

By: Representatives Green, Hines

To: County Affairs;  
Municipalities

HOUSE BILL NO. 644

1 AN ACT TO REQUIRE THE BOARD OF SUPERVISORS OF EVERY COUNTY  
2 AND THE GOVERNING AUTHORITIES OF EVERY MUNICIPALITY TO ESTABLISH  
3 LOCAL PLANNING COMMISSIONS; TO PRESCRIBE THE POWERS AND DUTIES OF  
4 LOCAL PLANNING COMMISSIONS; TO PROVIDE FOR THE SELECTION OF  
5 MEMBERS OF THE COMMISSION AND TO PRESCRIBE THEIR QUALIFICATIONS,  
6 TERMS OF OFFICE AND COMPENSATION; TO PRESCRIBE THE PROCESS BY  
7 WHICH LOCAL PLANNING COMMISSIONS SHALL DEVELOP AND MAINTAIN THEIR  
8 POLICIES; TO PROVIDE FOR THE MANNER AND PROCEDURE THAT PLANNING  
9 COMMISSIONS SHALL FOLLOW IN ADOPTING AND ENFORCING ZONING  
10 ORDINANCES; TO PROVIDE A PROCEDURE FOR APPEALS FROM DECISIONS OF A  
11 COMMISSION AND FROM COURT DECISIONS PERTAINING TO ZONING  
12 ORDINANCES AND PLANNING COMMISSION ORDERS; TO PRESCRIBE PENALTIES  
13 FOR VIOLATIONS OF ZONING ORDINANCES AND PLANNING COMMISSIONS  
14 ORDERS; TO REPEAL SECTIONS 17-1-1 THROUGH 17-1-39, MISSISSIPPI  
15 CODE OF 1972, WHICH AUTHORIZE THE GOVERNING AUTHORITIES OF ANY  
16 MUNICIPALITY AND THE BOARD OF SUPERVISORS OF ANY COUNTY TO  
17 ESTABLISH LOCAL AND REGIONAL PLANNING COMMISSIONS TO REGULATE AND  
18 RESTRICT THE ERECTION, CONSTRUCTION, RECONSTRUCTION, ALTERATION,  
19 REPAIR AND USE OF BUILDINGS, STRUCTURES AND LAND WITHIN THEIR  
20 JURISDICTION; AND FOR RELATED PURPOSES.

21 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

22 **SECTION 1.** This act shall be known and may be cited as the  
23 "Local Planning Commission Act of 2003."

24 ARTICLE 1

25 CREATION OF LOCAL PLANNING COMMISSION

26 **SECTION 2.** (1) The governing authorities of each  
27 municipality and the board of supervisors of each county shall  
28 create a local planning commission. A municipality may exercise  
29 the powers granted under the provisions of this chapter in the  
30 total area within its corporate limits. A county may exercise the  
31 powers granted under the provisions of this chapter in the total  
32 unincorporated area or specific parts of the unincorporated area.  
33 Unincorporated areas of the county or counties adjacent to  
34 incorporated municipalities may be added to and included in the  
35 area under municipal jurisdiction for the purposes of this chapter  
36 provided that the governing authorities of the municipality and



37 the boards of supervisors of the counties involved, by ordinance  
38 duly adopted and entered upon their respective official minutes,  
39 establish the boundaries of the additional areas, limit of the  
40 authority to be exercised by the municipality and provide for  
41 representation on the boards and commissions provided for under  
42 this chapter.

43 (2) The governing authorities of a municipality may  
44 designate by ordinance the county planning commission as the  
45 official planning commission of the municipality. In the event of  
46 the designation and acceptance by the county, the county planning  
47 commission may exercise the powers and duties as provided in this  
48 chapter for municipal planning commissions as are specified in the  
49 agreement reached by the governing authorities of the municipality  
50 and the board of supervisors. The agreement must specify the  
51 procedures for the exercise of powers granted under this chapter  
52 and shall address the issue of equitable representation of the  
53 municipality and the county on the boards and commissions  
54 authorized by this chapter. This agreement must be formally  
55 stated in appropriate ordinances by the governing authorities  
56 involved.

57 **SECTION 3.** (1) A local planning commission, when created by  
58 an ordinance passed by the governing authorities of municipality  
59 or the county board of supervisors, or both, must undertake a  
60 continuing planning program for the physical, social and economic  
61 growth, development and redevelopment of the area within its  
62 jurisdiction. The plans and programs must be designed to promote  
63 public health, safety, morals, convenience, prosperity or the  
64 general welfare as well as the efficiency and economy of its area  
65 of jurisdiction. Specific planning elements must be based upon  
66 careful and comprehensive surveys and studies of existing  
67 conditions and probable future development and include recommended  
68 means of implementation. The local planning commission shall  
69 make, publish and distribute maps, plans, reports and



70 recommendations relating to the plans and programs and the  
71 development of its area of jurisdiction to public officials and  
72 agencies, public utility companies, civic, educational,  
73 professional and other organizations and citizens. All public  
74 officials, upon request, shall furnish to the planning commission,  
75 within a reasonable time, such available information as it may  
76 require for its work. The planning commission, its members and  
77 employees, in the performance of its functions, may enter upon any  
78 land with consent of the property owner or after ten (10) days'  
79 written notification to the owner of record, make examinations and  
80 surveys and place and maintain necessary monuments and marks on  
81 them; however, the planning commission shall be liable for any  
82 resulting injury or damage to property. In general, the planning  
83 commission has the powers as may be necessary to enable it to  
84 perform its functions and promote the planning of its political  
85 jurisdiction.

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

88 (a) Periodically prepare and revise plans and programs  
89 for the development and redevelopment of its area as provided in  
90 this chapter; and

91 (b) Prepare and recommend for adoption to the  
92 appropriate governing authority or authorities as a means for  
93 implementing the plans and programs in its area:

94 (i) Zoning ordinances to include zoning district  
95 maps and appropriate revisions thereof, as provided in this  
96 chapter;

97 (ii) Regulations for the subdivision or  
98 development of land and appropriate revisions thereof and to  
99 oversee the administration of the regulations that may be adopted  
100 as provided in this chapter;

101 (iii) An official map and appropriate revision on  
102 it showing the exact location of existing or proposed public



103 street, highway and utility rights-of-way and public building  
104 sites, together with regulations to control the erection of  
105 buildings or other structures or changes in land use within the  
106 rights-of-way, building sites, or open spaces within its political  
107 jurisdiction or a specified portion of it, as set forth in this  
108 chapter;

109 (iv) A landscaping ordinance setting forth  
110 required planting, tree preservation and other aesthetic  
111 considerations for land and structures;

112 (v) A capital improvements program setting forth  
113 projects required to implement plans which have been prepared and  
114 adopted, including an annual listing of priority projects for  
115 consideration by the governmental bodies responsible for  
116 implementation before preparation of their annual budget; and

117 (vi) Policies or procedures to facilitate  
118 implementation of planning elements.

119 **SECTION 4.** (1) A local planning commission serving not more  
120 than two (2) political jurisdictions may not have less than five  
121 (5) nor more than twelve (12) members. A local planning  
122 commission serving three (3) or more political jurisdictions shall  
123 have a membership not greater than four (4) times the number of  
124 jurisdictions it serves. In the case of a joint city-county  
125 planning commission, the membership must be proportional to the  
126 population inside and outside the corporate limits of  
127 municipalities.

128 (2) No member of a planning commission may hold an elected  
129 public office in the municipality or county from which appointed.  
130 Members of the commission first to serve must be appointed for  
131 staggered terms as described in the agreement of organization and  
132 shall serve until their successors are appointed and qualified.  
133 The compensation of the members, if any, must be determined by the  
134 governing authority or authorities creating the commission. A  
135 vacancy in the membership of a planning commission must be filled



136 for the unexpired term in the same manner as the original  
137 appointment. The governing authority or authorities creating the  
138 commission may remove any member of the commission for cause.

139 (3) In the appointment of planning commission members, the  
140 appointing authority shall consider their professional expertise,  
141 knowledge of the community and concern for the future welfare of  
142 the total community and its citizens. Members shall represent a  
143 broad cross section of the interests and concerns within the  
144 jurisdiction. The members shall also represent the diversity of  
145 the total community.

146 **SECTION 5.** (1) A local planning commission shall organize  
147 itself electing one (1) of its members as chairman and one (1) as  
148 vice chairman whose terms must be for one (1) year. It shall  
149 appoint a secretary who may be an officer or an employee of the  
150 governing authority or of the planning commission. The planning  
151 commission shall meet at the call of the chairman and at such  
152 times as the chairman or commission may determine.

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

159 **SECTION 6.** The governing authorities of a municipality or  
160 the board of supervisors of any county may provide for the  
161 reference of any matters or class of matters to the local planning  
162 commission; however, final action on it may not be taken until the  
163 planning commission has submitted a report on it or has had a  
164 reasonable period of time, as determined by the governing  
165 authorities or board of supervisors, to submit a report.

166 **SECTION 7.** A local planning commission may cooperate with,  
167 contract with or accept funds from federal government agencies,  
168 state government agencies, school districts, special purpose



169 districts, including those of other states, public or eleemosynary  
170 institutions or agencies or private individuals or corporations.  
171 A commission may expend the funds and it may carry out such  
172 cooperative undertakings and contracts as it considers necessary.

173 ARTICLE 3

174 THE COMPREHENSIVE PLANNING PROCESS

175 **SECTION 8.** (1) The local planning commission shall develop  
176 and maintain a planning process that will result in the systematic  
177 preparation and continual reevaluation and updating of those  
178 elements it considers critical, necessary and desirable to guide  
179 the development and redevelopment of its area of jurisdiction.

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

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

- 185 (a) Inventory of existing conditions;
- 186 (b) A statement of needs and goals; and
- 187 (c) Implementation strategies with time frames.

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

190 (1) A population element that considers historic trends  
191 and projections, household numbers and sizes, educational levels  
192 and income characteristics;

193 (2) An economic development element that considers  
194 labor force and labor force characteristics, employment by place  
195 of work and residence and analysis of the economic base;

196 (3) A natural resources element that considers coastal  
197 resources, prime agricultural and forest land, plant and animal  
198 habitats, parks and recreation areas, scenic views and sites,  
199 wetlands and soil types. Where a separate board exists under this  
200 chapter, this element is the responsibility of the existing board;



201           (4) A cultural resources element that considers  
202 historic buildings and structures, commercial districts,  
203 residential districts, unique, natural or scenic resources,  
204 archaeological and other cultural resources. Where a separate  
205 board exists under this chapter, this element is the  
206 responsibility of the existing board;

207           (5) A community facilities element that considers  
208 transportation network; water supply, treatment and distribution;  
209 sewage system and wastewater treatment; solid waste collection and  
210 disposal, fire protection, emergency medical services and general  
211 government facilities; education facilities and libraries and  
212 other cultural facilities;

213           (6) A housing element which considers location, types,  
214 age and condition of housing, owner and renter occupancy and  
215 affordability of housing; and

216           (7) A land use element which considers existing and  
217 future land use by categories, including residential, commercial,  
218 industrial, agricultural, forestry, public and quasi-public,  
219 recreation, parks, open space and vacant or undeveloped.

220           (5) All planning elements must be an expression of the  
221 planning commission recommendations to the appropriate governing  
222 bodies with regard to the wise and efficient use of public funds,  
223 the future growth, development and redevelopment of its area of  
224 jurisdiction and consideration of the fiscal impact on property  
225 owners. The planning elements whether done as a package or in  
226 separate increments together comprise the comprehensive plan for  
227 the jurisdiction at any one point in time. The local planning  
228 commission shall review the comprehensive plan or elements of it  
229 as often as necessary, but not less than once every five (5)  
230 years, to determine whether changes in the amount, kind, or  
231 direction of development of the area or other reasons make it  
232 desirable to make additions or amendments to the plan. The



233 comprehensive plan, including all elements of it, must be updated  
234 at least every ten (10) years.

235         SECTION 9. (1) In the preparation or periodic updating of  
236 any planning elements for the jurisdiction, the planning  
237 commission may use advisory committees with membership from both  
238 the planning commission or other public involvement mechanisms and  
239 other resource people not members of the planning commission. If  
240 the local government maintains a list of groups that have  
241 registered an interest in being informed of proceedings related to  
242 planning, notice of meetings must be mailed to these groups.

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

254         (3) In satisfying the preparation and periodic updating of  
255 the required planning elements, the planning commission shall  
256 review and consider, and may recommend by reference, plans  
257 prepared by other agencies that the planning commission considers  
258 to meet the requirements of this article.

259         SECTION 10. The local planning commission may recommend to  
260 the appropriate governing body and the body may adopt the plan as  
261 a whole by a single ordinance or elements of the plan by  
262 successive ordinances. The elements shall correspond with the  
263 major geographical sections or divisions of the planning area or  
264 with functional subdivisions of the subject matter of the  
265 comprehensive plan, or both. Before adoption of an element or a





266 plan as a whole, the governing authority shall hold a public  
267 hearing on it after not less than fifteen (15) days' notice of the  
268 time and place of the hearings has been given in a newspaper  
269 having general circulation in the jurisdiction.

270       **SECTION 11.** When the local planning commission has  
271 recommended and local governing authority or authorities have  
272 adopted the related comprehensive plan element set forth in this  
273 chapter, no new street, structure, utility, square, park or other  
274 public way, grounds, or open space or public buildings for any  
275 use, whether publicly or privately owned, may be constructed or  
276 authorized in the political jurisdiction of the governing  
277 authority or authorities establishing the planning commission  
278 until the location, character and extent of it have been submitted  
279 to the planning commission for review and comment as to the  
280 compatibility of the proposal with the comprehensive plan of the  
281 community. If the planning commission finds the proposal to be in  
282 conflict with the comprehensive plan, the commission shall  
283 transmit its findings and the particulars of the nonconformity to  
284 the entity proposing the facility. If the entity proposing the  
285 facility determines to go forward with the project that conflicts  
286 with the comprehensive plan, the governing or policy making body  
287 of the entity shall publicly state its intention to proceed and  
288 the reasons for the action. A copy of this finding must be sent  
289 to the local governing body, the local planning commission and  
290 published as a public notice in a newspaper of general circulation  
291 in the community at least thirty (30) days before awarding a  
292 contract or beginning construction. Telephone, sewer and gas  
293 utilities, or electric suppliers, utilities and providers, whether  
294 publicly or privately owned, whose plans have been approved by the  
295 local governing body or a state or federal regulatory agency, or  
296 electric suppliers, utilities and providers who are acting in  
297 accordance with a legislatively delegated right are exempt from



298 this provision. These utilities must submit construction  
299 information to the appropriate local planning commission.

300 ARTICLE 5

301 LOCAL PLANNING -- ZONING

302 **SECTION 12.** (1) Zoning ordinances must be for the general  
303 purposes of guiding development in accordance with existing and  
304 future needs and promoting the public health, safety, morals,  
305 convenience, order, appearance, prosperity and general welfare.  
306 To these ends, zoning ordinances must be made with reasonable  
307 consideration of the following purposes, where applicable, to:

308 (a) Provide for adequate light, air and open space;

309 (b) Prevent the overcrowding of land, to avoid undue  
310 concentration of population and to lessen congestion in the  
311 streets;

312 (c) Facilitate the creation of a convenient, attractive  
313 and harmonious community;

314 (d) Protect and preserve scenic, historic or  
315 ecologically sensitive areas;

316 (e) Regulate the density and distribution of  
317 populations and the uses of buildings, structures and land for  
318 trade, industry, residence, recreation, agriculture, forestry,  
319 conservation, airports and approaches thereto, water supply,  
320 sanitation, protection against floods, public activities and other  
321 purposes;

322 (f) Facilitate the adequate provision or availability  
323 of transportation, police and fire protection, water, sewage,  
324 schools, parks and other recreational facilities, affordable  
325 housing, disaster evacuation and other public services and  
326 requirements. "Other public requirements" that the local  
327 governing body intends to address by a particular ordinance or  
328 action must be specified in the preamble or some other part of the  
329 ordinance or action;



330 (g) Secure safety from fire, flood and other dangers;  
331 and

332 (h) Further the public welfare in any other regard  
333 specified by a local governing body.

334 **SECTION 13.** (1) When the local planning commission has  
335 prepared and recommended and the governing body has adopted at  
336 least the land use element of the comprehensive plan as set forth  
337 in this chapter, the governing body of a municipality or county  
338 may adopt a zoning ordinance to help implement the comprehensive  
339 plan. The zoning ordinance shall create zoning districts of such  
340 number, shape and size as the governing authority determines to be  
341 best suited to carry out the purposes of this chapter. Within  
342 each district the governing body may regulate:

343 (a) The use of buildings, structures and land;

344 (b) The size, location, height, bulk, orientation,  
345 number of stories, erection, construction, reconstruction,  
346 alteration, demolition or removal in whole or in part of buildings  
347 and other structures, including signage;

348 (c) The density of development, use or occupancy of  
349 buildings, structures or land;

350 (d) The areas and dimensions of land, water and air  
351 space to be occupied by buildings and structures and the size of  
352 yards, courts and other open spaces;

353 (e) The amount of off-street parking and loading that  
354 must be provided and restrictions or requirements related to the  
355 entry or use of motor vehicles on the land;

356 (f) Other aspects of the site plan including, but not  
357 limited to, tree preservation, landscaping, buffers, lighting and  
358 curb cuts; and

359 (g) Other aspects of the development and use of land or  
360 structures necessary to accomplish the purposes set forth  
361 throughout this chapter.



362 (2) The regulations must be made in accordance with the  
363 comprehensive plan for the jurisdiction and be made with a view to  
364 promoting the purposes set forth throughout this chapter. Except  
365 as provided in this chapter, all of these regulations must be  
366 uniform for each class or kind of building, structure, or use  
367 throughout each district, but the regulations in one (1) district  
368 may differ from those in other districts.

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

374 (a) "Cluster development" or the grouping of  
375 residential, commercial or industrial uses within a subdivision or  
376 development site, permitting a reduction in the otherwise  
377 applicable lot size, while preserving substantial open space on  
378 the remainder of the parcel;

379 (b) "Floating zone" or a zone that is described in the  
380 text of a zoning ordinance but is unmapped. A property owner may  
381 petition for the zone to be applied to a particular parcel meeting  
382 the minimum zoning district area requirements of the zoning  
383 ordinance through legislative action;

384 (c) "Performance zoning" or zoning that specifies a  
385 minimum requirement or maximum limit on the effects of a land use  
386 rather than, or in addition to, specifying the use itself,  
387 simultaneously assuring compatibility with surrounding development  
388 and increasing a developer's flexibility;

389 (d) "Planned development district" or a development  
390 project comprised of housing of different types and densities and  
391 of compatible commercial uses, or shopping centers, office parks  
392 and mixed-use developments. A planned development district is  
393 established by rezoning prior to development and is characterized  
394 by a unified site design for a mixed-use development;



395 (e) "Overlay zone" or a zone that imposes a set of  
396 requirements or relaxes a set of requirements imposed by the  
397 underlying zoning district when there is a special public interest  
398 in a particular geographic area that does not coincide with the  
399 underlying zone boundaries; and

400 (f) "Conditional uses" or zoning ordinance provisions  
401 that impose conditions, restrictions, or limitations on a  
402 permitted use that are in addition to the restrictions applicable  
403 to all land in the zoning district. The conditions, restrictions,  
404 or limitations must be set forth in the text of the zoning  
405 ordinance.

406 **SECTION 14.** The regulations may provide that land, buildings  
407 and structures and the uses of them that are lawful at the time of  
408 the enactment or amendment of zoning regulations may be continued  
409 although not in conformity with the regulations or amendments,  
410 which is called a nonconformity. The governing authority of a  
411 municipality or county may provide in the zoning ordinance or  
412 resolution for the continuance, restoration, reconstruction,  
413 extension or substitution of nonconformities. The governing  
414 authority also may provide for the termination of a nonconformity  
415 by specifying the period or periods in which the nonconformity is  
416 required to cease or be brought into conformance, or by providing  
417 a formula where the compulsory termination of nonconformities may  
418 be so fixed as to allow for the recovery or amortization of the  
419 investment in the nonconformity.

420 **SECTION 15.** In order to achieve the objectives of the  
421 comprehensive plan of the locality and to allow flexibility in  
422 development that will result in improved design, character and  
423 quality of new mixed-use developments and preserve natural and  
424 scenic features of open spaces, the local governing authority may  
425 provide for the establishment of planned development districts as  
426 amendments to a locally adopted zoning ordinance and official  
427 zoning map. The adopted planned development map is the zoning



428 district map for the property. The planned development provisions  
429 must encourage innovative site planning for residential,  
430 commercial, institutional and industrial developments within  
431 planned development districts. Planned development districts may  
432 provide for variations from other ordinances and the regulations  
433 of other established zoning districts concerning use, setbacks,  
434 lot size, density, bulk and other requirements to accommodate  
435 flexibility in the arrangement of uses for the general purpose of  
436 promoting and protecting the public health, safety and general  
437 welfare. Amendments to a planned development district may be  
438 authorized by ordinance of the governing authority after  
439 recommendation from the planning commission. These amendments  
440 constitute zoning ordinance amendments and must follow prescribed  
441 procedures for the amendments. The adopted plan may include a  
442 method for minor modifications to the site plan or development  
443 provisions.

444 **SECTION 16.** (1) Before enacting or amending any zoning  
445 regulations or maps, the governing authority or the planning  
446 commission, if authorized by the governing authority, shall hold a  
447 public hearing on it, which must be advertised and conducted  
448 according to lawfully prescribed procedures. At least fifteen  
449 (15) days' notice of the time and place of the public hearing must  
450 be given in a newspaper of general circulation in the municipality  
451 or county. In cases involving rezoning, conspicuous notice shall  
452 be posted on the property affected, with at least one such notice  
453 being visible from each public thoroughfare that abuts the  
454 property. If the local government maintains a list of groups that  
455 have expressed an interest in being informed of zoning  
456 proceedings, notice of such meetings must be mailed to these  
457 groups. No change in or departure from the text or maps as  
458 recommended by the local planning commission may be made pursuant  
459 to the hearing unless the change or departure is first submitted  
460 to the planning commission for review and recommendation. The



461 planning commission shall have a time prescribed in the ordinance  
462 that may not be more than thirty (30) days within which to submit  
463 its report and recommendation on the change to the governing  
464 authority. If the planning commission fails to submit a report  
465 within the prescribed time period, it is deemed to have approved  
466 the change or departure. When the required public hearing is held  
467 by the planning commission, no public hearing by the governing  
468 authority is required before amending the zoning ordinance text or  
469 maps.

470 (2) A landowner whose land is the subject of a proposed  
471 amendment is allowed to present oral or written comments to the  
472 planning commission. At least ten (10) days' notice and an  
473 opportunity to comment in the same manner must be given to other  
474 interested members of the public, including owners of adjoining  
475 property.

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

480 (4) No challenge to the adequacy of notice or challenge to  
481 the validity of a regulation or map, or any amendment to it,  
482 whether enacted before or after the effective date of this act,  
483 may be made thirty (30) days after the decision of the governing  
484 body if there has been substantial compliance with the notice  
485 requirements of this section or with established procedures of the  
486 governing authority or the planning commission.

487 **SECTION 17.** (1) Agencies, departments and subdivisions of  
488 this state that use real property, as owner or tenant, in any  
489 county or municipality in this state are subject to the zoning  
490 ordinances.

491 (2) A county or agency, department or subdivision of it that  
492 uses any real property, as owner or tenant, within the limits of



493 any municipality in this state is subject to the zoning ordinances  
494 of the municipality.

495 (3) A municipality or agency, department or subdivision of  
496 it, that uses any real property, as owner or tenant, within the  
497 limits of any county in this state but not within the limits of  
498 the municipality is subject to the zoning ordinances of the  
499 county.

500 (4) The provisions of this section do not require a state  
501 agency, department or subdivision to move from facilities occupied  
502 before the enactment of this act, regardless of whether or not  
503 their location is in violation of municipal or county zoning  
504 ordinances.

505 **SECTION 18.** (1) As a part of the administrative mechanism  
506 designed to enforce the zoning ordinance, the zoning ordinance may  
507 provide for the creation of a board to be known as the Board of  
508 Zoning Adjustments. Local governing bodies with a joint planning  
509 commission and adopting a common zoning ordinance may create a  
510 board to be known as the Joint Board of Adjustments. All of these  
511 boards are referred to as the board.

512 (2) The board consists of not less than three (3) nor more  
513 than nine (9) members, a majority of which constitutes a quorum.  
514 The board shall be appointed by the governing authority or  
515 authorities of the area served. The members shall serve for  
516 overlapping terms of not less than three (3) nor more than five  
517 (5) years or after that time until their successors are appointed.  
518 A vacancy in the membership must be filled for the unexpired term  
519 in the same manner as the initial appointment. The governing  
520 authority or authorities creating the board of zoning adjustments  
521 may remove any member of the board for cause. The appointing  
522 authorities shall determine the amount of compensation, if any, to  
523 be paid to the members of a board of zoning appeals. None of the  
524 members shall hold any other public office or position in the  
525 municipality or county.





526           **SECTION 19.** The board shall elect one (1) of its members  
527 chairman, who shall serve for one (1) year or until he is  
528 reelected or his successor is elected and qualified. The board  
529 shall appoint a secretary who may be an officer of the governing  
530 authority or of the zoning board. The board shall adopt rules of  
531 procedure in accordance with the provisions of an ordinance  
532 adopted pursuant to this chapter. Meetings of the board must be  
533 held at the call of the chairman and at such other times as the  
534 board may determine. Public notice of all meetings of the board  
535 of appeals shall be provided by publication in a newspaper of  
536 general circulation in the municipality or county. In cases  
537 involving variances or special exceptions conspicuous notice shall  
538 be posted on or adjacent to the property affected, with at least  
539 one such notice being visible from each public thoroughfare that  
540 abuts the property. The chairman or, in his or her absence, the  
541 acting chairman, may administer oaths and compel the attendance of  
542 witnesses by subpoena. The board shall keep minutes of its  
543 proceedings, showing the vote of each member upon each question,  
544 or if absent or failing to vote, indicating that fact and shall  
545 keep records of its examinations and other official actions, all  
546 of which must be immediately filed in the office of the board and  
547 must be a public record.

548           **SECTION 20.** (1) The board of adjustments has the following  
549 powers:

550                   (a) To hear and decide appeals where it is alleged  
551 there is error in an order, requirement, decision or determination  
552 made by an administrative official in the enforcement of the  
553 zoning ordinance;

554                   (b) To hear and decide appeals for variance from the  
555 requirements of the zoning ordinance when strict application of  
556 the provisions of the ordinance would result in unnecessary  
557 hardship. A variance may be granted in an individual case of



558 unnecessary hardship if the board makes and explains in writing  
559 the following findings:

560 (i) There are extraordinary and exceptional  
561 conditions pertaining to the particular piece of property;

562 (ii) These conditions do not generally apply to  
563 other property in the vicinity;

564 (iii) Because of these conditions, the application  
565 of the ordinance to the particular piece of property would  
566 effectively prohibit or unreasonably restrict the utilization of  
567 the property; and

568 (iv) The authorization of a variance will not be  
569 of substantial detriment to adjacent property or to the public  
570 good and the character of the district will not be harmed by the  
571 granting of the variance.

572 The board may not grant a variance the effect of which would  
573 be to allow the establishment of a use not otherwise permitted in  
574 a zoning district, to extend physically a nonconforming use of  
575 land or to change the zoning district boundaries shown on the  
576 official zoning map. The fact that property may be utilized more  
577 profitably, should a variance be granted, may not be considered  
578 grounds for a variance. Other requirements may be prescribed by  
579 the zoning ordinance.

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

588 In granting a variance, the board may attach to it such  
589 conditions regarding the location, character, or other features of  
590 the proposed building, structure or use as the board considers



591 advisable to protect established property values in the  
592 surrounding area or to promote the public health, safety or  
593 general welfare.

594 (c) To permit uses by special exception subject to the  
595 terms and conditions for the uses set forth for such uses in the  
596 zoning ordinance.

597 (2) (a) Appeals to the board may be taken by any person  
598 aggrieved or by any officer, department, board or bureau of the  
599 municipality or county. The appeal must be taken within a  
600 reasonable time, as provided by the zoning ordinance or rules of  
601 the board, or both, by filing with the officer from whom the  
602 appeal is taken and with the board of appeals notice of appeal  
603 specifying the grounds of it. If no time is provided, the appeals  
604 must be taken within thirty (30) days from the date the appealing  
605 party has received actual notice of the action from which the  
606 appeal is taken. The officer from whom the appeal is taken  
607 immediately shall transmit to the board all the papers  
608 constituting the record upon which the action appealed from was  
609 taken.

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

619 (c) The board shall fix a reasonable time for the  
620 hearing of the appeal or other matter referred to it and give at  
621 least fifteen (15) days' public notice of it in a newspaper of  
622 general circulation in the community, as well as due notice to the  
623 parties in interest, and shall decide the question within a



624 reasonable time. At the hearing, any party may appear in person,  
625 by agent or by attorney.

626 (d) In exercising the power under this section, the  
627 board of appeals, in conformity with the provisions of this  
628 chapter, may reverse or affirm, wholly or in part, or may modify  
629 the order, requirements, decision or determination and to that end  
630 shall have all the powers of the officer from whom the appeal is  
631 taken and may issue or direct the issuance of a permit. The board  
632 in the execution of the duties specified in this chapter, may  
633 subpoena witnesses and, in case of contempt, may certify this fact  
634 to the circuit court having jurisdiction.

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

640 **SECTION 21.** In case of contempt by a party, witness or other  
641 person before the board of appeals, the board may certify this  
642 fact to the circuit court of the county in which the contempt  
643 occurs and the judge of the court, in open court or in chambers,  
644 after hearing, may impose a penalty as authorized by law.

645 **SECTION 22.** A person who may have a substantial interest in  
646 any decision of the board of adjustments or an officer or agent of  
647 the appropriate governing authority may appeal from a decision of  
648 the board to the circuit court in and for the county by filing  
649 with the clerk of the court a petition in writing setting forth  
650 plainly, fully and distinctly why the decision is contrary to law.  
651 The appeal must be filed within thirty (30) days after the  
652 decision of the board is mailed.

653 **SECTION 23.** (1) Upon the filing of the appeal, the clerk of  
654 the circuit court shall give immediate notice of it to the  
655 secretary of the board and within thirty (30) days from the time  
656 of the notice the board shall file with the clerk a certified copy



657 of the proceedings held before the board of appeals, including a  
658 transcript of the evidence heard before it, if any, and the  
659 decision of the board including its findings of fact and  
660 conclusions.

661 (2) The filing of an appeal in the circuit court from a  
662 decision of the board shall not ipso facto act as a supersedeas,  
663 but the judge of the circuit court may in his discretion grant a  
664 supersedeas upon such terms and conditions as may seem reasonable  
665 and proper.

666 **SECTION 24.** At the next term of the circuit court or in  
667 chambers, upon ten (10) days' notice to the parties, the presiding  
668 judge of the circuit court of the county shall proceed to hear and  
669 pass upon the appeal on the certified record of the board  
670 proceedings. The findings of fact by the board of adjustments  
671 shall be treated in the same manner as a finding of fact by a jury  
672 and the court may not take additional evidence. If the judge  
673 determines that the certified record is insufficient for review,  
674 the matter may be remanded to the zoning board of adjustments for  
675 rehearing. In determining the questions presented by the appeal,  
676 the court shall determine only whether the decision of the board  
677 is correct as a matter of law. If the decision of the board is  
678 reversed by the circuit court, the board is charged with the costs  
679 and the costs must be paid by the governing authority that  
680 established the board of appeals.

681 **SECTION 25.** A party in interest who is aggrieved by the  
682 judgment rendered by the circuit court upon the appeal may appeal  
683 in the manner provided by the Mississippi Rules of Appellate  
684 Procedure.

685 **SECTION 26.** The governing authority may appropriate such  
686 monies, otherwise unappropriated, as it considers fit to finance  
687 the work of the board of adjustments and to provide generally for  
688 the enforcement of any zoning regulations and restrictions  
689 authorized under this chapter that are adopted and may accept and



690 expend grants of money for those purposes from either private or  
691 public sources, whether local, state or federal.

692       **SECTION 27.** (1) A local government that enacts a zoning  
693 ordinance that makes specific provision for the preservation and  
694 protection of historic and architecturally valuable districts and  
695 neighborhoods or significant or natural scenic areas, or protects  
696 or provides, or both, for the unique, special or desired character  
697 of a defined district, corridor or development area or any  
698 combination of it, by means of restriction and conditions  
699 governing the right to erect, demolish, remove in whole or in  
700 part, or alter the exterior appearance of all buildings or  
701 structures within the areas, may provide for appointment of a  
702 board of architectural review or similar body.

703       (2) The board shall consist of not more than ten (10)  
704 members to be appointed by the governing authorities of the  
705 municipality or the board of supervisors of the county which may  
706 restrict the membership on the board to those professionally  
707 qualified persons as it may desire. The governing authorities  
708 creating the board may remove for cause any member of the board  
709 that it has appointed.

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

714       (4) The board shall elect one (1) of its members chairman,  
715 who shall serve for one (1) year or until he is reelected or his  
716 successor is elected and qualified. The board shall appoint a  
717 secretary who may be an officer of the governing authority or of  
718 the board of architectural review. The board shall adopt rules of  
719 procedure in accordance with the provisions of any ordinance  
720 adopted under this chapter. Meetings of the board must be held at  
721 the call of the chairman and at such other times as the board may  
722 determine. The chairman or, in his or her absence, the acting



723 chairman, may administer oaths and compel the attendance of  
724 witnesses by subpoena. The board shall keep minutes of its  
725 proceedings, showing the vote of each member upon each question,  
726 or if absent or failing to vote, indicating that fact and shall  
727 keep records of its examinations and other official actions, all  
728 of which immediately must be filed in the office of the board and  
729 must be a public record.

730 **SECTION 28.** The board of architectural review has those  
731 powers involving the structures and neighborhoods as may be  
732 determined by the zoning ordinance. Decisions of the Planning  
733 Director or other appropriate administrative official in matters  
734 under the purview of the board of architectural review may be  
735 appealed to the board where there is an alleged error in any  
736 order, requirement, determination or decision.

737 **SECTION 29.** (1) Appeals to the board may be taken by any  
738 person aggrieved or by any officer, department, board or bureau of  
739 the municipality or county. The appeal must be taken within a  
740 reasonable time, as provided by the zoning ordinance or rules of  
741 the board, or both, by filing with the officer from whom the  
742 appeal is taken and with the board of architectural review notice  
743 of appeal specifying the grounds of it. The officer from whom the  
744 appeal is taken immediately shall transmit to the board all the  
745 papers constituting the record upon which the action appealed from  
746 was taken.

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



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

761 **SECTION 30.** A person who may have a substantial interest in  
762 any decision of the board of architectural review or any officer,  
763 or agent of the appropriate governing authority may appeal from  
764 any decision of the board to the circuit court in and for the  
765 county by filing with the clerk of the court a petition in writing  
766 setting forth plainly, fully and distinctly why the decision is  
767 contrary to law. The appeal must be filed within thirty (30) days  
768 after the affected party receives actual notice of the decision of  
769 the board of architectural review.

770 **SECTION 31.** In case of contempt by a party, witness or other  
771 person before the board of architectural review, the board may  
772 certify the fact to the circuit court of the county in which the  
773 contempt occurs and the judge of the court, in open court or in  
774 chambers, after hearing, may impose a penalty as authorized by  
775 law.

776 **SECTION 32.** (1) Upon filing of the appeal, the clerk of the  
777 circuit court shall give immediate notice of it to the secretary  
778 of the board and within thirty (30) days from the time of the  
779 notice the board shall file with the clerk a duly certified copy  
780 of the proceedings had before the board of architectural review,  
781 including a transcript of the evidence heard before it, if any,  
782 and the decision of the board including its findings of fact and  
783 conclusions.

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





789           **SECTION 33.** At the next term of the circuit court or in  
790 chambers upon ten (10) days' notice to the parties, the resident  
791 presiding judge of the circuit court of the county shall proceed  
792 to hear and pass upon the appeal on the certified record of the  
793 board proceedings. The findings of fact by the board of  
794 architectural review are final and conclusive on the hearing of  
795 the appeal and the court may not take additional evidence. If the  
796 judge determines that the certified record is insufficient for  
797 review, the matter must be remanded to the board of architectural  
798 review for rehearing. In determining the questions presented by  
799 the appeal, the court shall determine only whether the decision of  
800 the board is correct as a matter of law. If the decision of the  
801 board is reversed by the circuit court, the board must be charged  
802 with the costs and they must be paid by the governing authority  
803 that established the board of architectural review.

804           **SECTION 34.** A party in interest who is aggrieved by the  
805 judgment rendered by the circuit court upon the appeal may appeal  
806 in the manner provided by the Mississippi Rules of Appellate  
807 Procedure.

808           **SECTION 35.** (1) The governing authorities of municipalities  
809 or the boards of supervisors of counties may provide for the  
810 enforcement of any ordinance adopted pursuant to the provisions of  
811 this chapter by means of the withholding of building or zoning  
812 permits, or both, and the issuance of stop orders against any work  
813 undertaken by an entity not having a proper building or zoning  
814 permit, or both. It is unlawful to construct, reconstruct, alter,  
815 demolish, change the use of or occupy any land, building or other  
816 structure without first obtaining the appropriate permit or permit  
817 approval. No permit may be issued or approved unless the  
818 requirements of this chapter or any ordinance adopted pursuant to  
819 it are complied with. It is unlawful for other officials to issue  
820 any permit for the use of any land, building or structure, or the  
821 construction, conversion, demolition, enlargement, movement or



822 structural alteration of a building or structure, without the  
823 approval of the planning director or his/her designee. A  
824 violation of any ordinance adopted pursuant to the provisions of  
825 this chapter is a misdemeanor. If a building, structure or land  
826 is or is proposed to be used in violation of any ordinance adopted  
827 pursuant to this chapter, the planning director or other  
828 appropriate administrative officer, municipal or county attorney,  
829 or other appropriate authority of the municipality or county or an  
830 adjacent or neighboring property owner who would be specially  
831 damaged by the violation may in addition to other remedies,  
832 institute an injunction, mandamus or other appropriate action or  
833 proceeding to prevent the unlawful erection, construction,  
834 reconstruction, alteration, conversion, maintenance or use, or to  
835 correct or abate the violation, or to prevent the occupancy of the  
836 building, structure or land. Each day the unlawful erection,  
837 construction, reconstruction, alteration, conversion, maintenance  
838 or use continues is considered a separate offense.

839 (2) If a building, structure or land is or is proposed to be  
840 used in violation of an ordinance adopted pursuant to this  
841 chapter, the planning director or other designated administrative  
842 officer, in addition to other remedies, may issue and serve upon a  
843 person pursuing the activity or activities a stop order requiring  
844 that entity to stop all activities in violation of the zoning  
845 ordinance.

846 **SECTION 36.** When the regulations made under authority of  
847 this chapter require a greater width or size of yards, courts or  
848 other open spaces, or require a lower height of building or  
849 smaller number of stories, or require a greater percentage of lot  
850 to be left unoccupied, or impose other more restrictive standards  
851 than are required in or under another statute, local ordinance or  
852 regulation, the regulations made under authority of this chapter  
853 govern. When the provisions of another statute require more  
854 restrictive standards than are required by the regulations made



855 under authority of this chapter, the provisions of that statute  
856 govern.

857 ARTICLE 7

858 LOCAL PLANNING -- LAND DEVELOPMENT REGULATION

859 **SECTION 37.** As used in this article:

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

866 (b) "Subdivision" means all divisions of a tract or  
867 parcel of land into two (2) or more lots, building sites, or other  
868 divisions for the purpose, whether immediate or future, of sale,  
869 lease or building development and includes all division of land  
870 involving a new street or change in existing streets and includes  
871 re-subdivision that would involve the further division or  
872 relocation of lot lines of any lot or lots within a subdivision  
873 previously made and approved or recorded according to law; or, the  
874 alteration of any streets or the establishment of any new streets  
875 within any subdivision previously made and approved or recorded  
876 according to law and includes combinations of lots of record;  
877 however, the following exceptions are included within this  
878 definition only for the purpose of requiring that the local  
879 planning agency be informed and have a record of the subdivisions:

880 (i) The combination or recombination of portions  
881 of previously platted lots where the total number of lots is not  
882 increased and the resultant lots are equal to the standards of the  
883 governing authority;

884 (ii) The division of land into parcels of five (5)  
885 acres or more where no new street is involved and plats of these  
886 exceptions must be received as information by the planning agency  
887 which shall indicate that fact on the plats; and



888 (iii) The combination or recombination of entire  
889 lots of record where no new street or change in existing streets  
890 is involved.

891 **SECTION 38.** The public health, safety, economy, good order,  
892 appearance, convenience, morals and general welfare require the  
893 harmonious, orderly and progressive development of land within the  
894 municipalities and counties of the state. In furtherance of this  
895 general intent, the regulation of land development by  
896 municipalities, counties or consolidated political subdivisions is  
897 authorized for the following purposes, among others:

898 (a) To encourage the development of economically sound  
899 and stable municipalities and counties;

900 (b) To assure the timely provision of required streets,  
901 utilities and other facilities and services to new land  
902 developments;

903 (c) To assure the adequate provision of safe and  
904 convenient traffic access and circulation, both vehicular and  
905 pedestrian, in and through new land developments;

906 (d) To assure the provision of needed public open  
907 spaces and building sites in new land developments through the  
908 dedication or reservation of land for recreational, educational,  
909 transportation and other public purposes; and

910 (e) To assure, in general, the wise and timely  
911 development of new areas and redevelopment of previously developed  
912 areas in harmony with the comprehensive plans of municipalities  
913 and counties.

914 **SECTION 39.** (1) When at least the community facilities  
915 element of the comprehensive plan as authorized by this chapter  
916 has been adopted by the local planning commission and the local  
917 governing body or bodies, the local planning commission may  
918 prepare and recommend to the governing body or bodies for adoption  
919 regulations governing the development of land within the  
920 jurisdiction. These regulations may provide for the harmonious



921 development of the municipality and the county; for coordination  
922 of streets within subdivision and other types of land developments  
923 with other existing or planned streets or official map streets;  
924 for the size of blocks and lots; for the dedication or reservation  
925 of land for streets, school sites and recreation areas and of  
926 easements for utilities and other public services and facilities;  
927 and for the distribution of population and traffic that will tend  
928 to create conditions favorable to health, safety, convenience,  
929 appearance, prosperity or the general welfare. In particular, the  
930 regulations shall prescribe that no land development plan,  
931 including subdivision plats, will be approved unless all land  
932 intended for use as building sites can be used safely for building  
933 purposes, without danger from flood or other inundation or from  
934 other menaces to health, safety or public welfare.

935 (2) These regulations may include requirements as to the  
936 extent to which and the manner in which streets must be graded,  
937 surfaced and improved and water, sewers, septic tanks and other  
938 utility mains, piping, connections or other facilities must be  
939 installed as a condition precedent to the approval of the plan.  
940 The governing authorities of the municipality and the board of  
941 supervisors of the county may adopt and amend the land development  
942 regulations after a public hearing on it, giving at least thirty  
943 (30) days' notice of the time and place by publication in a  
944 newspaper of general circulation in the municipality or county.

945 **SECTION 40.** After the local governing authority has adopted  
946 land development regulations, no subdivision plat or other land  
947 development plan within the jurisdiction of the regulations may be  
948 filed or recorded in the office of the county where deeds are  
949 required to be recorded and no building permit may be issued until  
950 the plat or plan bears the stamp of approval and is properly  
951 signed by the designated authority. The submission for filing or  
952 the recording of a subdivision plat or other land development plan  
953 without proper approval as required by this chapter is declared a



954 misdemeanor and, upon conviction, is punishable as provided by  
955 law.

956        SECTION 41. (1) The land development regulations adopted by  
957 the governing authority must include a specific procedure for the  
958 submission and approval or disapproval by the planning commission  
959 or designated staff. These procedures may include requirements  
960 for submission of sketch plans, preliminary plans and final plans  
961 for review and approval or disapproval. Time limits, not to  
962 exceed sixty (60) days, must be set forth for action on plans or  
963 plats, or both, submitted for approval or disapproval. Failure of  
964 the designated authority to act within sixty (60) days of the  
965 receipt of development plans or subdivision plats with all  
966 documentation required by the land development regulations is  
967 deemed to constitute approval and the developer must be issued a  
968 letter of approval and authorization to proceed based on the plans  
969 or plats and supporting documentation presented. The sixty-day  
970 time limit may be extended by mutual agreement.

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

976        (3) Staff action, if authorized, to approve or disapprove a  
977 land development plan may be appealed to the planning commission  
978 by any party in interest. The planning commission shall act on  
979 the appeal within sixty (60) days and the action of the planning  
980 commission is final. An appeal from the decision of the planning  
981 commission may be taken to circuit court within thirty (30) days  
982 after actual notice of the decision.

983        SECTION 42. The county official whose duty it is to accept  
984 and record real estate deeds and plats may not accept, file or  
985 record a land development plan or subdivision plat involving a  
986 land area subject to land development regulations adopted pursuant



987 to this chapter unless the development plan or subdivision plat  
988 has been properly approved. If a public official violates the  
989 provisions of this section, he is, in each instance, subject to  
990 the penalty provided in this article and the affected governing  
991 body, private individual or corporation has rights and remedies as  
992 to enforcement or collection as are provided and may enjoin any  
993 violations of them.

994 **SECTION 43.** The approval of the land development plan or  
995 subdivision plat may not be deemed to automatically constitute or  
996 effect an acceptance by the municipality or the county or the  
997 public of the dedication of any street, easement or other ground  
998 shown upon the plat. Public acceptance of the lands must be by  
999 action of the governing body customary to these transactions.

1000 **SECTION 44.** In circumstances where the land development  
1001 regulations adopted pursuant to this chapter require the  
1002 installation and approval of site improvements before approval of  
1003 the land development plan or subdivision plat for recording in the  
1004 office of the county official whose duty it is to accept and  
1005 record the instruments, the developer may be permitted to post a  
1006 surety bond, certified check or other instrument readily  
1007 convertible to cash. The surety must be in an amount equal to at  
1008 least one hundred twenty-five percent (125%) of the cost of the  
1009 improvement. This surety must be in favor of the local government  
1010 to ensure that, in the event of default by the developer, funds  
1011 will be used to install the required improvements at the expense  
1012 of the developer.

1013 **SECTION 45.** The owner or agent of the owner of any property  
1014 being developed within the municipality or county may not transfer  
1015 title to any lots or parts of the development unless the land  
1016 development plan or subdivision has been approved by the local  
1017 planning commission or designated authority and an approved plan  
1018 or plat recorded in the office of the county charged with the  
1019 responsibility of recording deeds, plats and other property



1020 records. A transfer of title in violation of this provision is a  
1021 misdemeanor and, upon conviction, may be punished, in the  
1022 discretion of the court. A description by metes and bounds in the  
1023 instrument of transfer or other document used in the process of  
1024 transfer does not exempt the transaction from these penalties.  
1025 The municipality or county may enjoin the transfer by appropriate  
1026 action.

1027        SECTION 46. (1) A local planning commission created under  
1028 the provisions of this chapter, by proper certificate, shall  
1029 approve and authorize the name of a street or road laid out within  
1030 the territory over which the commission has jurisdiction. It is  
1031 unlawful for a person in laying out a new street or road to name  
1032 the street or road on a plat, by a marking or in a deed or  
1033 instrument without first getting the approval of the planning  
1034 commission. Any person violating this provision is guilty of a  
1035 misdemeanor and, upon conviction, may be punished, in the  
1036 discretion of the court.

1037        (2) A commission, after reasonable notice through a  
1038 newspaper having general circulation in which the commission is  
1039 created and exists, may change the name of a street or road within  
1040 the boundary of its territorial jurisdiction:

1041           (a) When there is duplication of names or other  
1042 conditions that tend to confuse the traveling public or the  
1043 delivery of mail, orders or messages;

1044           (b) When it is found that a change may simplify marking  
1045 or giving of directions to persons seeking to locate addresses; or

1046           (c) Upon any other good and just reason that may appear  
1047 to the commission.

1048        (3) On the name being changed, after reasonable opportunity  
1049 for a public hearing, the planning commission shall issue its  
1050 certificate designating the change, which must be recorded in the  
1051 office of the register of deeds or clerk of court and the name  
1052 changed and certified is the legal name of the street or road.





1053           **SECTION 47.** Sections 17-1-1, 17-1-3, 17-1-5, 17-1-7, 17-1-9,  
1054 17-1-11, 17-1-13, 17-1-15, 17-1-17, 17-1-19, 17-1-21, 17-1-23,  
1055 17-1-25, 17-1-27, 17-1-29, 17-1-31, 17-1-33, 17-1-35, 17-1-37 and  
1056 17-1-39, Mississippi Code of 1972, which authorize the governing  
1057 authorities of any municipality and the board of supervisors of  
1058 any county to establish local and regional planning commissions to  
1059 regulate and restrict the erection, construction, reconstruction,  
1060 alteration, repair and use of buildings, structures and land  
1061 within their jurisdiction, are repealed.

1062           **SECTION 48.** This act shall take effect and be in force from  
1063 and after July 1, 2003.

