

# Blue Ridge Arts Council

## Arts & Crafts Center

Objective: To serve the Oconee County Community with classes, exhibits and performances of our Heritage Arts and Crafts.

Offering classes in:

Basketry	Canning and Food Preserving	Dance (Contra, Clogging, Square & Swing)	Drawing
Flower Arranging & Design	Jewelry	Knitting & Crochet	Leatherwork
Macramé	Music – piano & vocal (Community Chorus)	Needlepoint & Embroidery	
Painting (oil, watercolor, acrylic, pastel)	Penmanship and Calligraphy	Photography	
Pottery making	Printmaking	Quilting	Sewing - hand and machine
		Weaving	Woodcarving

**Gallery for Performance and Exhibits in:** Dance, Music, Arts & Crafts

The Blue Ridge Arts & Crafts Center, under the umbrella of the Blue Ridge Arts Council (BRAC), is a 501©3 non-profit organization. We are seeking sponsorship from Oconee County to provide start-up funding for the development of this new program. Our original thought was to suggest that the “Arts & Historical Commission” of Oconee County become an umbrella for all the Arts & Historical non-profits in the county, but we were told that this commission is “inactive”. We come to you directly, to ask for monetary support in the amount of \$2500. This amount is what is budgeted for one month operations cost.

The Center will conduct classes/training in the above mentioned activities. The “Gallery” would become a classroom and performance area. BRAC would hold two Art Exhibits per year; the Annual Public School Student Show and a Member’s Exhibit for Arts & Crafts produced at the Center. Both exhibits would have work for sale to the public and the Center would receive a commission of 35%.

The Picture Person Program, for the Oconee County Elementary Schools, will continue to function under the supervision of BRAC. We have offered this program to all the County Elementary Schools for the past 30 years at no cost to the schools. Our Volunteers have shared this Art Appreciation Program with at least 300 students per year.

Performance or Special Event space will be for rent on a daily basis. Parties, Weddings, Private Events & Exhibits are welcomed in the “Chapel” (Gallery) space especially.

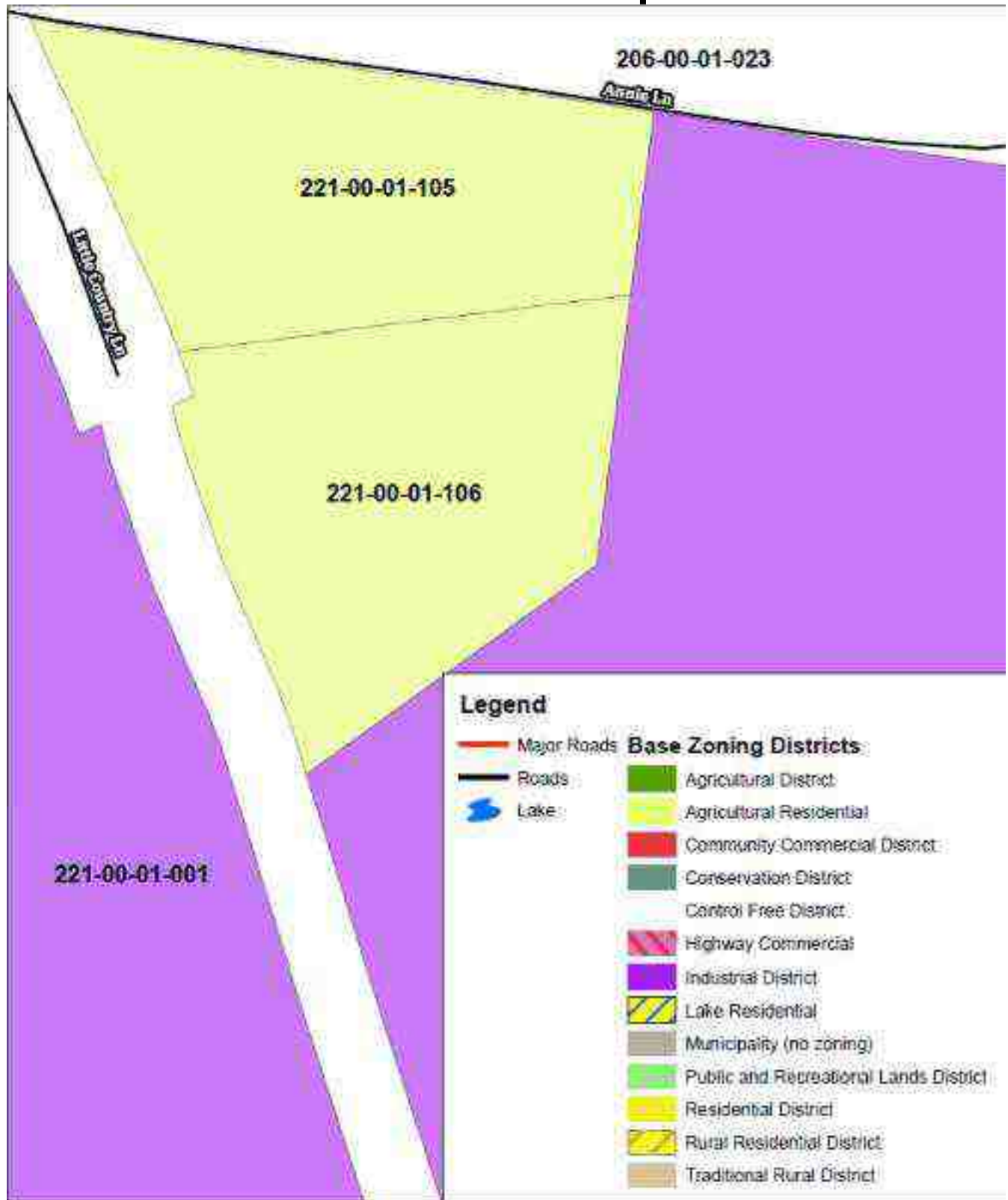
Chapel (Gallery) space can be used for public/member Dance Events (Contra, Clogging, Square Dance and Shag). Instrumental & voice classes would use the Chapel space for practice and recitals. This plan includes a **Community Choral Group** that would give performances.

# Ordinance 2013-21

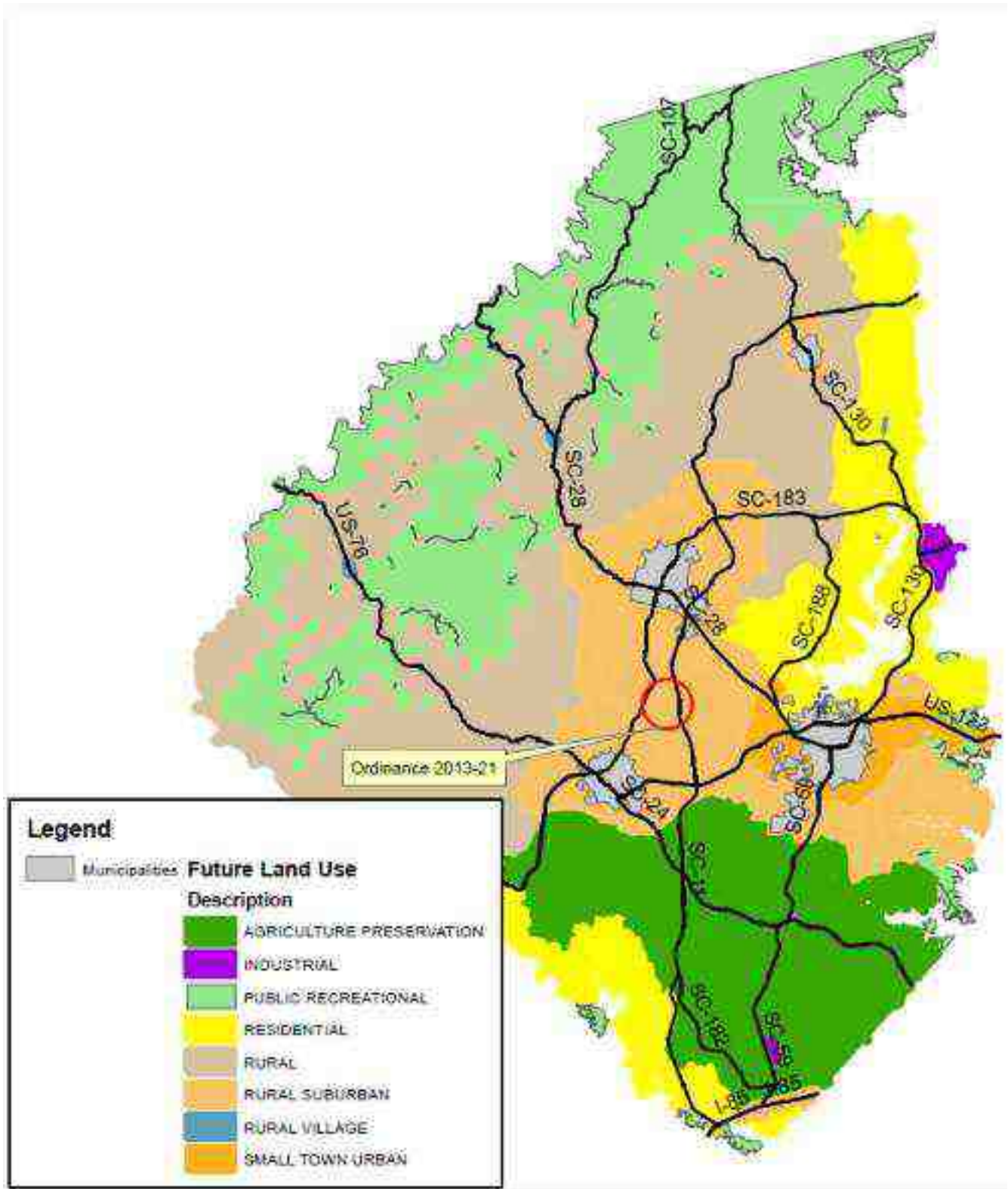
Sub 02 Rezoning Request

August 26, 2013  
Planning Commission  
Meeting

# Area Map



# Location on Future Land Use Map



# Background

- After the property for the Oconee Industry and Technology Park, formerly known as Echo Hills, was purchased it was discovered there were two mobile homes on the property. The County negotiated with the owners of the mobile homes and it was determined that two 1 acre lots would be surveyed out of the Park and sold to the mobile home owners. The northern most parcel was purchased and the transfer of ownership was completed. However, the southern parcel did not sale. Considering that the County has no plans to sale this parcel, staff recommends that the parcel be reincorporated into the Park. Having been surveyed and rezoned out of the Park, rezoning is the first step in the process of reincorporating this parcel into the Park.
- The request is a subsequent rezoning consisting of a parcel totaling 1 acre. This parcel is located in the rural suburban area on the Future Land Use Map, and is currently zoned in the Agricultural Residential District.
- As submitted, parcel 221-00-01-106, currently in Agricultural Residential District, would be rezoned into the Industrial District.

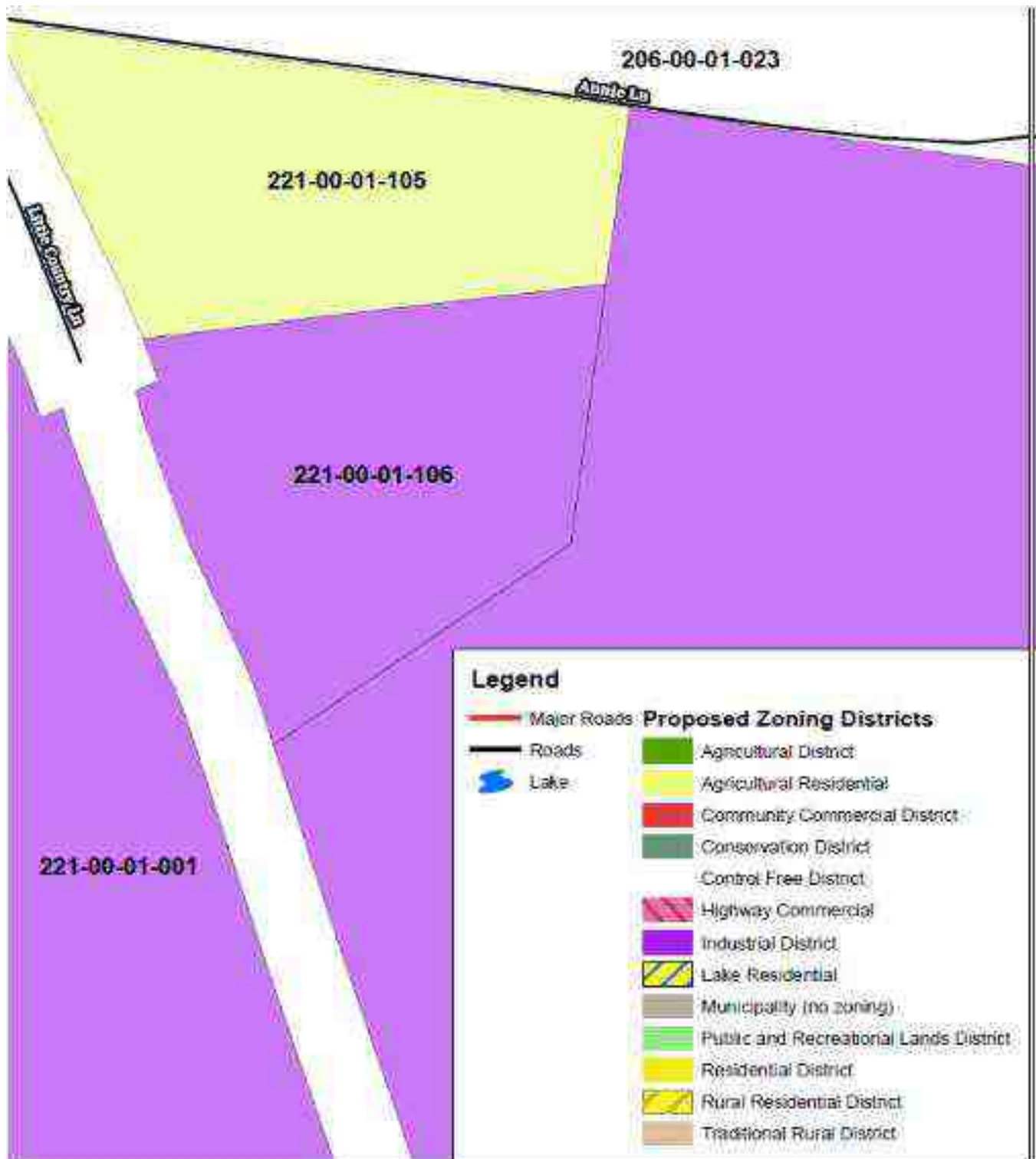
# Public Input Received to Date

- None to date

# Staff Recommendation

- This rezoning request is located in the Rural Suburban area on the FLUM;
- The district requested complies with the Comprehensive Plan and with what Council has previously adopted in this area on the FLUM;
- The Commission should consider all public input received to date;
- Staff recommends ID for the area under consideration;
- With the consensus of the Commission staff will develop other alternatives for consideration.

# Staff's Map for Consideration





# Discussion and Consideration by Commission



**OCONEE COUNTY COUNCIL  
WALHALLA, SOUTH CAROLINA**

**BOARDS, COMMISSIONS  
& COUNCIL APPOINTED COMMITTEES  
GENERAL INFORMATION &  
ORIENTATION BOOKLET**

**OCONEE COUNTY MISSION STATEMENT**

It is the mission of Oconee County to provide our current and future citizens and visitors quality services and to protect our neighborhoods, heritage and environment by managing growth and change through smart, inclusive planning.

**OCONEE COUNTY VISION STATEMENT**

A diverse, growing, safe, vibrant community guided by rural traditions and shaped by natural beauty, where employment, education and recreation offer a rich quality of life for all generations, both today and tomorrow.

**ESTABLISHED: JULY 2013**



## **Introduction:**

Oconee County Council has the responsibility of appointing citizens to serve on boards, commissions and ad hoc committees [*“board/commission”*]. Council members view this process and appointment as a trust between Council, the appointee, the agency, and the community; all working together for the betterment of Oconee County.

Therefore, it is Oconee County Council’s desire to provide a general orientation regarding the appointee’s responsibilities on the board/commission. The information contained in this booklet is not a contract, but is information that will assist you in your roll as a public official representing the Oconee County Council.

Some of the boards and commission of Oconee County are jointly appointed with other governing bodies or agencies. Also, some of the boards are more of an advisory nature while some are policy making boards / commissions. The Department Head [or his/her designee], known as the “Staff Liaison” will work with your board / commission and will give to you specific information related to board / commission.

## **Definitions:**

- **“Public Member”** means an individual appointed to a non-compensated part-time position on a board / commission / ad hoc committee. A public member does not lose the status by receiving reimbursement of expenses or a per diem payment for services.
- **“Public Official”** means an elected or appointed official of the State, a county, a municipality, or a political subdivision thereof, including candidates for office. Public Official does not mean a member of the judiciary except that for the purposes of campaign practices, campaign disclosure, and disclosure of economic interests, a probate judge is considered a public official and must meet the requirements of this chapter.
- **“Official Capacity”** means activities which:
  - arise because of the position held by the public official, public member, or public employee;
  - involve matters which fall within the official responsibility of the agency, the public official, the public member, or the public employee; and
  - Are services the agency would normally provide and for which the public official, public members, or public employee would be subject to expense reimbursement by the agency with which the public official, public member or public employee is associated.

## **Board / Commission Rules for Procedure & Specific By-Laws [if applicable]**

All Boards & Commissions will operate utilizing the South Carolina Association of Counties [SCAC], Model Rule of Parliamentary Procedure for South Carolina Counties [most recent edition – viewable on the SCAC website].

It is each Board/Commission member's responsibility to review and adhere to specific rules of order and adopted by-laws; noting that conduct is not just specific to meetings of the board/commission.

## **Board / Commission Members' Attendance Practices**

It is Council's desire to appoint citizens to boards and commission that have openly acknowledged their willingness to serve his/her community in this capacity. Therefore, it is Council's belief that persons who have been appointed to a board, commission or other authority should attend all meetings that are called. Some of the boards / commissions have specific attendance requirements in addition to those outlined in the Oconee County Code of Ordinances, Chapter 2, Section 2-241 as stated below:

*A member who is absent from three consecutive meetings without adequate excuse, such as documented illness, shall be reported by the chairperson of that board to council and is subject to replacement by council. Any member may also be removed or replaced at will by majority vote of council upon the motion of the appointing council member at any time, unless appointment is required by or regulated by state or federal law.*

## **Freedom of Information Act [FOIA]**

All Oconee County Boards & Commissions are required to comply with all aspects of the South Carolina Code 30-4-10; Freedom of Information Act. SCAC publishes a Freedom of Information Handbook for County Government [which can be viewed on the SCAC website].

## **CONSTITUTION OF THE STATE OF SOUTH CAROLINA ARTICLE XVII: Miscellaneous Matters**

### **Section 1. Qualifications of officers.**

No person shall be elected or appointed to any office in this State unless he possess the qualifications of an elector: Provided, The provisions of this Section shall not apply to the offices of State Librarian and Departmental Clerks, to either of which offices any woman, a resident of the State two years, who has attained the age of twenty-one years, shall be eligible.

#### **SECTION 1A. Qualification for office; two offices.**

Every qualified elector is eligible to any office to be voted for, unless disqualified by age, as prescribed in this Constitution. No person may hold two offices of honor or profit at the same time, but any person holding another office may at the same time be an officer in the militia, member of a lawfully and regularly organized fire department, constable, or a notary public. The limitation above set forth "No person may hold two offices of honor or profit at the same time," does not apply to the circuit judges of the State under the circumstances stated in this section, but whenever it appears that any or all of the Justices of the Supreme Court are disqualified or otherwise

prevented from presiding in any cause for the reasons set forth in Section 6 of Article V of the Constitution, the Chief Justice or in his stead the Senior Associate Justice when available shall designate the requisite number of circuit judges for the hearing and determination of the hearing. The limitation above set forth does not prohibit any officeholder from being a delegate to a constitutional convention. (1989 Act No. 9, Section 3, eff February 8, 1989.)

**SECTION 1B. Property qualifications; term of office; dueling.**

No property qualification, unless prescribed in this Constitution, shall be necessary for an election to or the holding of any office. No person shall be elected or appointed to office in this State for life or during good behavior, but the terms of all officers shall be for some specified period, except Notaries Public and officers in the Militia. After the adoption of this Constitution any person who shall fight a duel or send or accept a challenge for that purpose, or be an aider or abettor in fighting a duel, shall be deprived of holding any office of honor or trust in this State, and shall be otherwise punished as the law shall prescribe.

**State Ethics Rules of Conduct – General Information:**

All public employees, public officeholders, and public members are expected to adhere to and follow the Rules of Conduct as outlined in the Ethics Reform Act. Anyone who is found guilty of violating these rules is subject to prosecution by the State Ethics Commission and the Attorney General's Office.

A public official, public member, or public employee may not knowingly use his official office, membership, or employment to influence a government decision to obtain an economic interest for himself, a member of his immediate family, an individual with whom he is associated, or a business with which he is associated.

A person may not directly or indirectly give, offer, or promise anything of value to a public official, public member, or public employee with intent to influence the public official's, public member's, or public employee's official responsibilities, nor is the public official, public member, or public employee to ask, demand, solicit, or accept anything of value for himself or for another person in return for fulfilling his official responsibilities or duties.

A public official, public member, or public employee may not receive anything of value for speaking before a public or private group in his/her official capacity. A meal can be accepted if provided in conjunction with the speaking engagement where all participants are entitled to the same meal and the meal is incidental to the speaking engagement. A public official, public member or public employee may receive payment or reimbursement for actual expenses incurred.

Public officials, public members, or public employees may not receive money in addition to that received by the public official, public member, or public employee in his official capacity for advice or assistance given in the course of his employment as a public official, public member, or public employee.

No public official, public member, or public employee may disclose confidential information gained as a result of his responsibility as a public official, public member, or public employee that would affect an economic interest held by himself, a member of his immediate family, an individual with whom he is associated, or a business with which he is associated.

No person may serve as a member of a governmental regulatory agency that regulates any business with which that person is associated.



No person shall serve on the governing body of a state; county; municipal; or political subdivision, board, or commission and serve in a position of the same governing body which makes decisions affecting his economic interests.

A public official occupying a statewide office, a member of his immediate family, an individual with whom he is associated, or a business with which he is associated may not knowingly represent another person before a governmental entity.

No member of the General Assembly or an individual with whom he is associated or business with which he is associated may represent a client for a fee in a contested case before an agency, a commission, board, department, or other entity if the member of the General Assembly has voted in the election, appointment, recommendation, or confirmation of a member of the governing body of the agency, board, department, or other entity within the 12 preceding months.

A public member occupying statewide office, an individual with whom associated, or a business with which associated may not knowingly represent a person before the same unit or division of the governmental entity for which the public member has official responsibility.

A public official, public member, or public employee of a county or municipality, an individual with whom associated, or a business with which associated may not knowingly represent a person before any agency, unit, or subunit of that county or municipality.

A public employee, other than of a county or municipality, an individual with whom associated, or a business with which associated may not knowingly represent a person before an entity of the same level of government for which the public employee has official responsibility.

No public official, public member, or public employee may cause the employment, appointment, promotion, transfer, or advancement of a family member to a state or local office or position in which the public official, public member, or public employee supervises or manages. A public official, public member, or public employee may not participate in an action relating to the discipline of the public official's, public member's or public employee's family member.

A former public official, former public member, or former public employee holding office, membership, or employment may not serve as a lobbyist or represent clients before the agency or department on which the public official, public member, or public employee formerly served in a matter in which he directly and substantially participated for one year after terminating his public service or employment.

It is a breach of ethical standards for a public official, public member, or public employee who participates directly in procurement to resign and accept employment with a person contracting with the governmental body if the contract falls or would fall under the public official's, public member's, or public employee's official responsibility.

No person may use government personnel, equipment, materials, or an office building in an election campaign. A person may use public facilities for a campaign purposes if they are available on similar terms to all candidates and committees. Likewise, government personnel may participate in election campaign on their own time and on non-government premises.

A public official, public member, or public employee may not have an economic interest in a contract with the state or its political subdivisions if the public official, public member, or public employee is authorized to perform an official function (including writing or preparing the contract, accepting bids, and awarding of the contracts) relating to the contract.

**It is the responsibility of each board / commission member to review and comply with all requirements as outlined on the South Carolina Ethics Commission website <http://ethics.sc.gov/>.**



## ORGANIZATION LINKS:

South Carolina Association of Counties [SCAC]

<http://www.sccounties.org/>

SCAC: Directory of County Officials

<http://www.sccounties.org/publications/pdf/DirectoryofCountyOfficials08.pdf>

SCAC: *"A Handbook for County Government in South Carolina"*

<http://www.sccounties.org/research/Handbook/Handbook2005.pdf>

SCAC: *"Model Rules of Parliamentary Procedure for South Carolina Counties"*

[http://www.sccounties.org/publications/Parliamentary%20Procedure/parliamentary\\_proc.pdf](http://www.sccounties.org/publications/Parliamentary%20Procedure/parliamentary_proc.pdf)

The Official Website of South Carolina

<http://www.sc.gov/>

South Carolina Ethics Commission

<http://www.ethics.sc.gov/>

## Questionnaire for Boards / Commissions

At the April 1, 2008 meeting Council unanimously approved usage of the "Questionnaire for Boards / Commissions". The form is designed to allow citizens to express interest in serving on boards and/or commissions and will be updated frequently to accurately reflect current boards and commissions. The form did not prohibit Council members from seeking individuals who they feel are qualified to serve but would allow for a larger pool to draw from when openings arise.

At the May 15, 2012 County Council unanimously approved that all interested candidates seeking appointment and / or reappointment to any Oconee County appointed Board and / or Commission be required to complete the Questionnaire for Board / Commission prior to being considered for any appointment.



# Oconee County Active Boards / Commissions

It is the responsibility of each board / commission member to review the full description of the duties/responsibilities etc. and to review the applicable section of the Oconee County Code of Ordinances referenced.

Copies of Code may be viewed on line at <http://www.municode.com>

<u>BOARD / COMMISSION</u>	<u>CODE OF ORDINANCE REFERENCE</u>	<u>CONTACT INFORMATION</u>
Appalachian Council of Government [ACOG] Board	County Council appoints one citizen member to represent the County on the ACOG Board. In addition, County Council will elect at their first meeting each year one Council member to also sit on the ACOG Board.	Clerk to Council 718-1023
Aeronautics Commission	Chapter 18	Airport 882-2959
Anderson – Oconee Behavioral Health Services Commission	Chapter 2	
Building Codes Appeal Board	Chapter 6	Community Development 364-5103
Capital Project Advisory Committee	Chapter 2	Clerk to Council 718-1023
Conservation Bank Board	Chapter 2	Clerk to Council 718-1023
Economic Development Commission	Chapter 24	Economic Development 638-4210
Infrastructure Advisory Commission	Chapter 34	Clerk to Council 718-1023
Library Board	Chapter 18	Library Director 638-4133
Parks, Recreation & Tourism Commission	Chapter 2	PRT Director 888-1488
Planning Commission	Chapter 32	Planning 364-5109
Scenic Highway Committee	Chapter 26	Planning 364-5109
Worklink Workforce Board	County Council appoints members upon recommendation of the WorkLink Board.	
Board of Zoning Appeals	Chapter 32	Planning 364-5109

**STAFF LIAISON:**

**INSERT BOARD / COMMISSION SPECIFIC DOCUMENTS TO INCLUDE BUT NOT LIMITED TO:**

- ADOPTED RULES
- ADOPTED BY LAWS
- SPECIFIC STATE LAW SECTIONS THAT PERTAIN TO BOARD / COMMISSION

## **Article I Organization**

### **Section 1. Rules**

These rules of procedure are adopted pursuant to S.C. Code § 6-29-360 for the Oconee County Planning Commission which consists of members appointed by the Oconee County Council.

### **Section 2. Officers**

The officers of the Commission shall be a chairman and vice-chairman elected for one (1) year terms at the first meeting of the Commission in each calendar year. The Oconee County Planning Department shall fulfill the role of secretary for the Commission.

### **Section 3. Chairman**

The chairman shall be a voting member of the Commission and shall:

- a. Call meetings of the Commission;
- b. Preside at meetings and hearings;
- c. Act as spokesperson for the Commission;
- d. Sign documents for the Commission;
- e. Transmit reports and recommendations to Council; and
- f. Perform other duties approved by the Commission.

### **Section 4. Vice-Chairman**

The vice-chairman shall exercise the duties of the chairman in the absence, disability, or disqualification of the chairman. In the absence of the chairman and vice-chairman, an acting chairman shall be elected by the members present.

### **Section 5. Planning Department**

The Planning Department shall:

- a. Provide notice of meetings;
- b. Assist the chairman in preparation of agenda;
- c. Keep minutes of meetings and hearings;
- d. Maintain Commission records as public records;
- e. Attend to Commission correspondence; and
- f. Perform other duties normally carried out by a secretary.

## **Article II Meetings**

### **Section 1. Time and Place**

An annual schedule of regular meetings shall be adopted, published and posted at the designated Oconee County Planning Department office in December of each year. Special meetings may be called by the chairman upon twenty four (24) hours notice, posted and delivered to all members and local news media. Meetings shall be held at the place stated in the notices, and shall be open to the public.

### **Section 2. Agenda**

A written agenda shall be furnished by the Planning Department to each member of the Commission and the news media, and shall be posted at least five (5) days prior to each regular meeting, and at least twenty four (24) hours prior to a special meeting. Items may be added to the agenda at a meeting by majority vote.

### **Section 3. Quorum**

A majority of the members of the Commission shall constitute a quorum. A quorum shall be present before any business is conducted other than rescheduling the meeting.

### **Section 4. Rules of Order**

The Model Rules of Parliamentary Procedure for South Carolina Counties shall govern the conduct of meetings except as otherwise provided by these Rules of Procedure.

### **Section 5. Voting**

A member must be present to vote. Each member shall vote on every question unless disqualified by law. The question of disqualification shall be decided by the member affected, who shall announce the reason for disqualification, have it placed in the minutes, and refrain from deliberating or voting on the question.

### **Section 6. Conduct**

No person shall speak at a Commission meeting unless invited to do so by the Commission.

## **Article III Public Hearings**

## **Section 1. Notice**

The Planning Department shall give the notice required by statute or ordinance for all public hearings conducted by the Commission. Members of the public desiring to be heard shall give written notice to the Planning Department at least one week prior to commencement of the hearing.

## **Section 2. Procedure**

In matters brought before the Commission for public hearing which were initiated by an applicant, the Planning staff shall be heard first, the applicant, his agent or attorney shall be heard second, and members of the public next. The applicant shall have the right to reply last. No person may speak for more than two (2) minutes without consent of the Commission. No person speaking at a public hearing shall be subject to cross-examination. All questions shall be posed by members of the Commission. In matters not initiated by an applicant, members of the public shall speak in the order in which requests were received, or in such order as the Commission shall determine.

# **Article IV Variance Procedures and Hearings**

## **Section 1. Notice**

Once an application has been received by the Planning Department, a meeting will be scheduled no earlier than thirty (30) days from the date of application, and no later than sixty (60) days from the date of application. Upon good cause shown by the applicant, the meeting may be held earlier than thirty (30) days if so ordered by the Chairman of the Planning Commission.

Once the hearing date is set, the Planning Department shall issue notification to the adjacent property owners by mail, notify the public through a press release and by posting the property in question on road frontage property lines, and by placing notice on the Planning Department website.

The notice shall contain the following: a tax map number identifying the property, the party requesting the variance, the deadline for the submission of comments and signing up to speak at the hearing, notice that application is on file in the Planning Department.

## **Section 2. Submission of Comments and Speaking**

The deadline for the submission of written comments and signing up to speak at the hearing will be one week prior to the date of the scheduled meeting.

The Planning Department will mail all comments and a list of those wishing to speak to all commission members prior to the scheduled meeting.

### **Section 3. Hearing Procedures**

The Chairman will call the meeting to order;

The Planning Director will present the department's findings and give a synopsis of the issues surrounding the variance;

The Party requesting the variance shall be granted a maximum of twenty (20) minutes to present their case before the Commission;

Once the party wishing to receive a variance has finished his or her presentation, those opposing the variance request shall be granted a maximum of twenty (20) minutes to speak;

No debate shall occur between those who favor the variance and those who do not;

The Commission, for good cause shown, may extend the time limits set out in this section;

Once all parties have presented their concerns to the Commission, the Commission may ask questions and render a decision.

## **Article V Records**

### **Section 1. Minutes**

The Planning Department shall record all meetings and hearings of the Commission on tape which shall be preserved until final action is taken on all matters presented. The Planning Department shall prepare minutes of each meeting for approval by the Commission at the next regular meeting. Minutes shall be maintained as public records.

### **Section 2. Reports**

The Planning Department shall assist in the preparation and forwarding of all reports and recommendations of the Commission in appropriate form. Copies of all notices, correspondence, reports and forms shall be maintained as public records.

### **Section 3. Attendance**

The minutes shall show the members in attendance at each meeting and the reason for absence submitted by any member. The Commission shall recommend to the governing body the removal for cause of any member who is absent from three (3) consecutive meetings without adequate reason.

## **Article VI Review Procedure**

### **Section 1. Plats**

Plats submitted for review pursuant to land development regulations shall be reviewed by designated staff members who may approve for recording plats of existing lots of record, minor subdivisions of land which meet all zoning requirements, and subdivisions which are exempt from regulation pursuant to S.C. Code § 6-29-1110(2). A public record of such actions shall be maintained. All other plats shall be subject to review and approval by the Commission. [NOTE: See chapter 6 of the Performance Standards Ordinance]

### **Section 2. Comprehensive Plan**

All land development regulation amendments shall be reviewed first for conformity with the comprehensive plan. Conflicts with comprehensive plan shall be noted in any report to the governing body on a proposed amendment. The elements of the comprehensive plan shall be reviewed and updated on a schedule adopted by the Commission meeting the requirements of S.C. Code § 6-29-510(E).

### **Section 3. Reconsideration**

The Commission may reconsider any review when so requested by the governing body, or when an applicant brings to the attention of the Commission new facts, a mistake of fact in the original review, correction of clerical error, or matters not the fault of the applicant which affect the result of the review.

## **Article VII Adoption and Amendment**

## **Section 1. Adoption**

These rules were adopted by vote of a majority of the members of the Commission at a regular public meeting on May 14, 2007.

## **Section 2. Amendment**

These rules may be amended at any regular meeting of the Commission by majority vote of the members of the Commission at least seven (7) days after the written amendment is delivered to all members.



## DISCLAIMER

The South Carolina Legislative Council is offering access to the unannotated South Carolina Code of Laws on the Internet as a service to the public. The unannotated South Carolina Code on the General Assembly's website is now current through the 2012 session. The unannotated South Carolina Code, consisting only of Code text, numbering, and history may be copied from this website at the reader's expense and effort without need for permission.

The Legislative Council is unable to assist users of this service with legal questions. Also, legislative staff cannot respond to requests for legal advice or the application of the law to specific facts. Therefore, to understand and protect your legal rights, you should consult your own private lawyer regarding all legal questions.

While every effort was made to ensure the accuracy and completeness of the unannotated South Carolina Code available on the South Carolina General Assembly's website, the unannotated South Carolina Code is not official, and the state agencies preparing this website and the General Assembly are not responsible for any errors or omissions which may occur in these files. Only the current published volumes of the South Carolina Code of Laws Annotated and any pertinent acts and joint resolutions contain the official version.

Please note that the Legislative Council is not able to respond to individual inquiries regarding research or the features, format, or use of this website. However, you may notify Legislative Printing, Information and Technology Systems at [LPITS@scstatehouse.gov](mailto:LPITS@scstatehouse.gov) regarding any apparent errors or omissions in content of Code sections on this website, in which case LPITS will relay the information to appropriate staff members of the South Carolina Legislative Council for investigation.

CHAPTER 29.

SOUTH CAROLINA LOCAL GOVERNMENT COMPREHENSIVE PLANNING ENABLING ACT  
OF 1994

ARTICLE 1.

CREATION OF LOCAL PLANNING COMMISSION

**SECTION 6-29-310.** "Local planning commission" defined.

For purposes of this chapter, "local planning commission" means a municipal planning commission, a county planning commission, a joint city-county planning commission, or a consolidated government planning commission.

HISTORY: 1994 Act No. 355, Section 1.

**SECTION 6-29-320.** Bodies authorized to create local planning commissions.

The city council of each municipality may create a municipal planning commission. The county council of each county may create a county planning commission. The governing body of a consolidated government may create a planning commission. Any combination of municipal councils and a county council or any combination of municipal councils may create a joint planning commission.

HISTORY: 1994 Act No. 355, Section 1.

**SECTION 6-29-330.** Areas of jurisdiction; agreement for county planning commission to act as municipal planning commission.

(A) A municipality may exercise the powers granted under the provisions of this chapter in the total area within its corporate limits. A county may exercise the powers granted under the provisions of this chapter in the total unincorporated area or specific parts of the unincorporated area. Unincorporated areas of the county or counties adjacent to incorporated municipalities may be added to and included in the area under municipal jurisdiction for the purposes of this chapter provided that the municipality and county councils involved adopt ordinances establishing the boundaries of the additional areas, the limitations of the authority to be exercised by the municipality, and representation on the boards and commissions provided under this chapter. The agreement must be formally approved and executed by the municipal council and the county councils involved.

(B) The governing body of a municipality may designate by ordinance the county planning commission as the official planning commission of the municipality. In the event of the designation, and acceptance by the county, the county planning commission may exercise the powers and duties as provided in this chapter for municipal planning commissions as are specified in the agreement reached by the governing authorities. The agreement must specify the procedures for the exercise of powers granted in the chapter and shall address the issue of equitable representation of the municipality and the county on the boards and commissions authorized by this chapter. This agreement must be formally stated in appropriate ordinances by the governing authorities involved.

HISTORY: 1994 Act No. 355, Section 1.

**SECTION 6-29-340.** Functions, powers, and duties of local planning commissions.

(A) It is the function and duty of the local planning commission, when created by an ordinance passed by the municipal council or the county council, or both, to undertake a continuing planning program for the physical, social, and economic growth, development, and redevelopment of the area within its jurisdiction. The plans and programs must be designed to promote public health, safety, morals, convenience, prosperity, or the general welfare as well as the efficiency and economy of its area of jurisdiction. Specific planning elements must be based upon careful and comprehensive surveys and studies of existing conditions and probable future development and include recommended means of implementation. The local planning commission may make, publish, and distribute maps, plans, and reports and recommendations relating to the plans and programs and the development of its area of jurisdiction to public officials and agencies, public utility companies, civic, educational, professional, and other organizations and citizens. 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 planning commission, its members and employees, in the performance of its functions, may enter upon any land with consent of the property owner or after ten days' written notification to the owner of record, make examinations and surveys, and place and maintain necessary monuments and marks on them, provided, however, that the planning commission shall be liable for any injury or damage to property resulting therefrom. In general, the planning commission has the powers as may be necessary to enable it to perform its functions and promote the planning of its political jurisdiction.

(B) In the discharge of its responsibilities, the local planning commission has the power and duty to:

(1) prepare and revise periodically plans and programs for the development and redevelopment of its area as provided in this chapter; and

(2) prepare and recommend for adoption to the appropriate governing authority or authorities as a means for implementing the plans and programs in its area:

(a) zoning ordinances to include zoning district maps and appropriate revisions thereof, as provided in this chapter;

(b) regulations for the subdivision or development of land and appropriate revisions thereof, and to oversee the administration of the regulations that may be adopted as provided in this chapter;

(c) an official map and appropriate revision on it showing the exact location of existing or proposed public street, highway, and utility rights-of-way, and public building sites, together with regulations to control the erection of buildings or other structures or changes in land use within the rights-of-way, building sites, or open spaces within its political jurisdiction or a specified portion of it, as set forth in this chapter;

(d) a landscaping ordinance setting forth required planting, tree preservation, and other aesthetic considerations for land and structures;

(e) a capital improvements program setting forth projects required to implement plans which have been prepared and adopted, including an annual listing of priority projects for consideration by the governmental bodies responsible for implementation prior to preparation of their capital budget; and

(f) policies or procedures to facilitate implementation of planning elements.

HISTORY: 1994 Act No. 355, Section 1.

**SECTION 6-29-350.** Membership; terms of office; compensation; qualifications.

(A) A local planning commission serving not more than two political jurisdictions may not have less than five nor more than twelve members. A local planning commission serving three or more political jurisdictions shall have a membership not greater than four times the number of jurisdictions it serves. In the case of a joint city-county planning commission the membership must be proportional to the population inside and outside the corporate limits of municipalities.

(B) No member of a planning commission may hold an elected public office in the municipality or county from which appointed. Members of the commission first to serve must be appointed for staggered terms as described in the agreement of organization and shall serve until their successors are appointed

and qualified. The compensation of the members, if any, must be determined by the governing authority or authorities creating the commission. A vacancy in the membership of a planning commission must be filled for the unexpired term in the same manner as the original appointment. The governing authority or authorities creating the commission may remove any member of the commission for cause.

(C) In the appointment of planning commission members the appointing authority shall consider their professional expertise, knowledge of the community, and concern for the future welfare of the total community and its citizens. Members shall represent a broad cross section of the interests and concerns within the jurisdiction.

HISTORY: 1994 Act No. 355, Section 1.

**SECTION 6-29-360.** Organization of commission; meetings; procedural rules; records; purchases.

(A) A local planning commission shall organize itself electing one of its members as chairman and one as vice-chairman whose terms must be for one year. It shall appoint a secretary who may be an officer or an employee of the governing authority or of the planning commission. The planning commission shall meet at the call of the chairman and at such times as the chairman or commission may determine.

(B) The commission shall adopt rules of organizational procedure and shall keep a record of its resolutions, findings, and determinations, which record must be a public record. The planning commission may purchase equipment and supplies and may employ or contract for such staff and such experts as it considers necessary and consistent with funds appropriated.

HISTORY: 1994 Act No. 355, Section 1.

**SECTION 6-29-370.** Referral of matters to commission; reports.

The governing authority may provide for the reference of any matters or class of matters to the local planning commission, with the provision that final action on it may not be taken until the planning commission has submitted a report on it or has had a reasonable period of time, as determined by the governing authority to submit a report.

HISTORY: 1994 Act No. 355, Section 1.

**SECTION 6-29-380.** Funding of commissions; expenditures; contracts.

A local planning commission may cooperate with, contract with, or accept funds from federal government agencies, state government agencies, local general purpose governments, school districts, special purpose districts, including those of other states, public or eleemosynary agencies, or private individuals or corporations; it may expend the funds; and it may carry out such cooperative undertakings and contracts as it considers necessary.

HISTORY: 1994 Act No. 355, Section 1.

ARTICLE 3.

LOCAL PLANNING--THE COMPREHENSIVE PLANNING PROCESS

**SECTION 6-29-510.** Planning process; elements; comprehensive plan.

(A) The local planning commission shall develop and maintain a planning process which will result in the systematic preparation and continual re-evaluation and updating of those elements considered critical, necessary, and desirable to guide the development and redevelopment of its area of jurisdiction.

(B) Surveys and studies on which planning elements are based must include consideration of potential conflicts with adjacent jurisdictions and regional plans or issues.

(C) The basic planning process for all planning elements must include, but not be limited to:

- (1) inventory of existing conditions;
- (2) a statement of needs and goals; and
- (3) implementation strategies with time frames.

(D) A local comprehensive plan must include, but not be limited to, the following planning elements:

(1) a population element which considers historic trends and projections, household numbers and sizes, educational levels, and income characteristics;

(2) an economic development element which considers labor force and labor force characteristics, employment by place of work and residence, and analysis of the economic base;

(3) a natural resources element which considers coastal resources, slope characteristics, prime agricultural and forest land, plant and animal habitats, parks and recreation areas, scenic views and sites, wetlands, and soil types. Where a separate board exists pursuant to this chapter, this element is the responsibility of the existing board;

(4) a cultural resources element which considers historic buildings and structures, commercial districts, residential districts, unique, natural, or scenic resources, archaeological, and other cultural resources. Where a separate board exists pursuant to this chapter, this element is the responsibility of the existing board;

(5) a community facilities element which considers water supply, treatment, and distribution; sewage system and wastewater treatment; solid waste collection and disposal, fire protection, emergency medical services, and general government facilities; education facilities; and libraries and other cultural facilities;

(6) a housing element which considers location, types, age, and condition of housing, owner and renter occupancy, and affordability of housing. This element includes an analysis to ascertain nonessential housing regulatory requirements, as defined in this chapter, that add to the cost of developing affordable housing but are not necessary to protect the public health, safety, or welfare and an analysis of market-based incentives that may be made available to encourage development of affordable housing, which incentives may include density bonuses, design flexibility, and streamlined permitting processes;

(7) a land use element which considers existing and future land use by categories, including residential, commercial, industrial, agricultural, forestry, mining, public and quasi-public, recreation, parks, open space, and vacant or undeveloped;

(8) a transportation element that considers transportation facilities, including major road improvements, new road construction, transit projects, pedestrian and bicycle projects, and other elements of a transportation network. This element must be developed in coordination with the land use element, to ensure transportation efficiency for existing and planned development;

(9) a priority investment element that analyzes the likely federal, state, and local funds available for public infrastructure and facilities during the next ten years, and recommends the projects for expenditure of those funds during the next ten years for needed public infrastructure and facilities such as water, sewer, roads, and schools. The recommendation of those projects for public expenditure must be done through coordination with adjacent and relevant jurisdictions and agencies. For the purposes of this item, "adjacent and relevant jurisdictions and agencies" means those counties, municipalities, public service districts, school districts, public and private utilities, transportation agencies, and other public entities that are affected by or have planning authority over the public project. For the purposes of this item, "coordination" means written notification by the local planning commission or its staff to adjacent and relevant jurisdictions and agencies of the proposed projects and the opportunity for adjacent and relevant jurisdictions and agencies to provide comment to the planning commission or its staff concerning the proposed projects. Failure of the planning commission or its staff to identify or notify an adjacent or

relevant jurisdiction or agency does not invalidate the local comprehensive plan and does not give rise to a civil cause of action.

(E) All planning elements must be an expression of the planning commission recommendations to the appropriate governing bodies with regard to the wise and efficient use of public funds, the future growth, development, and redevelopment of its area of jurisdiction, and consideration of the fiscal impact on property owners. The planning elements whether done as a package or in separate increments together comprise the comprehensive plan for the jurisdiction at any one point in time. The local planning commission shall review the comprehensive plan or elements of it as often as necessary, but not less than once every five years, to determine whether changes in the amount, kind, or direction of development of the area or other reasons make it desirable to make additions or amendments to the plan. The comprehensive plan, including all elements of it, must be updated at least every ten years.

HISTORY: 1994 Act No. 355, Section 1; 2007 Act No. 31, Section 2, eff May 23, 2007.

**SECTION 6-29-520.** Advisory committees; notice of meetings; recommendations by resolution; transmittal of recommended plan.

(A) In the preparation or periodic updating of any or all planning elements for the jurisdiction, the planning commission may use advisory committees with membership from both the planning commission or other public involvement mechanisms and other resource people not members of the planning commission. If the local government maintains a list of groups that have registered an interest in being informed of proceedings related to planning, notice of meetings must be mailed to these groups.

(B) Recommendation of the plan or any element, amendment, extension, or addition must be by resolution of the planning commission, carried by the affirmative votes of at least a majority of the entire membership. The resolution must refer expressly to maps and other descriptive matter intended by the planning commission to form the whole or element of the recommended plan and the action taken must be recorded in its official minutes of the planning commission. A copy of the recommended plan or element of it must be transmitted to the appropriate governing authorities and to all other legislative and administrative agencies affected by the plan.

(C) In satisfying the preparation and periodic updating of the required planning elements, the planning commission shall review and consider, and may recommend by reference, plans prepared by other agencies which the planning commission considers to meet the requirements of this article.

HISTORY: 1994 Act No. 355, Section 1.

**SECTION 6-29-530.** Adoption of plan or elements; public hearing.

The local planning commission may recommend to the appropriate governing body and the body may adopt the plan as a whole by a single ordinance or elements of the plan by successive ordinances. The elements shall correspond with the major geographical sections or divisions of the planning area or with functional subdivisions of the subject matter of the comprehensive plan, or both. Before adoption of an element or a plan as a whole, the governing authority shall hold a public hearing on it after not less than thirty days' notice of the time and place of the hearings has been given in a newspaper having general circulation in the jurisdiction.

HISTORY: 1994 Act No. 355, Section 1.

**SECTION 6-29-540.** Review of proposals following adoption of plan; projects in conflict with plan; exemption for utilities.

When the local planning commission has recommended and local governing authority or authorities have adopted the related comprehensive plan element set forth in this chapter, no new street, structure, utility, square, park, or other public way, grounds, or open space or public buildings for any use, whether publicly or privately owned, may be constructed or authorized in the political jurisdiction of the governing authority or authorities establishing the planning commission until the location, character, and extent of it have been submitted to the planning commission for review and comment as to the compatibility of the proposal with the comprehensive plan of the community. In the event the planning commission finds the proposal to be in conflict with the comprehensive plan, the commission shall transmit its findings and the particulars of the nonconformity to the entity proposing the facility. If the entity proposing the facility determines to go forward with the project which conflicts with the comprehensive plan, the governing or policy making body of the entity shall publicly state its intention to proceed and the reasons for the action. A copy of this finding must be sent to the local governing body, the local planning commission, and published as a public notice in a newspaper of general circulation in the community at least thirty days prior to awarding a contract or beginning construction. Telephone, sewer and gas utilities, or electric suppliers, utilities and providers, whether publicly or privately owned, whose plans have been approved by the local governing body or a state or federal regulatory agency, or electric suppliers, utilities and providers who are acting in accordance with a legislatively delegated right pursuant to Chapter 27 or 31 of Title 58 or Chapter 49 of Title 33 are exempt from this provision. These utilities must submit construction information to the appropriate local planning commission.

HISTORY: 1994 Act No. 355, Section 1.

## ARTICLE 5.

### LOCAL PLANNING--ZONING

#### **SECTION 6-29-710.** Zoning ordinances; purposes.

(A) Zoning ordinances must be for the general purposes of guiding development in accordance with existing and future needs and promoting the public health, safety, morals, convenience, order, appearance, prosperity, and general welfare. To these ends, zoning ordinances must be made with reasonable consideration of the following purposes, where applicable:

- (1) to provide for adequate light, air, and open space;
- (2) to prevent the overcrowding of land, to avoid undue concentration of population, and to lessen congestion in the streets;
- (3) to facilitate the creation of a convenient, attractive, and harmonious community;
- (4) to protect and preserve scenic, historic, or ecologically sensitive areas;
- (5) to regulate the density and distribution of populations and the uses of buildings, structures and land for trade, industry, residence, recreation, agriculture, forestry, conservation, airports and approaches thereto, water supply, sanitation, protection against floods, public activities, and other purposes;
- (6) to facilitate the adequate provision or availability of transportation, police and fire protection, water, sewage, schools, parks, and other recreational facilities, affordable housing, disaster evacuation, and other public services and requirements. "Other public requirements" which the local governing body intends to address by a particular ordinance or action must be specified in the preamble or some other part of the ordinance or action;
- (7) to secure safety from fire, flood, and other dangers; and
- (8) to further the public welfare in any other regard specified by a local governing body.

HISTORY: 1994 Act No. 355, Section 1.

#### **SECTION 6-29-715.** Church-related activities; zoning ordinances for single family residences.

(A) For purposes of this section, "church-related activities" does not include regularly scheduled worship services.

(B) Notwithstanding any other provision of law, no zoning ordinance of a municipality or county may prohibit church-related activities in a single-family residence.

HISTORY: 1998 Act No. 276, Section 2.

**SECTION 6-29-720.** Zoning districts; matters regulated; uniformity; zoning techniques.

(A) When the local planning commission has prepared and recommended and the governing body has adopted at least the land use element of the comprehensive plan as set forth in this chapter, the governing body of a municipality or county may adopt a zoning ordinance to help implement the comprehensive plan. The zoning ordinance shall create zoning districts of such number, shape, and size as the governing authority determines to be best suited to carry out the purposes of this chapter. Within each district the governing body may regulate:

- (1) the use of buildings, structures, and land;
- (2) the size, location, height, bulk, orientation, number of stories, erection, construction, reconstruction, alteration, demolition, or removal in whole or in part of buildings and other structures, including signage;
- (3) the density of development, use, or occupancy of buildings, structures, or land;
- (4) the areas and dimensions of land, water, and air space to be occupied by buildings and structures, and the size of yards, courts, and other open spaces;
- (5) the amount of off-street parking and loading that must be provided, and restrictions or requirements related to the entry or use of motor vehicles on the land;
- (6) other aspects of the site plan including, but not limited to, tree preservation, landscaping, buffers, lighting, and curb cuts; and
- (7) other aspects of the development and use of land or structures necessary to accomplish the purposes set forth throughout this chapter.

(B) The regulations must be made in accordance with the comprehensive plan for the jurisdiction, and be made with a view to promoting the purposes set forth throughout this chapter. Except as provided in this chapter, all of these regulations must be uniform for each class or kind of building, structure, or use throughout each district, but the regulations in one district may differ from those in other districts.

(C) The zoning ordinance may utilize the following or any other zoning and planning techniques for implementation of the goals specified above. Failure to specify a particular technique does not cause use of that technique to be viewed as beyond the power of the local government choosing to use it:

- (1) "cluster development" or the grouping of residential, commercial, or industrial uses within a subdivision or development site, permitting a reduction in the otherwise applicable lot size, while preserving substantial open space on the remainder of the parcel;
- (2) "floating zone" or a zone which is described in the text of a zoning ordinance but is unmapped. A property owner may petition for the zone to be applied to a particular parcel meeting the minimum zoning district area requirements of the zoning ordinance through legislative action;
- (3) "performance zoning" or zoning which specifies a minimum requirement or maximum limit on the effects of a land use rather than, or in addition to, specifying the use itself, simultaneously assuring compatibility with surrounding development and increasing a developer's flexibility;
- (4) "planned development district" or a development project comprised of housing of different types and densities and of compatible commercial uses, or shopping centers, office parks, and mixed-use developments. A planned development district is established by rezoning prior to development and is characterized by a unified site design for a mixed use development;



(5) "overlay zone" or a zone which imposes a set of requirements or relaxes a set of requirements imposed by the underlying zoning district when there is a special public interest in a particular geographic area that does not coincide with the underlying zone boundaries;

(6) "conditional uses" or zoning ordinance provisions that impose conditions, restrictions, or limitations on a permitted use that are in addition to the restrictions applicable to all land in the zoning district. The conditions, restrictions, or limitations must be set forth in the text of the zoning ordinance; and

(7) "priority investment zone" in which the governing authority adopts market-based incentives or relaxes or eliminates nonessential housing regulatory requirements, as these terms are defined in this chapter, to encourage private development in the priority investment zone. The governing authority also may provide that traditional neighborhood design and affordable housing, as these terms are defined in this chapter, must be permitted within the priority investment zone.

HISTORY: 1994 Act No. 355, Section 1; 2007 Act No. 31, Section 3, eff May 23, 2007.

**SECTION 6-29-730.** Nonconformities.

The regulations may provide that land, buildings, and structures and the uses of them which are lawful at the time of the enactment or amendment of zoning regulations may be continued although not in conformity with the regulations or amendments, which is called a nonconformity. The governing authority of a municipality or county may provide in the zoning ordinance or resolution for the continuance, restoration, reconstruction, extension, or substitution of nonconformities. The governing authority also may provide for the termination of a nonconformity by specifying the period or periods in which the nonconformity is required to cease or be brought into conformance, or by providing a formula where the compulsory termination of nonconformities may be so fixed as to allow for the recovery or amortization of the investment in the nonconformity.

HISTORY: 1994 Act No. 355, Section 1.

**SECTION 6-29-740.** Planned development districts.

In order to achieve the objectives of the comprehensive plan of the locality and to allow flexibility in development that will result in improved design, character, and quality of new mixed use developments and preserve natural and scenic features of open spaces, the local governing authority may provide for the establishment of planned development districts as amendments to a locally adopted zoning ordinance and official zoning map. The adopted planned development map is the zoning district map for the property. The planned development provisions must encourage innovative site planning for residential, commercial, institutional, and industrial developments within planned development districts. Planned development districts may provide for variations from other ordinances and the regulations of other established zoning districts concerning use, setbacks, lot size, density, bulk, and other requirements to accommodate flexibility in the arrangement of uses for the general purpose of promoting and protecting the public health, safety, and general welfare. Amendments to a planned development district may be authorized by ordinance of the governing authority after recommendation from the planning commission. These amendments constitute zoning ordinance amendments and must follow prescribed procedures for the amendments. The adopted plan may include a method for minor modifications to the site plan or development provisions.

HISTORY: 1994 Act No. 355, Section 1.

**SECTION 6-29-750.** Special development district parking facility plan; dedication.

In accordance with a special development district parking facility plan and program, which includes guidelines for preferred parking locations and indicates prohibited parking areas, the planning commission may recommend and the local governing body may adopt regulations which permit the reduction or waiver of parking requirements within the district in return for cash contributions or dedications of land earmarked for provision of public parking or public transit which may not be used for any other purpose. The cash contributions or the value of the land may not exceed the approximate cost to build the required spaces or provide the public transit that would have incurred had not the reduction or waiver been granted.

HISTORY: 1994 Act No. 355, Section 1.

**SECTION 6-29-760.** Procedure for enactment or amendment of zoning regulation or map; notice and rights of landowners; time limit on challenges.

(A) Before enacting or amending any zoning regulations or maps, the governing authority or the planning commission, if authorized by the governing authority, shall hold a public hearing on it, which must be advertised and conducted according to lawfully prescribed procedures. If no established procedures exist, then at least fifteen days' notice of the time and place of the public hearing must be given in a newspaper of general circulation in the municipality or county. In cases involving rezoning, conspicuous notice shall be posted on or adjacent to the property affected, with at least one such notice being visible from each public thoroughfare that abuts the property. If the local government maintains a list of groups that have expressed an interest in being informed of zoning proceedings, notice of such meetings must be mailed to these groups. No change in or departure from the text or maps as recommended by the local planning commission may be made pursuant to the hearing unless the change or departure be first submitted to the planning commission for review and recommendation. The planning commission shall have a time prescribed in the ordinance which may not be more than thirty days within which to submit its report and recommendation on the change to the governing authority. If the planning commission fails to submit a report within the prescribed time period, it is deemed to have approved the change or departure. When the required public hearing is held by the planning commission, no public hearing by the governing authority is required before amending the zoning ordinance text or maps.

(B) If a landowner whose land is the subject of a proposed amendment will be allowed to present oral or written comments to the planning commission, at least ten days' notice and an opportunity to comment in the same manner must be given to other interested members of the public, including owners of adjoining property.

(C) An owner of adjoining land or his representative has standing to bring an action contesting the ordinance or amendment; however, this subsection does not create any new substantive right in any party.

(D) No challenge to the adequacy of notice or challenge to the validity of a regulation or map, or amendment to it, whether enacted before or after the effective date of this section, may be made sixty days after the decision of the governing body if there has been substantial compliance with the notice requirements of this section or with established procedures of the governing authority or the planning commission.

HISTORY: 1994 Act No. 355, Section 1.

**SECTION 6-29-770.** Governmental entities subject to zoning ordinances; exceptions.

(A) Agencies, departments, and subdivisions of this State that use real property, as owner or tenant, in any county or municipality in this State are subject to the zoning ordinances.

(B) A county or agency, department or subdivision of it that uses any real property, as owner or tenant, within the limits of any municipality in this State is subject to the zoning ordinances of the municipality.

(C) A municipality or agency, department or subdivision of it, that uses any real property, as owner or tenant, within the limits of any county in this State but not within the limits of the municipality is subject to the zoning ordinances of the county.

(D) The provisions of this section do not require a state agency, department, or subdivision to move from facilities occupied on June 18, 1976, regardless of whether or not their location is in violation of municipal or county zoning ordinances.

(E) The provisions of this section do not apply to a home serving nine or fewer mentally or physically handicapped persons provided the home provides care on a twenty-four hour basis and is approved or licensed by a state agency or department or under contract with the agency or department for that purpose. A home is construed to be a natural family or such similar term as may be utilized by any county or municipal zoning ordinance to refer to persons related by blood or marriage. Prior to locating the home for the handicapped persons, the appropriate state agency or department or the private entity operating the home under contract must first give prior notice to the local governing body administering the pertinent zoning laws, advising of the exact site of any proposed home. The notice must also identify the individual representing the agency, department, or private entity for site selection purposes. If the local governing body objects to the selected site, the governing body must notify the site selection representative of the entity seeking to establish the home within fifteen days of receiving notice and must appoint a representative to assist the entity in selection of a comparable alternate site or structure, or both. The site selection representative of the entity seeking to establish the home and the representative of the local governing body shall select a third mutually agreeable person. The three persons have forty-five days to make a final selection of the site by majority vote. This final selection is binding on the entity and the governing body. In the event no selection has been made by the end of the forty-five day period, the entity establishing the home shall select the site without further proceedings. An application for variance or special exception is not required. No person may intervene to prevent the establishment of a community residence without reasonable justification.

(F) Prospective residents of these homes must be screened by the licensing agency to ensure that the placement is appropriate.

(G) The licensing agency shall conduct reviews of these homes no less frequently than every six months for the purpose of promoting the rehabilitative purposes of the homes and their continued compatibility with their neighborhoods.

(H) The governing body of a county or municipality whose zoning ordinances are violated by the provisions of this section may apply to a court of competent jurisdiction for injunctive and such other relief as the court may consider proper.

HISTORY: 1994 Act No. 355, Section 1.

**SECTION 6-29-775.** Use of property obtained from federal government.

Notwithstanding the provisions of Section 6-29-770 of the 1976 Code or any other provision of law, a state agency or entity that acquires real property from the federal government or from a state instrumentality or redevelopment agency that received it from the federal government shall be permitted to use the property in the same manner the federal government was permitted to use the property. Further, the property in the hands of the state agency or entity shall be subject only to the same restrictions, if any, as it was in the hands of the federal government, and no county or municipality of this State by zoning or other means may restrict this permitted use or enjoyment of the property.

HISTORY: 2002 Act No. 256, Section 3.

**SECTION 6-29-780.** Board of zoning appeals; membership; terms of office; vacancies; compensation.

(A) As a part of the administrative mechanism designed to enforce the zoning ordinance, the zoning ordinance may provide for the creation of a board to be known as the board of zoning appeals. Local governing bodies with a joint planning commission and adopting a common zoning ordinance may create a board to be known as the joint board of appeals. All of these boards are referred to as the board.

(B) The board consists of not less than three nor more than nine members, a majority of which constitutes a quorum, appointed by the governing authority or authorities of the area served. The members shall serve for overlapping terms of not less than three nor more than five years or after that time until their successors are appointed. A vacancy in the membership must be filled for the unexpired term in the same manner as the initial appointment. The governing authority or authorities creating the board of zoning appeals may remove any member of the board for cause. The appointing authorities shall determine the amount of compensation, if any, to be paid to the members of a board of zoning appeals. None of the members shall hold any other public office or position in the municipality or county.

HISTORY: 1994 Act No. 355, Section 1.

**SECTION 6-29-790.** Board of zoning appeals; officers; rules; meetings; notice; records.

The board shall elect one of its members chairman, who shall serve for one year or until he is re-elected or his successor is elected and qualified. The board shall appoint a secretary who may be an officer of the governing authority or of the zoning board. The board shall adopt rules of procedure in accordance with the provisions of an ordinance adopted pursuant to this chapter. Meetings of the board must be held at the call of the chairman and at such other times as the board may determine. Public notice of all meetings of the board of appeals shall be provided by publication in a newspaper of general circulation in the municipality or county. In cases involving variances or special exceptions conspicuous notice shall be posted on or adjacent to the property affected, with at least one such notice being visible from each public thoroughfare that abuts the property. The chairman or, in his or her absence, the acting chairman, may administer oaths and compel the attendance of witnesses by subpoena. The board shall keep minutes of its proceedings, showing the vote of each member upon each question, or if absent or failing to vote, indicating that fact, and shall keep records of its examinations and other official actions, all of which must be immediately filed in the office of the board and must be a public record.

HISTORY: 1994 Act No. 355, Section 1.

**SECTION 6-29-800.** Powers of board of appeals; variances; special exceptions; remand; stay; hearing; decisions and orders.

(A) The board of appeals has the following powers:

(1) to hear and decide appeals where it is alleged there is error in an order, requirement, decision, or determination made by an administrative official in the enforcement of the zoning ordinance;

(2) to hear and decide appeals for variance from the requirements of the zoning ordinance when strict application of the provisions of the ordinance would result in unnecessary hardship. A variance may be granted in an individual case of unnecessary hardship if the board makes and explains in writing the following findings:

(a) there are extraordinary and exceptional conditions pertaining to the particular piece of property;

(b) these conditions do not generally apply to other property in the vicinity;

(c) because of these conditions, the application of the ordinance to the particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property; and

(d) the authorization of a variance will not be of substantial detriment to adjacent property or to the public good, and the character of the district will not be harmed by the granting of the variance.

(i) The board may not grant a variance, the effect of which would be to allow the establishment of a use not otherwise permitted in a zoning district, to extend physically a nonconforming use of land or to change the zoning district boundaries shown on the official zoning map. The fact that property may be utilized more profitably, if a variance is granted, may not be considered grounds for a variance. Other requirements may be prescribed by the zoning ordinance.

A local governing body by ordinance may permit or preclude the granting of a variance for a use of land, a building, or a structure that is prohibited in a given district, and if it does permit a variance, the governing body may require the affirmative vote of two-thirds of the local adjustment board members present and voting. Notwithstanding any other provision of this section, the local governing body may overrule the decision of the local board of adjustment concerning a use variance.

(ii) In granting a variance, the board may attach to it such conditions regarding the location, character, or other features of the proposed building, structure, or use as the board may consider advisable to protect established property values in the surrounding area or to promote the public health, safety, or general welfare;

(3) to permit uses by special exception subject to the terms and conditions for the uses set forth for such uses in the zoning ordinance; and

(4) to remand a matter to an administrative official, upon motion by a party or the board's own motion, if the board determines the record is insufficient for review. A party's motion for remand may be denied if the board determines that the record is sufficient for review. The board must set a rehearing on the remanded matter without further public notice for a time certain within sixty days unless otherwise agreed to by the parties. The board must maintain a list of persons who express an interest in being informed when the remanded matter is set for rehearing, and notice of the rehearing must be mailed to these persons prior to the rehearing.

(B) Appeals to the board may be taken by any person aggrieved or by any officer, department, board, or bureau of the municipality or county. The appeal must be taken within a reasonable time, as provided by the zoning ordinance or rules of the board, or both, by filing with the officer from whom the appeal is taken and with the board of appeals notice of appeal specifying the grounds for the appeal. If no time limit is provided, the appeal must be taken within thirty days from the date the appealing party has received actual notice of the action from which the appeal is taken. The officer from whom the appeal is taken immediately must transmit to the board all the papers constituting the record upon which the action appealed from was taken.

(C) An appeal stays all legal proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the board, after the notice of appeal has been filed with him, that by reason of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life and property. In that case, proceedings may not be stayed other than by a restraining order which may be granted by the board or by a court of record on application, on notice to the officer from whom the appeal is taken, and on due cause shown.

(D) The board must fix a reasonable time for the hearing of the appeal or other matter referred to the board, and give at least fifteen days' public notice of the hearing in a newspaper of general circulation in the community, as well as due notice to the parties in interest, and decide the appeal or matter within a reasonable time. At the hearing, any party may appear in person or by agent or by attorney.

(E) In exercising the above power, the board of appeals may, in conformity with the provisions of this chapter, reverse or affirm, wholly or in part, or may modify the order, requirements, decision, or determination, and to that end, has all the powers of the officer from whom the appeal is taken and may issue or direct the issuance of a permit. The board, in the execution of the duties specified in this chapter, may subpoena witnesses and in case of contempt may certify this fact to the circuit court having jurisdiction.

(F) All final decisions and orders of the board must be in writing and be permanently filed in the office of the board as a public record. All findings of fact and conclusions of law must be separately stated in final decisions or orders of the board which must be delivered to parties of interest by certified mail.

HISTORY: 1994 Act No. 355, Section 1; 2003 Act No. 39, Section 2, eff June 2, 2003.

**SECTION 6-29-810.** Contempt; penalty.

In case of contempt by a party, witness, or other person before the board of appeals, the board may certify this fact to the circuit court of the county in which the contempt occurs and the judge of the court, in open court or in chambers, after hearing, may impose a penalty as authorized by law.

HISTORY: 1994 Act No. 355, Section 1.

**SECTION 6-29-820.** Appeal from zoning board of appeals to circuit court; pre-litigation mediation; filing requirements.

(A) A person who may have a substantial interest in any decision of the board of appeals or an officer or agent of the appropriate governing authority may appeal from a decision of the board to the circuit court in and for the county, by filing with the clerk of the court a petition in writing setting forth plainly, fully, and distinctly why the decision is contrary to law. The appeal must be filed within thirty days after the decision of the board is mailed.

(B) A property owner whose land is the subject of a decision of the board of appeals may appeal either:

(1) as provided in subsection (A); or

(2) by filing a notice of appeal with the circuit court accompanied by a request for pre-litigation mediation in accordance with Section 6-29-825.

Any notice of appeal and request for pre-litigation mediation must be filed within thirty days after the decision of the board is postmarked.

(C) Any filing of an appeal from a particular board of appeals decision pursuant to the provisions of this chapter must be given a single docket number, and the appellant must be assessed only one filing fee pursuant to Section 8-21-310(11)(a).

HISTORY: 1994 Act No. 355, Section 1; 2003 Act No. 39, Section 3, eff June 2, 2003.

**SECTION 6-29-825.** Pre-litigation mediation; notice; settlement approval; effect on real property; unsuccessful mediation.

(A) If a property owner files a notice of appeal with a request for pre-litigation mediation, the request for mediation must be granted, and the mediation must be conducted in accordance with South Carolina Circuit Court Alternative Dispute Resolution Rules and this section. A person who is not the owner of the property may petition to intervene as a party, and this motion must be granted if the person has a substantial interest in the decision of the board of appeals.

(B) The property owner or his representative, any other person claiming an ownership interest in the property or his representative, and any other person who has been granted leave to intervene pursuant to subsection (A) or his representative must be notified and have the opportunity to attend the mediation. The governmental entity must be represented by at least one person for purposes of mediation.

(C) Within five working days of a successful mediation, the mediator must provide the parties with a signed copy of the written mediation agreement.

(D) Before the terms of a mediation settlement may take effect, the mediation settlement must be approved by:

(1) the local legislative governing body in public session; and

(2) the circuit court as provided in subsection (G).

(E) Any land use or other change agreed to in mediation which affects existing law is effective only as to the real property which is the subject of the mediation, and a settlement agreement sets no precedent as to other parcels of real property.

(F) If mediation is not successful or if the mediated settlement is not approved by the local legislative governing body, a property owner may appeal by filing a petition in writing setting forth plainly, fully, and distinctly why the decision is contrary to law. The petition must be filed with the circuit court within thirty days of:

(1) the report of an impasse as provided in the South Carolina Circuit Court Alternative Dispute Resolution Rules; or

(2) the failure to approve the settlement by the local governing body.

(G) The circuit court judge must approve the settlement if the settlement has a rational basis in accordance with the standards of this chapter. If the mediated settlement is not approved by the court, the judge must schedule a hearing for the parties to present evidence and must issue a written opinion containing findings of law and fact. A party may appeal from the decision:

(1) in the same manner as provided by law for appeals from other judgments of the circuit court; or

(2) by filing an appeal pursuant to subsection (F).

HISTORY: 2003 Act No. 39, Section 4, eff June 2, 2003.

**SECTION 6-29-830.** Notice of appeal; transcript; supersedeas.

(A) Upon the filing of an appeal with a petition as provided in Section 6-29-820(A) or Section 6-29-825(F), the clerk of the circuit court must give immediate notice of the appeal to the secretary of the board and within thirty days from the time of the notice, the board must file with the clerk a duly certified copy of the proceedings held before the board of appeals, including a transcript of the evidence heard before the board, if any, and the decision of the board including its findings of fact and conclusions.

(B) The filing of an appeal in the circuit court from any decision of the board does not ipso facto act as a supersedeas, but the judge of the circuit court may in his discretion grant a supersedeas upon such terms and conditions as may seem reasonable and proper.

HISTORY: 1994 Act No. 355, Section 1; 2003 Act No. 39, Section 5, eff June 2, 2003.

**SECTION 6-29-840.** Determination of appeal; costs; trial by jury.

(A) At the next term of the circuit court or in chambers, upon ten days' notice to the parties, the presiding judge of the circuit court of the county must proceed to hear and pass upon the appeal on the certified record of the board proceedings. The findings of fact by the board of appeals must be treated in the same manner as a finding of fact by a jury, and the court may not take additional evidence. In the event the judge determines that the certified record is insufficient for review, the matter may be remanded to the zoning board of appeals for rehearing. In determining the questions presented by the appeal, the court must determine only whether the decision of the board is correct as a matter of law. In the event that the decision of the board is reversed by the circuit court, the board is charged with the costs, and the costs must be paid by the governing authority which established the board of appeals.

(B) When an appeal includes no issues triable of right by jury or when the parties consent, the appeal must be placed on the nonjury docket. A judge, upon request by any party, may in his discretion give the appeal precedence over other civil cases. Nothing in this subsection prohibits a property owner from subsequently electing to assert a pre-existing right to trial by jury of any issue beyond the subject matter jurisdiction of the board of appeals, such as, but not limited to, a determination of the amount of damages due for an unconstitutional taking.

HISTORY: 1994 Act No. 355, Section 1; 2003 Act No. 39, Section 6, eff June 2, 2003.

**SECTION 6-29-850.** Appeal to Supreme Court.

A party in interest who is aggrieved by the judgment rendered by the circuit court upon the appeal may appeal in the manner provided by the South Carolina Appellate Court Rules.

HISTORY: 1994 Act No. 355, Section 1; 1999 Act No. 55, Section 10.

**SECTION 6-29-860.** Financing of board of zoning appeals.

The governing authority may appropriate such monies, otherwise unappropriated, as it considers fit to finance the work of the board of appeals and to generally provide for the enforcement of any zoning regulations and restrictions authorized under this chapter which are adopted and may accept and expend grants of money for those purposes from either private or public sources, whether local, state, or federal.

HISTORY: 1994 Act No. 355, Section 1.

**SECTION 6-29-870.** Board of architectural review; membership; officers; rules; meetings; records.

(A) A local government which enacts a zoning ordinance which makes specific provision for the preservation and protection of historic and architecturally valuable districts and neighborhoods or significant or natural scenic areas, or protects or provides, or both, for the unique, special, or desired character of a defined district, corridor, or development area or any combination of it, by means of restriction and conditions governing the right to erect, demolish, remove in whole or in part, or alter the exterior appearance of all buildings or structures within the areas, may provide for appointment of a board of architectural review or similar body.

(B) The board shall consist of not more than ten members to be appointed by the governing body of the municipality or the governing body of the county which may restrict the membership on the board to those professionally qualified persons as it may desire. The governing authority or authorities creating the board may remove any member of the board which it has appointed.

(C) The appointing authorities shall determine the amount of compensation, if any, to be paid to the members of a board of architectural review. None of the members may hold any other public office or position in the municipality or county.

(D) The board shall elect one of its members chairman, who shall serve for one year or until he is re-elected or his successor is elected and qualified. The board shall appoint a secretary who may be an officer of the governing authority or of the board of architectural review. The board shall adopt rules of procedure in accordance with the provisions of any ordinance adopted pursuant to this chapter. Meetings of the board must be held at the call of the chairman and at such other times as the board may determine. The chairman or, in his or her absence, the acting chairman, may administer oaths and compel the attendance of witnesses by subpoena. The board shall keep minutes of its proceedings, showing the vote of each member upon each question, or if absent or failing to vote, indicating that fact, and shall keep records of its examinations and other official actions, all of which immediately must be filed in the office of the board and must be a public record.

HISTORY: 1994 Act No. 355, Section 1.

**SECTION 6-29-880.** Powers of board of architectural review.

The board of architectural review has those powers involving the structures and neighborhoods as may be determined by the zoning ordinance. Decisions of the zoning administrator or other appropriate administrative official in matters under the purview of the board of architectural review may be appealed to the board where there is an alleged error in any order, requirement, determination, or decision.

HISTORY: 1994 Act No. 355, Section 1.



**SECTION 6-29-890.** Appeal to board of architectural review.

(A) Appeals to the board may be taken by any person aggrieved or by any officer, department, board, or bureau of the municipality or county. The appeal must be taken within a reasonable time, as provided by the zoning ordinance or rules of the board, or both, by filing with the officer from whom the appeal is taken and with the board of architectural review notice of appeal specifying the grounds of it. The officer from whom the appeal is taken immediately must transmit to the board all the papers constituting the record upon which the action appealed from was taken. Upon a motion by a party or the board's own motion, the board may remand a matter to an administrative official if the board determines the record is insufficient for review. A party's motion for remand may be denied if the board determines that the record is sufficient for review. The board must set a rehearing on the remanded matter without further public notice for a time certain within sixty days unless otherwise agreed to by the parties. The board must maintain a list of persons who express an interest in being informed when the remanded matter is set for rehearing, and notice of the rehearing must be mailed to these persons prior to the rehearing.

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

(C) The board must fix a reasonable time for the hearing of the appeal or other matter referred to it, and give public notice of the hearing, as well as due notice to the parties in interest, and decide the appeal or other matter within a reasonable time. At the hearing, any party may appear in person, by agent, or by attorney.

HISTORY: 1994 Act No. 355, Section 1; 2003 Act No. 39, Section 7, eff June 2, 2003.

**SECTION 6-29-900.** Appeal from board of architectural review to circuit court; pre-litigation mediation; filing requirements.

(A) A person who may have a substantial interest in any decision of the board of architectural review or any officer, or agent of the appropriate governing authority may appeal from any decision of the board to the circuit court in and for the county by filing with the clerk of court a petition in writing setting forth plainly, fully, and distinctly why the decision is contrary to law. The appeal must be filed within thirty days after the affected party receives actual notice of the decision of the board of architectural review.

(B) A property owner whose land is the subject of a decision of the board of architectural review may appeal either:

(1) as provided in subsection (A); or

(2) by filing a notice of appeal with the circuit court accompanied by a request for pre-litigation mediation in accordance with Section 6-29-915.

A notice of appeal and request for pre-litigation mediation must be filed within thirty days after the decision of the board is postmarked.

(C) Any filing of an appeal from a particular board of architectural review decision pursuant to the provisions of this chapter must be given a single docket number, and the appellant must be assessed only one filing fee pursuant to Section 8-21-310(11)(a).

HISTORY: 1994 Act No. 355, Section 1; 2003 Act No. 39, Section 8, eff June 2, 2003.

**SECTION 6-29-910.** Contempt; penalty.

In case of contempt by a party, witness, or other person before the board of architectural review, the board may certify the fact to the circuit court of the county in which the contempt occurs and the judge of the court, in open court or in chambers, after hearing, may impose a penalty as authorized by law.

HISTORY: 1994 Act No. 355, Section 1.

**SECTION 6-29-915.** Pre-litigation mediation; notice; settlement approval; effect on real property; unsuccessful mediation.

(A) If a property owner files a notice of appeal with a request for pre-litigation mediation, the request for mediation must be granted and the mediation must be conducted in accordance with South Carolina Circuit Court Alternative Dispute Resolution Rules and this section. A person who is not the owner of the property may petition to intervene as a party, and this motion must be granted if the person has a substantial interest in the decision of the board of architectural review.

(B) The property owner or his representative, any other person claiming an ownership interest in the property or his representative, and any other person who has been granted leave to intervene pursuant to subsection (A) or his representative must be notified and have the opportunity to attend the mediation. The governmental entity must be represented by at least one person for purposes of mediation.

(C) Within five working days of a successful mediation, the mediator must provide the parties with a signed copy of the written mediation agreement.

(D) Before the terms of a mediation settlement may take effect, the mediation settlement must be approved by:

- (1) the local legislative governing body in public session; and
- (2) the circuit court as provided in subsection (G).

(E) Any land use or other change agreed to in mediation which affects existing law is effective only as to the real property which is the subject of the mediation, and a settlement agreement sets no precedent as to other parcels of real property.

(F) If mediation is not successful or if the mediated settlement is not approved by the local legislative governing body, a property owner may appeal by filing a petition in writing setting forth plainly, fully, and distinctly why the decision is contrary to law. The petition must be filed with the circuit court within thirty days of:

- (1) the report of an impasse as provided in the South Carolina Circuit Court Alternative Dispute Resolution Rules; or
- (2) the failure to approve the settlement by the local governing body.

(G) The circuit court judge must approve the settlement if the settlement has a rational basis in accordance with the standards of this chapter. If the mediated settlement is not approved by the court, the judge must schedule a hearing for the parties to present evidence and must issue a written opinion containing findings of law and fact. A party may appeal from the decision:

- (1) in the same manner as provided by law for appeals from other judgments of the circuit court; or
- (2) by filing an appeal pursuant to subsection (F).

HISTORY: 2003 Act No. 39, Section 9, eff June 2, 2003.

**SECTION 6-29-920.** Notice of appeal; transcript; supersedeas.

(A) Upon filing of an appeal with a petition as provided in Section 6-29-900(A) or Section 6-29-915(F), the clerk of the circuit court must give immediate notice of the appeal to the secretary of the board and within thirty days from the time of the notice, the board must file with the clerk a duly certified copy of the proceedings held before the board of architectural review, including a transcript of the evidence heard before the board, if any, and the decision of the board including its findings of fact and conclusions.

(B) The filing of an appeal in the circuit court from any decision of the board does not ipso facto act as a supersedeas, but the judge of the circuit court may in his discretion grant a supersedeas upon such terms and conditions as may seem reasonable and proper.

HISTORY: 1994 Act No. 355, Section 1; 2003 Act No. 39, Section 10, eff June 2, 2003.

**SECTION 6-29-930.** Determination of appeal; costs; trial by jury.

(A) At the next term of the circuit court or in chambers upon ten days' notice to the parties, the resident presiding judge of the circuit court of the county must proceed to hear and pass upon the appeal on the certified record of the board proceedings. The findings of fact by the board of architectural review are final and conclusive on the hearing of the appeal, and the court may not take additional evidence. In the event the judge determines that the certified record is insufficient for review, the matter must be remanded to the board of architectural review for rehearing. In determining the questions presented by the appeal, the court must determine only whether the decision of the board is correct as a matter of law. In the event that the decision of the board is reversed by the circuit court, the board must be charged with the costs which must be paid by the governing authority which established the board of architectural review.

(B) When an appeal includes no issues triable of right by jury or when the parties consent, the appeal must be placed on the nonjury docket. A judge, upon request by any party, may in his discretion give the appeal precedence over other civil cases. Nothing in this subsection prohibits a property owner from subsequently electing to assert a pre-existing right to trial by jury of any issue beyond the subject matter jurisdiction of the board of architectural review, such as, but not limited to, a determination of the amount of damages due for an unconstitutional taking.

HISTORY: 1994 Act No. 355, Section 1; 2003 Act No. 39, Section 11, eff June 2, 2003.

**SECTION 6-29-940.** Appeal to Supreme Court.

A party in interest who is aggrieved by the judgment rendered by the circuit court upon the appeal may appeal in the manner provided by the South Carolina Appellate Court Rules.

HISTORY: 1994 Act No. 355, Section 1; 1999 Act No. 55, Section 11.

**SECTION 6-29-950.** Enforcement of zoning ordinances; remedies for violations.

(A) The governing authorities of municipalities or counties may provide for the enforcement of any ordinance adopted pursuant to the provisions of this chapter by means of the withholding of building or zoning permits, or both, and the issuance of stop orders against any work undertaken by an entity not having a proper building or zoning permit, or both. It is unlawful to construct, reconstruct, alter, demolish, change the use of or occupy any land, building, or other structure without first obtaining the appropriate permit or permit approval. No permit may be issued or approved unless the requirements of this chapter or any ordinance adopted pursuant to it are complied with. It is unlawful for other officials to issue any permit for the use of any land, building, or structure, or the construction, conversion, demolition, enlargement, movement, or structural alteration of a building or structure without the approval of the zoning administrator. A violation of any ordinance adopted pursuant to the provisions of this chapter is a misdemeanor. In case a building, structure, or land is or is proposed to be used in violation of any ordinance adopted pursuant to this chapter, the zoning administrator or other appropriate administrative officer, municipal or county attorney, or other appropriate authority of the municipality or county or an adjacent or neighboring property owner who would be specially damaged by the violation may in addition to other remedies, institute injunction, mandamus, or other appropriate action or

proceeding to prevent the unlawful erection, construction, reconstruction, alteration, conversion, maintenance, or use, or to correct or abate the violation, or to prevent the occupancy of the building, structure, or land. Each day the unlawful erection, construction, reconstruction, alteration, conversion, maintenance, or use continues is considered a separate offense.

(B) In case a building, structure, or land is or is proposed to be used in violation of an ordinance adopted pursuant to this chapter, the zoning administrator or other designated administrative officer may in addition to other remedies issue and serve upon a person pursuing the activity or activities a stop order requiring that entity stop all activities in violation of the zoning ordinance.

HISTORY: 1994 Act No. 355, Section 1.

**SECTION 6-29-960.** Conflict with other laws.

When 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 smaller number of stories, or require a greater percentage of lot to be left unoccupied, or impose other more restrictive standards than are required in or under another statute, or local ordinance or regulation, the regulations made under authority of this chapter govern. When the provisions of another statute require more restrictive standards than are required by the regulations made under authority of this chapter, the provisions of that statute govern.

HISTORY: 1994 Act No. 355, Section 1.

ARTICLE 7.

LOCAL PLANNING--LAND DEVELOPMENT REGULATION

**SECTION 6-29-1110.** Definitions.

As used in this chapter:

(1) "Affordable housing" means in the case of dwelling units for sale, housing in which mortgage, amortization, taxes, insurance, and condominium or association fees, if any, constitute no more than twenty-eight percent of the annual household income for a household earning no more than eighty percent of the area median income, by household size, for the metropolitan statistical area as published from time to time by the U.S. Department of Housing and Community Development (HUD) and, in the case of dwelling units for rent, housing for which the rent and utilities constitute no more than thirty percent of the annual household income for a household earning no more than eighty percent of the area median income, by household size for the metropolitan statistical area as published from time to time by HUD.

(2) "Land development" means the changing of land characteristics through redevelopment, construction, subdivision into parcels, condominium complexes, apartment complexes, commercial parks, shopping centers, industrial parks, mobile home parks, and similar developments for sale, lease, or any combination of owner and rental characteristics.

(3) "Market-based incentives" mean incentives that encourage private developers to meet the governing authority's goals as developed in this chapter. Incentives may include, but are not limited to:

(a) density bonuses, allowing developers to build at a density higher than residential zones typically permit, and greater density bonuses, allowing developers to build at a density higher than residential affordable units in development, or allowing developers to purchase density by paying into a local housing trust fund;

(b) relaxed zoning regulations including, but not limited to, minimum lot area requirements, limitations of multifamily dwellings, minimum setbacks, yard requirements, variances, reduced parking requirements, and modified street standards;

(c) reduced or waived fees including those fees levied on new development projects where affordable housing is addressed, reimburse permit fees to builder upon certification that dwelling unit is affordable and waive up to one hundred percent of sewer/water tap-in fees for affordable housing units;

(d) fast-track permitting including, but not limited to, streamlining the permitting process for new development projects and expediting affordable housing developments to help reduce cost and time delays;

(e) design flexibility allowing for greater design flexibility, creating preapproved design standards to allow for quick and easy approval, and promoting infill development, mixed use and accessory dwellings.

(4) "Subdivision" means all divisions of a tract or parcel of land into two or more lots, building sites, or other divisions for the purpose, whether immediate or future, of sale, lease, or building development, and includes all division of land involving a new street or change in existing streets, and includes re-subdivision which would involve the further division or relocation of lot lines of any lot or lots within a subdivision previously made and approved or recorded according to law; or, the alteration of any streets or the establishment of any new streets within any subdivision previously made and approved or recorded according to law, and includes combinations of lots of record; however, the following exceptions are included within this definition only for the purpose of requiring that the local planning agency be informed and have a record of the subdivisions:

(a) the combination or recombination of portions of previously platted lots where the total number of lots is not increased and the resultant lots are equal to the standards of the governing authority;

(b) the division of land into parcels of five acres or more where no new street is involved and plats of these exceptions must be received as information by the planning agency which shall indicate that fact on the plats; and

(c) the combination or recombination of entire lots of record where no new street or change in existing streets is involved.

(5) "Traditional neighborhood design" means development designs intended to enhance the appearance and functionality of the new development so that it functions like a traditional neighborhood or town. These designs make possible reasonably high residential densities, a mixture of residential and commercial land uses, a range of single and multifamily housing types, and street connectivity both within the new development and to surrounding roadways, pedestrian, and bicycle features.

(6) "Nonessential housing regulatory requirements" mean those development standards and procedures that are determined by the local governing body to be not essential within a specific priority investment zone to protect the public health, safety, or welfare and that may otherwise make a proposed housing development economically infeasible. Nonessential housing regulatory requirements may include, but are not limited to:

(a) standards or requirements for minimum lot size, building size, building setbacks, spacing between buildings, impervious surfaces, open space, landscaping, buffering, reforestation, road width, pavements, parking, sidewalks, paved paths, culverts and storm water drainage, and sizing of water and sewer lines that are excessive; and

(b) application and review procedures that require or result in extensive submittals and lengthy review periods.

HISTORY: 1994 Act No. 355, Section 1; 2007 Act No. 31, Section 4, eff May 23, 2007.

**SECTION 6-29-1120.** Legislative intent; purposes.

The public health, safety, economy, good order, appearance, convenience, morals, and general welfare require the harmonious, orderly, and progressive development of land within the municipalities and counties of the State. In furtherance of this general intent, the regulation of land development by municipalities, counties, or consolidated political subdivisions is authorized for the following purposes, among others:

(1) to encourage the development of economically sound and stable municipalities and counties;

(2) to assure the timely provision of required streets, utilities, and other facilities and services to new land developments;

(3) to assure the adequate provision of safe and convenient traffic access and circulation, both vehicular and pedestrian, in and through new land developments;

(4) to assure the provision of needed public open spaces and building sites in new land developments through the dedication or reservation of land for recreational, educational, transportation, and other public purposes; and

(5) to assure, in general, the wise and timely development of new areas, and redevelopment of previously developed areas in harmony with the comprehensive plans of municipalities and counties.

HISTORY: 1994 Act No. 355, Section 1.

**SECTION 6-29-1130. Regulations.**

(A) When at least the community facilities element, the housing element, and the priority investment element of the comprehensive plan as authorized by this chapter have been adopted by the local planning commission and the local governing body or bodies, the local planning commission may prepare and recommend to the governing body or bodies for adoption regulations governing the development of land within the jurisdiction. These regulations may provide for the harmonious development of the municipality and the county; for coordination of streets within subdivision and other types of land developments with other existing or planned streets or official map streets; for the size of blocks and lots; for the dedication or reservation of land for streets, school sites, and recreation areas and of easements for utilities and other public services and facilities; and for the distribution of population and traffic which will tend to create conditions favorable to health, safety, convenience, appearance, prosperity, or the general welfare. In particular, the regulations shall prescribe that no land development plan, including subdivision plats, will be approved unless all land intended for use as building sites can be used safely for building purposes, without danger from flood or other inundation or from other menaces to health, safety, or public welfare.

(B) These regulations may include requirements as to the extent to which and the manner in which streets must be graded, surfaced, and improved, and water, sewers, septic tanks, and other utility mains, piping, connections, or other facilities must be installed as a condition precedent to the approval of the plan. The governing authority of the municipality and the governing authority of the county are given the power to adopt and to amend the land development regulations after a public hearing on it, giving at least thirty days' notice of the time and place by publication in a newspaper of general circulation in the municipality or county.

HISTORY: 1994 Act No. 355, Section 1; 2007 Act No. 31, Section 5, eff May 23, 2007.

**SECTION 6-29-1140. Development plan to comply with regulations; submission of unapproved plan for recording is a misdemeanor.**

After the local governing authority has adopted land development regulations, no subdivision plat or other land development plan within the jurisdiction of the regulations may be filed or recorded in the office of the county where deeds are required to be recorded, and no building permit may be issued until the plat or plan bears the stamp of approval and is properly signed by the designated authority. The submission for filing or the recording of a subdivision plat or other land development plan without proper approval as required by this chapter is declared a misdemeanor and, upon conviction, is punishable as provided by law.

HISTORY: 1994 Act No. 355, Section 1.

**SECTION 6-29-1145.** Determining existence of restrictive covenant; effect.

(A) In an application for a permit, the local planning agency must inquire in the application or by written instructions to an applicant whether the tract or parcel of land is restricted by any recorded covenant that is contrary to, conflicts with, or prohibits the permitted activity.

(B) If a local planning agency has actual notice of a restrictive covenant on a tract or parcel of land that is contrary to, conflicts with, or prohibits the permitted activity:

(1) in the application for the permit;

(2) from materials or information submitted by the person or persons requesting the permit; or

(3) from any other source including, but not limited to, other property holders, the local planning agency must not issue the permit unless the local planning agency receives confirmation from the applicant that the restrictive covenant has been released for the tract or parcel of land by action of the appropriate authority or property holders or by court order.

(C) As used in this section:

(1) "actual notice" is not constructive notice of documents filed in local offices concerning the property, and does not require the local planning agency to conduct searches in any records offices for filed restrictive covenants;

(2) "permit" does not mean an authorization to build or place a structure on a tract or parcel of land; and

(3) "restrictive covenant" does not mean a restriction concerning a type of structure that may be built or placed on a tract or parcel of land.

HISTORY: 2007 Act No. 45, Section 3, eff June 4, 2007, applicable to applications for permits filed on and after July 1, 2007; 2007 Act No. 113, Section 2, eff June 27, 2007.

**SECTION 6-29-1150.** Submission of plan or plat to planning commission; record; appeal.

(A) The land development regulations adopted by the governing authority must include a specific procedure for the submission and approval or disapproval by the planning commission or designated staff. These procedures may include requirements for submission of sketch plans, preliminary plans, and final plans for review and approval or disapproval. Time limits, not to exceed sixty days, must be set forth for action on plans or plats, or both, submitted for approval or disapproval. Failure of the designated authority to act within sixty days of the receipt of development plans or subdivision plats with all documentation required by the land development regulations is considered to constitute approval, and the developer must be issued a letter of approval and authorization to proceed based on the plans or plats and supporting documentation presented. The sixty-day time limit may be extended by mutual agreement.

(B) A record of all actions on all land development plans and subdivision plats with the grounds for approval or disapproval and any conditions attached to the action must be maintained as a public record. In addition, the developer must be notified in writing of the actions taken.

(C) Staff action, if authorized, to approve or disapprove a land development plan may be appealed to the planning commission by any party in interest. The planning commission must act on the appeal within sixty days, and the action of the planning commission is final.

(D)(1) An appeal from the decision of the planning commission must be taken to the circuit court within thirty days after actual notice of the decision.

(2) A property owner whose land is the subject of a decision of the planning commission may appeal by filing a notice of appeal with the circuit court accompanied by a request for pre-litigation mediation in accordance with Section 6-29-1155.

A notice of appeal and request for pre-litigation mediation must be filed within thirty days after the decision of the board is mailed.

(3) Any filing of an appeal from a particular planning commission decision pursuant to the provisions of this chapter must be given a single docket number, and the appellant must be assessed only one filing fee pursuant to Section 8-21-310(11)(a).

(4) When an appeal includes no issues triable of right by jury or when the parties consent, the appeal must be placed on the nonjury docket. A judge, upon request by any party, may in his discretion give the appeal precedence over other civil cases. Nothing in this subsection prohibits a property owner from subsequently electing to assert a pre-existing right to trial by jury of any issue beyond the subject matter jurisdiction of the planning commission, such as, but not limited to, a determination of the amount of damages due for an unconstitutional taking.

HISTORY: 1994 Act No. 355, Section 1; 2003 Act No. 39, Section 12, eff June 2, 2003.

**SECTION 6-29-1155.** Pre-litigation mediation; notice; settlement approval; effect on real property; unsuccessful mediation.

(A) If a property owner files a notice of appeal with a request for pre-litigation mediation, the request for mediation must be granted, and the mediation must be conducted in accordance with South Carolina Circuit Court Alternative Dispute Resolution Rules and this section. A person who is not the owner of the property may petition to intervene as a party, and this motion must be granted if the person has a substantial interest in the decision of the planning commission.

(B) The property owner or his representative, any other person claiming an ownership interest in the property or his representative, and any other person who has been granted leave to intervene pursuant to subsection (A) or his representative must be notified and have the opportunity to attend the mediation. The governmental entity must be represented by at least one person for purposes of mediation.

(C) Within five working days of a successful mediation, the mediator must provide the parties with a signed copy of the written mediation agreement.

(D) Before the terms of a mediation settlement may take effect, the mediation settlement must be approved by:

- (1) the local legislative governing body in public session; and
- (2) the circuit court as provided in subsection (G).

(E) Any land use or other change agreed to in mediation which affects existing law is effective only as to the real property which is the subject of the mediation, and a settlement agreement sets no precedent as to other parcels of real property.

(F) If mediation is not successful or if the mediated settlement is not approved by the local legislative governing body, a property owner may appeal by filing a petition in writing setting forth plainly, fully, and distinctly why the decision is contrary to law. The petition must be filed with the circuit court within thirty days of:

(1) the report of an impasse as provided in the South Carolina Circuit Court Alternative Dispute Resolution Rules; or

- (2) the failure to approve the settlement by the local governing body.

(G) The circuit court judge must approve the settlement if the settlement has a rational basis in accordance with the standards of this chapter. If the mediated settlement is not approved by the court, the judge must schedule a hearing for the parties to present evidence and must issue a written opinion containing findings of law and fact. A party may appeal from the decision:

- (1) in the same manner as provided by law for appeals from other judgments of the circuit court; or
- (2) by filing an appeal pursuant to subsection (F).

HISTORY: 2003 Act No. 39, Section 13, eff June 2, 2003.

**SECTION 6-29-1160.** Recording unapproved land development plan or plat; penalty; remedies.



The county official whose duty it is to accept and record real estate deeds and plats may not accept, file, or record a land development plan or subdivision plat involving a land area subject to land development regulations adopted pursuant to this chapter unless the development plan or subdivision plat has been properly approved. If a public official violates the provisions of this section, he is, in each instance, subject to the penalty provided in this article and the affected governing body, private individual, or corporation has rights and remedies as to enforcement or collection as are provided, and may enjoin any violations of them.

HISTORY: 1994 Act No. 355, Section 1.

**SECTION 6-29-1170.** Approval of plan or plat not acceptance of dedication of land.

The approval of the land development plan or subdivision plat may not be deemed to automatically constitute or effect an acceptance by the municipality or the county or the public of the dedication of any street, easement, or other ground shown upon the plat. Public acceptance of the lands must be by action of the governing body customary to these transactions.

HISTORY: 1994 Act No. 355, Section 1.

**SECTION 6-29-1180.** Surety bond for completion of site improvements.

In circumstances where the land development regulations adopted pursuant to this chapter require the installation and approval of site improvements prior to approval of the land development plan or subdivision plat for recording in the office of the county official whose duty it is to accept and record the instruments, the developer may be permitted to post a surety bond, certified check, or other instrument readily convertible to cash. The surety must be in an amount equal to at least one hundred twenty-five percent of the cost of the improvement. This surety must be in favor of the local government to ensure that, in the event of default by the developer, funds will be used to install the required improvements at the expense of the developer.

HISTORY: 1994 Act No. 355, Section 1.

**SECTION 6-29-1190.** Transfer of title to follow approval and recording of development plan; violation is a misdemeanor.

The owner or agent of the owner of any property being developed within the municipality or county may not transfer title to any lots or parts of the development unless the land development plan or subdivision has been approved by the local planning commission or designated authority and an approved plan or plat recorded in the office of the county charged with the responsibility of recording deeds, plats, and other property records. A transfer of title in violation of this provision is a misdemeanor and, upon conviction, must be punished in the discretion of the court. A description by metes and bounds in the instrument of transfer or other document used in the process of transfer does not exempt the transaction from these penalties. The municipality or county may enjoin the transfer by appropriate action.

HISTORY: 1994 Act No. 355, Section 1.

**SECTION 6-29-1200.** Approval of street names required; violation is a misdemeanor; changing street name.

(A) A local planning commission created under the provisions of this chapter shall, by proper certificate, approve and authorize the name of a street or road laid out within the territory over which the

commission has jurisdiction. It is unlawful for a person in laying out a new street or road to name the street or road on a plat, by a marking or in a deed or instrument without first getting the approval of the planning commission. Any person violating this provision is guilty of a misdemeanor and, upon conviction, must be punished in the discretion of the court.

(B) A commission may, after reasonable notice through a newspaper having general circulation in which the commission is created and exists, change the name of a street or road within the boundary of its territorial jurisdiction:

(1) when there is duplication of names or other conditions which tend to confuse the traveling public or the delivery of mail, orders, or messages;

(2) when it is found that a change may simplify marking or giving of directions to persons seeking to locate addresses; or

(3) upon any other good and just reason that may appear to the commission.

(C) On the name being changed, after reasonable opportunity for a public hearing, the planning commission shall issue its certificate designating the change, which must be recorded in the office of the register of deeds or clerk of court, and the name changed and certified is the legal name of the street or road.

HISTORY: 1994 Act No. 355, Section 1; 1997 Act No. 34, Section 1.

## ARTICLE 9.

### EDUCATIONAL REQUIREMENTS FOR LOCAL GOVERNMENT PLANNING OR ZONING OFFICIALS OR EMPLOYEES

#### **SECTION 6-29-1310.** Definitions.

As used in this article:

(1) "Advisory committee" means the State Advisory Committee on Educational Requirements for Local Government Planning or Zoning Officials and Employees;

(2) "Appointed official" means a planning commissioner, board of zoning appeals member, or board of architectural review member;

(3) "Clerk" means the clerk of the local governing body;

(4) "Local governing body" means the legislative governing body of a county or municipality;

(5) "Planning or zoning entity" means a planning commission, board of zoning appeals, or board of architectural review;

(6) "Professional employee" means a planning professional, zoning administrator, zoning official, or a deputy or assistant of a planning professional, zoning administrator, or zoning official.

HISTORY: 2003 Act No. 39, Section 14, eff June 2, 2003.

#### **SECTION 6-29-1320.** Identification of persons covered by act; compliance schedule.

(A) The local governing body must:

(1) by no later than December 31st of each year, identify the appointed officials and professional employees for the jurisdiction and provide a list of those appointed officials and professional employees to the clerk and each planning or zoning entity in the jurisdiction; and

(2) annually inform each planning or zoning entity in the jurisdiction of the requirements of this article.

(B) Appointed officials and professional employees must comply with the provisions of this article according to the following dates and populations based on the population figures of the latest official United States Census:

- (1) municipalities and counties with a population of 35,000 and greater: by January 1, 2006; and
- (2) municipalities and counties with a population under 35,000: by January 1, 2007.

HISTORY: 2003 Act No. 39, Section 14, eff June 2, 2003; 2004 Act No. 287, Section 3, eff July 22, 2004.

**SECTION 6-29-1330.** State Advisory Committee; creation; members; terms; duties; compensation; meetings; fees charged.

(A) There is created the State Advisory Committee on Educational Requirements for Local Government Planning or Zoning Officials and Employees.

(B) The advisory committee consists of five members appointed by the Governor. The advisory committee consists of:

- (1) a planner recommended by the South Carolina Chapter of the American Planning Association;
- (2) a municipal official or employee recommended by the Municipal Association of South Carolina;
- (3) a county official or employee recommended by the South Carolina Association of Counties;
- (4) a representative recommended by the University of South Carolina's Institute for Public Service and Policy Research; and
- (5) a representative recommended by Clemson University's Department of Planning and Landscape Architecture. Recommendations must be submitted to the Governor not later than the thirty-first day of December of the year preceding the year in which appointments expire. If the Governor rejects any person recommended for appointment, the group or association who recommended the person must submit additional names to the Governor for consideration.

(C) The members of the advisory committee must serve a term of four years and until their successors are appointed and qualify; except that for the members first appointed to the advisory committee, the planner must serve a term of three years; the municipal official or employee and the county official or employee must each serve a term of two years; and the university representatives must each serve a term of one year. A vacancy on the advisory committee must be filled in the manner of the original appointment for the remainder of the unexpired term. The Governor may remove a member of the advisory committee in accordance with Section 1-3-240(B).

(D) The advisory committee's duties are to:

- (1) compile and distribute a list of approved orientation and continuing education programs that satisfy the educational requirements in Section 6-29-1340;
- (2) determine categories of persons with advanced degrees, training, or experience, that are eligible for exemption from the educational requirements in Section 6-29-1340; and
- (3) make an annual report to the President Pro Tempore of the Senate and Speaker of the House of Representatives, no later than April fifteenth of each year, providing a detailed account of the advisory committee's:
  - (a) activities;
  - (b) expenses;
  - (c) fees collected; and
  - (d) determinations concerning approved education programs and categories of exemption.

(E) A list of approved education programs and categories of exemption by the advisory committee must be available for public distribution through notice in the State Register and posting on the General Assembly's Internet website. This list must be updated by the advisory committee at least annually.

(F) The members of the advisory committee must serve without compensation and must meet at a set location to which members must travel no more frequently than quarterly, at the call of the chairman selected by majority vote of at least a quorum of the members. Nothing in this subsection prohibits the chairman from using discretionary authority to conduct additional meetings by telephone conference if necessary. These telephone conference meetings may be conducted more frequently than quarterly. Three members of the advisory committee constitute a quorum. Decisions concerning the approval of

education programs and categories of exemption must be made by majority vote with at least a quorum of members participating.

(G) The advisory committee may assess by majority vote of at least a quorum of the members a nominal fee to each entity applying for approval of an orientation or continuing education program; however, any fees charged must be applied to the operating expenses of the advisory committee and must not result in a net profit to the groups or associations that recommend the members of the advisory committee. An accounting of any fees collected by the advisory committee must be made in the advisory committee's annual report to the President Pro Tempore of the Senate and Speaker of the House of Representatives.

HISTORY: 2003 Act No. 39, Section 14, eff June 2, 2003; 2008 Act No. 273, Section 2, eff June 4, 2008.

**SECTION 6-29-1340.** Educational requirements; time-frame for completion; subjects.

(A) Unless expressly exempted as provided in Section 6-29-1350, each appointed official and professional employee must:

(1) no earlier than one hundred and eighty days prior to and no later than three hundred and sixty-five days after the initial date of appointment or employment, attend a minimum of six hours of orientation training in one or more of the subjects listed in subsection (C); and

(2) annually, after the first year of service or employment, but no later than three hundred and sixty-five days after each anniversary of the initial date of appointment or employment, attend no fewer than three hours of continuing education in any of the subjects listed in subsection (C).

(B) An appointed official or professional employee who attended six hours of orientation training for a prior appointment or employment is not required to comply with the orientation requirement for a subsequent appointment or employment after a break in service. However, unless expressly exempted as provided in Section 6-29-1350, upon a subsequent appointment or employment, the appointed official or professional employee must comply with an annual requirement of attending no fewer than three hours of continuing education as provided in this section.

(C) The subjects for the education required by subsection (A) may include, but not be limited to, the following:

- (1) land use planning;
- (2) zoning;
- (3) floodplains;
- (4) transportation;
- (5) community facilities;
- (6) ethics;
- (7) public utilities;
- (8) wireless telecommunications facilities;
- (9) parliamentary procedure;
- (10) public hearing procedure;
- (11) administrative law;
- (12) economic development;
- (13) housing;
- (14) public buildings;
- (15) building construction;
- (16) land subdivision; and
- (17) powers and duties of the planning commission, board of zoning appeals, or board of architectural review.

(D) In order to meet the educational requirements of subsection (A), an educational program must be approved by the advisory committee.

HISTORY: 2003 Act No. 39, Section 14, eff June 2, 2003.

**SECTION 6-29-1350.** Exemption from educational requirements.

(A) An appointed official or professional employee who has one or more of the following qualifications is exempt from the educational requirements of Section 6-29-1340:

- (1) certification by the American Institute of Certified Planners;
- (2) a masters or doctorate degree in planning from an accredited college or university;
- (3) a masters or doctorate degree or specialized training or experience in a field related to planning as determined by the advisory committee;
- (4) a license to practice law in South Carolina.

(B) An appointed official or professional employee who is exempt from the educational requirements of Section 6-29-1340 must file a certification form and documentation of his exemption as required in Section 6-29-1360 by no later than the first anniversary date of his appointment or employment. An exemption is established by a single filing for the tenure of the appointed official or professional employee and does not require the filing of annual certification forms and conforming documentation.

HISTORY: 2003 Act No. 39, Section 14, eff June 2, 2003.

**SECTION 6-29-1360.** Certification.

(A) An appointed official or professional employee must certify that he has satisfied the educational requirements in Section 6-29-1340 by filing a certification form and documentation with the clerk no later than the anniversary date of the appointed official's appointment or professional employee's employment each year.

(B) Each certification form must substantially conform to the following form and all applicable portions of the form must be completed:

EDUCATIONAL REQUIREMENTS  
CERTIFICATION FORM  
FOR LOCAL GOVERNMENT PLANNING OR ZONING  
OFFICIALS OR EMPLOYEES

To report compliance with the educational requirements, please complete and file this form each year with the clerk of the local governing body no later than the anniversary date of your appointment or employment. To report an exemption from the educational requirements, please complete and file this form with the clerk of the local governing body by no later than the first anniversary of your current appointment or employment. Failure to timely file this form may subject an appointed official to removal for cause and an employee to dismissal.

Name of Appointed Official or Employee: \_\_\_\_\_

Position: \_\_\_\_\_

Initial Date of Appointment or Employment: \_\_\_\_\_

Filing Date: \_\_\_\_\_

I have attended the following orientation or continuing education program(s) within the last three hundred and sixty-five days. (Please note that a program completed more than one hundred and eighty days prior to the date of your initial appointment or employment may not be used to satisfy this requirement.):

Program Name	Sponsor	Location	Date Held	Hours of Instruction
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Also attached with this form is documentation that I attended the program(s).

OR

I am exempt from the orientation and continuing education requirements because (Please initial the applicable response on the line provided):

\_\_\_\_ I am certified by the American Institute of Certified Planners.

\_\_\_\_ I hold a masters or doctorate degree in planning from an accredited college or university.

\_\_\_\_ I hold a masters or doctorate degree or have specialized training or experience in a field related to planning as determined by the State Advisory Committee on Educational Requirements for Local Government Planning or Zoning Officials and Employees. (Please describe your advanced degree or specialty on the line provided.)

\_\_\_\_ I am licensed to practice law in South Carolina.

Also attached with this form is documentation to confirm my exemption.

I certify that I have satisfied or am exempt from the educational requirements for local planning or zoning officials or employees.

Signature: \_\_\_\_\_

(C) Each appointed official and professional employee is responsible for obtaining written documentation that either:

(1) is signed by a representative of the sponsor of any approved orientation or continuing education program for which credit is claimed and acknowledges that the filer attended the program for which credit is claimed; or

(2) establishes the filer's exemption.

The documentation must be filed with the clerk as required by this section.

HISTORY: 2003 Act No. 39, Section 14, eff June 2, 2003.

**SECTION 6-29-1370.** Sponsorship and funding of programs; compliance and exemption; certification as public records.

(A) The local governing body is responsible for:

(1) sponsoring and providing approved education programs; or

(2) funding approved education programs provided by a sponsor other than the local governing body for the appointed officials and professional employees in the jurisdiction.

(B) The clerk must keep in the official public records originals of:

(1) all filed forms and documentation that certify compliance with educational requirements for three years after the calendar year in which each form is filed; and

(2) all filed forms and documentation that certify an exemption for the tenure of the appointed official or professional employee.

HISTORY: 2003 Act No. 39, Section 14, eff June 2, 2003.

**SECTION 6-29-1380.** Failure to complete training requirements; false documentation.

(A) An appointed official is subject to removal from office for cause as provided in Section 6-29-350, 6-29-780, or 6-29-870 if he:

(1) fails to complete the requisite number of hours of orientation training and continuing education within the time allotted under Section 6-29-1340; or

(2) fails to file the certification form and documentation required by Section 6-29-1360.

(B) A professional employee is subject to suspension or dismissal from employment relating to planning or zoning by the local governing body or planning or zoning entity if he:

(1) fails to complete the requisite number of hours of orientation training and continuing education within the time allotted under Section 6-29-1340; or

(2) fails to file the certification form and documentation required by Section 6-29-1360.

(C) A local governing body must not appoint a person who has falsified the certification form or documentation required by Section 6-29-1360 to serve in the capacity of an appointed official.

(D) A local governing body or planning or zoning entity must not employ a person who has falsified the certification form or documentation required by Section 6-29-1360 to serve in the capacity of a professional employee.

HISTORY: 2003 Act No. 39, Section 14, eff June 2, 2003.

## ARTICLE 11.

### VESTED RIGHTS

**SECTION 6-29-1510.** Citation of article.

This article may be cited as the "Vested Rights Act".

HISTORY: 2004 Act No. 287, Section 2, eff July 1, 2005.

**SECTION 6-29-1520.** Definitions.

As used in this article:

(1) "Approved" or "approval" means a final action by the local governing body or an exhaustion of all administrative remedies that results in the authorization of a site specific development plan or a phased development plan.

(2) "Building permit" means a written warrant or license issued by a local building official that authorizes the construction or renovation of a building or structure at a specified location.

(3) "Conditionally approved" or "conditional approval" means an interim action taken by a local governing body that provides authorization for a site specific development plan or a phased development plan but is subject to approval.

(4) "Landowner" means an owner of a legal or equitable interest in real property including the heirs, devisees, successors, assigns, and personal representatives of the owner. "Landowner" may include a person holding a valid option to purchase real property pursuant to a contract with the owner to act as his agent or representative for purposes of submitting a proposed site specific development plan or a phased development plan pursuant to this article.

(5) "Local governing body" means: (a) the governing body of a county or municipality, or (b) a county or municipal body authorized by statute or by the governing body of the county or municipality to make land-use decisions.

(6) "Person" means an individual, corporation, business or land trust, estate, trust, partnership, association, two or more persons having a joint or common interest, or any legal entity as defined by South Carolina laws.

(7) "Phased development plan" means a development plan submitted to a local governing body by a landowner that shows the types and density or intensity of uses for a specific property or properties to be developed in phases, but which do not satisfy the requirements for a site specific development plan.

(8) "Real property" or "property" means all real property that is subject to the land use and development ordinances or regulations of a local governing body, and includes the earth, water, and air, above, below, or on the surface, and includes improvements or structures customarily regarded as a part of real property.

(9) "Site specific development plan" means a development plan submitted to a local governing body by a landowner describing with reasonable certainty the types and density or intensity of uses for a specific property or properties. The plan may be in the form of, but is not limited to, the following plans or approvals: planned unit development; subdivision plat; preliminary or general development plan; variance; conditional use or special use permit plan; conditional or special use district zoning plan; or other land-use approval designations as are used by a county or municipality.

(10) "Vested right" means the right to undertake and complete the development of property under the terms and conditions of a site specific development plan or a phased development plan as provided in this article and in the local land development ordinances or regulations adopted pursuant to this chapter.

HISTORY: 2004 Act No. 287, Section 2, eff July 1, 2005.

**SECTION 6-29-1530.** Two-year vested right established on approval of site specific development plan; conforming ordinances and regulations; renewal.

(A)(1) A vested right is established for two years upon the approval of a site specific development plan.

(2) On or before July 1, 2005, in the local land development ordinances or regulations adopted pursuant to this chapter, a local governing body must provide for:

(a) the establishment of a two-year vested right in an approved site specific development plan; and

(b) a process by which the landowner of real property with a vested right may apply at the end of the vesting period to the local governing body for an annual extension of the vested right. The local governing body must approve applications for at least five annual extensions of the vested right unless an amendment to the land development ordinances or regulations has been adopted that prohibits approval.

(B) A local governing body may provide in its local land development ordinances or regulations adopted pursuant to this chapter for the establishment of a two-year vested right in a conditionally approved site specific development plan.

(C) A local governing body may provide in its local land development ordinances or regulations adopted pursuant to this chapter for the establishment of a vested right in an approved or conditionally approved phased development plan not to exceed five years.

HISTORY: 2004 Act No. 287, Section 2, eff July 1, 2005.

**SECTION 6-29-1540.** Conditions and limitations.

A vested right established by this article and in accordance with the standards and procedures in the land development ordinances or regulations adopted pursuant to this chapter is subject to the following conditions and limitations:

(1) the form and contents of a site specific development plan must be prescribed in the land development ordinances or regulations;

(2) the factors that constitute a site specific development plan sufficient to trigger a vested right must be included in the land development ordinances or regulations;

(3) if a local governing body establishes a vested right for a phased development plan, a site specific development plan may be required for approval with respect to each phase in accordance with regulations in effect at the time of vesting;

(4) a vested right established under a conditionally approved site specific development plan or conditionally approved phased development plan may be terminated by the local governing body upon its determination, following notice and public hearing, that the landowner has failed to meet the terms of the conditional approval;

(5) the land development ordinances or regulations amended pursuant to this article must designate a vesting point earlier than the issuance of a building permit but not later than the approval by the local governing body of the site specific development plan or phased development plan that authorizes the developer or landowner to proceed with investment in grading, installation of utilities, streets, and other infrastructure, and to undertake other significant expenditures necessary to prepare for application for a building permit;



(6) a site specific development plan or phased development plan for which a variance, regulation, or special exception is necessary does not confer a vested right until the variance, regulation, or special exception is obtained;

(7) a vested right for a site specific development plan expires two years after vesting. The land development ordinances or regulations must authorize a process by which the landowner of real property with a vested right may apply at the end of the vesting period to the local governing body for an annual extension of the vested right. The local governing body must approve applications for at least five annual extensions of the vested right unless an amendment to the land development ordinances or regulations has been adopted that prohibits approval. The land development ordinances or regulations may authorize the local governing body to:

(a) set a time of vesting for a phased development plan not to exceed five years; and

(b) extend the time for a vested site specific development plan to a total of five years upon a determination that there is just cause for extension and that the public interest is not adversely affected. Upon expiration of a vested right, a building permit may be issued for development only in accordance with applicable land development ordinances or regulations;

(8) a vested site specific development plan or vested phased development plan may be amended if approved by the local governing body pursuant to the provisions of the land development ordinances or regulations;

(9) a validly issued building permit does not expire or is not revoked upon expiration of a vested right, except for public safety reasons or as prescribed by the applicable building code;

(10) a vested right to a site specific development plan or phased development plan is subject to revocation by the local governing body upon its determination, after notice and public hearing, that there was a material misrepresentation by the landowner or substantial noncompliance with the terms and conditions of the original or amended approval;

(11) a vested site specific development plan or vested phased development plan is subject to later enacted federal, state, or local laws adopted to protect public health, safety, and welfare including, but not limited to, building, fire, plumbing, electrical, and mechanical codes and nonconforming structure and use regulations which do not provide for the grandfathering of the vested right. The issuance of a building permit vests the specific construction project authorized by the building permit to the building, fire, plumbing, electrical, and mechanical codes in force at the time of the issuance of the building permit;

(12) a vested site specific development plan or vested phased development plan is subject to later local governmental overlay zoning that imposes site plan-related requirements but does not affect allowable types, height as it affects density or intensity of uses, or density or intensity of uses;

(13) a change in the zoning district designation or land-use regulations made subsequent to vesting that affect real property does not operate to affect, prevent, or delay development of the real property under a vested site specific development plan or vested phased development plan without consent of the landowner;

(14) if real property having a vested site specific development plan or vested phased development plan is annexed, the governing body of the municipality to which the real property has been annexed must determine, after notice and public hearing in which the landowner is allowed to present evidence, if the vested right is effective after the annexation;

(15) a local governing body must not require a landowner to waive his vested rights as a condition of approval or conditional approval of a site specific development plan or a phased development plan; and

(16) the land development ordinances or regulations adopted pursuant to this article may provide additional terms or phrases, consistent with the conditions and limitations of this section, that are necessary for the implementation or determination of vested rights.

HISTORY: 2004 Act No. 287, Section 2, eff July 1, 2005.

**SECTION 6-29-1550.** Vested right attaches to real property; applicability of laws relating to public health, safety and welfare.

A vested right pursuant to this section is not a personal right, but attaches to and runs with the applicable real property. The landowner and all successors to the landowner who secure a vested right pursuant to this article may rely upon and exercise the vested right for its duration subject to applicable federal, state, and local laws adopted to protect public health, safety, and welfare including, but not limited to, building, fire, plumbing, electrical, and mechanical codes and nonconforming structure and use regulations which do not provide for the grandfathering of the vested right. This article does not preclude judicial determination that a vested right exists pursuant to other statutory provisions. This article does not affect the provisions of a development agreement executed pursuant to the South Carolina Local Government Development Agreement Act in Chapter 31 of Title 6.

HISTORY: 2004 Act No. 287, Section 2, eff July 1, 2005.

**SECTION 6-29-1560.** Establishing vested right in absence of local ordinances providing therefor; significant affirmative government acts.

(A) If a local governing body does not have land development ordinances or regulations or fails to adopt an amendment to its land development ordinances or regulations as required by this section, a landowner has a vested right to proceed in accordance with an approved site specific development plan for a period of two years from the approval. The landowner of real property with a vested right may apply at the end of the vesting period to the local governing body for an annual extension of the vested right. The local governing body must approve applications for at least five annual extensions of the vested right unless an amendment to the land development ordinances or regulations has been adopted that prohibits approval. For purposes of this section, the landowner's rights are considered vested in the types of land use and density or intensity of uses defined in the development plan and the vesting is not affected by later amendment to a zoning ordinance or land-use or development regulation if the landowner:

- (1) obtains, or is the beneficiary of, a significant affirmative government act that remains in effect allowing development of a specific project;
- (2) relies in good faith on the significant affirmative government act; and
- (3) incurs significant obligations and expenses in diligent pursuit of the specific project in reliance on the significant affirmative government act.

(B) For the purposes of this section, the following are significant affirmative governmental acts allowing development of a specific project:

- (1) the local governing body has accepted exactions or issued conditions that specify a use related to a zoning amendment;
- (2) the local governing body has approved an application for a rezoning for a specific use;
- (3) the local governing body has approved an application for a density or intensity of use;
- (4) the local governing body or board of appeals has granted a special exception or use permit with conditions;
- (5) the local governing body has approved a variance;
- (6) the local governing body or its designated agent has approved a preliminary subdivision plat, site plan, or plan of phased development for the landowner's property and the applicant diligently pursues approval of the final plat or plan within a reasonable period of time under the circumstances; or
- (7) the local governing body or its designated agent has approved a final subdivision plat, site plan, or plan of phased development for the landowner's property.

HISTORY: 2004 Act No. 287, Section 2, eff July 1, 2005.

ARTICLE 13.

## FEDERAL DEFENSE FACILITIES UTILIZATION INTEGRITY PROTECTION

### **SECTION 6-29-1610.** Short title.

This article may be cited as the "Federal Defense Facilities Utilization Integrity Protection Act".

HISTORY: 2005 Act No. 1, Section 1, eff October 28, 2004.

### **SECTION 6-29-1620.** Legislative purpose.

The General Assembly finds:

(1) As South Carolina continues to grow, there is significant potential for uncoordinated development in areas contiguous to federal military installations that can undermine the integrity and utility of land and airspace currently used for mission readiness and training.

(2) Despite consistent cooperation on the part of local government planners and developers, this potential remains for unplanned development in areas that could undermine federal military utility of lands and airspace in South Carolina.

(3) It is, therefore, desirous and in the best interests of the people of South Carolina to enact processes that will ensure that development in areas near federal military installations is conducted in a coordinated manner that takes into account and provides a voice for federal military interests in planning and zoning decisions by local governments.

HISTORY: 2005 Act No. 1, Section 1, eff October 28, 2004.

### **SECTION 6-29-1625.** Definitions.

(A) For purposes of this article, "federal military installations" includes Fort Jackson, Shaw Air Force Base, McEntire Air Force Base, Charleston Air Force Base, Beaufort Marine Corps Air Station, Beaufort Naval Hospital, Parris Island Marine Recruit Depot, and Charleston Naval Weapons Station.

(B) For purposes of this article, a "federal military installation overlay zone" is an "overlay zone" as defined in Section 6-29-720(C)(5) in a geographic area including a federal military installation as defined in this section.

HISTORY: 2005 Act No. 1, Section 1, eff October 28, 2004.

### **SECTION 6-29-1630.** Local planning department investigations, recommendations and findings; incorporation into official maps.

(A) In any local government which has established a planning department or other entity, such as a board of zoning appeals, charged with the duty of establishing, reviewing, or enforcing comprehensive land use plans or zoning ordinances, that planning department or other entity, with respect to each proposed land use or zoning decision involving land that is located within a federal military installation overlay zone or, if there is no such overlay zone, within three thousand feet of any federal military installation, or within the three thousand foot Clear Zone and Accident Potential Zones Numbers I and II as prescribed in 32 C.F.R. Section 256, defining Air Installation Compatible Use Zones of a federal military airfield, shall:

(1) at least thirty days prior to any hearing conducted pursuant to Section 6-29-530 or 6-29-800, request from the commander of the federal military installation a written recommendation with supporting facts with regard to the matters specified in subsection (C) relating to the use of the property which is the subject of review; and

(2) upon receipt of the written recommendation specified in subsection (A) (1) make the written recommendations a part of the public record, and in addition to any other duties with which the planning department or other entity is charged by the local government, investigate and make recommendations of findings with respect to each of the matters enumerated in subsection (C).

(B) If the base commander does not submit a recommendation pursuant to subsection (A)(1) by the date of the public hearing, there is a presumption that the land use plan or zoning proposal does not have any adverse effect relative to the matters specified in subsection (C).

(C) The matters the planning department or other entity shall address in its investigation, recommendations, and findings must be:

(1) whether the land use plan or zoning proposal will permit a use that is suitable in view of the fact that the property under review is within the federal military installation overlay zone, or, if there is no such overlay zone located within three thousand feet of a federal military installation or within the three thousand foot Clear Zone and Accident Potential Zones Numbers I and II as prescribed in 32 C.F.R. Section 256, defining Air Installation Compatible Use Zones of a federal military airfield;

(2) whether the land use plan or zoning proposal will adversely affect the existing use or usability of nearby property within the federal military installation overlay zone, or, if there is no such overlay zone, within three thousand feet of a federal military installation, or within the three thousand foot Clear Zone and Accident Potential Zones Numbers I and II as prescribed in 32 C.F.R. Section 256, defining Air Installation Compatible Use Zones of a federal military airfield;

(3) whether the property to be affected by the land use plan or zoning proposal has a reasonable economic use as currently zoned;

(4) whether the land use plan or zoning proposal results in a use which causes or may cause a safety concern with respect to excessive or burdensome use of existing streets, transportation facilities, utilities, or schools where adjacent or nearby property is used as a federal military installation;

(5) if the local government has an adopted land use plan, whether the zoning proposal is in conformity with the policy and intent of the land use plan given the proximity of a federal military installation; and

(6) whether there are other existing or changing conditions affecting the use of the nearby property such as a federal military installation which give supporting grounds for either approval or disapproval of the proposed land use plan or zoning proposal.

(D) Where practicable, local governments shall incorporate identified boundaries, easements, and restrictions for federal military installations into official maps as part of their responsibilities delineated in Section 6-29-340.

HISTORY: 2005 Act No. 1, Section 1, eff October 28, 2004.

**SECTION 6-29-1640.** Application to former or closing military installations.

Nothing in this article is to be construed to apply to former military installations, or approaches or access related thereto, that are in the process of closing or redeveloping pursuant to base realignment and closure proceedings, including the former naval base facility on the Cooper River in and near the City of North Charleston, nor to the planned uses of, or construction of facilities on or near, that property by the South Carolina State Ports Authority, nor to the construction and uses of transportation routes and facilities necessary or useful thereto.

HISTORY: 2005 Act No. 1, Section 1, eff October 28, 2004.