

## CHAPTER 462

## PLANNING AND ZONING

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**462.01 MUNICIPALITIES MAY PASS ZONING ORDINANCE.** For the purpose of promoting health, safety, order, convenience, prosperity, and general welfare, any city of the third or fourth class or any village in this state, acting by or through its governing body, may by ordinance regulate the location, size, use, and height of buildings, the arrangement of buildings on lots, and the density of population within such city or village; may make different regulations for different districts thereof; and may acquire or prepare and adopt a comprehensive plan for the future physical development and improvement of such city or village, in accordance with the regulations made as aforesaid, and may thereafter alter the regulations or plan, such alterations to be made only by a two-thirds vote of all the members of the governing body of such city or village. After the adoption of an ordinance hereunder and within ten days after its publication such ordinance may be suspended in effect upon the filing of a petition signed by resident freeholders of the municipality in a number equal to not less than ten per cent of the legal voters of the municipality requesting that the question of permitting the council to zone the city be submitted to the electors at a general or special election, and the ordinances shall not again become effective until a majority of the electors voting on the question approve the proposition permitting the governing body to zone the municipality.

[1929 c. 176 s. 1; 1935 c. 235 s. 1; 1935 c. 376 s. 1] (1933-42)

**462.02 ENFORCEMENT.** The governing body of any such city or village is hereby authorized to pass ordinances for the enforcement of the provisions of sections 462.01 to 462.04 and of the regulations of the governing body thereunder, and to provide, in and by such ordinances, penalties for the violation thereof. Such governing body is also hereby authorized to enforce its regulations thereunder, by mandamus, injunction, or any other appropriate remedy in any court having jurisdiction thereof.

[1929 c. 176 s. 2] (1933-43)

**462.03 POWERS ADDITIONAL TO EXISTING LAWS.** In any such city or village having a planning commission, the provisions of sections 462.01 to 462.04 shall be construed as an addition to existing powers and not as an amendment to or a repeal thereof, and the governing body may adopt a plan or plans prepared by such planning commission.

[1929 c. 176 s. 3] (1933-44)

**462.04 APPLICATION.** Sections 462.01 to 462.04 shall apply to cities operating under home rule charters adopted pursuant to the Constitution of the State of Minnesota, Article 4, Section 36, but shall not modify, limit, or affect in any way the power to enact planning and zoning regulations contained in any such charter in the manner prescribed therein.

[1929 c. 176 s. 4; 1931 c. 163] (1933-45)

**462.05 BUILDING AND ZONING REGULATIONS.** For the purpose of promoting health, safety, order, convenience, prosperity and general welfare, any city of the second class, including those operating under a home rule charter, may by ordinance regulate the location, size, use, and height of buildings, the arrangement of buildings on lots, and the density of population within such city; may make different regulations for different districts thereof; and may acquire or prepare and adopt a comprehensive plan for the future physical development and improvement of such city, in accordance with such regulations, and thereafter, by ordinance adopted by a two-thirds vote of all the members of its governing body, may alter the regulations or plan.

[*Ex. 1936 c. 35 s. 1*] (1664-91)

**462.06 MAY ENFORCE REGULATIONS.** The governing body of any such city is hereby authorized to pass ordinances for the enforcement of the provisions of sections 462.05 to 462.07 and of such regulations and to provide therein penalties for the violation thereof. Such city is also hereby authorized to enforce such regulations by mandamus, injunction, or any other appropriate remedy in any court having jurisdiction thereof.

[*Ex. 1936 c. 35 s. 2*] (1664-92)

**462.07 POWERS ADDITIONAL TO EXISTING LAWS.** In any such city having a planning commission, the provisions of sections 462.05 to 462.07 shall be construed as an addition to existing powers and not as an amendment to or a repeal thereof, and the governing body thereof may adopt a plan or plans prepared by such planning commission.

[*Ex. 1936 c. 35 s. 3*] (1664-93)

**462.08 RESIDENCE DISTRICTS DESIGNATED.** Any city of the first class in this state may, in the exercise of the police power, by ordinance duly adopted by its council or other governing body, upon petition of 50 per cent of the property owners of the district sought to be affected, designate residence districts in such cities wherein only buildings for residences may be erected and maintained including duplex houses and double houses and prohibiting the erection and maintenance of hotels, stores, factories, warehouses, dry cleaning plants, public garages or stables, tenement and apartment houses.

[1913 c. 98 s. 1] (1569)

**462.09 RESIDENCE DISTRICTS IN CITIES NOT UNDER HOME RULE CHARTERS.** Any city of the first class in this state may, in the exercise of the police power, by ordinance duly adopted by its council or other governing body, by a two-thirds vote, upon petition of 50 per cent of the property owners of the district sought to be affected, designate residence districts in such cities and prohibit the erection and maintenance of hotels, stores, factories, warehouses, dry cleaning plants, public garages or stables, or any industrial establishment or business whatsoever, tenement and apartment houses.

[1913 c. 420 s. 1] (1571)

**462.10 DESIGNATION OF INDUSTRIAL DISTRICTS.** Any such city by a like vote of its governing body may also classify industries and industrial establishments, and may designate, define and limit industrial districts within said city where such classes of industries and industrial establishments may be erected, operated and maintained, and may prohibit the erection, operation and maintenance of others within such districts.

[1913 c. 420 s. 2] (1572)

**462.11 CHANGE OF DISTRICTS.** The council or other governing body of the city may, at any time thereafter and when it shall find that the character of any residence or industrial district shall have changed materially, and on petition of 50 per cent of the property owners of the district, set aside its former determination and establish a residence district out of an industrial district, or an industrial district out of a residence district, by resolution or ordinance, duly passed; provided, that any industry which may have been heretofore established in such district, shall not be disturbed unless the same shall become a public nuisance.

[1913 c. 420 s. 3] (1573)

**462.12 RESTRICTED RESIDENCE DISTRICTS.** Any city of the first class may, through its council, upon petition of 50 per cent of the owners of the real estate in the district sought to be affected, by resolution, designate and establish by proceedings hereunder restricted residence districts and in and by such resolution and proceedings prohibit the erection, alteration, or repair of any building or

structure for any one or more of the purposes hereinafter named, and thereafter no building or other structure shall be erected, altered or repaired for any of the purposes, prohibited by such resolution and proceedings, which may prohibit the following: hotels, restaurants, eating houses, mercantile business, stores, factories, warehouses, printing establishments, tailor shops, coal yards, ice-houses; blacksmith shops, repair shops, paint shops, bakeries, dyeing, cleaning and laundering establishments, billboards and other advertising devices, public garages, public stables, apartment houses, tenement houses, flat buildings, any other building or structure for purposes similar to the foregoing. Public garages and public stables shall include those, and only those, operated for gain.

Nothing herein contained shall be construed to exclude double residences or duplex houses, so-called, schools, churches, or signs advertising for rent or sale the property only on which they are placed.

No building or structure erected after the creation of such district shall be used for any purpose for which its erection shall be prohibited hereunder.

The term "council" in sections 462.12 to 462.17 shall mean the chief governing body of the city by whatever name called.

Any district or any portion thereof created under the provisions of sections 462.12 to 462.17 may be vacated and the restrictions thereon removed by the council upon petition of 50 per cent of the owners of the real estate in the original district. A portion of a restricted residence district may be vacated and relieved of the restrictions imposed thereon pursuant to sections 462.12 to 462.17 by the council upon petition of the owners of the portion of the district sought to be relieved if such portion or lot sought to be relieved does not in any part lie between other portions of such restricted district, or if the portion sought to be relieved abuts upon a public street or alley along one border of such district and extends along said public street or alley the entire distance between cross streets, or if the portion or lot sought to be relieved is contiguous to, along one or both sides, or across a public street along its entire front from a parcel of land which shall be duly zoned under a valid municipal zoning ordinance for commercial, multiple-dwelling or industrial purposes. The vacation of such district or portion thereof and the removal of the restrictions therefrom shall be accomplished in the same manner herein provided for the creation of any such district, and in the vacation of any such district or any portion thereof and the removal of such restrictions each and all of the provisions of sections 462.12 to 462.17 as to allowance of damages and benefits to property affected and as to the appointment of commissioners to appraise such damages and benefits and the duties of such commissioners of the city clerk and of each and all of the other officers upon whom duties are herein imposed shall be complied with, and when such proceedings for the vacation of any such district or portion thereof shall have been completed the property included within such district or portion thereof so vacated shall be deemed relieved of each and all of the restrictions imposed in the proceeding creating such district. In the allowance of damages and benefits to property affected by any proposed vacation, no evidence shall be received, or consideration given to the existence of any other restriction or any restrictive or zoning ordinance, law, or regulation.

[1915 c. 128 s. 1; 1923 c. 133 s. 1; 1925 c. 122 s. 1; 1931 c. 290 s. 1] (1618)

**462.13 COUNCIL GIVEN RIGHT OF EMINENT DOMAIN.** The council shall first, after causing the probable costs of the proceedings, if abandoned, to be deposited or secured by the petitioners, designate the restricted residence district and shall have power to acquire by eminent domain the right to exercise the powers granted by sections 462.12 to 462.17 by proceedings hereinafter defined, and when such proceedings shall have been completed, the right to exercise such powers shall be vested in the city.

[1915 c. 128 s. 2; 1931 c. 290 s. 2] (1619)

**462.14 APPRAISAL OF DAMAGE.** Subdivision 1. **Appraisers.** The council shall appoint five appraisers who shall be disinterested qualified voters of the city, and none of whom shall be a resident of the ward or wards in which any part of the district so designated is situate, to view the premises and appraise the damages which may be occasioned by the establishment of such restricted residence district and by the exercise by the city of the powers herein granted.

The appraisers shall be notified as soon as practicable by the city clerk, as the case may be, to attend at a time fixed by him, for the purpose of qualifying and entering upon their duties. When a vacancy may occur among the appraisers by

neglect or refusal of any of them to act or otherwise, such vacancy shall be filled by the council.

**Subdivision 2. Oath of Appraisers.** The appraisers shall be sworn to discharge their duty as appraisers in the matter with impartiality and fidelity; and to make due return of their acts to the council.

**Subdivision 3. Notice of hearing by publication.** The appraisers shall give notice, by publication in the official newspaper of the city, once a week for two consecutive weeks, which last publication shall be at least ten days before the day of such meeting, which notice shall contain a general description of the lands designated by the council, and give notice that a plat of the same has been filed in the office of the city clerk, and that the appraisers will meet at a place and time designated in the notice, and thence proceed to view the premises and appraise the damages which may be occasioned by the establishment of such restricted residence district and by the exercise by the city of the powers herein granted, and to assess benefits in the manner hereinafter specified.

**Subdivision 4. Appraisal of damages.** The city clerk shall, after the first publication of such notice, and at least six days (Sunday excluded) prior to the meeting specified in said notice, serve upon each person having an interest as owner or mortgagee in each parcel of land in said district as shown by the records in the office of the register of deeds a copy of the notice by depositing the same in the post-office of the city, with first class postage prepaid, in an envelope bearing on its front in type no smaller than ten point the words "Notice of Restricted Residence District Proceedings Affecting Your Property" or "Notice of Proceedings to Vacate Restricted Residence Districts Affecting Your Property," as the case may be, directed to such person at his last known place of residence, if known to the city clerk, but if not known, then to his place of residence as given in the last published city directory of the city, if his name appears therein, or obtained from the records of such owner's address last given on tax receipts in the office of the county treasurer or auditor, or, in the case of mortgagees, to the address, if any, appearing in the mortgage.

After the first publication of the notice, and at least six days (Sunday excluded) prior to the meeting specified in the notice, a copy of the same shall also be served upon the person in possession of each of the tracts or parcels of land, or some part thereof, if the same be actually occupied, in the same manner as provided for the service of summons in a civil action in the district court. A copy of all subsequent notices relating to said proceedings which are required to be published, shall be mailed by said clerk in the manner above specified, immediately after the first publication thereof, to owners and mortgagees in the manner and to the address above provided and to such persons as shall have appeared in said proceedings and requested in writing that such notice be mailed to them.

**Subdivision 5. Hearing and assessment.** At the time and place mentioned in the notice, the appraisers shall meet and thence proceed to view the premises, and may hear the evidence or proof offered by the parties interested, and may adjourn from time to time for the purposes aforesaid. When their view and hearing shall be concluded they shall determine the amount of damages, if any, suffered by each piece or parcel of land of which each piece or parcel of land in the district is a part. They shall also determine the amount of benefits, if any, to each such piece or parcel of land. If the damages exceed the benefits to any particular piece, the excess shall be awarded as damages. If the benefits exceed the damages to any particular piece, the difference shall be assessed as benefits, but the costs of the proceedings, including printers' fees, appraisers' fees, cost of serving notices and other expenses, shall be added to the amount to be assessed. The total assessments for benefits, however, shall not be greater than the aggregate net award of damages, including the costs of the proceedings as above provided; and in every case the benefits assessed upon the several parcels shall be in proportion to the actual benefits received, and no assessment upon any particular piece shall exceed the amount of actual benefits after deducting the damages, if any.

**Subdivision 6. Separate assessment.** If the land and buildings belong to different persons, or if the land be subject to lease, mortgage or judgment, or if there be any estate less than an estate in fee, the injury or damage done to such persons or interests respectively may be awarded to them separately by the appraisers. Neither such award of the appraisers, nor the confirmation thereof by the council shall be deemed to require the payment of such damages to the person or persons

named in such award in case it shall transpire that such person or persons are not entitled to receive the same.

**Subdivision 7. Report of appraisers.** The appraisers having ascertained and appraised the damages and benefits as aforesaid, shall make and file with the city clerk a written report of their action in the premises, embracing a schedule and appraisal of the damages awarded and benefits assessed, with descriptions of the lands, and the names of the owners, if known to them and also a statement of the costs of the proceedings.

**Subdivision 8. Council action.** Upon such report being filed, the city clerk shall give notice that such appraisal has been returned, and that the same will be considered by the council at a meeting thereof to be named in the notice, which notice shall be published in the official newspaper of the city, once a week for two consecutive weeks, and the last publication shall be at least ten days before such meeting. The council upon the day fixed for the consideration of such report, or at any subsequent meeting to which the same may stand over or be referred, shall have power in their discretion to confirm, revise or annul the appraisal and assessment, giving due consideration to any objections interposed by parties interested in the manner hereinafter specified, provided that the council shall not have the power to reduce the amount of any award, nor increase any assessment. In case the appraisal and assessment is annulled, the council may thereupon appoint new appraisers, who shall proceed, in like manner, as in case of the first appraisal, and upon the coming in of their report, the council shall proceed in a like manner and with the same powers as in the case of the first appraisal.

**Subdivision 9. Awards.** If not annulled or set aside, such awards shall be final, and shall be a charge upon the city, for the payment of which the credit of the city shall be pledged. Such assessments shall be and remain a lien and charge upon the respective lands until paid. The awards shall be paid to the persons entitled thereto, or shall be deposited and set apart in the treasury of the city for the use of the parties entitled thereto, within six months after the confirmation of the appraisal and award. In case any appeal or appeals shall be taken from the order confirming the appraisal and assessment, as hereinafter provided, then the time for payment of the awards shall be extended until and including 60 days after the final determination of all appeals taken in the proceeding, and in case of any change in the awards or assessments upon appeal, the council may, by resolution duly adopted, at any time within 60 days after the determination of all appeals, set aside the entire proceeding. Any awards so set aside shall not be paid, and the proceedings as to the tracts for which the awards are so set aside shall be deemed abandoned. Any awards not so set aside shall be a charge upon the city, for the payment of which the credit of the city shall be pledged. All awards shall bear interest at the rate of six per cent per annum from the time of the filing of the original appraisers' report and all subsequent awards and awards upon appeal shall be made as of the day and date of filing of such original reports.

**Subdivision 10. Deposit of damages.** Upon the conclusion of the proceedings and the payment of the awards, the several tracts of lands shall be deemed to be taken and appropriated for the purpose of sections 462.12 to 462.17, and the right above specified shall vest absolutely in the city in which the lands are situate. In case the council shall in any case be unable to determine to whom the damages should in any particular case be paid, or in case of adverse claim in relation thereto, or in case of the legal disability of any person interested, the council shall, and in any and every case, the council may in its discretion deposit the amount of damages with the district court of the county in which such lands are situate, for the use of the parties entitled thereto, and the court shall, upon the application of any person interested and upon such notice as the court shall prescribe, determine who is entitled to the award, and shall order the same paid accordingly. Any such deposit shall have the same effect as the payment to the proper persons.

**Subdivision 11. Objections; appeal to district court.** Any owner of land within the district who deems that there is any irregularity in the proceedings of the council, or action of the appraisers, by reason of which the award of the appraisers ought not to be confirmed, or who is dissatisfied with the amount of damages awarded, to him or the assessment thereon, may at any time before the time specified for the consideration of the award and assessment by the council, file with the city clerk, in writing, his objections to such confirmation, setting forth therein specifically the particular irregularities complained of, and the particular objection

to the award or assessment, and containing a description of the property in which he is interested, affected by such proceedings and his interest therein, and if, notwithstanding such objections the council shall confirm the award, or assessment, such person so objecting shall have the right to appeal from such order of confirmation of the council to the district court of the county where such land is situate, within 20 days after such order. Such appeals shall be made by serving a written notice of appeal upon the city clerk which shall specify the property of the appellant affected by such award and refer to the objection filed as aforesaid, thereupon the city clerk, at the expense of the appellant, shall make out and transmit to the clerk of the district court a copy of the record of the entire proceedings, and of the award of the appraisers as confirmed by the council and of the order of the council confirming the same, and of the objections filed by the appellant, as aforesaid, and of the notice of appeal, all certified by the city clerk to be true copies, within ten days after the taking of such appeal. If more than one appeal be taken from any award, it shall not be necessary that the city clerk in appeals subsequent to the first, shall send up anything but a certified copy of the appellant's objections. There shall be no pleading on any appeal, but the court shall determine in the first instance whether there was in the proceedings any such irregularity or omission of duty prejudicial to the appellant and specified in his written objection that as to him the award or assessment of the appraisers ought not to stand, and whether the appraisers had jurisdiction to take action in the premises.

**Subdivision 12. Court proceedings.** The case may be brought on for hearing on eight days' notice, at any general or special term of the court, and the judgment of the court shall be to confirm or annul the proceedings, only so far as the proceedings affect the property of the appellant proposed to be included in the district or damaged or assessed, and described in the written objection. In case the amount of damages or benefits assessed is complained of by such appellant, the court shall, if the proceedings be confirmed in other respects, appoint three disinterested qualified voters, appraisers to reappraise the damages, and reassess benefits as to the property of appellant. The parties to such appeal shall be heard by the court upon the appointment of such appraisers, and the court shall fix the time and place of meeting of such appraisers, they shall be sworn to the faithful discharge of their duties as such appraisers, and shall proceed to view the premises and to hear the parties interested, with their allegations and proofs pertinent to the question of the amount of damages or benefits; such appraisers shall be governed by the same provisions in respect to the method of arriving at the amount of damages or benefits and in all other material respects as are in sections 462.12 to 462.17 made for the government of appraisers appointed by the council. They shall, after the hearing and view of the premises, make a report to the court of their award of damages and assessment of benefits in respect to the property of such appellant. The award shall be final unless set aside by the court. The motion to set aside shall be made within 15 days. In case such report is set aside, the court may, in its discretion, recommit the same to the same appraisers, or appoint new appraisers as it shall deem best; the court shall allow to the appraisers a reasonable compensation for their services, and make such award of costs on such appeal, including the compensation of such appraisers as it shall deem just in the premises, and enforce the same by execution. In case the court shall be of the opinion that such appeal was frivolous or vexatious, it may adjudge double costs against such appellant. An appeal may be taken to the supreme court of the state from any final decision of the district court in the proceedings.

**Subdivision 13. Bonds.** The city council, for the purpose of realizing the funds for making such improvements and paying such damages and the costs of such proceeding may issue and sell special certificates of indebtedness, or special restricted residence district bonds, as it may decide, which shall entitle the holder thereof to all sums realized upon any such assessment, or if deemed advisable, a series of two or more certificates or bonds against any one assessment, the principal and interest being payable at fixed dates out of the fund collected from such assessments, including interest and penalties, and the whole of such fund is hereby pledged for the pro rata payment of such certificates or bonds and the interest thereon, as they severally become due. Such certificates or bonds may be made payable to the bearer, with interest coupons attached, and the city council may bind the city to make good deficiencies in the collection up to, but not exceeding, the principal and interest at the rate fixed as hereinafter provided and for the time specified in sec-

tion 462.15. If the city, because of any such guaranty, shall redeem any certificate or bond, it shall thereupon be subrogated to the holder's rights. For the purpose of such guaranty, penalties collected shall be credited upon deficiencies of principal and interest before the city shall be liable. Such certificates or bonds shall be sold at public sale or by sealed proposals at a meeting of which at least two weeks' published notice shall be given to the purchaser who will pay the par value thereof at the lowest interest rate, and the certificates or bonds shall be drawn accordingly, but the rate of interest shall in no case exceed five per cent per annum payable annually or semiannually. The city clerk shall certify to the county auditor the rate of interest to be determined, and interest shall be computed upon the assessments at such annual rate, in accordance with the terms of section 462.15.

[1915 c. 128 s. 3; 1919 c. 297; 1925 c. 122 s. 2; 1931 c. 290 s. 3] (1620)

**462.15 MAPS, PLATS, AND LISTS OF DISTRICTS MADE AND FILED; ASSESSMENT OF TAXES ON PROPERTY.** As soon as such condemnation proceedings have been completed, it shall be the duty of such council to cause maps or plats of such restricted residence district to be made, with a list of the parcels of land within such district, and to file one of such maps and list duly certified by the president of the council and the city clerk, in each of the following offices: the office of the city engineer, the office of the register of deeds of the county and the office of the city clerk, and the same shall be prima facie evidence of the full and complete condemnation and establishment of the restricted residence district. As soon as the assessments are confirmed, the city clerk, or the clerk of the district court, as the case may be, shall transmit a copy thereof duly certified, to the auditor of the county in which the lands lie. The county auditor shall include the same in the next general tax list for the collection of state, county, and city taxes against the several tracts or parcels of land and the assessments shall be collected with and as a part of, and subject to the same penalties, costs, and interest, as, the general taxes. Such assessments shall be set down in the tax books in an appropriate column to be headed "Restricted Residence District Assessments" and when collected a separate account thereof shall be kept by the county auditor and the same transmitted to the treasurer of the city and placed to the credit of the proper fund. The city council may by resolution determine that the amount of such assessments shall be collected in from one to five equal annual instalments and in such case the county auditor shall include one of the equal annual instalments of assessments with and as a part of the taxes upon each parcel of land therein described for each year for the number of years into which the assessment is by the city council divided, together with annual interest as hereinafter provided. With the first instalment the auditor shall include interest upon the entire assessment from the date of the assessment to the time when the tax books including the first instalment are delivered by the county auditor to the county treasurer and thereafter the auditor shall include in the taxes for each year one of such instalments, together with one year's interest upon such instalment and all subsequent instalments at the same rate, each of which, together with such interest, shall be collected with the annual taxes upon such land, together with like penalties and interest in case of default, all of which shall be collected with and enforced as the annual taxes and credited to the proper city fund. Any parcel assessed may be discharged from the assessment at any time after the receipt of the assessment by the county auditor by paying all instalments that have gone into the hands of the county treasurer, as aforesaid, with accrued interest, penalties, and costs, as above provided, and by paying all subsequent instalments; or any parcel assessed may be discharged from the assessment by presenting certificates or bonds sold against such assessments as herein provided sufficient in amount to cover all instalments due on such parcel and accrued interest, penalties, and costs, and all instalments yet to accrue, by surrendering such certificates or bonds to the county treasurer for cancellation or having endorsed thereon such instalments, interest, penalties, and costs. The assessment shall be a lien on the land from the time of the making thereof as against the owner and every person in any way interested in the land. The owner of the land and any person interested therein may defend against such assessment at the time of application for judgment in the regular proceedings for the enforcement of delinquent taxes, but such assessment shall not be deemed invalid because of any irregularity provided the notices have been published substantially as required, and no defense shall be allowed except upon the ground that the cost of the improvement is substantially less than the amount of the assessment, and then

only to the extent of the difference between the assessment and the actual cost. Assessments made under sections 462.12 to 462.17 shall be called Restricted Residence District Assessments of the city of ..... and numbered consecutively. When an assessment is certified, as aforesaid, by the city clerk to the county auditor a duplicate thereof shall be sent to the city comptroller and all such assessments shall be sufficiently identified by the name and number, as aforesaid.

[1915 c. 128 s. 4; 1925 c. 122 s. 3] (1621)

**462.16 POWER TO ENACT ORDINANCES FOR ENFORCEMENT OF RIGHTS GIVEN TO COUNCIL.** The council shall have the power to enact ordinances for the enforcement of the rights which shall be acquired under sections 462.12 to 462.17, and to fix penalties for their violation, including a fine not exceeding \$100.00, or confinement in the city workhouse not exceeding 90 days. Violations of the ordinances may be prosecuted in the municipal court of the city.

[1915 c. 128 s. 5] (1622)

**462.17 BUILDINGS DECLARED A NUISANCE.** Any building or structure erected, altered, repaired, or used in violation of sections 462.12 to 462.17 or any ordinance passed thereunder, shall be deemed a nuisance and may be abated at the suit of the city in a civil action. The city may maintain actions for injunction to prevent violation of sections 462.12 to 462.17 and of the ordinances passed in pursuance thereof. Owners of land and others interested in land within the district may also maintain similar actions of abatement and for injunction.

[1915 c. 128 s. 6] (1623)

**462.18 HEIGHT OF BUILDINGS REGULATED IN CITIES OF FIRST CLASS.** For the purpose of promoting the public health, safety, order, convenience, prosperity and general welfare, any city of the first class in the state acting by and through its governing body, may by ordinance regulate the location, size, and use of buildings, the height of buildings, the arrangement of buildings on lots, and the density of population therein, may make different regulations for different districts thereof, and may acquire or prepare and adopt a comprehensive city plan for such city or any portion thereof for the future physical development and improvement of the city, in accordance with the regulations made as aforesaid, and may thereafter alter the regulations or plan, such alterations, however, to be made only after there shall be filed in the office of the city clerk a written consent of the owners of two-thirds of the several descriptions of real estate situate within 100 feet of the real estate affected, and after the affirmative vote in favor thereof by a majority of the members of the governing body of such city; provided, however, that notwithstanding any resolution, ordinance or law conflicting herewith, the governing body of any such city, by an affirmative two-thirds vote in favor thereof, may by resolution grant a permit for the construction of additions, extensions or improvements to any hospital which is being actually operated and maintained on the premises which it occupies on the date of the passage of this section; provided, further, that whenever the city planning commission or board shall make recommendation in writing to the governing body of any such city for altering the regulation or plan, with respect to a more restricted use of any real estate within 1,000 feet of a public park, which park contains not less than 50 acres, located near or adjacent to the waters of a navigable lake, covering an area of not less than 1,000 square miles, the governing body, by a two-thirds vote of all its members, may alter the regulation or plan in accordance with the recommendation of the city planning commission or board.

[1921 c. 217 s. 1; 1923 c. 364 s. 1; 1925 c. 284 s. 1; 1937 c. 239 s. 1] (1614)

**462.19 MAY PASS ORDINANCES FOR ENFORCEMENT.** The governing body of any such city is hereby authorized to pass ordinances for the enforcement of the provisions of sections 462.18 to 462.20 and of the regulations of such governing body under sections 462.18 to 462.20, and to provide, in, and by such ordinances, penalties for violation thereof. Such governing body is also hereby authorized to enforce its regulations thereunder by mandamus, injunction, or any other appropriate remedy in any court having jurisdiction thereof.

[1921 c. 217 s. 2] (1615)

**462.20 IN ADDITION TO EXISTING POWERS.** In any such city having a city planning commission, the provisions of sections 462.18 to 462.20 shall be construed as an addition to existing powers and not as an amendment to or repeal

thereof, and the governing body may adopt a plan or plans prepared by such city planning commission.

[1921 c. 217 s. 3] (1616)

**462.21 GRANT OF POWER.** In order to provide for the proper and reasonable enforcement of regulations adopted pursuant to sections 462.18 to 462.20 governing the location, size, and use of buildings, and to provide for such reasonable determinations of such regulations as will eliminate practical difficulties in the enforcement of such regulations and to provide for such reasonable variations in the terms of such regulations as will eliminate unnecessary hardship in the way of carrying out the strict letter of such regulations, the local governing body is hereby empowered to appoint a board of adjustment.

[1929 c. 340 s. 1] (1617-1)

**462.22 BOARD OF ADJUSTMENT.** Such a local governing body may provide for the appointment of a board of adjustment, and in conformity with the provisions of sections 462.21 to 462.23 may provide that the board of adjustment may determine and vary the application of regulations adopted pursuant to the provisions of sections 462.18 to 462.20 in harmony with their general purpose and intent, and the local governing body may provide by ordinance for the enactment of general or specific rules governing the determination and variation of such regulations.

Where an officially established city planning commission already exists under the city charter it shall be the board of adjustment, otherwise the powers of the board of adjustment shall vest in the governing body who may delegate all or part of such powers to a committee of the governing body. The terms of the members of the board of adjustment shall be concurrent with their terms as members of the governing body or city planning commission. The board shall adopt rules in accordance with the provisions of any ordinances adopted pursuant to sections 462.21 to 462.23.

Appeals to the board of adjustment may be taken by any person aggrieved.

The board of adjustment shall fix a reasonable time for the hearing of the appeal, giving public notice thereof, as well as due notice to the parties in interest, and decide the same within a reasonable time. Upon the hearing any party may appear in person, or by agent, or by attorney.

The board of adjustment shall have the following powers:

(1) To hear and decide appeals where it is alleged there is an error in any order, requirement, decision or determination made by an administrative official in the enforcement of sections 462.21 to 462.23 or of any ordinance adopted pursuant thereto;

(2) To hear and decide all matters referred to it or upon which it is required to pass under such ordinance; and

(3) In passing upon appeals, where there are practical difficulties or unnecessary hardship in the way of carrying out the strict letter of such ordinance to vary or modify the application of any of the regulations or provisions of such ordinance relating to the use, construction, or alteration of buildings or structures or the use of land so that the spirit of the ordinance shall be observed, public safety and welfare secured and substantial justice done.

In exercising the above mentioned powers such board may, in conformity with the provisions of sections 462.21 to 462.23, reverse or affirm wholly or partly, or may modify the order, requirement, decision, or determination appealed from and may make such order, requirement, decision, or determination as ought to be made, and to that end shall have all the powers of the officer from whom the appeal is taken.

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

[1929 c. 340 s. 2] (1617-2)

**462.23 APPLICATION.** The provisions of sections 462.21 and 462.22 shall not apply to any city now or hereafter having provided for the establishment of a board of adjustment in conformity with the provisions of the city charter of such city.

[1929 c. 340 s. 3] (1617-3)

**462.24 CITY PLANNING COMMISSIONS TO CONTROL PLATTING.** The governing body of any city of the first class having more than 35 per cent of the

land area of the city unplatted land may, by ordinance, authorize and empower its city planning commission to control the platting of land.

[1933 c. 93 s. 2] (8246-3)

**462.25 DEFINITIONS.** For the purposes of sections 462.24 to 462.35, certain terms are defined as follows:

"Subdivision" means the division of a lot, tract, or parcel of land into three or more lots, plats, sites, or other divisions of land of one acre or less in area for the purpose, whether immediate or future, of sale or of building development. It also means the division of a lot, tract, or parcel of land into two or more lots, plats, sites, or other divisions of land of more than one acre and less than ten acres in area, if such subdivision provides, or there is shown on a plat thereof, a new street or highway. It includes resubdivision and, when appropriate to the context, relates to the process of subdividing or to the land or territory subdivided. The term "street" includes street, avenue, boulevard, road, lane, alley, viaduct, and other ways.

[1933 c. 93 s. 1] (8246-2)

**462.26 JURISDICTION.** The territorial jurisdiction of such planning commission over the subdivision of land shall include all land located in the municipality and all land lying within three miles of the corporate limits of the municipality and not located in any other municipality, except that in case of any such non-municipal land lying within three miles of more than one municipality having a planning commission, the jurisdiction of such planning commission shall terminate at a boundary line equidistant from the respective corporate limits of such municipalities.

[1933 c. 93 s. 3] (8246-4)

**462.27 PLATS MUST BE APPROVED BY COMMISSION.** When such planning commission shall have adopted a major street plan of the territory within its subdivision jurisdiction, or part thereof, and filed a certified copy of such plan in the office of the register of deeds of the county in which the territory or part is located, no plat of a subdivision of land within such territory or part shall be filed or recorded until it shall have been approved by such planning commission and the approval entered in writing on the plat by the chairman or secretary of the commission.

[1933 c. 93 s. 4] (8246-5)

**462.28 MAY ADOPT REGULATIONS.** Before exercising the powers referred to in section 462.24, the planning commission shall adopt regulations governing the subdivision of land within its jurisdiction so as to secure a harmonious development and to provide for the coordination of streets with other streets and with the city plan and to provide for open spaces for traffic, utilities, access of fire-fighting apparatus, recreation, light, and air, and for the avoidance of congestion of population, including minimum width and area of lots. Such regulations may include reasonable provisions as to the extent to which streets and other ways shall be graded and improved and to which water and sewer and other utility mains, piping, or other facilities shall be installed as a condition precedent to the approval of the plat. In lieu of the completion of such improvements and utilities prior to the final approval of the plat, the city may accept a bond with surety to secure to the municipality the actual construction and installation of such improvements or utilities at a time and according to specifications fixed by the municipality. The municipality is hereby granted the power to enforce such bond by all appropriate legal and equitable remedies. All such regulations shall be published as provided by law for the publication of ordinances and, before adoption, a public hearing shall be held thereon. A copy thereof shall be certified by the planning commission to the register of deeds of each county in which the municipality and territory is located.

[1933 c. 93 s. 5] (8246-6)

**462.29 MUST APPROVE PLAT WITHIN 45 DAYS.** The planning commission shall approve or disapprove a plat within 45 days after the submission thereof otherwise such plat shall be deemed to have been approved and a certificate to that effect shall be issued by the commission on demand. The applicant for the planning commission's approval may waive this requirement and consent to the extension of such period. The ground of disapproval of any plat shall be stated upon the records of the commission. Any plat submitted to the planning commission shall contain the name and address of a person to whom notice of a hearing shall be sent and no plat shall be acted on by the planning commission without affording a hearing thereon. Notice shall be sent to this address by registered mail of the

time and place of such hearing not less than five days before the date fixed therefor. Every plat approved by the commission shall, by virtue of such approval, be deemed to be an amendment of or an addition to or a detail of the city plan and a part thereof. Approval of a plat by the planning commission shall be deemed the acceptance by the public of any street or other open space offered therein for dedication but shall not impose any duty upon the governing body to maintain or improve such dedicated areas until the governing body shall have authorized maintenance or improvement of the same in accordance with charter or other local provisions governing public expenditures for such purposes.

[1933 c. 93 s. 6] (8246-7)

**462.30 NOT TO SELL UNTIL PLAT IS APPROVED.** Whoever, being the owner, or agent of the owner, of any land located within a subdivision, transfers or sells or agrees to sell or negotiates to sell any land by reference to or exhibition of or by other use of a plat of a subdivision before such plat has been approved by the planning commission and recorded or filed in the office of the register of deeds shall forfeit and pay a penalty of \$100.00 for each lot or parcel so transferred or sold or agreed or negotiated to be sold; and the description of such lot or parcel by metes and bounds in the instrument of transfer or other document used in the process of selling or transferring shall not exempt the transaction from such penalties or from the remedies herein provided. The municipal corporation may enjoin such transfer or sale or agreement by action for injunction brought in any court of equity jurisdiction or may recover this penalty by a civil action in any court of competent jurisdiction.

[1933 c. 93 s. 7] (8246-8)

**462.31 PLATS MUST BE APPROVED BEFORE FILING.** The register of deeds shall not file or record a plat of a subdivision unless such plat has the approval of the planning commission as required by law.

[1933 c. 93 s. 8] (8246-9)

**462.32 STREET IMPROVEMENTS.** The municipality shall not accept, lay out, open, improve, grade, pave, curb, or light any street or lay or authorize water mains or sewers or connections to be laid in any street within any portion of the territory for which the planning commission shall have adopted a major street plan unless such street shall have been accepted or opened as, or shall otherwise have received the legal status of, a public street prior to the adoption of such plan, or unless such street is a street on a subdivision plat approved by the planning commission or a street on a street plat made and adopted by the commission. The city council may accept any street not shown on, or not corresponding with a street on, an approved subdivision plat or an approved street plat, provided the ordinance accepting such street be first submitted to the planning commission for its approval; and, if approved by the commission, enacted or passed by not less than a majority of the entire membership of the council or, if disapproved by the commission, enacted or passed by not less than two-thirds of the entire membership of the city council.

[1933 c. 93 s. 9] (8246-10)

**462.33 BUILDING RESTRICTIONS.** From and after the time when the planning commission shall have adopted a major street plan of the territory within its subdivision jurisdiction, or part thereof, no building shall be erected on any lot within such territory or part, nor shall a building permit be issued therefor unless the street giving access to the lot upon which such building is proposed to be placed shall have been accepted or opened as, or shall otherwise have received the legal status of, a public street prior to that time, or unless such street corresponds with a street shown on the city plan or with a street on a subdivision plat approved by the planning commission or with a street accepted by the city council, after submission to the planning commission, by the favorable vote required in section 462.32. Any building erected in violation of this section shall be deemed an unlawful structure and the building inspector, or other appropriate official, may cause it to be vacated and have it removed.

[1933 c. 93 s. 10] (8246-11)

**462.34 EXCLUSIVE.** Platting control by the planning commission, as provided in sections 462.24 to 462.35, shall be exclusive within the territory under its jurisdiction and all statutory control over plats or subdivisions of land granted by other

statutes, in so far as inconsistent with the provisions of those sections, are hereby repealed.

[1933 c. 93 s. 11] (8246-12)

**462.35 MAY APPEAL TO DISTRICT COURT.** Any person aggrieved by any decision of the planning commission concerning such plat, or any officer, department, board, or bureau of the municipality, may present to the district court a petition duly verified setting forth that such decision is illegal, in whole or in part, specifying the grounds of the illegality. Such petition must be presented to the court within 30 days after the filing of the decision in the office of the planning commission.

Upon the presentation of such petition the court may allow a writ of certiorari, directed to the planning commission, to review such decision of the planning commission and shall prescribe therein the time within which a return thereto must be made and served upon the relator's attorney, which shall not be less than ten days and may be extended by the court. The allowance of the writ shall stay proceedings upon the decision appealed from.

The planning commission shall not be required to return the original papers acted upon by it, but it shall be sufficient to return certified or sworn copies thereof or of such portions thereof as may be called for by such writ. The return must concisely set forth such other facts as may be pertinent and material to show the grounds of the decision appealed from and must be verified.

If upon the hearing it shall appear to the court that testimony is necessary for the proper disposition of the matter, it may take evidence or appoint a referee to take such evidence as it may direct and report the same to the court with his findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which the determination of the court shall be made. The court may reverse or affirm, wholly or partly, or may modify the decision brought up for review.

Costs shall not be allowed against the commission unless it shall appear to the court that it acted with gross negligence or in bad faith or with malice in making the decision appealed from.

All issues in any proceeding under this section shall have preference over all other civil actions and proceedings.

[1933 c. 93 s. 12] (8246-13)