

No. 298, A.]

[Published June 6, 1941.

**CHAPTER 203.**

AN ACT to amend 27.11 (12) and 61.35; and to repeal 62.23 (2), (5), (6), (7), (8) and (9); to renumber 62.23 (3) and (4) to be 62.23 (17) and (18); and to create 62.23 (1) (e) and (2) to (9) of the statutes, relating to city and village planning, and providing a penalty.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

SECTION 1. Subsection (12) of section 27.11 is amended to read:

(27.11) (12) In cities of the first class, said board of public land commissioners shall exercise all the powers conferred on city \* \* \* *plan commissions by section 62.23.*

SECTION 2. Section 61.35 of the statutes is amended to read:

61.35 The provisions of section 62.23 shall apply to villages, and the powers and duties conferred and imposed by said section upon mayors, councils and specified city officials are hereby conferred upon presidents, village boards, and village officials performing duties similar to the duties of such specified city officials, respectively. Any ordinance or resolution heretofore passed by any village board under the provisions of section 61.35 shall be and remain in full force and effect until repealed or amended by such village board; in case the village has no official paper, \* \* \* notices of *public hearings* specified in \* \* \* section 62.23 shall be posted in 3 public places in said village *the number of \* \* \* days specified in the respective subsections of said section 62.23* prior to the date of *the required hearing* \* \* \*.

SECTION 3. Subsections (2), (5), (6), (7), (8), and (9) of section 62.23 of the statutes are repealed.

SECTION 4. Subsections (3) and (4) of section 62.23 of the statutes are renumbered to be subsections (17) and (18) of said section.

SECTION 5. Paragraph (e) of subsection (1) and subsections (2) to (9) of section 62.23 of the statutes are created to read:

(62.23) (1) (e) The city plan commission shall have power and authority to employ experts and a staff, and to pay for their services and such other expenses as may be necessary and proper, not exceeding, in all, the appropriation that may be made for such commission by the legislative body, or placed at its disposal through gift, and subject to any ordinance or resolution enacted by the governing body.

(2) FUNCTIONS. It shall be the function and duty of the commission to make and adopt a master plan for the physical development of the municipality, including any areas outside of its boundaries which, in the commission's judgment bear relation to the development of the municipality provided, however, that in any county where a regional planning department has been established, areas outside the boundaries of a municipality may not be included in the master plan without the consent of the county board of supervisors. The master plan, with the accompanying maps, plats, charts, and descriptive and explanatory matter, shall show the commission's recommendations for such physical development, and may include, among other things without limitation because of enumeration, the general location, character, and extent of streets, highways, freeways, street grades, roadways, walks, bridges, viaducts, parking areas, tunnels, public places and areas, parks, parkways, playgrounds, sites for public buildings and structures, airports, pierhead and bulkhead lines, waterways, routes for railroads, street railways and buses, and the general location and extent of sewers, water conduits, and other public utilities whether privately or publicly owned, the acceptance, widening, narrowing, extension, relocation, removal, vacation, abandonment or change of use of any of the foregoing public ways, grounds, places, spaces, buildings, properties, utilities, routes or terminals, the general location, character and extent of community centers and neighborhood units, the general character, extent and layout of the replanning of blighted districts and slum areas, and a comprehensive zoning plan. The commission may from time to time amend, extend or add to the master plan or carry any part or subject matter into greater detail. The commission may adopt rules for the transaction of business and shall keep a record of its resolutions, transactions, findings and determinations, which record shall be a public record.

(3) THE MASTER PLAN. (a) The master plan shall be made with the general purpose of guiding and accomplishing a coordinated, adjusted and harmonious development of the municipality which will, in accordance with existing and future needs, best promote public health, safety, morals, order, convenience, prosperity, or the general welfare, as well as efficiency and economy in the process of development.

(b) The commission may adopt the master plan as a whole by a single resolution, or, as the work of making the whole master plan progresses, may from time to time by resolution adopt a part or parts thereof, any such part to correspond generally with one or more of the functional subdivisions of the subject matter of the plan. The adoption of the plan or any part, amendment or addition, shall be by resolution carried by the affirmative votes of not less than a majority of all the members of the city plan commission. The resolution shall refer expressly to the maps, descriptive matter, and other matters intended by the commission to form the whole or any part of the plan, and the action taken shall be recorded on the adopted plan or part thereof by the identifying signature of the secretary of the commission, and a copy of the plan or part thereof shall be certified to the common council. The purpose and effect of the adoption and certifying of the master plan or part thereof shall be solely to aid the city plan commission and the council in the performance of their duties.

(4) MISCELLANEOUS POWERS OF THE COMMISSION. The commission may make reports and recommendations relating to the plan and development of the city to public officials and agencies, public utility companies, civic, educational, professional, and other organizations, and citizens. It may recommend to the mayor or council, programs for public improvements and the financing thereof. All public officials shall, upon request, furnish to the commission, within a reasonable time, such available information as it may require for its work. The commission, its members and employes, in the performance of its functions, may enter upon any land, make examinations and surveys, and place and maintain necessary monuments and marks thereon. In general, the commission shall have such powers as may be necessary to enable it to perform its functions and promote municipal planning.

(5) MATTERS REFERRED TO CITY PLAN COMMISSION. The council, or other public body or officer of the city having final authority thereon, shall refer to the city plan commission, for its consideration and report before final action is taken by the council, public body or officer, the following matters: The location and architectural design of any public building; the location of any statue or other memorial; the location, acceptance, extension, alteration, vacation, abandonment, change of use, sale, acquisition of land for or lease of land for any street, alley or other public way, park, playground, airport, area for parking vehicles, or other memorial or public grounds; the location, extension, abandonment or authorization for any public utility whether publicly or privately owned; all plats of lands in the city or within the territory over which the city is given platting jurisdiction by chapter 236; the location, character and extent or acquisition, leasing or sale of lands for public or semi-public housing, slum clearance, relief of congestion, or vacation camps for children; and the amendment or repeal of any ordinance adopted pursuant to this section. Unless such report is made within 30 days, or such longer period as may be stipulated by the common council, the council or other public body or officer, may take final action without it.

(6) OFFICIAL MAP. (a) The council of every city may by ordinance or resolution establish an official map of the city showing the streets, highways, parkways, parks and playgrounds theretofore laid out, adopted, and established by law, and such map is to be deemed to be final and conclusive with respect to the location and width of streets, highways, and parkways, and the location and extent of parks and playgrounds shown thereon. Such official map is declared to be established to conserve and promote the public health, safety, convenience or general welfare. Said ordinance or resolution shall make it the duty of the city clerk at once to file with the register of deeds of the county or counties in which such city is situated a certificate showing that the city has established such official map.

(b) Such city council is authorized and empowered, whenever and as often as it may deem it for the public interest, to change or add to the official map of the city so as to establish the exterior lines of planned new streets, highways, parkways,

parks or playgrounds, or to widen, narrow, extend or close existing streets, highways, parkways, parks or playgrounds. No such change 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 20 days' notice of such a public hearing shall be published in an official publication of said city or in a newspaper of general circulation therein. Before making such addition or change, the council shall refer the matter to the city plan commission for report thereon, but if the city plan commission shall not make its report within 60 days of such reference, it shall forfeit the right to further suspend action. Such additions and changes when adopted shall become a part of the official map of the municipality, and shall be deemed to be final and conclusive with respect to the location and width of the streets, highways, and parkways and the location and extent of parks and playgrounds shown thereon. The placing of any street, highway, parkway, park, or playground line or lines upon the official map shall not in and of itself constitute or be deemed to constitute the opening or establishment of any street, parkway, park or playground, or the taking or acceptance of any land for such purposes.

(c) The locating, widening, or closing, or the approval of the locating, widening, or closing of streets, highways, parkways, parks, or playgrounds by the city under provisions of law other than contained in this section shall be deemed to be a change or addition to the official map, and shall be subject to all the provisions of this section.

(d) For the purpose of preserving the integrity of such official map, no permit shall hereafter be issued for any building in the bed of any street, highway, or parkway, shown or laid out on such map except as provided in this section. If the land within such mapped street, highway, or parkway is not yielding a fair return, the board of appeals in any municipality which has established such a board having power to make variances or exceptions in zoning regulations, shall have power in a specific case, by the vote of a majority of its members, to grant a permit for a building in such street, highway, or parkway, which will as little as practicable increase the cost of opening such street, highway, or parkway, or tend to cause a change of such official map; and such board may impose reasonable re-

quirements as a condition of granting such permit, which requirements shall be designed to promote the health, convenience, safety, or general welfare of the community. Such board shall refuse a permit where the applicant will not be substantially damaged by placing his building outside the mapped street, highway, or parkway.

(e) In any city in which there is no such board of appeals, the city council shall have the same powers and shall be subject to the same restrictions. For this purpose such council is authorized to act as a discretionary administrative or quasi-judicial body. When so acting it shall not sit as a legislative body but in a separate meeting and with separate minutes kept.

(f) Before taking any action authorized in this subsection, the board of appeals or city council shall hold a hearing at which parties in interest and others shall have an opportunity to be heard. At least 15 days' notice of the time and place of such hearing shall be published in the official publication of such city or in a newspaper of general circulation therein. Any such decision shall be subject to review by certiorari issued by a court of record in the same manner and pursuant to the same provisions as in appeals from the decisions of a board of appeals upon zoning regulations.

(g) In any city which has established an official map as herein authorized no public sewer or other municipal street utility or improvement shall be constructed in any street, highway, or parkway until such street, highway, or parkway is duly placed on the official map. No permit for the erection of any building shall be issued unless a street, highway or parkway giving access to such proposed structure has been duly placed on the official map. Where the enforcement of the provisions of this section would entail practical difficulty or unnecessary hardship, and where the circumstances of the case do not require the structure to be related to existing or proposed streets, highways or parkways, the applicant for such a permit may appeal from the decision of the administrative officer having charge of the issue of permits to the board of appeals in any city which has established a board having power to make variances or exceptions in zoning regulations, and the same provisions are applied to such appeals and to such boards as are provided in cases of appeals on zoning regulations. The board may in passing

on such appeal make any reasonable exception, and issue the permit subject to conditions that will protect any future street, highway or parkway layout. Any such decision shall be subject to review by certiorari issued by a court of record in the same manner and pursuant to the same provisions as in appeals from the decision of such board upon zoning regulations. In any city in which there is no such board of appeals the city council shall have the same powers and be subject to the same restrictions, and the same method of court review shall be available. For such purpose such council is authorized to act as a discretionary administrative or quasi-judicial body. When so acting it shall not sit as a legislative body, but in a separate meeting and with separate minutes kept.

(h) In those counties where the county maintains and operates parks, parkways, playgrounds, bathing beaches, and other recreational facilities within the limits of any city, such city shall not include said facilities in the master plan without the approval of the county board of supervisors.

(7) ZONING. (a) *Grant of power.* For the purpose of promoting health, safety, morals, or the general welfare of the community, the council may by ordinance regulate and restrict the height, number of stories, and size of buildings and other structures, the 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 provided that there shall be no discrimination against temporary structures. This subsection shall be liberally construed in favor of the city. It shall not be deemed limitation of any power elsewhere granted.

(b) *Districts.* For any and all of said purposes the council may divide the city into districts of such number, shape, and area as may be deemed best suited to carry out the purposes of this section; and within such districts it may regulate and restrict the erection, construction, reconstruction, alteration, or use of buildings, structures, or land. All such regulations shall be uniform for each class or kind of buildings and for the use of land throughout each district, but the regulations in one district may differ from those in other districts.

(c) *Purposes in view.* Such 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, of 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 such city.

(d) *Method of procedure.* The city plan commission, or board of public land commissioners, or if the city has neither, a city plan committee of the council, shall, upon request of the council, recommend the district plan and regulations for the city. Tentative recommendations shall first be formulated and a public hearing or hearings held thereon by the plan commission, or plan committee functioning in lieu thereof. After submission of the final recommendations, the council may from time to time, after first submitting the proposal to the city plan commission or board of public land commissioners for report, change the districts and regulations, as recommended or as adopted, upon giving at least 10 days' notice, by publication in the official paper at least 3 times in such 10 days, of the proposed changes and of hearing thereon, and opportunity to any person interested to be heard. In case, however, of a protest against such change, duly signed and acknowledged by the owners of 20 per cent or more either of the areas of the land included in such proposed change, or by the owners of 20 per cent or more of the area of the land immediately adjacent extending 100 feet therefrom, or by the owners of 20 per cent or more of the land directly opposite thereto extending 100 feet from the street frontage of such opposite land, such amendment shall not become effective except by the favorable vote of three-fourths of the members of the council.

(e) *Board of appeals.* 1. The council which enacts zoning regulations pursuant to this section shall by ordinance provide for the appointment of a board of appeals, and shall

provide in such regulations that said board of appeals may, in appropriate cases and subject to approximate 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.

2. The board of appeals shall consist of 5 members appointed by the mayor for terms of 3 years, except that of those first appointed one shall serve for one year, 2 for 2 years, and 2 for 3 years. The members of the board shall serve without compensation, and shall be removable by the mayor for cause upon written charges and after public hearing. The mayor shall designate one of the members chairman. The board may employ a secretary and other employes. Vacancies shall be filled for the unexpired terms of members whose terms become vacant. The mayor may appoint, for a term of 3 years, an alternate member of such board, in addition to the 5 members above provided for, who shall act, with full power, only when a member of the board refuses to vote because of interest. The above provisions, with regard to removal and the filling of vacancies, shall apply to such alternate.

3. The board shall adopt rules in accordance with the provisions of any ordinance adopted pursuant to this section. Meetings of the board shall be held at the call of the chairman and at such other times as the board may determine. Such chairman, or in his absence the acting chairman, 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.

4. Appeals to the board of appeals may be taken by any person aggrieved or by any officer, department, board, or bureau of the city 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 of appeals 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.

5. An appeal shall stay all legal proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the board of appeals after the notice of appeal shall have been filed with him, that by reason of facts stated in the certificate a stay would, in his 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 of appeals or by a court of record on application, on notice to the officer from whom the appeal is taken, and on due cause shown.

6. The board of appeals shall fix a reasonable time for the hearing of the appeal or other matter referred to it, and 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 or by agent or by attorney.

7. The board of appeals shall have the following powers: To 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 section or of any ordinance adopted pursuant thereto; to hear and decide special exception to the terms of the ordinance upon which such board is required to pass under such ordinance; to authorize upon appeal in specific cases such variance from the terms of the ordinance as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provisions of the ordinance will result in practical difficulty or unnecessary hardship, so that the spirit of the ordinance shall be observed, public safety and welfare secured, and substantial justice done. The board may permit in appropriate cases, and subject to appropriate conditions and safeguards in harmony with the general purpose and intent of the ordinance, a building or premises to be erected or used for such public utility purposes in any location which is reasonably necessary for the public convenience and welfare.

8. In exercising the above mentioned powers such board may, in conformity with the provisions of such section, reverse or affirm, wholly or partly, or may modify the order, re-

quirement, 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, and may issue or direct the issue of a permit.

9. The concurring vote of 4 members of the board shall be necessary to reverse any order, requirement, decision, or determination of any such administrative official, or to decide in favor of the applicant on any matter upon which it is required to pass under any such ordinance, or to effect any variation in such ordinance. The grounds of every such determination shall be stated.

10. Any person or persons, jointly or severally aggrieved by any decision of the board of appeals, or any taxpayer, or any officer, department, board, or bureau of the municipality, may present to a court of record 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 of appeals.

11. Upon the presentation of such petition the court may allow a writ of certiorari directed to the board of appeals in order to review such decision of the board of appeals, 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 of appeals, and on due cause shown, grant a restraining order.

12. The board of appeals shall not be required to return the original papers acted upon by it, but it shall be sufficient to return certified or sworn copies thereof or of such portions thereof as may be called for by such writ. The return 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.

13. 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 to report the same to the court with his findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which the determination of the court shall be made. The court may reverse or affirm, wholly or partly, or may modify, the decision brought up for review.

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

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

(f) *Enforcement and remedies.* 1. The council may provide by ordinance for the enforcement of this section and of any ordinance or regulation made thereunder. A violation of this section or of such ordinance or regulation is declared to be a misdemeanor, and such council may provide for the punishment thereof by fine or imprisonment, or both. It is also empowered to provide civil penalties for such violation.

2. In case any building or structure is or is proposed to be erected, constructed, reconstructed, altered, converted, or maintained, or any building, structure, or land is or is proposed to be used in violation of this section, or of any ordinance or other regulation made under authority conferred hereby, the proper authorities of the city, or any adjacent or neighboring property owner who would be specially damaged by such violation may, in addition to other remedies, institute appropriate action or proceedings to prevent such unlawful erection, construction, reconstruction, alteration, conversion, maintenance, or use; to restrain, correct, or abate such violation; to prevent the occupancy of said building, structure, or land; or to prevent any illegal act, conduct, business, or use in or about such premises.

(g) *Conflict with other laws.* Wherever the regulations made under authority of this section require a greater width or size of yards, courts, or other open spaces, or require a lower height of building or less number of stories, or require 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 provisions of the regulations made under authority of this section shall govern. Wherever the provisions of any other statute or local ordinance or regulation

require a greater width or size of yards, courts, or other open spaces, or require a lower height of building or a less number of stories, or require a greater percentage of lot to be left unoccupied, or impose other higher standards than are required by the regulations made under authority of this section, the provisions of such statute or local ordinance or regulation shall govern.

(h) *Nonconforming uses.* The lawful use of a building or premises existing at the time of the adoption or amendment of a zoning ordinance may be continued although such use does not conform with the provisions of the ordinance. Such nonconforming use may not be extended. The total structural repairs or alterations in such a nonconforming building shall not during its life exceed 50 per cent of the assessed value of the building unless permanently changed to a conforming use. If such nonconforming use is discontinued for a period of 12 months, any future use of the building and premises shall conform to the ordinance.

(8) OTHER MEASURES OF ENFORCEMENT AND REMEDIES; PENALTY. Any building erected, constructed or reconstructed in violation of this section or regulations adopted pursuant thereto shall be deemed an unlawful structure, and the building inspector or city attorney or other official designated by the council may bring action to enjoin such erection, construction, or reconstruction, or cause such structure to be vacated or removed. It shall be unlawful to erect, construct or reconstruct any building or structure in violation of this section or regulations adopted pursuant thereto. Any person, firm or corporation violating such provisions shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not more than \$500. Each and every day during which said illegal erection, construction or reconstruction continues shall be deemed a separate offense. In case any building or structure is or is proposed to be erected, constructed or reconstructed, or any land is or is proposed to be used in violation of this section or regulations adopted pursuant thereto, the building inspector or the city attorney or any adjacent or neighboring property owner who would be specially damaged by such violation, may, in addition to other remedies provided by law, institute injunction, mandamus, abatement, or any other appropriate action or

proceeding to prevent or enjoin or abate or remove such unlawful erection, construction or reconstruction.

(9) BUILDING INSPECTION. (a) The city council may provide for the enforcement of this section and all other laws and ordinances relating to buildings by means of the withholding of building permits, and for such purposes may establish and fill the position of building inspector. From and after the establishment of such position and the filling of the same, it shall be unlawful to erect, construct or reconstruct any building or other structure without obtaining a building permit from such building inspector; and such building inspector shall not issue any permit unless the requirements of this section are complied with.

(b) The council may by ordinance designate general fire limits and regulate for safety and fire prevention the construction, alteration, enlargement and repair of buildings and structures within such limits, and may designate special fire limits within the general limits, and prescribe additional regulations therein. Any such proposed ordinance or amendment thereto shall be referred to the city plan commission, if such commission exists, for consideration and report, before final action is taken thereon by the council. However, no such ordinance or amendment thereto shall be adopted or become effective until after a public hearing in relation thereto, which may be held by the city plan commission or council, at which parties in interest and citizens shall have an opportunity to be heard. At least 10 days' notice of the time and place of such hearing shall be published in the official paper.

(10) MAY EXERCISE POWERS OF BOARD OF PUBLIC LAND COMMISSIONERS. In cities of the first class, said city plan commission may exercise all of the powers conferred on board of public land commissioners under section 27.11.

SECTION 6. This act shall take effect upon passage and publication.

Approved June 3, 1941.