

1 HB633
2 135710-1
3 By Representative Holmes (N & P)
4 RFD: Montgomery County Legislation
5 First Read: 03-APR-12

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9 A BILL
10 TO BE ENTITLED
11 AN ACT
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13 To create the Montgomery County Planning Commission;
14 to provide for the organization membership, powers, personnel,
15 jurisdiction, and financial and legal status of the planning
16 commission; to authorize the planning commission to adopt a
17 master plan and zoning regulations for the development of the
18 unincorporated area of Montgomery County; to provide for an
19 election in each precinct prior to the application of the
20 authority of the planning commission in the precinct; to
21 authorize the planning commission to zone under certain
22 conditions in the unincorporated areas within Montgomery
23 County and provide a procedure for the amendment of zoning
24 regulations; to prohibit zoning regulations from being
25 retroactive; to provide remedies for the enforcement of the
26 provisions of this act; to provide exceptions to the zoning

1 regulations; and to provide for appeals from the decisions of
2 the planning commission.

3 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

4 Section 1. (a) There is hereby created a Planning
5 Commission for Montgomery County which planning commission
6 shall be appointed as hereinafter provided and shall have
7 responsibilities and duties as are stated herein. The term
8 "planning commission" as used herein shall mean the Montgomery
9 County Planning Commission and the term "county commission" as
10 used herein shall mean the Montgomery County Commission.

11 (b) The jurisdiction of the planning commission
12 shall extend to all unincorporated areas of Montgomery County.

13 Section 2. The planning commission shall be composed
14 of seven members, each of whom shall be a qualified voter in
15 and an actual resident of Montgomery County. The majority of
16 the planning commission members shall be persons from the
17 unincorporated areas of Montgomery County. Each commissioner
18 shall appoint one member to the planning commission, one of
19 which will be a person with expertise in the field of
20 agriculture. An additional member shall be appointed by each
21 of the two commissioners that represent the majority of the
22 unincorporated geographical area, and shall serve at the
23 pleasure of the county commission. Each member shall serve a
24 term of six years or until a successor is duly appointed and
25 qualified. Prior to taking office each member shall subscribe
26 to an oath as provided by law for the public officials and the
27 same shall be recorded in the office of the Judge of Probate

1 of Montgomery County. The original members of the planning
2 commission shall draw lots to determine the period of time
3 each is to serve and the terms of two shall expire two years
4 from the date of the organization of the planning commission;
5 and the terms of two others shall expire four years from the
6 date of the organization of the planning commission; and the
7 terms of three others shall expire six years from the date of
8 the organization of the planning commission. In the event of a
9 vacancy on the planning commission, the vacancy shall be
10 filled as in the same manner as the original appointment. All
11 members shall be reimbursed reasonable and necessary expenses
12 incurred and approved by the county commission.

13 Section 3. The planning commission shall elect a
14 chair and other officers as it may determine necessary. The
15 term of chair shall be for one-year, with eligibility for
16 reelection to additional terms. The planning commission shall
17 normally hold at least one regular meeting each month. It
18 shall adopt bylaws, which shall also be approved by the county
19 commission, for the transaction of business and shall keep a
20 record of its resolutions and transactions of business, all of
21 which shall be a public record.

22 Section 4. The county commission, as it deems
23 necessary, may employ a planning director, as the appointing
24 authority for the planning department, with the authority to
25 hire, promote, demote, and remove employees under the rules
26 and regulations adopted by the county commission in compliance
27 with the policies of the Montgomery City/County Personnel

1 Board. The county commission may also contract with county or
2 city planners, engineers, architects, and other consultants
3 and with any local, state, or federal agency for any services
4 as the planning commission may require. The county commission
5 may cooperate with and accept funds from federal, state, and
6 local public or semi-public agencies, private individuals, or
7 corporations, and may expend the funds and carry out the
8 cooperative undertakings and contracts for necessary planning
9 studies. The expenditures of the planning commission shall be
10 within the budget appropriated for the purpose by the county
11 commission.

12 Section 5. It shall be the function and duty of the
13 planning commission to create and maintain a master plan of
14 unincorporated areas of Montgomery County as and when deemed
15 necessary by the planning commission and to adopt with the
16 approval of the county commission appropriate zoning
17 regulations as provided by Section 10 of this act for the
18 physical development of Montgomery County. The master plan and
19 regulations as provided for in this act, with the accompanying
20 maps, plats, charts, and descriptive material, shall show the
21 planning commission's recommendations for the use and
22 development of the unincorporated areas of Montgomery County.
23 The zoning plan shall also include zoning regulations for
24 selected areas for the control of the height, area, location,
25 and use of buildings and land. As the master plan and
26 preparation of zoning regulations evolves, the planning
27 commission may adopt and publish a part or parts thereof. The

1 planning commission, with approval of the county commission,
2 may extend or add to the plan or regulations as hereinafter
3 provided. Nothing in this act shall be construed to impair the
4 legal right of eminent domain currently prescribed by law.

5 Section 6. In the preparation of the master plan and
6 zoning regulations, the planning commission shall consider
7 surveys and studies of the present conditions existing within
8 Montgomery County.

9 Section 7. The master plan and zoning regulations
10 provided by the planning commission shall not be applicable in
11 any precinct of Montgomery County until the majority of the
12 qualified voters of the precinct voting in a special election
13 have signified by their vote that they desire the authority of
14 the planning commission, its master plan, and the zoning
15 regulations to apply to their precinct. The election must be
16 held not less than 30 or more than 45 days after a petition
17 seeking the election is filed in the office of the judge of
18 probate. The petition shall be signed by at least 25 percent
19 of the qualified voters who reside within the precinct and the
20 unincorporated areas of Montgomery County, as certified by the
21 office of the Judge of Probate of Montgomery County. Notice of
22 the election shall be given by three weeks publication in a
23 newspaper of general circulation in Montgomery County and
24 posting notice in two public places within the precinct. The
25 cost of the election shall be paid from the general fund of
26 Montgomery County. The ballot shall be so worded as to give
27 the voter the opportunity to vote either "Yes" or "No" as to

1 whether the voter wishes the authority of the planning
2 commission, its master plan, and the zoning regulations to
3 apply to the precinct. Only those qualified voters residing in
4 the precinct and in the unincorporated areas of Montgomery
5 County shall be permitted to sign a petition calling for the
6 election and vote in an election. Each petitioner shall verify
7 on the petition and at the voting precinct that he or she
8 resides in the unincorporated area of Montgomery County. If a
9 statement to this fact is not on the petition and the ballot,
10 the petition and the ballot are invalid.

11 Section 8. The planning commission, with the
12 approval of the county commission, shall adopt rules and
13 regulations applicable for the zoning of land, subdivision of
14 land, and plats of subdivisions in the unincorporated areas of
15 Montgomery County and the same shall be recorded in the office
16 of the judge of probate as prescribed by law. The provisions
17 of this section shall apply within the jurisdiction of the
18 planning commission as specified in Section 3 of this act.

19 Section 9. For the purpose of promoting the general
20 health, education, and welfare of the citizens of Montgomery
21 County, the planning commission, with the approval of the
22 county commission, may divide the portion of Montgomery County
23 within its unincorporated area as it deems proper.

24 Section 10. The county commission and its duly
25 appointed planning commission shall have the exclusive zoning
26 authority over all unincorporated areas of Montgomery County.

1 Section 11. Once zoning regulations and master plan
2 have been adopted by the county commission and have become
3 applicable to a precinct as provided by Section 8 herein, the
4 zoning regulations and master plan shall not be changed until
5 the notice has been published for three weeks in a newspaper
6 of general circulation within Montgomery County and posting
7 notice in two public places within the precinct. The notice
8 shall state the date, time, and place of a public hearing
9 concerning any proposed changes. After the hearing has been
10 properly conducted, any proposed changes shall be approved by
11 a vote of the majority of the members present that constitute
12 a legal quorum of the county commission.

13 Section 12. In case any building or structure is
14 erected, constructed, reconstructed, altered, repaired,
15 converted, or maintained, or any subdivision is established,
16 or land used in violation of this enactment or of any
17 regulation made under the authority conferred hereby, the
18 county commission may initiate any appropriate action or
19 proceeding to prevent the unlawful erection, construction,
20 reconstruction, alteration, repair, conversion, maintenance,
21 or subdivision of the land or use of the land to restrain,
22 correct, or abate the violation, and to prevent the occupancy
23 of any building, structure, or subdivision of land, or to
24 prevent any illegal act, conduct, business, or misuse in or
25 upon any premises regulated under the authority conferred by
26 this act.

1 Section 13. The planning commission, with the
2 approval of the county commission, in appropriate cases and
3 subject to appropriate conditions and safeguards, may make
4 special exceptions to the terms of the zoning regulations in
5 order to provide for the general health, education, and
6 welfare of the citizens of Montgomery County. Any appeal from
7 any exceptions to the above described zoning regulations
8 decision made by the planning commission pertaining to the
9 exceptions prescribed herein may be filed in writing setting
10 the basis for the appeal whereupon the county commission shall
11 fix a date for such hearing. The planning commission shall
12 give notice as to the date, time, and place of the hearing.
13 The county commission shall have the following powers: (1) To
14 hear and decide appeals where it is alleged there is error in
15 any order, requirement, decision, or determination made by the
16 planning commission; (2) To hear and decide on requests for
17 special exceptions to the term of provisions of the
18 regulations upon which such planning commission is required to
19 pass; and (3) To authorize upon appeal, in special cases, any
20 variances from the previously adopted regulations and master
21 plan.

22 The hearing shall require a legal quorum of the
23 members of the county commission.

24 Any actions taken must be approved by a majority
25 vote of the members present.

26 Section 14. Any aggrieved party to any final
27 judgment or decision of the planning commission, within 15

1 days, may file in writing by certified mail an appeal to the
2 county commission. The county commission shall then notify the
3 appellant in writing by certified mail as to the date, time,
4 and location of the hearing. The county commission, after
5 reviewing the evidence presented at the hearing, shall take
6 whatever action it deems appropriate. The county commission
7 shall issue in writing within 30 days of the hearing its
8 findings and final decision. Any party dissatisfied with the
9 decision of the county commission shall have the right to
10 appeal its decision within 30 days to the Circuit Court of
11 Montgomery County. In the case of an appeal to the circuit
12 court, the county commission shall cause a transcript of the
13 proceedings of the hearing to be certified to the court.

14 Section 15. The provisions of this act are
15 severable. If any part of this act is declared invalid or
16 unconstitutional, that declaration shall not affect the part
17 which remains.

18 Section 16. This act shall not affect the
19 jurisdiction of the planning commission of the City of
20 Montgomery pursuant to Section 11-52-30, Code of Alabama 1975.
21 All other laws or parts of laws in conflict with this act are
22 repealed. Upon approval by the voters of any precinct for this
23 act to be applicable in the precinct, this act shall supersede
24 any part of Act 350, 1971 Regular Session (Acts 1971, p. 642),
25 in conflict with this act.

1 Section 17. This act shall become effective on the
2 first day of the third month following its passage and
3 approval by the Governor, or its otherwise becoming law.