

## **CHAPTER 11-33.2 SUBDIVISION REGULATION**

### **11-33.2-01. Subdivision defined.**

For the purposes of this chapter, unless the context otherwise requires, "subdivision" means the division of a lot, tract, or parcel of land, creating one or more lots, tracts, or parcels for the purpose, whether immediate or future, of sale or of building development, and any plat or plan which includes the creation of any part of one or more streets, public easements, or other rights of way, whether public or private, for access to or from any such lot, tract, or parcel, and the creation of new or enlarged parks, playgrounds, plazas, or open spaces.

### **11-33.2-02. County power to regulate subdivision.**

For the purpose of promoting health, safety, morals, public convenience, general prosperity, and public welfare, the board of county commissioners of any county is hereby empowered to regulate and restrict within the county the subdivision of land. This chapter shall not serve to invalidate any ordinance, resolution, regulation, decision, plat approval, or other action taken or adopted, by a board of county commissioners or county planning commission, prior to or subsequent to July 1, 1981, which regulates or otherwise affects the subdivision of land, except that, subsequent to July 1, 1981, the provisions of section 11-33.2-12 shall apply to any county requiring plat approval as a prerequisite to the subdivision of land.

### **11-33.2-03. Scope of county authority.**

County regulation of subdivisions pursuant to the provisions of this chapter shall in no way affect subdivisions within the corporate limits, or within the area of application of extraterritorial zoning jurisdiction adopted pursuant to section 40-47-01.1, of any city. Additionally, no resolution, regulation, or restriction adopted pursuant to the provisions of this chapter shall prohibit or prevent the use of land or buildings for farming or any of the normal incidents of farming.

### **11-33.2-04. Preparation of subdivision resolution - Contents.**

The board of county commissioners of any county desiring to avail itself of the powers conferred by sections 11-33.2-01 through 11-33.2-11 and sections 11-33.2-13 through 11-33.2-15 shall direct the county planning commission, as established pursuant to sections 11-33-04 and 11-33-05, to prepare a proposed resolution regulating the subdivision of land. The county planning commission shall prepare the proposed resolution to be submitted to the board of county commissioners and shall file it in the office of the county auditor. The proposed subdivision resolution may include:

1. Provisions for the submittal and processing of plats, and specifications for such plats, including provisions for preliminary and final approval and for processing of final approval by stages or sections of development.
2. Provisions for ensuring that:
  - a. The location, layout, or arrangement of a proposed subdivision shall conform to the comprehensive plan of the county.
  - b. Streets in and bordering a subdivision shall be coordinated, and be of such width and grade and in such locations as deemed necessary to accommodate prospective traffic, and facilitate fire protection.
  - c. Adequate easements or rights of way shall be provided for drainage and utilities.
  - d. Reservations if any by the developer of any area designed for use as public grounds shall be of suitable size and location for the designated use.
  - e. Land which is subject to extraordinary hazards, including flooding and subsidence, either shall be made safe for the purpose for which such land is proposed to be used, or shall be set aside for uses which shall not endanger life or property or further aggravate or increase the existing hazard.
3. Provisions governing the standards that public improvements shall meet, including streets, walkways, curbs, gutters, streetlights, fire hydrants, and water and sewage

facilities. As a condition of final approval of plats, the board of county commissioners may require that the subdivider make and install such public improvements at the subdivider's expense and that the subdivider execute a surety bond or other security to ensure that the subdivider will so make those improvements within such time as the board of county commissioners shall set.

4. Provisions for release of a surety bond or other security upon completion of public improvements required to be made by the subdivider.
5. Provisions for encouraging and promoting flexibility, economy, and ingenuity in the location, layout, and design of subdivisions, including provisions authorizing the board of county commissioners to attach conditions to plat approvals requiring practices which are in accordance with modern and evolving principles of subdivision planning and development, as determined by the board of county commissioners.

**11-33.2-05. Public hearing - Notice.**

After the filing of the proposed resolution, the county planning commission shall hold a public hearing thereon, at which the proposed resolution shall be submitted for discussion, and parties in interest and citizens shall have an opportunity to be heard. Notice of the time, place, and purpose of the hearing shall be published once each week for two consecutive weeks in the official newspaper of the county, and in such other newspapers published in the county as the county planning commission may deem necessary. Said notice shall describe the nature, scope, and purpose of the proposed resolution and shall state the times at which it will be available to the public for inspection and copying at the office of the county auditor.

**11-33.2-06. Publication of resolution - Effective date.**

Following the public hearing, the board of county commissioners may adopt the proposed resolution, with such changes as it may deem advisable. Upon adoption of the resolution, the county auditor shall file a certified copy thereof with the recorder. Immediately after the adoption of any resolution, the county auditor shall have notice of that fact published for two successive weeks in the official newspaper of the county and in other newspapers published in the county as the board of county commissioners may deem appropriate. The notice shall describe the nature, scope, and purpose of the adopted resolution and shall state the times at which it will be available for public inspection and copying at the office of the recorder. Proof of publication shall be filed in the office of the county auditor. If no petition for a separate hearing is filed pursuant to section 11-33.2-07, the resolution or amendment thereto shall take effect upon the expiration of the time for filing said petition. If a petition for a separate hearing is filed pursuant to section 11-33.2-07, the resolution or amendment shall not take effect until the board of county commissioners has affirmed the resolution or amendment in accordance with the procedures set out in section 11-33.2-07. The resolution may be amended or repealed by the board of county commissioners by following the same procedures as in the case of adoption of a resolution.

**11-33.2-07. Separate hearings.**

Any person aggrieved by any provision of a resolution adopted hereunder, or any amendment thereto, may, within thirty days after the first publication of the notice of adoption of the resolution or amendment, petition for a separate hearing before the board of county commissioners. The petition shall be in writing and shall specify in detail the ground or grounds of objection. The petition shall be filed with the county auditor. A hearing on the petition shall be held by the board no sooner than seven days, nor later than thirty days after the filing of the petition with the county auditor, who shall notify the petitioner of the time and place of the hearing. At this hearing, the board of county commissioners shall consider the matter complained of and shall notify the petitioner, by registered or certified mail, what action, if any, it proposes to take. The board of county commissioners, at its next regular meeting, shall either rescind or affirm the resolution or amendment. The provisions of this section shall not operate to curtail or exclude the exercise of any other rights or powers of the board of county commissioners or of any citizen.

**11-33.2-08. Board may adjust enforcement of resolution.**

The board of county commissioners is authorized to adjust the application or enforcement of any provision of a resolution hereunder in any specific case when a literal enforcement of such provision would result in great practical difficulties, unnecessary hardship, or injustice, so as to avoid such consequences, provided such action shall not be contrary to the public interest or the general purposes of this chapter.

**11-33.2-09. Appeals to district court.**

Any person, or persons, jointly or severally, aggrieved by a decision of the board of county commissioners under this chapter, or any resolution or amendments adopted hereunder, may appeal to the district court in the manner provided in section 28-34-01.

**11-33.2-10. Board to enforce chapter.**

The board of county commissioners shall provide for the enforcement of this chapter and of any resolution and amendments adopted hereunder, and may impose enforcement duties on any officer, department, agency, or employee of the county.

**11-33.2-11. Board may approve plats - Appropriate money.**

The board of county commissioners may approve plats as a prerequisite to the subdivision of land subject to the provisions of this chapter and may establish and collect reasonable fees therefor. The fees collected must be credited to the general fund of the county. The board of county commissioners may appropriate, out of the general funds of the county, moneys necessary for the purposes of this chapter. The board of county commissioners shall state the grounds upon which any request for approval of plats is approved or disapproved, and written findings upon which the decision is based must be included within the records of the board.

**11-33.2-12. Effect of approval of plats.**

If a county requires approval of plats as a prerequisite to the subdivision of land, whether such requirement be adopted in compliance with this chapter, or be adopted, whether prior to or subsequent to July 1, 1981, pursuant to other authority, from and after July 1, 1981:

1. No subdivision of any lot, tract, or parcel of land shall be made, no street, sanitary sewer, water main, or other improvements in connection therewith shall be laid out, constructed, opened, or dedicated for public use or travel, or for the common use of occupants of buildings abutting thereon, except in accordance with a plat as finally approved by the board of county commissioners.
2. No plat shall be finally approved or disapproved by the board of county commissioners except upon receipt of recommendations by both the county planning commission and the board of township supervisors of the township in which the proposed subdivision is located. The board of county commissioners shall, by certified mail, notify the chairman of the board of township supervisors that an application for plat approval has been initiated, either before the county planning commission or before the board of county commissioners, and that the board of township supervisors is requested to make a recommendation on the application. If the board of county commissioners does not receive, by certified mail, a recommendation by the board of township supervisors within sixty days after notification, it may take final action on the application for plat approval. The recommendations by either the county planning commission or the board of township supervisors shall not be binding on the county commissioners.
3. In determining whether a plat shall be finally approved or disapproved, the board of county commissioners shall inquire into the public use and interest proposed to be served by the subdivision. It shall determine if appropriate provisions are made for the public health, safety, and general welfare, for open spaces, drainage ways, streets, alleys, other public ways, water supplies, sanitary wastes, parks, playgrounds, sites for schools and school grounds, but its determination is not limited to the foregoing. The board shall consider all other relevant facts and determine whether the public interest

will be served by the subdivision. If it finds that the proposed plat makes appropriate provisions for the public health, safety, and general welfare and for such open spaces, drainage ways, streets, alleys, other public ways, water supplies, sanitary wastes, parks, playgrounds, sites for schools and school grounds, and that the public use and interest will be served by the platting of such subdivision, and that the proposed plat complies with a county resolution, if any, regulating or restricting the subdivision of land, to the extent that such resolution does not conflict with the provisions of this section, such plat shall be finally approved with such conditions as the board of county commissioners may deem necessary. If it finds that the proposed plat does not make appropriate provisions, or that the public use and interest will not be served, or that the proposed plat does not so comply with the aforementioned resolution, then the board of county commissioners shall disapprove the proposed plat. Dedication of land to any public body may be required as a condition of subdivision approval and shall be clearly shown on the final plat.

**11-33.2-12.1. Contents of plat - Location and elevation of lakes, rivers, or streams - Notification of floodplain.**

Whenever land, subject to regulation under this chapter, abutting upon any lake, river, or stream is subdivided, the subdivider must show on the plat or other document containing the subdivision a contour line denoting the present shoreline, water elevation, and the date of the survey. If any part of a plat or other document lies within the one hundred year floodplain of a lake, river, or stream as designated by the department of water resources or a federal agency, the mean sea level elevation of that one hundred year flood must be denoted on the plat by numerals. Topographic contours at a two-foot [60.96-centimeter] contour interval referenced to mean sea level must be shown for the portion of the plat lying within the floodplain. All elevations must be referenced to a durable benchmark described on the plat with its location and elevation to the nearest hundredth of a foot [0.3048 centimeter], which must be given in mean sea level datum.

**11-33.2-13. Remedies to effect completion of improvements.**

In the event that any public improvements which may be required to be installed by the subdivider have not been installed as provided in the subdivision resolution or in accordance with the plat as finally approved, the board of county commissioners is hereby granted the power to enforce any surety bond, or other security, required of said subdivider by appropriate legal and equitable remedies. If the proceeds of the bond, or other security, are insufficient to pay the cost of installing or making repairs or corrections to all the improvements covered by the security, the board of county commissioners may, at its option, install part of such improvements in all or part of the subdivision and may institute appropriate legal or equitable action to recover the moneys necessary to complete the remainder of the improvements. All of the proceeds, whether resulting from the security or from any legal or equitable action brought against the subdivider, or both, shall be used solely for the installation of the improvements covered by such security, and not for any other purpose.

**11-33.2-14. Recording plat.**

Upon final approval of a plat as required under this chapter, the subdivider shall record the plat in the office of the recorder of the county wherein the plat is located. Whenever plat approval is required by a county, the recorder shall not accept any plat for recording unless such plat officially notes the final approval of the board of county commissioners.

**11-33.2-15. Penalty and remedies.**

Any person, partnership, corporation, or limited liability company who or which, being the owner or agent of the owner of any lot, tract, or parcel of land, shall lay out, construct, open, or dedicate any street, sanitary sewer, storm sewer, water main, or other improvements for public use, travel, or other purposes or for the common use of occupants of buildings abutting thereon, or who or which sells, transfers, or agrees or enters into an agreement to sell or transfer any

land in a subdivision or engages in the subdivision of land or erects any buildings thereon, unless and until a plat has been finally approved in full compliance with the provisions of this chapter and of the resolution adopted hereunder and has been recorded as provided herein, shall be guilty of a class B misdemeanor. Each lot, tract, or parcel created or transferred, and each building erected in a subdivision in violation of the provisions of this chapter or of the resolutions adopted hereunder shall constitute a separate offense.

If any lot, tract, or parcel of land is subdivided in violation of this chapter or any resolution or amendments thereto adopted pursuant to this chapter, the proper county authorities or any affected citizen or property owner, in addition to other remedies, may institute any appropriate action or proceedings:

1. To prevent such unlawful subdivision.
2. To restrain, correct, or abate such violations.
3. To prevent the occupancy or use of the land which has been unlawfully subdivided.
4. To vacate and nullify any recorded plat of such unlawful subdivision.