



The Delaware Code

**Chapters Pertaining to
Annexation
Municipal Zoning
Municipal Planning
State Planning
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TABLE OF CONTENTS	<i>page</i>
Title 22. Municipal Corporations. CHAPTER 1. SECTION 101. ANNEXATION	
§ 101. Annexation by city or town.	1
Title 22. Municipalities. CHAPTER 3. MUNICIPAL ZONING REGULATIONS	
Subchapter I. General Provisions.	
§ 301. Grant of power.	2
§ 302. Division into districts; regulations.	2
§ 303. Purpose of regulations.	2
§ 304. Establishment and enforcement of regulations.	3
§ 305. Changes in regulations; procedure.	3
§ 306. Zoning commission.	3
§ 307. Conflict with other laws.	3
§ 308. Enforcement.	4
§ 309. Residential facilities for developmentally disabled persons.	4
Subchapter II. Boards of Adjustment.	
§ 321. Creation and powers.	4
§ 322. Composition; terms of office.	4
§ 323. Rules; meetings; administration of oaths; records.	5
§ 324. Appeals to board.	5
§ 325. Stay of proceedings.	6
§ 326. Notice and hearing on appeal.	6
§ 327. Determinations of board.	6
§ 328. Appeal to Superior Court from board's decision.	6
§ 329. Priority of proceedings.	7
§ 330. Hearing on appeal.	7
§ 331. Record on appeal.	7
§ 332. Costs on appeal.	7
Title 22. Municipal Corporations. CHAPTER 7. PLANNING COMMISSION	
§ 701. Establishment; membership.	8
§ 702. Comprehensive development plan.	8
§ 703. General studies and reports.	9
§ 704. Adoption of official map.	9
§ 705. Change of or addition to official map.	10
§ 706. Establishing or changing public ways and parks.	10
§ 707. Public way or park to be shown on official map.	10
§ 708. Reference of certain matters to planning commission.	11
§ 709. Entry upon lands; making examinations and surveys.	11
§ 710. Enforcement.	11
§ 711. Limitations on powers and liabilities.	11
Title 29. State Government. Part IX, State Planning and Property Acquisition	
Subchapter 1 DELAWARE PLANNING ACT SECTION 9101 TO 9103.	
§ 9101. Cabinet Committee on State Planning Issues	12
§ 9102. Advisory Panel on Intergovernmental Planning and Coordination.	15
§ 9103. Comprehensive Plan Review and Certification Process.	16

Title 22. Municipal Corporations. CHAPTER 1. SECTION 101.

§ 101 Annexation by city or town:

Any city or town proposing to extend its boundaries, irrespective of any municipal charter provisions, whether such extension is proposed by action of the General Assembly or pursuant to the provisions of a home rule charter, except any proposed annexation that has been submitted to the Office of State Planning Coordination prior to the effective date of this Act for review, shall conform to the following provisions:

- (a) All annexations must be consistent with the most recently adopted municipal comprehensive plan meeting the requirements of Title 22, Chapter 7, Delaware Code. The area(s) being considered must be depicted as area(s) for future annexation on the adopted plan. If a municipality does not have an adopted comprehensive plan, or if its adopted comprehensive plan does not depict areas for future annexation, it shall prepare and adopt a plan or plan amendment within 12 months of the effective date of this Act. The municipality shall not approve any annexations until such plan or plan amendment is adopted, notwithstanding any other charter provisions; except that during the 12-month period a municipality may consider an annexation of already developed parcels where the proposed use(s) will not change from that currently authorized in the adjacent jurisdiction and where the primary purpose of the annexation is to address existing public health or safety issues such as, but not limited to, failing on-site wastewater disposal systems or contaminated or inadequate drinking water. In such cases the provisions of §101(b) through (f) of this section shall not apply.
- (b) A city or town shall prepare a plan of services indicating those services it expects to provide to the newly annexed area, how such services will be provided, and the fiscal and operating capabilities of the municipality to provide such services. Should any services be provided by another jurisdiction or a public utility regulated by the Delaware Public Service Commission, the written comments of such provider on the provider's ability to provide the necessary services for the proposed annexation shall be obtained and included in the plan of services. The study shall be conducted in accordance with standards or criteria established by the Cabinet Committee on State Planning Issues as administered by the Office of State Planning Coordination.
- (c) At the time of annexation the jurisdiction shall by ordinance rezone the area being annexed to a zoning classification consistent with the adopted comprehensive plan or development strategy.
- (d) A municipality proposing annexation must fully comply with the provisions of Chapter 92, Title 29, Delaware Code as to State notice, and must demonstrate that it has notified all other affected jurisdictions, conducted a public hearing, and provided a comment period of at least 30 days before formal annexation. The city or town proposing annexation shall file with the State Office of Planning Coordination any written comments received concerning such proposed annexation together with any response(s) thereto.
- (e) The Advisory Council on Planning Coordination shall establish a mechanism for resolving disputes between jurisdictions regarding annexations. The mechanism developed by the Council shall address:
 1. determination of how the costs for the dispute resolution process are born among the parties;
 2. timeline for the dispute resolution process; and
 3. extent to which the dispute resolution process will be enforceable.

Title 22. Municipalities. CHAPTER 3. MUNICIPAL ZONING REGULATIONS*Subchapter I. General Provisions.*

- 301. Grant of power.
- 302. Division into districts; regulations.
- 303. Purpose of regulations.
- 304. Establishment and enforcement of regulations.
- 305. Changes in regulations; procedure.
- 306. Zoning commission.
- 307. Conflict with other laws.
- 308. Enforcement.
- 309. Residential facilities for developmentally disabled persons.
- 310. Transfer of development rights; receiving zones.

Subchapter II. Boards of Adjustment.

- 321. Creation and powers.
- 322. Composition; terms of office.
- 323. Rules; meetings; administration of oaths; records.
- 324. Appeals to board.
- 325. Stay of proceedings.
- 326. Notice and hearing on appeal.
- 327. Determinations of board.
- 328. Appeal to Superior Court from board's decision.
- 329. Priority of proceedings.
- 330. Hearing on appeal.
- 331. Record on appeal.
- 332. Costs on appeal.

Subchapter I General Provisions**§ 301. Grant of power.**

For the purpose of promoting health, safety, morals or the general welfare of the community, the legislative body of cities and incorporated towns may regulate and restrict the height, number of stories and size of buildings and other structures, percentage of lot that may be occupied, the size of yards, courts and other open spaces, the density of population, and the location and use of buildings, structures and land for trade, industry, residence or other purposes.

(39 Del. Laws, c. 22, § 2; Code 1935, § 6228; 22 Del. C. 1953, § 301.)

§ 302. Division into districts; regulations.

For any or all of the purposes provided in § 301 of this title, the legislative body may divide the municipality into districts of such number, shape and area as may be deemed best suited to carry out the purposes of this chapter, and within such districts it may regulate and restrict the erection, construction, reconstruction, alteration, repair or use of buildings, structures or land. All such regulations shall be uniform for each class or kind of buildings throughout each district but the regulations in 1 district may differ from those in other districts.

(39 Del. Laws, c. 22, § 3; Code 1935, § 6229; 22 Del. C. 1953, § 302.)

§ 303. Purpose of regulations.

The regulations shall be made in accordance with a comprehensive plan and designed to lessen congestion in the streets, to secure safety from fire, panic and other dangers, to promote health and the

general welfare, to provide adequate light and air, to prevent the overcrowding of land, to avoid undue concentration of population, to facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirements. Such regulations shall be made with reasonable consideration, among other things, as to the character of the district and its peculiar suitability for particular uses and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout the municipality.

(39 Del. Laws, c. 22, § 4; Code 1935, § 6230; 22 Del. C. 1953, § 303.)

§ 304. Establishment and enforcement of regulations.

The legislative body of the municipality shall provide for the manner in which the regulations and restrictions and the boundaries of the districts shall be determined, established and enforced and from time to time amended, supplemented or changed. However, no such regulations, restriction or boundary shall become effective until after a public hearing in relation thereto, at which parties in interest and citizens shall have an opportunity to be heard. At least 15 days' notice of the time and place of such hearing shall be published in an official paper or a paper of general circulation in such municipality.

(39 Del. Laws, c. 22, § 5; Code 1935, § 6231; 22 Del. C. 1953, § 304.)

§ 305. Changes in regulations; procedure.

The regulations, restrictions and boundaries may from time to time be amended, supplemented, changed, modified or repealed. In case, however, of a protest against such changes signed by the owners of 20 percent or more, either of the area of the lots included in such proposed change or of those immediately adjacent thereto extending 100 feet therefrom or of those directly opposite thereto extending 100 feet back from the street frontage of such opposite lots, such amendment shall not become effective except by the favorable vote of three fourths of all the members of the legislative body of the municipality; provided, however, that in any municipality of this State with a population in excess of 50,000 persons, the foregoing provisions regarding a protest shall not be applicable to any such change which is proposed in connection with the construction of federally assisted multi-family housing for the elderly and handicapped, in all instances of which such change shall become effective by the favorable vote of a simple majority of all the members of the legislative body of the municipality. The provisions of § 304 of this title, relative to public hearings and official notice, shall apply equally to all changes or amendments.

(39 Del. Laws, c. 22, § 6; Code 1935, § 6232; 22 Del. C. 1953, § 305; 67 Del. Laws, c. 183, § 1.)

§ 306. Zoning commission.

In order to avail itself of the powers conferred by this chapter, the mayor or the chief executive of cities or incorporated towns shall appoint a commission to be known as the zoning commission of 3 members, the appointments to be confirmed by the legislative body, to recommend the boundaries of the various original districts and appropriate regulations to be enforced therein. The commission shall consist of not more than 2 members from 1 party and appointments shall be made for 2, 4, and 6 years, and for 6-year terms thereafter. Such commission shall make a preliminary report and hold public hearings thereon before submitting its final report. The legislative body shall not hold its public hearings or take action until it has received the final report of such commission.

(39 Del. Laws, c. 22, § 7; Code 1935, § 6232; 22 Del. C. 1953, § 306.)

§ 307. Conflict with other laws.

Wherever the regulations made under authority of this chapter require a greater width or size of yards or courts, or a lower height of building or less number of stories, or a greater percentage of lot to be left unoccupied, or impose other higher standards than are required in any other statute or local ordinance or regulation, the regulations made under authority of this chapter shall govern. Wherever any other statute, local ordinance or regulation requires a greater width or size of yards or courts, or a lower height of building or a less number of stories, or a greater percentage of lot to be left unoccupied, or imposed other

higher standards than are required by the regulations made under authority of this chapter, such statute, local ordinance or regulation shall govern.

(39 Del. Laws, c. 22, § 10; Code 1935, § 6236; 22 Del. C. 1953, § 307.)

§ 308. Enforcement.

In case any building or structure is erected, constructed, reconstructed, altered, repaired, converted or maintained or any building, structure or land is used in violation of this chapter or of any ordinance or other regulation made under authority conferred thereby, the proper local authorities of the municipality, in addition to other remedies, may institute any appropriate action or proceeding to prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance or use to restrain, correct or abate such violation, to prevent the occupancy of the building, structure or land or to prevent any illegal act, conduct, business or use in or about such premises.

(39 Del. Laws, c. 22, § 9; Code 1935, § 6235; 22 Del. C. 1953, § 308.)

§ 309. Residential facilities for developmentally disabled persons.

- (a) For purposes of all local zoning ordinances a residential facility licensed or approved by a state agency serving 10 or fewer developmentally disabled persons on a 24 hour-per-day basis shall be construed to be a permitted single family residential use of such property.
- (b) For purposes of this section a developmentally disabled person is a person with a disability resulting in substantial functional limitations in a person's major life activities attributable to mental retardation, cerebral palsy, epilepsy or autism, attributable to any other condition found to be closely related to mental retardation because such condition results in similar impairment of general intellectual functioning or adaptive behavior to that of mentally retarded persons or requires treatment and services similar to those required for such persons, or attributable to a physical impairment.
- (c) No residential facility serving 10 or fewer developmentally disabled persons shall be established within a 5,000 foot radius of an existing, similar community residential facility in a residential area.

(62 Del. Laws, c. 390, § 4.)

Subchapter II Boards of Adjustment

§ 321. Creation and powers.

The legislative body of cities or incorporated towns shall provide for the appointment of a board to be known as the board of adjustment and in the rules and regulations adopted pursuant to the authority of this chapter shall provide that the board may, in appropriate cases and subject to appropriate conditions and safeguards, make special exceptions to the terms of the ordinance in harmony with its general purpose and intent and in accordance with general or specific rules therein contained.

(39 Del. Laws, c. 22, § 8; Code 1935, § 6234; 22 Del. C. 1953, § 321.)

§ 322. Composition; terms of office.

- (a) In cities or incorporated towns not having heretofore adopted a home rule charter pursuant to Chapter 8 of this title, the board of adjustment shall consist of the chief engineer of the street and sewer department, the city solicitor and the mayor or an authorized agent of the mayor. If the city or incorporated town has no city engineer or city solicitor, then the mayor or chief executive of such city or town shall appoint 2 members, each to be appointed for a term of 3 years and removable for cause by the appointing authority upon written charges and after public hearing, who, with the presiding officer of the zoning commission, shall constitute the board of adjustment for such city or town. Vacancies shall be filled for the unexpired term of any member whose term becomes vacant.
- (b) In cities or incorporated towns having heretofore or hereafter adopted a home rule charter pursuant to Chapter 8 of this title, the legislative body thereof may establish a board of adjustment consisting of 5

members who shall be residents of the city or incorporated town and who shall have knowledge of and experience in the problems of urban and rural development, and who, at the time of appointment, shall not be candidates-elect for or incumbents of an elective public office. The mayor or chief executive officer of such city or incorporated town, with consent of the legislative body thereof, shall appoint 4 members for terms of 4 years, provided that the terms of the original members shall be established in a manner that 1 shall expire each year. The mayor or chief executive officer of such city or incorporated town, with the consent of the legislative body thereof, shall appoint 1 member who shall be chairperson and who shall serve at the pleasure of that appointing official. The members shall be entitled to compensation as determined by the city or incorporated town.

- (c) In the event that a city or incorporated town qualifying under subsection (b) of this section fails to establish a board of adjustment as permitted in subsection (b) of this section, the board of adjustment shall consist of those persons designated in subsection (a) of this section.
- (d)
- (1) Anything heretofore in this section to the contrary notwithstanding, any city or town, by its legislative body, may establish a board of adjustment consisting of not less than 3 nor more than 5 members who shall be residents of the city or town and who shall have knowledge of the problems of urban and rural development and who, at the time of appointment and throughout the term of office, shall not be candidates nor members of the legislative body nor employees of the city or town. The mayor or chief executive officer of such city or town shall appoint such members of the board of adjustment, and all such appointments shall be confirmed by a majority vote of the elected members of the legislative body.
 - (2) All appointments shall be for a period of 3 years, provided that the terms of the original members shall be established in such a manner that the term of at least 1 member shall expire each year and the successor shall be appointed for a term of 3 years. The board of adjustment so selected shall elect from among their own number a chairperson and a secretary.
 - (3) Any member of the board of adjustment may be removed from office by the legislative body for cause after a hearing by a majority vote of all the elected members of the legislative body of such city or town. A vacancy occurring otherwise than by the expiration of term shall be filled for the remainder of the unexpired term in the same manner as an original appointment.

(39 Del. Laws, c. 22, § 8; Code 1935, § 6234; 22 Del. C. 1953, § 322; 57 Del. Laws, c. 717; 58 Del. Laws, c. 276; 59 Del. Laws, c. 137, § 1; 64 Del. Laws, c. 284, § 1; 70 Del. Laws, c. 186, § 1.)

§ 323. Rules; meetings; administration of oaths; records.

The board of adjustment shall adopt rules in accordance with any ordinance adopted pursuant to this chapter. Meetings of the board shall be held at the call of the chairperson and at such other times as the board may determine. Such chairperson, or in the chairperson's absence, the acting chairperson, may administer oaths and compel the attendance of witnesses. All meetings of the board shall be open to the public. The board shall keep minutes of its proceedings showing the vote of each member upon each question or, if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the board and shall be a public record.

(39 Del. Laws, c. 22, § 8; Code 1935, § 6234; 22 Del. C. 1953, § 323; 70 Del. Laws, c. 186, § 1.)

§ 324. Appeals to board.

Appeals to the board of adjustment may be taken by any person aggrieved or by any officer, department, board or bureau of the municipality affected by any decision of the administrative officer. Such appeal shall be taken within a reasonable time as provided by the rules of the board by filing with the officer from whom the appeal is taken and with the board a notice of appeal specifying the grounds thereof. The officer from whom the appeal is taken shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken.

(39 Del. Laws, c. 22, § 8; Code 1935, § 6234; 22 Del. C. 1953, § 324.)

§ 325. Stay of proceedings.

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

(39 Del. Laws, c. 22, § 8; Code 1935, § 6234; 22 Del. C. 1953, § 325; 70 Del. Laws, c. 186, § 1.)

§ 326. Notice and hearing on appeal.

The board of adjustment shall fix a reasonable time for the hearing of the appeal, give 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, by agent or by attorney.

(39 Del. Laws, c. 22, § 8; Code 1935, § 6234; 22 Del. C. 1953, § 326.)

§ 327. Determinations of board.

(a) The board of adjustment may:

- (1) Hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by an administrative official in the enforcement of this chapter or of any ordinance adopted pursuant thereto;
- (2) Hear and decide special exceptions to the terms of the ordinance upon which the board is required to pass under such ordinance;
- (3) Authorize, in specific cases, such variance from any zoning ordinance, code or regulation that will not be contrary to the public interest, where, owing to special conditions or exceptional situations, a literal interpretation of any zoning ordinances, code or regulation will result in unnecessary hardship or exceptional practical difficulties to the owner of property so that the spirit of the ordinance, code or regulation shall be observed and substantial justice done, provided such relief may be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of any zoning ordinance, code, regulation or map.

(b) In exercising the powers provided in subsection (a) of this section the board may, in conformity with this chapter, 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.

(39 Del. Laws, c. 22, § 8; Code 1935, § 6234; 22 Del. C. 1953, § 327; 65 Del. Laws, c. 61, § 1.)

§ 328. Appeal to Superior Court from board's decision.

(a) Any person or persons, jointly or severally aggrieved by any decision of the board of adjustment, or any taxpayer or any officer, department, board or bureau of the municipality may present to the Superior 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 shall be presented to the Court within 30 days after the filing of the decision in the office of the board.

(b) Upon the presentation of the petition, the Court may allow a writ of certiorari directed to the board to review such decision of the board 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 10 days and may be extended by the Court. The allowance of the writ shall not stay proceedings upon the decision appealed from, but the Court may, on application, on notice to the board and on due cause shown, grant a restraining order.

(c) The Court may reverse or affirm, wholly or partly, or may modify the decision brought up for review.

(39 Del. Laws, c. 22, § 8; Code 1935, § 6234; 22 Del. C. 1953, § 328.)

§ 329. Priority of proceedings.

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

(39 Del. Laws, c. 22, § 8; Code 1935, § 6234; 22 Del. C. 1953, § 329.)

§ 330. Hearing on appeal.

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 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.

(39 Del. Laws, c. 22, § 8; Code 1935, § 6234; 22 Del. C. 1953, § 330; 70 Del. Laws, c. 186, § 1.)

331. Record on appeal.

The board of adjustment 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 the writ. The return shall concisely set forth such other facts as may be pertinent and material to show the grounds of the decision appealed from and shall be verified.

(39 Del. Laws, c. 22, § 8; Code 1935, § 6234; 22 Del. C. 1953, § 331.)

§ 332. Costs on appeal.

Costs shall not be allowed against the board of adjustment, unless it appears to the Court that it acted with gross negligence, in bad faith or with malice in making the decision appealed from.

(39 Del. Laws, c. 22, § 8; Code 1935, § 6234; 22 Del. C. 1953, § 332.)

Title 22. Municipal Corporations. CHAPTER 7. PLANNING COMMISSION

Sec.

- 701. Establishment; membership.
- 702. Comprehensive development plan.
- 703. General studies and reports.
- 704. Adoption of official map.
- 705. Change of or addition to official map.
- 706. Establishing or changing public ways and parks.
- 707. Public way or park to be shown on official map.
- 708. Reference of certain matters to planning commission.
- 709. Entry upon lands; making examinations and surveys.
- 710. Enforcement.
- 711. Limitations on powers and liabilities.

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 five 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 ten 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, Delaware Code. 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 his or her designee for certification provided in §9103. Any proposed comprehensive plan, that has been submitted to the Office of State Planning Coordination prior to the effective date of this Act 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.)

§ 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.)

Title 29. State Government. Part IX, State Planning and Property Acquisition
Subchapter 1 DELAWARE PLANNING ACT, SECTIONS 9101 TO 9103.

- § 9101. Cabinet Committee on State Planning Issues
§ 9102. Advisory Panel on Intergovernmental Planning and Coordination
§ 9103. Comprehensive Plan Review and Certification Process.

§ 9101. Cabinet Committee on State Planning Issues

- (a) A Cabinet Committee on State Planning Issues is established and shall serve in an advisory capacity to the Governor. It shall be comprised of the following members:
- (1) The Secretary of the Department of Natural Resources and Environmental Control.
 - (2) The Secretary of the Department of Transportation
 - (3) The Secretary of the Department of Agriculture
 - (4) The Director of the Delaware Economic Development Office
 - (5) Such others as the Governor may designate
- (b) The Governor shall designate 1 member to serve as Chairperson of the Committee.
- (c) The Committee shall consider matters relating to the orderly growth and development of the State, including, but not limited to:
- (1) Recommendations for the most desirable general pattern of land use within the State, in light of the best available information concerning topography, climate, soil and underground conditions, water courses and bodies of water and other natural or environmental factors, as well as in light of the best available information concerning the present and prospective economic bases of the State, trends of industrial, population or other developments, the habits and standards of life of the people of the State and the relation of land use within the State to land use within adjoining areas;
 - (2) The major circulation pattern recommended for the State, including major routes and terminals of transportation and communication facilities, whether used for movement of people and goods within the State or for movement from and to adjoining areas;
 - (3) Recommendations concerning the need for and the proposed general location of major public and private works and facilities, such as utilities, flood control works, water reservoirs and pollution control facilities, military or defense installations and other governmentally financed or owned facilities; and
 - (4) Recommendations on land use planning actions that are subject to review and comment pursuant to Chapter 92 of this title.
- (d) The Cabinet Committee shall meet and shall consult with the Advisory Panel on Intergovernmental Planning and Coordination as necessary; however, at least 2 such meetings shall be held in each calendar year.
- (e) The Cabinet Committee shall submit a report on its activities to the Governor and the General Assembly by the 15th day of October of each year, together with the recommendations for legislative and/or administrative changes it deems desirable.
- (f) The Cabinet Committee's proceedings shall be conducted in accordance with Chapter 100 of this title.
- (g) The Cabinet Committee shall be assisted by staff designated by each participating agency, and shall work in cooperation with all federal, State and local agencies of government and with private organizations and individuals to obtain all necessary and relevant information for its assignments.
- (h) There is hereby established the Office of State Planning Coordination within the Office of the Budget. The administrator and head of the Office of State Planning Coordination shall be the State Planning Coordinator who shall be qualified by training or experience to perform the duties of the office. The Office of State Planning Coordination shall assist in statewide planning matters, and it shall function as an advisory, consultative and coordinating office.
- (1) The Office of State Planning Coordination shall provide staffing assistance to the Cabinet Committee on State Planning Issues.

- (2) The State Planning Coordinator shall serve as the secretary to the Cabinet Committee on State Planning Issues.
- (3) The Office of State Planning Coordination shall collect and coordinate the comments of state agencies regarding land use planning actions pursuant to Chapter 92 of this title. In carrying out this function, the Office of State Planning Coordination shall, to the maximum extent possible, reconcile differing opinions and conclusions among agency comments with the objective of providing consistent, timely and useful information to the local government. The Office of State Planning Coordination shall be authorized to represent and speak for the State on land use matters subject to Chapter 92 of this title.
- (4) Delaware Geographic Data Committee and Comprehensive State Planning Database System.
 - a. The Office of State Planning Coordination shall be responsible for identifying and insuring that all source data and metadata relating directly or indirectly to planning issues, including databases resident on automated systems and non-automated maps and graphics materials maintained or prepared by state agencies, state supported agencies or developed through state funded projects, will be made available to planning agencies at the state, regional and local levels and to the public. This information is to be made available to all potential users in a manner that provides easy and direct access, subject to appropriate security and confidentiality protocols. Data shall be cataloged to provide a comprehensive and coordinated inventory of data relating to planning issues.
 - b. The Delaware Geographic Data Committee shall be established, under the guidance of the Office of State Planning Coordination, to insure the implementation of a coordinated program to catalog and distribute geographic data. The Delaware Geographic Data Committee membership shall consist of representatives from the Office of Information Services and other state agencies, state funded agencies, county and municipal governments, the Delaware Geological Survey and the University of Delaware. Other appropriate private and public institutions and organizations may serve as ex-officio members of the committee as needed. The Delaware Geographic Data Committee shall establish subcommittees or workgroups as needed.
 - c. The Office of State Planning Coordination in consultation with the Office of Information Services, in cooperation with the Delaware Geographic Data Committee, and in consultation with the responsible agencies and organizations, shall develop the procedures and identify the resources necessary to ensure that each database reflects the latest and best available information. To provide for statewide coordinated knowledge of the available databases, the Office of State Planning Coordination, in consultation with Delaware Geographic Data Information Committee and appropriate state, regional and local agencies, will coordinate the development of a metadata system as the inventory and catalog of databases, maps, graphic representations and other appropriate information. The metadata standards for this inventory shall be set by the Office of State Planning Coordination in consultation with the Delaware Geographic Data Committee.
 - d. All state agencies and other organizations receiving state funds in whole or in part for the development of planning related data sets and related maps and other graphics shall comply in developing and maintaining the Delaware inventory of databases, maps, graphic representations and other appropriate information relating to planning issues. This compliance shall require that state agencies provide documentation of all existing relevant databases, maps and graphic representations using the standards set by the Office of State Planning Coordination in consultation with the Delaware Geographic Data Committee. Agencies will be required to submit metadata to the Delaware inventory as new data is developed and to provide an annual update of the documentation of databases, maps and graphic representations. State agencies shall make databases, maps and graphic representations developed either directly or indirectly with state funds accessible to other

- state agencies, regional county, municipal governments and the public subject to security and confidentiality protocols and reasonable processing costs.
- e. The Delaware Geographic Data Committee shall serve as the state contact for the Federal Geographic Data Committee. A subcommittee of the Delaware Geographic Data Committee shall be the State Mapping Advisory Committee (SMAC). The SMAC shall be organized as follows:
 - a. The State Mapping Advisory Committee shall consist of representatives of state, county and municipal agencies, the Delaware Geological Survey, the University of Delaware and other appropriate educational institutions. Other public and private institutions may serve in ex-officio members
 - b. The chair of SMAC shall be the State Geologist or Acting State Geologist of the Delaware Geological Survey, or his or her designee.
 - c. The SMAC shall consolidate statewide mapping requirements into a single annual report for submission to the United States Geological Survey (USGS). This annual report shall be submitted to the Delaware Geographic Data Committee for review and approval for submission to the USGS.
 - d. The Office of State Planning Coordination shall render local planning technical assistance, and may make grants available, to county and municipal governments for the purposes of coordinating planning activities, promoting liaison between various State agencies and local governments, building capacity through training and sharing of digital and other information, developing infrastructure plans, addressing specific growth and design issues, and such other actions as are appropriate to achieve the purposes of this chapter. The Office of State Planning Coordination shall develop and promote cooperation and coordination among State agencies and local governments to ensure effective and efficient planning and infrastructure investment.

(63 Del. Laws, c. 191, § 2; 69 Del. Laws, c. 458, § 1; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 522, §§ 1, 2; 71 Del. Laws, c. 485, § 1.)

§ 9102. Advisory Panel on Intergovernmental Planning and Coordination

- (a) The Cabinet Committee shall be assisted in its efforts by an Advisory Panel on Intergovernmental Planning and Coordination whose membership shall include:
- (1) Two members from each county to be appointed by the Governor, representing, to the extent possible, the following constituencies: The agriculture, real estate and development industries; environmental interests; small business; a major state industry; and civic associations
 - (2) A member appointed by the President Pro Tempore of the Delaware State Senate and a member appointed by the Speaker of the House of Representatives of the State.
 - (3) The President or a designee representing the Delaware League of Local Governments
 - (4) The President or a designee representing the Delaware Association of Counties
 - (5) The President of the State Chamber of Commerce.
- (b) Members of the Panel shall serve for a term of 3 years, however, 3 of the initial appointees shall serve for a term of 3 years, 3 shall serve for a term of 2 years, and 2 shall serve for a term of 1 year.
- (c) At least 4, but no more than 5, members of the Advisory Panel shall be affiliated with 1 of the major political parties and at least 3, but no more than 4, of the members shall be affiliated with the other major political party; provided, however, that there shall be no more than a bare majority representation of 1 major political party over the other major political party. Any person who declines to announce a political affiliation shall also be eligible for appointment as a member of the Advisory Panel on Intergovernmental Planning and Coordination.
- (d) Members of the Advisory Panel shall serve without compensation, except that they may be reimbursed for reasonable and necessary expenses incident to their duties as members in accordance with state law.
- (e) Members of the Advisory Panel shall serve without compensation, except that they may be reimbursed for reasonable and necessary expenses incident to their duties as members in accordance with state law.
- (f) Any appointment, pursuant to this section, to replace a member whose position becomes vacant prior to the expiration of the member's term shall be filled only for the remainder of that term.
- (g) The Advisory Panel shall cooperate with the Cabinet Committee to ensure that State and local planning issues, development policies and resource management efforts are complementary to the maximum extent possible.
- (h) The Advisory Panel shall be empowered to hear appeals permitted under the State's Land Use Planning Act, created pursuant to Chapter 92 of this title.
- (i) The Advisory Panel shall conduct the cross-acceptance process for the Delaware Conservation, Development and Redevelopment Plan as pursuant to Chapter 92, subchapter IIA of this title.
- (63 Del. Laws, c. 191, § 2; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 490, §§ 1-4.)

§9103. Comprehensive Plan Review and Certification Process.

- (a) The comprehensive plan review and certification process is intended to compare planning goals and development policies among levels of government for the purpose of attaining compatibility and consistency among the interests of State, county and municipal governments. Plan review and certification are necessary to properly address potential burdens on the State government for future infrastructure and public services caused by local land use actions.
- (b) Comprehensive plans and amendments or revisions thereto are subject to the provisions of §9211 of this Title. The Office of State Planning Coordination, in addition to soliciting State agency comments as provided therein, shall within the 20 working day review period provided in §9218 of this Title, also conduct a review and comparison of the proposed county or municipal comprehensive plan or amendment or revision with State goals, policies and strategies. The Office of State Planning Coordination shall prepare a report:
 - (1) documenting the degree to which the county or municipal comprehensive plan has incorporated the State's goals, policies, and strategies;
 - (2) including a detailed list of findings, recommendations, and objections, including adverse fiscal impacts;
 - (3) identifying improvements, revisions or other actions desired to address and resolve inconsistencies;
 - (4) setting forth a timetable and process for negotiations with the county or municipality for achieving consistency.

The State review shall include an assessment of the potential fiscal impacts of the proposed county or municipal comprehensive plan as they relate to State funded infrastructure and services, including but not limited to transportation, water and sewer systems, public schools, affordable housing and public safety. The State's review shall be based on such Statewide land development goals, policies and criteria as may have been adopted by the Governor or Cabinet Committee on State Planning Issues, or as set forth in State law or regulation, or in provisions of the State's most recent capital budgets.

- (c) Proposed comprehensive plans or amendments or revisions thereto will be shared with other potentially impacted jurisdictions and the Office of State Planning Coordination will provide for such review and comment, pursuant to the provisions of §9218 of this Title. Other jurisdictions desiring to comment on any inconsistencies with a county or municipal comprehensive plan shall do so by an official action of said government setting forth the nature of any inconsistencies, concerns, issues, conflicts, agreement, and recommended revisions.
- (d) Should the Office of State Planning Coordination make objection to any proposed comprehensive plan or amendments or revisions thereto, then the Office of State Planning Coordination shall immediately enter into negotiation with the county or municipality in an attempt to solicit agreement and resolution. Any agreements reached during these negotiations shall be incorporated into the public record and considered by the governing body prior to final action on the comprehensive plan. If the Office of State Planning Coordination and the county or municipality fail to reach agreement after a period of 45 days, the Office of State Planning Coordination shall report the extent of agreement and areas of continued disagreement to the Advisory Council on Planning Coordination for dispute resolution.
- (e) The Office of State Planning Coordination shall submit a final comprehensive plan report and recommendation to the Advisory Council on Planning Coordination for its consideration. The Council shall consider the report submitted by the Office of State Planning Coordination, appropriate State land development goals and strategies, comments submitted by any impacted jurisdiction, and such other information as it may determine to be appropriate and in the public interest. The Council may, in its discretion, conduct a public hearing on the proposed comprehensive plan or amendment or revision thereto, except that no hearing shall be held if the proposed plan or amendment or revision thereto is found to be consistent with the state goals, policies and strategies, and not in conflict with

plans of other jurisdictions. Within 45 days of the receipt of the report from the Office of State Planning Coordination, the Council shall issue its findings and recommendations, and shall submit the proposed plan to the Governor or designee for certification.

- (f) Within 20 days of receipt of the findings and recommendations from the Council, the Governor shall certify the comprehensive plan or return the comprehensive plan to the municipality or county for revision. The municipality or county shall have the right to accept or reject any or all of the recommendations. The final decision on the adoption of the comprehensive plan is that of the municipality or county.

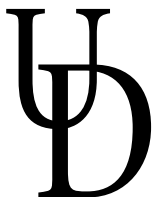


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