

Source: L. 75: Entire title R&RE, p. 1145, § 1, effective July 1.

Editor's note: This section is similar to former § 31-1-409 as it existed prior to 1975.

31-23-111. Owner construed. For the purposes of this part 1, any person having a legal or equitable interest in any lands shall be deemed an owner and proprietor. Nothing in this part 1 shall affect the rights of anyone other than those acknowledging any such plat.

Source: L. 75: Entire title R&RE, p. 1145, § 1, effective July 1.

Editor's note: This section is similar to former § 31-1-410 as it existed prior to 1975.

31-23-112. Fees of recorder. The county clerk and recorder shall receive the same fees for filing and recording the plats provided for by this part 1 as are allowed for filing and recording original maps or plats of cities or towns.

Source: L. 75: Entire title R&RE, p. 1145, § 1, effective July 1.

Editor's note: This section is similar to former § 31-1-411 as it existed prior to 1975.

Cross references: For fees for filing and recording maps or plats, see § 30-1-103.

PART 2

PLANNING COMMISSION

Law reviews: For article, "Land Use Decisionmaking: Legislative or Quasi-judicial Action", see 18 Colo. Law. 241 (1989).

31-23-201. Definitions. As used in this part 2, unless the context otherwise requires:

(1) "Mayor" means the chief executive of the municipality, whether the official designation of his office is mayor, city manager, or otherwise; except that with respect to municipalities operating under the statutory city manager form of government, the term means the city manager.

(2) "Subdivision" means any parcel of land which is to be used for condominiums, apartments, or any other multiple-dwellings units, unless such land was previously subdivided and the filing accompanying such subdivision complied with municipal regulations applicable to subdivisions of substantially the same density, or the division of a lot, tract, or parcel of land into two or more lots, plats, sites, or other divisions of land for the purpose, whether immediate or future, of sale or of building development. It includes resubdivision and, when appropriate to the context, relates to the process of subdividing or to the land or territory subdivided.

Source: L. 75: Entire title R&RE, p. 1145, § 1, effective July 1. **L. 81:** (2) amended, p. 1512, § 1, effective June 4.

Editor's note: This section is similar to former § 31-23-101 (3) and (6) as it existed prior to 1975.

31-23-202. Grant of power to municipality. Any municipality is authorized to make, adopt, amend, extend, add to, or carry out a plan as provided in this part 2 and to create by ordinance or resolution a planning commission with the powers and duties set forth in this part 2.

Source: L. 75: Entire title R&RE, p. 1146, § 1, effective July 1.

Editor's note: This section is similar to former § 31-23-102 as it existed prior to 1975.

31-23-203. Personnel of the commission. (1) The municipal planning commission, referred to in this part 2 as the "commission", shall consist of not less than five nor more than seven members; except that a home rule city or town shall not be limited in the size of its commission. Unless otherwise provided by ordinance, the membership and terms of members shall be as follows:

(a) When the commission is limited to five members, the membership shall consist of the mayor and a member of the governing body as ex officio members and three persons appointed by the mayor, if the mayor is an elective officer; otherwise by such office as the governing body may designate as the appointing power in the ordinance creating the commission.

(b) When the commission consists of seven or more members, there shall be four ex officio members consisting of the mayor, one of the administrative officials selected by the mayor, a member of the governing body selected by the mayor, and a member of the governing body selected by the governing body; the balance of the membership shall be appointed as provided in paragraph (a) of this subsection (1).

(2) All members of such commission shall be bona fide residents of the municipality and, if any member ceases to reside in such municipality, his membership on the commission shall automatically terminate.

(3) All members of the commission shall serve without compensation unless otherwise provided by ordinance and the appointed members shall hold no other municipal office; except that one such appointed member may be a member of the zoning board of adjustment or appeals. The terms of ex officio members shall correspond to their respective official tenures; except that the term of the administrative official selected by the mayor shall terminate with the expiration of the term of the mayor who selected him or her. The term of each appointed member shall be six years or until his or her successor takes office; except that the respective terms of one-third of the members first appointed shall be two years, one-third shall be four years, and one-third shall be six years. Members other than the member representing the governing body may be removed, after public hearings, by the mayor for inefficiency, neglect of duty, or malfeasance in office, and the governing body may remove the member representing it for the same reasons. The mayor or the governing body, as the case may be, shall file a written statement of reasons for such removal. Vacancies occurring otherwise than through the expiration of term shall be filled for the remainder of the unexpired term by the mayor in the case of members selected or appointed by the mayor, by the governing body in the case of the member appointed by it, and

by the appointing power designated by the governing body in municipalities in which the mayor is not an elective officer.

(4) Notwithstanding any provisions of subsections (1) and (3) of this section to the contrary, the governing body of each municipality may provide by ordinance for the size, membership, designation of alternate membership, terms of members, removal of members pursuant to subsection (3) of this section, and filling of vacancies of the commission.

Source: L. 75: Entire title R&RE, p. 1146, § 1, effective July 1. L. 79: (4) added, p. 1188, § 1, effective June 19. L. 2014: (3) amended, (HB 14-1060), ch. 67, p. 292, § 1, effective August 6.

Editor's note: This section is similar to former § 31-23-103 as it existed prior to 1975.

31-23-204. Organization and rules. The commission shall elect its chairman from among the non ex officio members and shall create and fill such other of its offices as it may determine. The term of the chairman shall be one year, with eligibility for reelection. The commission shall hold at least one regular meeting in each month. It shall adopt rules for transaction of business and shall keep a record of its resolutions, transactions, findings, and determinations, which record shall be a public record.

Source: L. 75: Entire title R&RE, p. 1147, § 1, effective July 1.

Editor's note: This section is similar to former § 31-23-104 as it existed prior to 1975.

31-23-205. Staff and finances. The commission may appoint such employees as it deems necessary for its work; except that the appointment, promotion, demotion, and removal of such employees shall be subject to the same provisions of law as govern other corresponding civil employees of the municipality. The commission may also contract, with the approval of the governing body, with municipal planners, engineers, and architects and other consultants for such services as it requires. The expenditures of the commission, exclusive of gifts, shall be within the amounts appropriated for the purpose by the governing body, which shall provide the funds, equipment, and accommodations necessary for the commission's work.

Source: L. 75: Entire title R&RE, p. 1147, § 1, effective July 1.

Editor's note: This section is similar to former § 31-23-105 as it existed prior to 1975.

31-23-206. Master plan. (1) It is the duty of the commission to make and adopt a master plan for the physical development of the municipality, including any areas outside its boundaries, subject to the approval of the governmental body having jurisdiction thereof, that in the commission's judgment bear relation to the planning of the municipality. The master plan of a municipality is an advisory document to guide land development decisions; however, the plan or any part thereof may be made binding by inclusion in the municipality's adopted subdivision, zoning, platting, planned unit development, or other similar land development regulations after satisfying notice, due process, and hearing requirements for legislative or quasi-judicial

processes as appropriate. When a commission decides to adopt a master plan, the commission shall conduct public hearings, after notice of such public hearings has been published in a newspaper of general circulation in the municipality in a manner sufficient to notify the public of the time, place, and nature of the public hearing, prior to final adoption of a master plan in order to encourage public participation in and awareness of the development of such plan and shall accept and consider oral and written public comments throughout the process of developing the plan. The plan, with the accompanying maps, plats, charts, and descriptive matter, must, after consideration of each of the following, where applicable or appropriate, show the commission's recommendations for the development of the municipality and outlying areas, including:

(a) The general location, character, and extent of existing, proposed, or projected streets, roads, rights-of-way, bridges, waterways, waterfronts, parkways, highways, mass transit routes and corridors, and any transportation plan prepared by any metropolitan planning organization that covers all or a portion of the municipality and that the municipality has received notification of or, if the municipality is not located in an area covered by a metropolitan planning organization, any transportation plan prepared by the department of transportation that the municipality has received notification of and that covers all or a portion of the municipality;

(b) The general location of public places or facilities, including public schools, culturally, historically, or archaeologically significant buildings, sites, and objects, playgrounds, squares, parks, airports, aviation fields, military installations, and other public ways, grounds, open spaces, trails, and designated federal, state, and local wildlife areas. For purposes of this section, "military installation" shall have the same meaning as specified in section 29-20-105.6 (2)(b), C.R.S.

(c) The general location and extent of public utilities terminals, capital facilities, and transfer facilities, whether publicly or privately owned or operated, for water, light, sanitation, transportation, communication, power, and other purposes, and any proposed or projected needs for capital facilities and utilities, including the priorities, anticipated costs, and funding proposals for such facilities and utilities;

(d) (I) The general location and extent of an adequate and suitable supply of water.

(II) If the master plan includes a water supply element, the planning commission shall consult with the entities that supply water for use within the municipality to ensure coordination on water supply and facility planning, and the water supply element must identify water supplies and facilities sufficient to meet the needs of the public and private infrastructure reasonably anticipated or identified in the planning process.

(III) The water supply element must include water conservation policies, to be determined by the municipality, which may include goals specified in the state water plan adopted pursuant to section 37-60-106.3 and may include policies to implement water conservation and other state water plan goals as a condition of development approvals, including subdivisions, planned unit developments, special use permits, and zoning changes. A municipality with a master plan that includes a water supply element shall ensure that its master plan includes water conservation policies at the first amending of the master plan that occurs after September 14, 2020, but in no case later than July 1, 2025.

(IV) The department of local affairs created in section 24-1-125 may hire and employ one full-time employee to provide educational resources and assistance to municipalities that include water conservation policies in their master plans as described in subsection (1)(d)(III) of this section.

(V) Nothing in this subsection (1)(d) shall be construed to supersede, abrogate, or otherwise impair the allocation of water pursuant to the state constitution or laws, the right to beneficially use water pursuant to decrees, contracts, or other water use agreements, or the operation, maintenance, repair, replacement, or use of any water facility.

(e) The acceptance, removal, relocation, widening, narrowing, vacating, abandonment, modification, change of use, or extension of any of the public ways, rights-of-way, including the coordination of such rights-of-way with the rights-of-way of other municipalities, counties, or regions, grounds, open spaces, buildings, property, utility, or terminals, referred to in paragraphs (a) to (d) of this subsection (1);

(f) A zoning plan for the control of the height, area, bulk, location, and use of buildings and premises. Such a zoning plan may protect and assure access to appropriate conditions for solar, wind, or other alternative energy sources; however, regulations and restrictions of the height, number of stories, size of buildings and other structures, and the height and location of trees and other vegetation shall not apply to existing buildings, structures, trees, or vegetation except for new growth on such vegetation.

(g) The general character, location, and extent of community centers, housing developments, whether public or private, the existing, proposed, or projected location of residential neighborhoods and sufficient land for future housing development for the existing and projected economic and other needs of all current and anticipated residents of the municipality, and redevelopment areas. If a municipality has entered into a regional planning agreement, such agreement may be incorporated by reference into the master plan.

(h) A master plan for the extraction of commercial mineral deposits pursuant to section 34-1-304, C.R.S.;

(i) A plan for the location and placement of public utilities that facilitates the provision of such utilities to all existing, proposed, or projected developments in the municipality;

(j) Projections of population growth and housing needs to accommodate the projected population for specified increments of time. The municipality may base these projections upon data from the department of local affairs and upon the municipality's local objectives.

(k) The areas containing steep slopes, geological hazards, endangered or threatened species, wetlands, floodplains, floodways, and flood risk zones, highly erodible land or unstable soils, and wildfire hazards. For purposes of determining the location of such areas, the planning commission should consider the following sources for guidance:

(I) The Colorado geological survey for defining and mapping geological hazards;

(II) The United States fish and wildlife service of the United States department of the interior and the parks and wildlife commission created in section 33-9-101, C.R.S., for locating areas inhabited by endangered or threatened species;

(III) The United States Army corps of engineers and the United States fish and wildlife service national wetlands inventory for defining and mapping wetlands;

(IV) The federal emergency management agency for defining and mapping floodplains, floodways, and flood risk zones;

(V) The natural resources conservation service of the United States department of agriculture for defining and mapping unstable soils and highly erodible land; and

(VI) The Colorado state forest service for locating wildfire hazard areas.

(2) As the work of making the whole master plan progresses, the commission may from time to time adopt and publish a part thereof. Any such part shall cover one or more major

sections or divisions of the municipality or one or more of the foregoing or other functional matters to be included in the plan. The commission may amend, extend, or add to the plan from time to time.

(3) (Deleted by amendment, L. 2007, p. 613, § 2, effective August 3, 2007.)

(4) (a) Each municipality that has a population of two thousand persons or more and that is wholly or partially located in a county that is subject to the requirements of section 30-28-106 (4), C.R.S., shall adopt a master plan within two years after January 8, 2002.

(b) The department of local affairs shall annually determine, based on the population statistics maintained by said department, whether a municipality is subject to the requirements of this subsection (4), and shall notify any municipality that is newly identified as being subject to said requirements. Any such municipality shall have two years following receipt of notification from the department to adopt a master plan.

(c) Once a municipality is identified as being subject to the requirements of this subsection (4), the municipality shall at all times thereafter remain subject to the requirements of this subsection (4), regardless of whether it continues to meet the criteria specified in paragraph (a) of this subsection (4).

(5) A master plan adopted in accordance with the requirements of subsection (4) of this section shall contain a recreational and tourism uses element pursuant to which the municipality shall indicate how it intends to provide for the recreational and tourism needs of residents of the municipality and visitors to the municipality through delineated areas dedicated to, without limitation, hiking, mountain biking, rock climbing, skiing, cross country skiing, rafting, fishing, boating, hunting, and shooting, or any other form of sports or other recreational activity, as applicable, and commercial facilities supporting such uses.

(6) The master plan of any municipality adopted or amended in accordance with the requirements of this section on and after August 8, 2005, shall satisfy the requirements of section 29-20-105.6, C.R.S., as applicable.

(7) Notwithstanding any other provision of this section, no master plan originally adopted or amended in accordance with the requirements of this section shall conflict with a master plan for the extraction of commercial mineral deposits adopted by the municipality pursuant to section 34-1-304, C.R.S.

Source: **L. 75:** Entire title R&RE, p. 1147, § 1, effective July 1. **L. 79:** (1)(d) amended, p. 1162, § 10, effective January 1, 1980. **L. 97:** (3) added, p. 414, § 2, effective April 24. **L. 2000:** (1) amended, p. 874, § 2, effective August 2. **L. 2001, 2nd Ex. Sess.:** (4) and (5) added, p. 22, § 2, effective January 8, 2002. **L. 2002:** (5) amended, p. 1036, § 84, effective June 1. **L. 2005:** (6) added, p. 223, § 3, effective August 8. **L. 2007:** IP(1) and (3) amended and (7) added, p. 613, § 2, effective August 3. **L. 2010:** (1)(b) and (6) amended, (HB 10-1205), ch. 242, p. 1078, § 3, effective August 11. **L. 2012:** IP(1) and (1)(k)(II) amended, (HB 12-1317), ch. 248, p. 1206, § 13, effective June 4. **L. 2020:** IP(1) and (1)(d) amended, (HB 20-1095), ch. 82, p. 332, § 2, effective September 14.

Editor's note: This section is similar to former § 31-23-106 as it existed prior to 1975.

31-23-207. Purposes in view. In the preparation of such plan, the commission shall make careful and comprehensive surveys and studies of present conditions and future growth of

the municipality, with due regard to its relation to neighboring territory. The plan shall be made with the general purpose of guiding and accomplishing a coordinated, adjusted, and harmonious development of the municipality and its environs which will, in accordance with present and future needs, best promote health, safety, order, convenience, prosperity, and general welfare, as well as efficiency and economy in the process of development, including, among other things, adequate provision for traffic, the promotion of safety from fire, flood waters, and other dangers, adequate provision for light and air, distribution of population, affordable housing, the promotion of good civic design and arrangement, efficient expenditure of public funds, the promotion of energy conservation, and the adequate provision of public utilities and other public requirements.

Source: **L. 75:** Entire title R&RE, p. 1147, § 1, effective July 1. **L. 79:** Entire section amended, p. 1163, § 11, effective January 1, 1980. **L. 97:** Entire section amended, p. 414, § 3, effective April 24.

Editor's note: This section is similar to former § 31-23-107 as it existed prior to 1975.

31-23-208. Procedure of commission. The commission may adopt the plan as a whole by a single resolution or may by successive resolutions adopt successive parts of the plan (said parts corresponding with major geographical sections or divisions of the municipality or with functional subdivisions of the subject matter of the plan) and may adopt any amendment or extension thereof or addition thereto. Before the adoption of the plan or any such part, amendment, extension, or addition, the commission shall hold at least one public hearing thereon, notice of the time and place of which shall be given by one publication in a newspaper of general circulation in the municipality and in the official newspaper of the county affected. The adoption of the plan, any part, amendment, extension, or addition shall be by resolution of the commission carried by the affirmative votes of not less than two-thirds of the entire membership of the commission. The resolution shall refer expressly to the maps and descriptive and other matter intended by the commission to form the whole or part of the plan, and the action taken shall be recorded on the map and plan and descriptive matter by the identifying signature of the chairman or secretary of the commission. An attested copy of the plan or part thereof shall be certified to each governmental body of the territory affected and, after the approval by each body, shall be filed with the county clerk and recorder of each county wherein the territory is located.

Source: **L. 75:** Entire title R&RE, p. 1148, § 1, effective July 1.

Editor's note: This section is similar to former § 31-23-108 as it existed prior to 1975.

31-23-209. Legal status of official plan. When the commission has adopted the master plan of the municipality or of one or more major sections or districts thereof, no street, square, park or other public way, ground or open space, public building or structure, or publicly or privately owned public utility shall be constructed or authorized in the municipality or in such planned section and district until the location, character, and extent thereof has been submitted for approval by the commission. In case of disapproval, the commission shall communicate its

reasons to the municipality's governing body, which has the power to overrule such disapproval by a recorded vote of not less than two-thirds of its entire membership. If the public way, ground space, building, structure, or utility is one the authorization or financing of which does not, under the law or charter provisions governing the same, fall within the province of the municipal governing body, the submission to the commission shall be by the governmental body having jurisdiction, and the planning commission's disapproval may be overruled by said governmental body by a vote of not less than two-thirds of its membership. The failure of the commission to act within sixty days from and after the date of official submission to it shall be deemed approval.

Source: L. 75: Entire title R&RE, p. 1148, § 1, effective July 1.

Editor's note: This section is similar to former § 31-23-109 as it existed prior to 1975.

31-23-210. Publicity - travel - information - entry. The commission has power to promote public interest in and understanding of the plan and to that end may publish and distribute copies of the plan or any report and may employ such other means of publicity and education as it may determine. Members of the commission may attend city planning conferences, meetings of city planning institutes, or hearings upon pending municipal planning legislation, and the commission may pay, by resolution, the reasonable traveling expenses incident to such attendance. The commission shall recommend, from time to time, to the appropriate public officials programs for public structures and improvements and for the financing thereof. It shall be part of its duties to consult and advise with public officials and agencies, public utility companies, civic, educational, professional, and other organizations, and with citizens in relation to protecting and carrying out the plan. The commission has the right to accept and use gifts for the exercise of its functions. All public officials shall furnish to the commission, upon request, within a reasonable length of time, such available information as the commission may require for its work. The commission and its members, officers, and employees, in the performance of their functions, may enter upon any land and make examinations and surveys and place and maintain necessary marks and monuments thereon. In general, the commission has such powers as are necessary to enable it to fulfill its functions, to promote municipal planning, or to carry out the purposes of this part 2.

Source: L. 75: Entire title R&RE, p. 1148, § 1, effective July 1.

Editor's note: This section is similar to former § 31-23-110 as it existed prior to 1975.

31-23-211. Zoning. Where a commission is established in accordance with the provisions of this part 2, it has and shall exercise all of the powers and rights granted to the zoning commission by part 3 of this article. When there is a zoning commission in existence at the time that a commission is created, the zoning commission shall deliver to the commission all of its records and shall thereafter cease to exercise the powers and prerogatives previously exercised by it; except that, if the existing zoning commission is nearing completion of a zoning plan, the governing body of the municipality may postpone, by resolution, the transfer of the zoning commission's powers until completion of the zoning plan; but in no event shall the period

of such postponement exceed six months from the date of the creation of the commission. Nothing in this section shall invalidate or otherwise affect any zoning law or regulation or any action of the zoning commission adopted or taken prior to the creation of a commission.

Source: L. 75: Entire title R&RE, p. 1149, § 1, effective July 1.

Editor's note: This section is similar to former § 31-23-111 as it existed prior to 1975.

31-23-212. Jurisdiction. The territorial jurisdiction of any commission over the subdivision of land includes all land located within the legal boundaries of the municipality and, limited only to control with reference to a major street plan and not otherwise, also includes all land lying within three miles of the boundaries of the municipality not located in any other municipality; except that in the case of any such land lying within five miles of more than one municipality, the jurisdiction of each commission shall terminate at a boundary line equidistant from the respective municipal limits of such municipalities. The jurisdiction over the subdivision of lands outside the boundary of a municipality shall apply equally to any municipality.

Source: L. 75: Entire title R&RE, p. 1149, § 1, effective July 1.

Editor's note: This section is similar to former § 31-23-112 as it existed prior to 1975.

31-23-213. Scope of control. When a commission has adopted a major street plan for the territory within its subdivision control, or any part thereof, as provided in section 31-23-208, and has filed a certified copy of such plan in the office of the county clerk and recorder of the county in which such territory or such part is located, no plat of a subdivision of land within such territory or such part shall be filed or recorded until it has been approved by such commission and such approval entered in writing on the plat by the chairman or secretary of the commission.

Source: L. 75: Entire title R&RE, p. 1149, § 1, effective July 1.

Editor's note: This section is similar to former § 31-23-113 as it existed prior to 1975.

31-23-214. Subdivision regulations. (1) Before any commission exercises the powers set forth in section 31-23-213, it shall adopt regulations governing the subdivision of land within its jurisdiction and shall publish the same in pamphlet form, which shall be available for public distribution, or, at the election of the commission, the regulations may be published once each week for three consecutive weeks in the official paper of the municipality or county in which such subdivisions, or any part thereof, are located. Such regulations may provide for the proper arrangement of streets in relation to other existing or planned streets and to the master plan, for adequate and convenient open spaces for traffic, utilities, access of fire fighting apparatus, recreation, light, and air, and for the avoidance of congestion of population, including minimum area and width of lots. The regulations may also provide for waivers from subdivision requirements and may establish different requirements applicable to subdivisions of different sizes, densities, or types of dwelling units. In the territory subject to subdivision jurisdiction

beyond the municipal limits, the regulations shall provide only for conformance with the major street plan.

(1.5) Subdivision regulations adopted under provisions of this section may protect and assure access to sunlight for solar energy devices by considering in subdivision development plans the use of restrictive covenants or solar easements, height restrictions, side yard and setback requirements, street orientation and width requirements, or other permissible forms of land use controls.

(2) Before the adoption of the regulations referred to in this section, a public hearing shall be held thereon in the municipality. A copy of such regulations shall be certified by the commission to the county clerk and recorders of the counties in which the municipality and territory are located.

(3) Subdivision regulations adopted under provisions of this section shall require that a subdivider, as defined in section 30-28-101 (9), C.R.S., submit to the commission evidence that provision has been made for facility sites, easements, and rights of access for electrical and natural gas utility service sufficient to ensure reliable and adequate electric or, if applicable, natural gas service for any proposed subdivision. Submission of a letter of agreement between the subdivider and utility serving the site shall be deemed sufficient to establish that adequate provision for electric or, if applicable, natural gas service to a proposed subdivision has been made.

Source: **L. 75:** Entire title R&RE, p. 1150, § 1, effective July 1. **L. 79:** (1.5) added, p. 1163, § 12, effective January 1, 1980. **L. 81:** (1) amended, p. 1512, § 2, effective June 4. **L. 83:** (2) amended, p. 1262, § 1, effective March 15. **L. 2000:** (3) added, p. 1618, § 2, effective July 1.

Editor's note: This section is similar to former § 31-23-114 as it existed prior to 1975.

Cross references: For registration of subdivision developers, see part 5 of article 10 of title 12.

31-23-214.1. Subdivision plan or plat - access to public highways. No person may submit an application for subdivision approval to a local authority unless the subdivision plan or plat provides, pursuant to section 43-2-147, C.R.S., that all lots and parcels created by the subdivision will have access to the state highway system in conformance with the state highway access code.

Source: **L. 80:** Entire section added, p. 796, § 59, effective June 5. **L. 82:** Entire section amended, p. 627, § 35, effective April 2.

31-23-215. Procedure - legal effect. (1) The commission shall approve or disapprove a plat within thirty days after said plat has been submitted to it; otherwise such plat shall be deemed approved and a certificate to that effect shall be issued by the commission on demand unless the applicant for the commission's approval waives this requirement and consents to an extension of such period. The ground of disapproval of any plat shall be stated upon the records of the commission. No plat shall be acted on by the commission without affording a hearing

thereon. Notice of the time and place of such hearing shall be sent to mineral estate owners in accordance with article 65.5 of title 24, C.R.S.

(2) Every plat approved by the commission, by virtue of such approval, shall be deemed to be an amendment or an addition to or a detail of the municipal plan and a part thereof. Approval of a plat shall not constitute or effect an acceptance by the public of any street or other open space shown upon the plat. From time to time, the commission may recommend to the governing body amendments of the zoning ordinance or map or additions thereto to conform to the commission's recommendations for the zoning regulations of the territory comprised within approved subdivisions. The commission has the power to impose use, height, area, or bulk requirements or restrictions governing buildings and premises within the subdivision if such requirements or restrictions do not authorize the violation of the then effective zoning ordinance of the municipality. Such requirements or restrictions shall be stated upon the plat prior to the approval and recording thereof, shall have the force of law, and shall be enforceable in the same manner and with the same sanctions and penalties and subject to the same powers of amendment or repeal as though set out as a part of the zoning ordinance or map of the municipality. No action taken under this section shall be binding for any purpose until such action has been approved by the governmental body of the territory affected or any part thereof.

Source: **L. 75:** Entire title R&RE, p. 1150, § 1, effective July 1. **L. 79:** (1) amended, p. 1167, § 3, effective July 1. **L. 2001:** (1) amended, p. 490, § 5, effective July 1. **L. 2007:** (1) amended, p. 2122, § 8, effective August 3.

Editor's note: This section is similar to former § 31-23-115 as it existed prior to 1975.

31-23-216. Penalties for sales in unapproved subdivisions. Whoever, being the owner or agent of the owner of any land located within a subdivision, transfers or sells, agrees to sell, or negotiates to sell any land by reference to or exhibition of or by use of a plat of a subdivision before such plat has been approved by the commission and recorded or filed in the office of the appropriate county clerk and recorder shall pay a penalty of one hundred dollars to the municipality for each lot or parcel so transferred, or sold, or agreed or negotiated to be sold. The description of such lot or parcel by metes and bounds in the instrument of transfer or other document used in the process of selling or transferring shall not exempt the transaction from such penalties or from the remedies provided in this section. The municipality may enjoin such transfer or sale or agreement by action for injunction brought in any court of competent jurisdiction and may recover the penalty by civil action in any court of competent jurisdiction.

Source: **L. 75:** Entire title R&RE, p. 1151, § 1, effective July 1.

Editor's note: This section is similar to former § 31-23-116 as it existed prior to 1975.

Cross references: For the requirements of monumentation of external boundaries of all subdivisions prior to recording of a plat, see § 38-51-105.

31-23-216.5. Additional enforcement - fine or imprisonment - abatement or removal. (1) In addition to any other remedies, the governing body of any municipality may

provide by ordinance that it is unlawful to erect, construct, reconstruct, use, or alter any building or structure or to use any land in violation of any municipal subdivision regulation, and the governing body may enforce obedience to such ordinance by fine or imprisonment as provided in section 31-16-101.

(2) In case any building or structure is or is proposed to be erected, constructed, reconstructed, altered, or used or any land is or is proposed to be used in violation of any municipal subdivision regulation, the municipality, in addition to other remedies provided by law, may institute an appropriate action to prevent, enjoin, abate, or remove the violation to prevent the occupancy of the building, structure, or land or to prevent any illegal act or use in or on such premises.

Source: L. 81: Entire section added, p. 1513, § 3, effective June 4.

31-23-217. Acceptance and improvement of streets. (1) The municipality shall not accept, lay out, open, improve, grade, pave, curb, or light any street or lay or authorize water mains or sewers or connections to be laid in any street within any portion of a territory for which the commission has adopted a major street plan unless such street:

(a) Has been accepted or opened as or otherwise has received the legal status of a public street prior to the adoption of such plan; or

(b) Corresponds with a street shown on the official master plan or with a street on a subdivision plat approved by the planning commission or with a street on a street plat made by and adopted by the commission. However, the governing body may accept any street not shown on or not corresponding with a street on the official master plan or on any approved subdivision plat or an approved street plat if the ordinance or other measure accepting such street is first submitted to the commission for its approval and, if approved by the commission, is enacted or passed by not less than a majority of the entire membership of the governing body or, if disapproved by the commission, is enacted or passed by not less than two-thirds of the entire membership of the governing body.

(2) A street approved by the commission upon submission by the governing body or a street accepted by a two-thirds vote after disapproval by the commission shall have the status of an approved street as though it had been originally shown on the official master plan or on a subdivision plat approved by the commission or had been originally platted by the commission.

Source: L. 75: Entire title R&RE, p. 1151, § 1, effective July 1.

Editor's note: This section is similar to former § 31-23-117 as it existed prior to 1975.

31-23-218. Erection of buildings. (1) After the time when a commission has adopted a major street plan of the territory within the municipal limits of said municipality, no building shall be erected on any lot within such territory or part nor shall a building permit be issued therefor unless the street giving access to the lot upon which such building is proposed to be placed:

(a) Has been accepted or opened as or otherwise has received the legal status of a public street prior to that time; or

(b) Corresponds with a street shown on the official master plan, with a street or subdivision plat approved by the planning commission, with a street on a street plat made by and adopted by the commission, or with a street accepted by the governing body in accordance with the provisions of section 31-23-217. Any building erected in violation of this section is an unlawful structure, and the building inspector or other appropriate official may cause it to be vacated or have it removed.

Source: L. 75: Entire title R&RE, p. 1151, § 1, effective July 1.

Editor's note: This section is similar to former § 31-23-118 as it existed prior to 1975.

31-23-219. Status of existing statutes. After the time when a municipal planning commission has control over subdivisions as provided in section 31-23-213, the jurisdiction of the planning commission over plats shall be exclusive within the territory under its jurisdiction, and all statutory control over plats or subdivisions of land granted by other statutes, insofar as in harmony with the provisions of this part 2, shall be deemed transferred to the planning commission of such municipality.

Source: L. 75: Entire title R&RE, p. 1152, § 1, effective July 1.

Editor's note: This section is similar to former § 31-23-119 as it existed prior to 1975.

31-23-220. Reservation for future acquisition. (1) (a) Any commission is empowered, from time to time, after it has adopted a major street plan of the territory within its subdivision jurisdiction or of any major section or district thereof, to make or cause to be made surveys for the exact location of the lines of a street in any portion of such territory and to make a plat of the area or district thus surveyed showing the land which it recommends be reserved for future acquisition for public streets. The commission, before adopting any such plat, shall hold a public hearing thereon, notice of the time and place of which, with a general description of the district or area covered by the plat, shall be given not less than ten days previous to the time fixed therefor by one publication in a newspaper of general circulation in the municipality if the district or area is within the municipality or of general circulation in the county if the district or area is outside the municipality. After such a hearing the commission may transmit the plat, as originally made or modified, as may be determined by the commission, to the governing body together with the commission's estimate of the time within which the lands shown on the plat as street locations should be acquired by the municipality.

(b) The governing body, by resolution, may approve and adopt or reject such plat or may modify it with the approval of the planning commission or, in the event of the commission's disapproval, the governing body, by a favorable vote of not less than two-thirds of its entire membership, may modify such plat and adopt the modified plat. In the resolution of adoption of a plat, the governing body shall fix the period of time for which the street locations shown upon the plat shall be reserved for future taking or acquisition for public use. Upon such adoption the clerk shall transmit one attested copy of the plat to the county clerk and recorder of each county in which the platted land is located and retain one copy for the purpose of public examination and hearings of claims for compensation.

(2) (a) Such approval and adoption of a plat shall not, however, be deemed the opening or establishment of any street, nor the taking of any land for street purposes, nor for public use, nor as a public improvement but solely as a reservation of the street location shown therein for the period specified in the resolution for future taking or acquisition for public use. The commission at any time may negotiate for and secure from the owners of any such lands releases of claims for damages or compensation for such reservations or agreements indemnifying the municipality from such claims by others, which releases or agreements shall be binding upon the owners executing the same and their successors in title.

(b) At any time after the filing of a plat with the county clerk and recorder and during the period specified for the reservation, the commission and the owner of any land containing a reserved street location may agree upon modification of the location of the lines of the proposed street. Such agreement shall include a release by said owner of any claim for compensation or damages by reason of such modification. Thereupon the commission may make a plat corresponding to the said modification and transmit the same to the governing body. If such modified plat is approved by the governing body, the clerk shall transmit an attested copy thereof to the county clerk and recorder and the modified plat shall take the place of the original plat. At any time the governing body, by resolution, may abandon any reservation and shall certify any such abandonment to the county clerk and recorder.

Source: L. 75: Entire title R&RE, p. 1152, § 1, effective July 1.

Editor's note: This section is similar to former § 31-23-120 as it existed prior to 1975.

31-23-221. Compensation for reservations. (1) In the resolution of adoption of a plat, the governing body shall appoint a board of three appraisers and shall fix the time and place of meetings for hearings by said board upon the amounts of compensation to be paid for such reservations. Thereupon the clerk shall publish in at least two newspapers of general circulation in the municipality once a week for four consecutive weeks a notice which shall contain a general description of the land thus reserved as shown on the plat, the provisions of the resolution of the governing body, including the period of time for which such reservations are made, the time within which claims for compensation may be filed, which shall be not less than three nor more than six months from the date of notice, and the time and place of hearings by the board of appraisers. The first hearing shall not be set earlier than thirty days after the date of the first of such publications. Such notice shall also be posted in at least three public places in the neighborhood of or along the line of the location of the reservation.

(2) The board of appraisers shall fix the amounts of compensation to be paid, respectively, to the owners of lands reserved for the period of time as shown on the plat and in the resolution adopted by the governing body. When the clerk receives, within the period fixed for the same, any claim for such compensation, he shall transmit it to the board of appraisers. At the time and place fixed for such hearings, the board of appraisers shall hear and consider all claims presented to it in writing or in person, including all evidence which may be presented by the claimants or other persons. The board of appraisers has the right on its own initiative to investigate and ascertain data or evidence relevant to the question of such compensation. In case of the abandonment of a reservation prior to the time fixed for payment of compensation, the

municipality shall be liable to the owner of the land included within the abandoned reservation for the expenses, if any, incurred by such owner by reason of such reservation.

Source: L. 75: Entire title R&RE, p. 1152, § 1, effective July 1.

Editor's note: This section is similar to former § 31-23-121 as it existed prior to 1975.

31-23-222. Report of appraisers - action by the governing body. (1) The board of appraisers, within ninety days after the time fixed for the filing of claims, shall file its tentative report with the clerk setting forth its findings as to the amounts of compensation to be paid the respective owners of the lands included within the lines of such reservations as located on the approved plat. Thereupon the clerk shall publish once a week for two consecutive weeks in at least two newspapers of general circulation in the municipality the fact of the filing of the report of the appraisers and specify a period of thirty days after the date of the first such publication within which objections to the report may be filed with the clerk. If objections are filed within said period, the clerk shall cause the board of appraisers to hold a meeting at which said objections shall be transmitted to the board, and the board may modify its report. The report in its original form or, if modified, in its modified form shall be transmitted to the governing body by the clerk.

(2) Before passing on the report, the governing body may return it to the board of appraisers for reconsideration, and the board, upon further consideration, may transmit its former or modified report to the governing body. The governing body may approve or disapprove the report. If the report is approved by the governing body, it shall provide for the payment of the amounts of compensation set forth in the report within ninety days after the filing of the report with the governing body. In the case of those property owners who file claims, payment shall be made through the clerk who shall notify the claimants at the addresses given upon the claims filed with him. Payments to all other persons shall be made through the clerk of the district court of the county in which the reserved location is situated by the payment to said clerk of the amounts awarded to such persons. Notice of distribution to such persons shall be given and made as may be provided by a rule or order of said court. Payments made to the clerk or clerk of the district court within said ninety days shall be deemed compliance with the above requirement for payment within ninety days.

(3) If the governing body disapproves the report or fails to provide for such payment within ninety days, such disapproval or failure shall be deemed a dismissal of the proceedings, a cancellation of the plat, and an abandonment of the reservations of the street locations as shown on the plat, with the same liability of the municipality for expenses as provided in the case of abandonment by resolution. Thereafter the clerk shall transmit to the county clerk and recorder an attested statement of such abandonment.

Source: L. 75: Entire title R&RE, p. 1152, § 1, effective July 1.

Editor's note: This section is similar to former § 31-23-122 as it existed prior to 1975.

31-23-223. Appeal from awards. Within twenty days after the approval of any such report by the governing body, any person dissatisfied with the award of compensation may file

with the clerk notice of appeal to the district court of the county in which the appellant's land is located. Within ten days of such notice, the clerk shall file with the clerk of the district court the report of the board of appraisers approved by the governing body, together with certified copies of the resolution thereof and of the notice of appeal. Thereafter the procedure shall be in accordance with the procedure specified by law.

Source: L. 75: Entire title R&RE, p. 1154, § 1, effective July 1.

Editor's note: This section is similar to former § 31-23-123 as it existed prior to 1975.

31-23-224. No compensation for buildings. The reservation of a street location, as provided in section 31-23-220, shall not prohibit or impair in any respect the use of the reserved land by the owner or occupant thereof for any lawful purpose, including the erection of buildings thereon. No compensations, other than the compensation awarded in the final report of said board of appraisers as approved by the governing body, as provided in section 31-23-222 or, in the case of an appeal, as awarded on such appeal as provided in section 31-23-223, shall at any time be paid by the municipality or public to or recovered from the municipality or public by any person for the taking of or injury to any building or structure built or erected within the period fixed in the resolution of the governing body upon any such reserved location. No compensation or damages for any such reservation shall be paid or recovered except as provided in sections 31-23-221 to 31-23-223.

Source: L. 75: Entire title R&RE, p. 1154, § 1, effective July 1.

Editor's note: This section is similar to former § 31-23-124 as it existed prior to 1975.

31-23-225. Major activity notice. When a subdivision or commercial or industrial activity is proposed which will cover five or more acres of land, the governing body of the municipality in which the activity is proposed shall send notice to the state geologist and the board of county commissioners of the county in which the improvement is located of the proposal prior to approval of any zoning change, subdivision, or building permit application associated with such a proposed activity.

Source: L. 75: Entire title R&RE, p. 1154, § 1, effective July 1. **L. 2005:** Entire section amended, p. 669, § 7, effective June 1.

Editor's note: This section is similar to former § 31-23-125 as it existed prior to 1975.

Cross references: For duties of the state geologist upon receipt of a notice, see § 23-41-205.

31-23-226. Applicability. This part 2 applies to municipalities, including home rule cities and towns, insofar as constitutionally permissible and except as limits are placed upon its application within the boundaries of home rule cities and towns by the charter or ordinance adopted pursuant thereto of said cities or towns.

Source: L. 75: Entire title R&RE, p. 1156, § 1, effective July 1.

Editor's note: This section is similar to former § 31-23-101 (4) as it existed prior to 1975.

31-23-227. Allocation of powers or duties. (1) The governing body of a municipality may, by ordinance, assume and exercise any power granted to or duty placed upon the municipal planning commission by this part 2 and may, by ordinance, delegate to the municipal planning commission or other appropriate municipal body any power granted to or duty placed upon the municipal governing body by this part 2, providing that the right to appeal to the municipal governing body is retained in any such delegation; except that the power to impose fines and penalties may not be delegated.

(2) The governing body of a municipality may, by ordinance, enter into an intergovernmental agreement with the county or counties in which it is located for the purposes of joint participation in land use planning, subdivision procedures, and zoning for a specific area designated in the intergovernmental agreement. However, any action taken pursuant to the intergovernmental agreement that pertains to any land within the municipality is subject to final approval by the governing body of the municipality.

Source: L. 83: Entire section added, p. 1263, § 1, effective May 4. **L. 96:** Entire section amended, p. 575, § 1, effective April 25.

PART 3

ZONING

Cross references: For county planning and building codes, see article 28 of title 30.

Law reviews: For comment, "The King Can Do Wrong: Local Government Immunity from Zoning", see 57 U. Colo. L. Rev. 639 (1986); for article, "Pronouncements of the U.S. Supreme Court Relating to the Criminal Law Field: 1985-1986", which discusses a case relating to municipal zoning, see 15 Colo. Law. 1560 (1986); for article, "Land Use Decisionmaking: Legislative or Quasi-judicial Action", see 18 Colo. Law. 241 (1989); for article, "Substantive Due Process and Zoning Decisions", see 25 Colo. Law. 71 (March 1996).

31-23-301. Grant of power. (1) Except as otherwise provided in section 34-1-305, C.R.S., for the purpose of promoting health, safety, morals, or the general welfare of the community, including energy conservation and the promotion of solar energy utilization, the governing body of each municipality is empowered to 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, the height and location of trees and other vegetation, and the location and use of buildings, structures, and land for trade, industry, residence, or other purposes. Regulations and restrictions of the height, number of stories, and the height and location of trees and other vegetation shall not apply to existing buildings, structures, trees, or vegetation except for new growth on such vegetation. Such