previously platted tract, parcel, lot, or site

9 if the conveyance does not cause the tract, parcel, lot, or site from which the portion

10 is severed to be in violation of any existing zoning ordinance or subdivision

11 regulation applying to such tract, parcel, lot, or site;

12 (9) "Subdivision ordinance," any ordinance adopted by ~~the~~ a municipality to regulate the

13 subdivision of land so as to ~~provide coordination of~~ coordinate streets with other

14 subdivisions and the major street plan, and to provide adequate areas set aside for

15 public uses, water and sanitation facilities, drainage and flood control, and

16 conformity with the comprehensive plan;

17 (9A) "Temporary zoning or subdivision ordinance," ~~an~~ any ordinance adopted by a

18 municipality as an emergency measure for a limited duration;

19 (10) "Zoning map," any map adopted as an ordinance by ~~the~~ a municipality that delineates

20 the extent of each district or zone established in the zoning ordinance;

21 (11) "Zoning ordinance," any ordinance adopted by ~~the~~ a municipality to implement ~~the~~

22 a comprehensive plan by regulating the location and use of buildings and uses of

23 land.

24 Section 2. That § 11-6-2 be amended to read:

1 11-6-2. For the purpose of promoting the health, safety, and general welfare of the
2 municipality, each municipality of the state shall provide by ordinance for a planning and zoning
3 commission, including the appropriation of money to a fund for the expenditures of ~~such~~ the
4 commission, and to provide by ordinance for the qualifications of the members; the mode of
5 the members' appointment, tenure of office, compensation, and powers; and the duties of and
6 rules governing ~~such board. Municipalities~~ the commission. Each municipality shall, ~~as soon~~
7 ~~as possible~~, make, adopt, amend, extend, add to or ~~carry out~~ execute a general municipal plan
8 of development, ~~such~~ for the area within the municipality's corporate limits. The plan ~~to~~ may
9 be referred to as the comprehensive plan.

10 Section 3. That § 11-6-3 be amended to read:

11 11-6-3. The governing body of any municipality may contract with the board of county
12 commissioners for planning and zoning services to be provided by the county, and the contract
13 may provide that the municipality shall pay ~~such~~ fees as are agreed upon for ~~the~~ planning and
14 zoning services performed. Under the provisions of the contract the municipal governing body
15 may authorize the county planning and zoning commission, on behalf of the municipality, to
16 exercise any of the powers otherwise granted to municipal planning and zoning commissions
17 under this chapter and chapter 11-4. The contract between the governing body of the
18 municipality and the county ~~may provide among other things for joint county-municipal~~
19 ~~planning activities, or it~~ may designate the county planning commission as the planning
20 commission for the municipality. The municipality may also contract with a planning agency,
21 authority, or commission, or with planning consultants; or ~~with~~ other specialists for ~~such~~
22 planning services ~~as it~~ the municipality requires.

23 Section 4. That § 11-6-4.1 be repealed.

24 ~~11-6-4.1. For the purpose of carrying out any of the provisions of §§ 11-6-26 to 11-6-38,~~

1 ~~inclusive, the city council may temporarily add as a member of the city planning and zoning~~
2 ~~commission a resident of the area to be affected by proposed municipal zoning and subdivision~~
3 ~~ordinances outside the corporate limits of the municipality.~~

4 Section 5. That § 11-6-10 be repealed.

5 ~~— 11-6-10. The legislative body of an incorporated municipality and a board of county~~
6 ~~commissioners may jointly exercise the comprehensive planning and zoning powers granted in~~
7 ~~this chapter and chapters 11-2 and 11-4 in a joint jurisdictional area beyond the municipal~~
8 ~~corporate limits. The joint jurisdictional area, not to exceed six miles, shall be delineated in a~~
9 ~~comprehensive plan but in no instance may the area extend beyond a line equidistant from the~~
10 ~~corporate limits of any other municipality unless otherwise agreed to by a majority vote of the~~
11 ~~governing body of each municipality having a planning commission. Nothing contained in this~~
12 ~~chapter may be construed to amend or repeal any provisions of chapter 49-34A.~~

13 ~~— The county and city planning commissions shall meet jointly and hold at least one public~~
14 ~~hearing on the comprehensive plan. Notice of the time and place of the hearing shall be given~~
15 ~~once by either the city or county at least ten days in advance by publication in a legal newspaper.~~
16 ~~Following the public hearing, each planning commission shall submit a recommendation to their~~
17 ~~respective governing body.~~

18 Section 6. That § 11-6-11 be repealed.

19 ~~— 11-6-11. The governing bodies shall meet jointly and hold at least one public hearing to~~
20 ~~consider the recommendations of the planning commissions on the comprehensive plan for the~~
21 ~~joint jurisdictional area. Notice of the time and place of the hearing shall be given once by either~~
22 ~~the city or county at least ten days in advance by publication in a legal newspaper. Adoption of~~
23 ~~the comprehensive plan shall be by resolution of each governing body. Such action is subject~~
24 ~~to §§ 11-6-18.2 and 11-2-21.~~

1 Section 7. That § 11-6-12 be repealed.

2 ~~—11-6-12. Following adoption of a comprehensive plan by the governing bodies, the city and~~
3 ~~county planning commissions may prepare zoning regulations for all property in the joint~~
4 ~~jurisdictional area consistent with the comprehensive plan. The regulations shall delineate the~~
5 ~~authority of the governing bodies over all zoning matters pertaining to the joint jurisdictional~~
6 ~~area. Such regulations may include relinquishment by the county of some or all of its zoning~~
7 ~~authority within the joint jurisdictional area. In those instances where a county has granted to~~
8 ~~a municipality sole zoning authority beyond said municipality's existing corporate limits, the~~
9 ~~notice and public hearing requirements of chapter 11-4 shall apply.~~

10 ~~—The county and city planning commissions shall meet jointly and hold at least one public~~
11 ~~hearing on the zoning regulations. Notice of the time and place of the hearing shall be given~~
12 ~~once by either the city or county at least ten days in advance by publication in a legal newspaper.~~
13 ~~Following the public hearing, each planning commission shall submit a recommendation to each~~
14 ~~respective governing body.~~

15 Section 8. That § 11-6-12.1 be repealed.

16 ~~—11-6-12.1. Following notice and public hearing as required by §§ 11-2-19 and 11-4-4, the~~
17 ~~board of county commissioners and the municipal governing body shall meet jointly and take~~
18 ~~action upon the recommendations from the two planning commissions. The zoning regulations~~
19 ~~that apply in the joint jurisdictional area shall be adopted by ordinance of each governing body.~~
20 ~~The notice and public hearing requirements of this section apply to any proposed amendments~~
21 ~~to the zoning regulations. Any change in the zoning of property is subject to the requirements~~
22 ~~of §§ 11-2-19 and 11-2-28.1.~~

23 Section 9. That § 11-6-13.2 be repealed.

24 ~~—11-6-13.2. The referendum provisions of chapter 11-2 shall apply to such zoning ordinances,~~

1 provided however, that notwithstanding the provisions of ~~§ 11-2-22~~, if a referendum petition
2 is filed with the county auditor, the question of adoption or rejection of the zoning ordinance
3 shall be considered at a special election to be held for that purpose within sixty days after the
4 filing of a petition; except that when such petition is filed within three months prior to the next
5 primary or general election, whichever occurs first, such ordinance shall be submitted at such
6 primary or general election if there is time to give notice thereof.

7 Section 10. That § 11-6-14 be amended to read:

8 11-6-14. ~~It shall be a function and duty of the~~ The planning commission ~~to shall~~ propose a
9 plan for the physical development of the municipality; ~~including any areas outside the boundary~~
10 ~~and within its planning jurisdiction which~~ that, in the commission's judgment ~~bear,~~ bears
11 relation to the planning of the municipality. The comprehensive plan, with ~~the~~ any
12 accompanying maps, plats, charts, and descriptive and explanatory matter, shall show the
13 commission's recommendations for the ~~said~~ physical development ~~and~~ of the municipality. The
14 plan may include, ~~among other things~~, the general location, character, and extent of streets,
15 bridges, viaducts, parks, parkways, waterways and waterfront developments, playgrounds,
16 airports, and other public ways, grounds, places and spaces; the general location of public
17 schools, ~~of~~ public buildings, and other public property; a zoning ordinance for the regulation of
18 the height, area, bulk, location, and use of private and public structures and premises, and of
19 population density as may be ~~provided~~ required by law and may be included as an adjunct to the
20 comprehensive plan; the general location and extent of public utilities and terminals, whether
21 publicly or privately owned, for water, light, power, heat, sanitation, transportation,
22 communication, ~~and~~ or other purposes; the acceptance, widening, removal, extension,
23 relocation, narrowing, vacation, abandonment, or change of use of any of the foregoing public
24 ways, grounds, places, spaces, buildings, properties, utilities, or terminals; the general location,

1 character, layout, and extent of community centers and neighborhood units, and the general
2 character, extent, and layout of the replanning of blighted districts and slum areas. The
3 commission may from time to time propose amendments, extensions, or additions to the plan
4 or carry any of the subject matter into greater detail.

5 Section 11. That § 11-6-26 be repealed.

6 ~~11-6-26. The following provisions apply to all subdivisions of land that are not approved~~
7 ~~pursuant to § 11-3-6, and are located outside of municipal corporate limits:~~

8 ~~(1) A municipality may elect to approve subdivision plats outside of but not exceeding~~
9 ~~three miles from its corporate limits, and not located in any other municipality;~~

10 ~~(2) A municipality shall adopt a comprehensive plan and a major street plan that~~
11 ~~identifies the unincorporated area to be governed by municipal platting authority. A~~
12 ~~major street plan is defined as a document that consists of a map or written narrative,~~
13 ~~or both, of a municipality's future collector and arterial streets that are incorporated~~
14 ~~as a part of a municipality's comprehensive plan or as a stand-alone document that~~
15 ~~has been approved in accordance with the provisions of §§ 11-6-17 to 11-6-18.2,~~
16 ~~inclusive;~~

17 ~~(3) A copy of the adopted comprehensive plan and major street plan shall be forwarded~~
18 ~~to the county commissioners through the office of the county auditor or clerk in~~
19 ~~which the municipality is located;~~

20 ~~(4) After the comprehensive plan and major street plan is adopted and before approving~~
21 ~~plats outside municipal limits, the municipality shall adopt a subdivision ordinance~~
22 ~~that will govern the area outside municipal limits. The ordinance shall be adopted~~
23 ~~according to the provisions of § 11-6-27 and shall incorporate a platting jurisdiction~~
24 ~~boundary map or text description of the area to be governed;~~

1 ~~(5) Subdivision plats may not be filed or recorded unless the plat has the~~
2 ~~recommendation of the city planning and zoning commission within sixty days of~~
3 ~~submission, and the approval of the city council;~~

4 ~~(6) For lands located outside of and within three miles of more than one municipality,~~
5 ~~the jurisdiction of each municipality terminates at a boundary line equidistant from~~
6 ~~the corporate limits of the municipalities unless otherwise agreed to by a majority~~
7 ~~vote of the governing body of each such municipality.~~

8 Section 12. That § 11-6-26.1 be repealed.

9 ~~11-6-26.1. In the case of land over which there is joint municipal-county zoning jurisdiction,~~
10 ~~the plats may not be filed or recorded until the plats have also been submitted to the county~~
11 ~~planning and zoning commission for review and recommendation to the city council. The~~
12 ~~county planning and zoning commission shall make its recommendation to the city council~~
13 ~~within forty-five days of submission. If the county planning and zoning commission~~
14 ~~recommends disapproval of any such plats, a two-thirds vote of the entire membership of the~~
15 ~~city council is required to approve the plats. The board of county commissioners may by~~
16 ~~resolution designate an administrative official of the county to review and make a~~
17 ~~recommendation to the city council in lieu of the review and recommendation by the county~~
18 ~~planning commission.~~

19 Section 13. That § 11-6-27 be repealed.

20 ~~11-6-27. In exercising the duties granted to it by this chapter, the planning commission shall~~
21 ~~recommend and the council shall by ordinance adopt regulations governing the subdivision of~~
22 ~~land within its jurisdiction as defined in § 11-6-26. Such regulations may provide for the~~
23 ~~harmonious development of the municipality and its environs; for the coordination of streets~~
24 ~~within subdivisions with other existing or planned streets or with other features of the~~

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

9 Section 14. That § 11-6-28 be repealed.

10 ~~11-6-28. Subdivision regulations may include requirements as to the extent to which and the~~
11 ~~manner in which the streets of the subdivision shall be graded and improved, and water, sewer,~~
12 ~~and other utility mains, piping, connections, or other facilities shall be installed as a condition~~
13 ~~precedent to the approval of the subdivision. The regulations may provide for the tentative~~
14 ~~approval of the plat previous to such improvements and installation; but any such tentative~~
15 ~~approval shall not be entered on the plat.~~

16 Section 15. That § 11-6-29 be repealed.

17 ~~11-6-29. Subdivision regulations may provide that, in lieu of the completion of such work~~
18 ~~and installations previous to the final approval of a plat, the council may accept a bond, in an~~
19 ~~amount and with surety and conditions satisfactory to it, providing for and securing to the~~
20 ~~municipality the actual construction and installation of such improvements and utilities within~~
21 ~~a period specified by the council and expressed in the bond; and the municipality is hereby~~
22 ~~granted the power to enforce such bonds by all appropriate legal and equitable remedies.~~

23 Section 16. That § 11-6-30 be repealed.

24 ~~11-6-30. Subdivision regulations may provide in lieu of the completion of such work and~~

1 installations previous to the final approval of a plat for an assessment or other method whereby
2 the municipality is put in an assured position to do said work and make said installations at the
3 cost of the owners of the property within the subdivision.

4 Section 17. That § 11-6-31 be repealed.

5 ~~— 11-6-31. Any subdivision of land containing two or more lots, no matter how described,
6 shall be platted or replatted, and must be submitted to the planning commission for their
7 consideration and recommendation to the council for approval or rejection or reviewed and
8 approved in accordance with § 11-3-6.~~

9 Section 18. That § 11-6-32 be repealed.

10 ~~— 11-6-32. The plat shall be approved or disapproved within ninety days after submission
11 thereof; otherwise such plat shall be deemed to have been approved and a certificate to that
12 effect shall be issued by the council on demand; provided, however, that the applicant for the
13 approval may waive this requirement and consent to the extension of such period. The ground
14 of disapproval of any plat shall be stated upon the records of the council.~~

15 Section 19. That § 11-6-33 be repealed.

16 ~~— 11-6-33. The approval of a plat by the council shall not be deemed to constitute or effect an
17 acceptance by the municipality or public of the dedication of any street or other ground shown
18 on the plat.~~

19 Section 20. That § 11-6-34 be repealed.

20 ~~— 11-6-34. When any map, plan, plat, or replat is tendered for filing in the office of the register
21 of deeds, the register of deeds or deputy shall determine whether such proposed map, plan, plat,
22 or replat is or is not subject to the provisions of this chapter and whether the endorsements
23 required by this chapter appear thereon. No register of deeds or deputy may accept for record,
24 or record, any such map, plan, plat, or replat unless and until it has been approved by the city~~

1 council of such municipality as required by § 11-6-26 or reviewed and approved in accordance
2 with § 11-3-6.

3 Section 21. That § 11-6-35 be repealed.

4 ~~11-6-35. It is a petty offense for the owner or agent of the owner of the land located within~~
5 ~~the platting jurisdiction of any municipality as described in § 11-6-26, knowingly or with intent~~
6 ~~to defraud, to transfer or sell, to agree to sell, or to negotiate to sell such land by reference to or~~
7 ~~exhibition of or by other use of a subdivision of such land before the plat has been approved by~~
8 ~~the council and recorded in the office of the register of deeds, for each lot so transferred or sold~~
9 ~~or agreed or negotiated to be sold. The description by metes and bounds in the instrument of~~
10 ~~transfer or other document used in the process of selling or transferring shall not exempt the~~
11 ~~transaction from the penalties. A municipality may enjoin such transfer or sale or agreement by~~
12 ~~action for injunction.~~

13 Section 22. That § 11-6-36 be repealed.

14 ~~11-6-36. From and after the time when the platting jurisdiction of any municipality has~~
15 ~~attached by virtue of the adoption of a major street plan as provided in § 11-6-26, the~~
16 ~~municipality or other public authority may not, except as provided by § 11-6-37, accept, lay out,~~
17 ~~open, improve, grade, pave, or light any street or lay or authorize the laying of water mains,~~
18 ~~sewers, connections, or other facilities or utilities in any street within the municipality unless~~
19 ~~such street has been accepted or opened as, or has otherwise received the legal status of, a public~~
20 ~~street prior to the adoption of a comprehensive plan, or unless such street corresponds in its~~
21 ~~location and lines with a street shown on a subdivision plat approved by the council or on a~~
22 ~~street plat made by the planning commission and adopted by the council or reviewed and~~
23 ~~approved in accordance with § 11-3-6.~~

24 Section 23. That § 11-6-37 be repealed.

1 ~~11-6-37. The council, or, in the case of a street outside of the municipality, the governing~~
2 ~~body of such outside territory, may locate and construct or may accept any other street if the~~
3 ~~ordinance or other measure for such location and construction or for such acceptance be first~~
4 ~~submitted to the planning commission for its consideration, and, if disapproved by the~~
5 ~~commission, be passed by not less than two-thirds of the entire membership of the city council~~
6 ~~or said governing body. A street approval by the commission upon such submission, or~~
7 ~~constructed or accepted by a two-thirds vote after disapproval by the commission, has the status~~
8 ~~of an approved street as fully as though it had been originally shown on a subdivision plat~~
9 ~~approved by the council or on a plat made by the commission and adopted by the council or~~
10 ~~reviewed and approved in accordance with § 11-3-6.~~

11 Section 24. That § 11-6-38 be repealed.

12 ~~11-6-38. From and after the time when the platting jurisdiction of any municipality has~~
13 ~~attached by reason of the adoption of a major street plan as provided in § 11-6-26, no building~~
14 ~~permit may be issued for or no building may be erected on any lot within the territorial~~
15 ~~jurisdiction of the commission and council as provided in § 11-6-26, unless the street giving~~
16 ~~access to the lot upon which the building is proposed to be placed is accepted as opened as, or~~
17 ~~has otherwise received the legal status of, a public street prior to that time, or unless such street~~
18 ~~corresponds in its location and lines with a street shown on a recorded subdivision plat approved~~
19 ~~by the council or on a street plat made by the commission and adopted by the council or with~~
20 ~~a street located or accepted by the council, or, in the case of territory outside of the municipal~~
21 ~~corporation, by the governing body thereof, after submission to the commission, and, in case~~
22 ~~of the commission's disapproval, by the favorable vote required in § 11-6-37. Any building~~
23 ~~erected in violation of this section is an unlawful structure, and the municipality or governing~~
24 ~~body may bring action to enjoin such erection or cause it to be vacated or removed.~~

1 Section 25. That § 11-6-39 be repealed.

2 ~~11-6-39. The lawful use of land or premises existing at the time of the adoption of the~~
3 ~~zoning ordinance may be continued, even though the use, lot, or occupancy does not conform~~
4 ~~to the provisions of the zoning ordinance. If the nonconforming use is discontinued for a period~~
5 ~~of more than one year, any subsequent use, lot, or occupancy of the land or premises shall be~~
6 ~~in conformance with such regulation.~~

7 Section 26. That § 11-6-40 be repealed.

8 ~~11-6-40. Any municipality with a population of fifty thousand or more or any municipality~~
9 ~~located in a county with a population of fifty thousand or more, if such municipality has adopted~~
10 ~~a comprehensive plan pursuant to this chapter, the municipality may require by ordinance that~~
11 ~~any parcel of land of less than forty acres which is located within three miles of its corporate~~
12 ~~limits, be platted prior to the sale or transfer of the land. The register of deeds may not record~~
13 ~~any document of any sale or transfer of unplatted property if a municipality requires platting~~
14 ~~pursuant to this section.~~