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## TITLE 22

### Municipalities

#### CHAPTER 7. PLANNING COMMISSION

##### § 701. Establishment; membership.

Any incorporated city or town may at any time establish a planning commission under this chapter. A planning commission established hereunder shall consist of not less than 5 nor more than 9 members. Such members shall in cities be appointed by the mayor, subject to confirmation by the city council, and in towns where there is not a mayor shall be elected by the town commissioners. When a planning commission is first established the members thereof shall be appointed or elected for terms of such length and shall be so arranged that the term of at least 1 member shall expire each year and their successor shall be appointed or elected for terms of 2 to 5 years each. Any member of the planning commission so established in a city may be removed for cause after a public hearing by the mayor with the approval of city council; members of the planning commission elected by town commissioners shall be removed by them for cause after a public hearing by a majority vote. A vacancy occurring otherwise than by expiration of term shall be filled for the unexpired term in a city in the same manner as an original appointment and in a town by the town commissioners. Such a planning commission shall elect annually a chairperson and a secretary from among its own number and may employ experts, clerical and other assistants. It may appoint a custodian of its plan and records who may be the city engineer or town clerk. (22 Del. C. 1953, § 701; 49 Del. Laws, c. 415, § 1; 59 Del. Laws, c. 463, § 1; 70 Del. Laws, c. 186, § 1.)

##### § 702. Comprehensive development plan.

(a) A planning commission established by any incorporated municipality under this chapter shall prepare a comprehensive plan for the city or town or portions thereof as the commission deems appropriate. It is the purpose of this section to encourage the most appropriate uses of the physical and fiscal resources of the municipality and the coordination of municipal growth, development and infrastructure investment actions with those of other municipalities, counties and the State through a process of municipal comprehensive planning.

(b) Comprehensive plan means a document in text and maps, containing at a minimum, a municipal development strategy setting forth the jurisdiction's position on population and housing growth within the jurisdiction, expansion of its boundaries, development of adjacent areas, redevelopment potential, community character, and the general uses of land within the community, and critical community development and infrastructure issues. The comprehensive planning process shall demonstrate coordination with other municipalities, the county and the State during plan preparation. The comprehensive plan for municipalities of greater than 2,000 population shall also contain, as appropriate to the size and character of the jurisdiction, a description of the physical, demographic and

economic conditions of the jurisdiction; as well as policies, statements, goals and planning components for public and private uses of land, transportation, economic development, affordable housing, community facilities, open spaces and recreation, protection of sensitive areas, community design, adequate water and wastewater systems, protection of historic and cultural resources, annexation and such other elements which in accordance with present and future needs, in the judgment of the municipality, best promotes the health, safety, prosperity and general public welfare of the jurisdiction's residents.

(c) The comprehensive plan shall be the basis for the development of zoning regulations as permitted pursuant to Chapter 3 of this title. Should a jurisdiction exercise its authority to establish municipal zoning regulations pursuant to Chapter 3 of this title, it shall, within 18 months of the adoption of a comprehensive development plan or revision thereof, amend its official zoning map to rezone all lands within the municipality in accordance with the uses of land provided for in the comprehensive development plan.

(d) After a comprehensive plan or portion thereof has been adopted by the municipality in accordance to this chapter, the comprehensive plan shall have the force of law and no development shall be permitted except as consistent with the plan.

(e) At least every 5 years a municipality shall review its adopted comprehensive plan to determine if its provisions are still relevant given changing conditions in the municipality or in the surrounding areas. The adopted comprehensive plan shall be revised, updated and amended as necessary, and re-adopted at least every 10 years.

(f) The comprehensive plan or amendments or revisions thereto shall be submitted to the Governor or designee at such time as the plan is made available for public review. The municipality shall provide sufficient copies for review by the Governor's Advisory Council on Planning Coordination. The Advisory Council, within 30 days of plan submission, shall conduct a public meeting, at which time the municipality shall make a presentation of the plan and its underlying goals and development policies, except when the Advisory Council determines that the comprehensive plan, amendments or revisions are fully consistent with statewide land development goals, policies and criteria as adopted by the Governor or Cabinet Committee on State Planning Issues. Following the public meeting the plan shall be subject to the state review and certification process set forth in § 9103 of Title 29. If the Advisory Council determines that a public meeting is not required as provided above, the plan shall be submitted directly to the Governor or the Governor's designee for certification provided in § 9103 of Title 29. Any proposed comprehensive plan that has been submitted to the Office of State Planning Coordination prior to July 13, 2001, for review shall be exempt from the requirements of this subsection.

(g) Municipalities shall provide to the Office of State Planning Coordination by December 31 of each year a report describing implementation of their comprehensive plan and identifying development issues, trends or conditions since the plan was last adopted or amended. (22 Del. C. 1953, § 702; 49 Del. Laws, c. 415, § 1; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 477, § 1; 73 Del. Laws, c. 186, §§ 7-9.)

### **§ 703. General studies and reports.**

The planning commission shall have full power and authority to make such investigations, maps and reports of the resources, possibilities and needs of the city or town as it deems desirable, providing the total expenditures of said commission shall not exceed the appropriation for its expenses. Upon completion of any such reports the planning commission shall submit the same to the city council or town commissioners with its recommendations. It shall report annually to the city council or town commissioners on

the activities of the planning commission during the preceding year. (22 Del. C. 1953, § 703; 49 Del. Laws, c. 415, § 1.)

#### **§ 704. Adoption of official map.**

Each incorporated city or town established under this title may, by action of its city council or town commissioners, adopt an official map prepared under the direction of such planning commission and showing the public ways and parks therein as theretofore laid out and established by law and the private ways then existing and used in common by more than 2 owners. Such official map is hereby declared to be established to conserve and promote the public health, safety and general welfare. Upon the adoption of such a map and upon any change therein or addition thereto made, as hereinafter provided, the city or town clerk shall forthwith file with the recorder of deeds in the respective counties a certificate of such action and a copy of such map as adopted or as changed or added to. (22 Del. C. 1953, § 704; 49 Del. Laws, c. 415, § 1.)

#### **§ 705. Change of or addition to official map.**

An incorporated city or town so adopting an official map by action of its city council or town commissioners may, whenever and as often as it may deem it for the public interest, change or add to such map, so as to place thereon lines and notations showing existing or proposed locations not theretofore mapped of new or widened public ways and new or enlarged parks and proposed discontinuances in whole or in part of existing or mapped public ways and parks. No such change or addition shall become effective until after a public hearing in relation thereto before the city council or town commissioners, at which parties in interest shall have an opportunity to be heard. At least 10 days' notice of such a public hearing shall be given by advertisement in a newspaper of general circulation in the city or town or in the county in which the city or town is located. No such change or addition which has not been previously recommended by the planning commission established by this chapter shall be adopted until after a report thereon by said commission and no variance from a plan prepared or approved by said planning commission shall be made except by a two-thirds vote of all the members of a city council or by a two-thirds vote of the town commissioners; provided, that the last mentioned requirement shall be deemed to be waived in case the matter has been referred to said commission for a report and it has failed to report within 30 days thereafter. (22 Del. C. 1953, § 705; 49 Del. Laws, c. 415, § 1.)

#### **§ 706. Establishing or changing public ways and parks.**

This chapter shall not abridge the powers of the city council or the town commissioners of any town or any other municipal officer in regard to public ways or parks in any manner except as provided herein, nor shall they authorize the taking of land or the laying out or construction of a way or a park or the alteration, relocation or discontinuance thereof, except in accordance with the laws governing the same; provided, that after an incorporated city and/or town has adopted an official map under this chapter no public way shall be laid out, altered, relocated or discontinued if such laying out, alteration, relocation or discontinuance is not in accordance with such official map as it then appears, unless the proposed laying out, alteration, relocation or discontinuance has been referred to the planning commission of such city or town established under this chapter and such planning commission has reported thereon or has allowed 45 days to elapse after such reference without submitting its report. After a city or town has adopted an official map under this chapter, no person shall open a way for public use, except as provided under the sections of this chapter, unless the location of such way is in accordance with the official map as it then appears or has been approved by the planning commission established under this chapter, and, in either case, the grading, surfacing and draining of such way have been

approved by such commission or by the city or town engineer. (22 Del. C. 1953, § 706; 49 Del. Laws, c. 415, § 1.)

#### **§ 707. Public way or park to be shown on official map.**

Upon final action by the proper authorities in laying out, altering or relocating a proper way or in discontinuing the whole or any part thereof or in establishing or enlarging a public park or closing thereof in whole or in part, the lines and notations showing such improvement, discontinuance or closing, as so established or effected, shall, without further action by the city council or town commissioners, be made a part of the official map, if any, of the incorporated city or town in which such public way or park is located. (22 Del. C. 1953, § 707; 49 Del. Laws, c. 415, § 1.)

#### **§ 708. Reference of certain matters to planning commission.**

In a city or town having a planning commission established under this chapter, but which has not adopted an official map, no public way shall be laid out, altered, relocated or discontinued unless the proposed laying out, alteration, relocation or discontinuance has been referred to the planning commission of such city or town and such commission has reported thereon or has allowed 45 days to elapse after such reference without submitting its report. Any city or town having a planning commission established under this chapter may, by ordinance, bylaw or vote, provide for the reference of any other matter or class of matters to the planning commission before final action thereon with or without provision that final action shall not be taken until the planning commission has submitted its report or has had a reasonable fixed time to submit such report. Such planning commission shall have full power to make such investigations, maps and reports and recommendations in connection therewith, relating to any of the subjects referred to under this section, as it deems desirable. (22 Del. C. 1953, § 708; 49 Del. Laws, c. 415, § 1.)

#### **§ 709. Entry upon lands; making examinations and surveys.**

Planning commissions established under this chapter, their officers and agents may, so far as they deem it necessary in carrying out this chapter, enter upon any lands and there make examinations and surveys and place and maintain monuments and marks. (22 Del. C. 1953, § 709; 49 Del. Laws, c. 415, § 1.)

#### **§ 710. Enforcement.**

The Court of Chancery shall have jurisdiction on petition of the planning commission established hereunder to enforce this chapter and any ordinance or bylaws made thereunder and may restrain by injunction violations thereof. (22 Del. C. 1953, § 710; 49 Del. Laws, c. 415, § 1.)

#### **§ 711. Limitations on powers and liabilities.**

This chapter shall not be construed to authorize the taking of land nor the authorization of a city or town to lay out or construct any way which may be indicated on any plan or plot until such way has been laid out as a public way in the manner prescribed by law, nor shall this chapter be construed to render a city or town liable for damages except as may be sustained under § 705 of this title by reason of changes in the official map. (22 Del. C. 1953, § 711; 49 Del. Laws, c. 415, § 1.)

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