

#### **IC 14-28-4**

##### **Chapter 4. Flood Plain Commissions**

#### **IC 14-28-4-1**

##### **"Commission" defined**

Sec. 1. As used in this chapter, "commission" refers to a flood plain commission established under this chapter.

*As added by P.L.1-1995, SEC.21.*

#### **IC 14-28-4-2**

##### **"Improvement location permit" defined**

Sec. 2. As used in this chapter, "improvement location permit" means a permit to alter, expand, or enlarge any use of land or structure. The term includes the erection of a structure.

*As added by P.L.1-1995, SEC.21.*

#### **IC 14-28-4-3**

##### **Establishment of flood plain commissions**

Sec. 3. A county or municipality may establish a flood plain commission by ordinance of the unit's legislative body. The commission may regulate land uses within identified flood hazard areas under this chapter.

*As added by P.L.1-1995, SEC.21.*

#### **IC 14-28-4-4**

##### **Members**

Sec. 4. The commission, to be known as the "\_\_\_\_\_ Flood Plain Commission", consists of three (3) members as follows:

(1) One (1) member of the legislative body of the county or municipality to be appointed by the legislative body.

(2) Two (2) citizens who reside within the jurisdiction of the legislative body and who do not hold an elective public office to be appointed as follows:

(A) The board of commissioners, for a county.

(B) The city executive, for a city.

(C) The town executive, for a town.

*As added by P.L.1-1995, SEC.21.*

#### **IC 14-28-4-5**

##### **Term of members; filling of vacancies**

Sec. 5. (a) Commission members serve terms of one (1) year, beginning with the first Monday of January of each year. The initial members serve from the date of establishment of the commission until the first Monday of January of the following year.

(b) If a vacancy occurs, the appointing authority shall appoint a member to fill the unexpired term.

*As added by P.L.1-1995, SEC.21.*

#### **IC 14-28-4-6**

##### **Officers**

Sec. 6. (a) At the first regular meeting of each year the commission shall elect from the members of the commission the following officers:

- (1) A president.
- (2) A vice president.
- (3) A secretary.

(b) The vice president may act as president of the commission during the absence or disability of the president.

*As added by P.L.1-1995, SEC.21.*

#### **IC 14-28-4-7**

##### **Regular meetings**

Sec. 7. The commission shall fix the time for holding regular meetings, but the commission shall meet at least one (1) time in January, April, July, and October.

*As added by P.L.1-1995, SEC.21.*

#### **IC 14-28-4-8**

##### **Special meetings**

Sec. 8. (a) A special meeting of the commission may be called by any member upon written request to the secretary.

(b) The secretary shall send to all the members, at least two (2) days in advance of a special meeting, a written notice fixing the time and place of the meeting.

(c) Written notice of a special meeting is not required if:

- (1) the time of the special meeting has been fixed in a regular meeting; or
- (2) all members are present at the special meeting.

*As added by P.L.1-1995, SEC.21.*

#### **IC 14-28-4-9**

##### **Quorum**

Sec. 9. A majority of the members of the commission constitutes a quorum. To be official, an action of the commission must be authorized by a majority of the commission at a regular or special meeting.

*As added by P.L.1-1995, SEC.21.*

#### **IC 14-28-4-10**

##### **Disqualification of interested members**

Sec. 10. A member of the commission or legislative body of the county or municipality may not participate in a hearing or decision upon a zoning matter, other than the preparation and adoption of an initial flood plain zoning ordinance, in which the member is directly or indirectly interested in a financial sense. If a disqualification under this section occurs:

- (1) this fact shall be entered on the records of the commission or legislative body; and
- (2) the remaining members shall act upon the matter.

*As added by P.L.1-1995, SEC.21.*

#### **IC 14-28-4-11**

##### **General powers of commissions**

Sec. 11. The commission may do the following:

- (1) Exercise general supervision of and make rules for the administration of the affairs of the commission.
- (2) Prescribe uniform rules pertaining to investigations and hearings.
- (3) Supervise the fiscal affairs and responsibilities of the commission.
- (4) Keep an accurate and a complete record of all commission proceedings and assume responsibility for the custody and preservation of all papers and documents of the commission.
- (5) Make recommendations and an annual report to the legislative body of the county or municipality concerning the operation of the commission.
- (6) Make recommendations to the legislative body on the adoption of the initial flood plain zoning ordinance and amendments and any other matter within the commission's jurisdiction under this chapter.
- (7) Prepare, publish, and distribute reports, ordinances, and other material relating to the activities authorized under this chapter.
- (8) Sue and be sued collectively by the commission's legal name, service of process being had on the president of the commission or any of the members in an action.
- (9) Invoke any legal, equitable, or special remedy for the enforcement of this chapter or the commission's action taken under this chapter.

*As added by P.L.1-1995, SEC.21.*

#### **IC 14-28-4-12**

##### **Annual budgets**

Sec. 12. The commission shall prepare and submit an annual budget. After the legislative body of the county or municipality has passed an ordinance creating a commission:

- (1) money may be appropriated to carry out the duties of the commission; and
- (2) the commission may expend, under procedure provided by law, money appropriated to the commission for purposes and activities authorized by this chapter.

*As added by P.L.1-1995, SEC.21.*

#### **IC 14-28-4-13**

##### **Special nonreverting commission funds**

Sec. 13. (a) The commission, county, or municipality may accept gifts, donations, and grants from private and governmental sources for commission purposes. Money accepted shall be deposited in a special nonreverting commission fund available for expenditure by the commission for the purpose designated by the donor.

- (b) The disbursing officer of the county or municipality shall draw

warrants against regular funds or the special nonreverting fund only upon claims signed by the president and secretary of the commission.  
*As added by P.L.1-1995, SEC.21.*

#### **IC 14-28-4-14**

##### **Per diem compensation and traveling expenses**

Sec. 14. (a) The county or municipality may compensate the members of the commission for service on the commission.

(b) When the commission determines that it is necessary for members to attend in another city or county a state, regional, or national conference or interview dealing with planning or related problems, the commission may pay the actual expenses of the attending member if the amount has been made available in the commission's appropriation.

(c) The commission may approve a per diem allowance to a member for the purpose of attending a regular or special meeting held by the commission if the amount has been made available in the commission's appropriation.

*As added by P.L.1-1995, SEC.21.*

#### **IC 14-28-4-15**

##### **Proposed initial flood plain zoning ordinances**

Sec. 15. (a) To assure the promotion of public health, safety, convenience, and the general welfare within the commission's jurisdiction, the commission shall prepare a proposed initial flood plain zoning ordinance. The ordinance must provide for the following:

(1) The classification of all land within the jurisdiction of the county or municipality into flood plain or nonflooding areas.

(2) The regulation of land use and the location or construction of buildings and other structures within the areas designated as flood plain areas.

(b) In establishing flood plain districts and regulations, the commission may use the special flood hazard area maps supplied by the Federal Insurance Administration or any other criteria approved by the department.

*As added by P.L.1-1995, SEC.21.*

#### **IC 14-28-4-16**

##### **Land classified as flood plain area; effectiveness of mappings or identification**

Sec. 16. (a) As used in this section, "flood protection grade" means the elevation of the lowest point around the perimeter of a building at which flood water may enter the interior of the building.

(b) The land classified as flood plain areas may be:

(1) defined and subclassified in the ordinance as floodway or floodway fringe; and

(2) further identified as to flood protection grade.

(c) The mappings or other identification of the areas become effective only at the time that accurate information is made available

to the commission and authenticated by the department or the United States Department of Housing and Urban Development.

*As added by P.L.1-1995, SEC.21.*

#### **IC 14-28-4-17**

##### **Ordinance may require buildings or land to conform; improvement location permit fees**

Sec. 17. (a) A flood plain zoning ordinance may require that:

- (1) a structure may not be located;
- (2) a use may not be changed; and
- (3) an improvement location permit may not be issued for a structure or change of use;

on land either platted or unplatted within the jurisdiction of the commission unless the structure or use and location conform to the requirements of the flood plain zoning ordinance.

(b) The:

- (1) commission may set; and
- (2) zoning administrator may collect;

reasonable fees for the issuance of improvement location permits.

*As added by P.L.1-1995, SEC.21.*

#### **IC 14-28-4-18**

##### **Zoning administrators; judicial review of administrator's final decision**

Sec. 18. (a) A flood plain zoning ordinance must designate:

- (1) the county auditor;
- (2) the county surveyor; or
- (3) the municipal clerk or clerk-treasurer;

as applicable, as the zoning administrator who issues improvement location permits within the jurisdiction of the commission and in conformance with the flood plain ordinance.

(b) A final decision of the zoning administrator may be judicially reviewed in the same manner and subject to the same limitations as a final decision of a board of zoning appeals under IC 36-7-4.

*As added by P.L.1-1995, SEC.21. Amended by P.L.126-2011, SEC.1.*

#### **IC 14-28-4-19**

##### **Presentation of proposed ordinance to legislative body**

Sec. 19. (a) The commission shall prepare and present the proposed initial zoning ordinance, with explanatory maps, to the legislative body of the county or municipality.

(b) The legislative body shall do the following:

- (1) Consider the proposed initial zoning ordinance.
- (2) Return the ordinance within forty-five (45) days with any suggestions and recommendations to the commission for the commission's final report.

*As added by P.L.1-1995, SEC.21.*

#### **IC 14-28-4-20**

##### **Final report of commission on proposed ordinance**

Sec. 20. A county or municipality may not pass an ordinance under this chapter until:

(1) the legislative body of the county or municipality receives; and

(2) the natural resources commission approves; the final report of the commission.

*As added by P.L.1-1995, SEC.21.*

#### **IC 14-28-4-21**

##### **Legislative action on proposed ordinance; hearing**

Sec. 21. (a) After the commission submits the final report, the legislative body of the county or municipality shall give all interested persons an opportunity to be heard with reference to the final report at a public hearing convenient for all persons affected. The legislative body shall publish notice of the hearing in a daily newspaper of general circulation in the county or municipality.

(b) The notice must state the following:

(1) The time and place of the hearing.

(2) That the report contains a flood plain zoning ordinance for the county or municipality.

(3) That written objections to the proposed zoning ordinance filed with the clerk of the legislative body at or before the hearings will be heard.

(4) That the hearing will be continued as is necessary.

(c) The notice shall be published at least two (2) times within the ten (10) days before the time set for the hearing, during which time the proposed zoning ordinance shall be kept on file in the office of the commission or other designated place for public examination.

(d) Upon completion of the public hearing, the legislative body shall proceed to consider the ordinance.

*As added by P.L.1-1995, SEC.21.*

#### **IC 14-28-4-22**

##### **Legislative body may amend or supplement regulations or boundaries in ordinance**

Sec. 22. The legislative body of the county or municipality may amend or supplement the regulations and district boundaries fixed by ordinance under this chapter or IC 13-2-22.6 (before its repeal). However, the area designated as flood plain may not be changed unless the change is based upon data:

(1) supplied by the United States Department of Housing and Urban Development; or

(2) supplied or approved by the department.

*As added by P.L.1-1995, SEC.21.*

#### **IC 14-28-4-23**

##### **Petition to amend or supplement zoning ordinance**

Sec. 23. The:

(1) commission; or

(2) owners of at least fifty percent (50%) of the land area

involved in the matter set forth in a petition; may present signed petitions to the legislative body of the county or municipality requesting an amendment or supplement of the regulations of the zoning ordinance.

*As added by P.L.1-1995, SEC.21.*

#### **IC 14-28-4-24**

##### **Referral of proposed amendment, supplement, or repeal to commission**

Sec. 24. The legislative body shall refer a proposed ordinance for the amendment, supplement, or repeal of the zoning ordinance not originating from petition of the commission to the commission for consideration and a report before the legislative body of the county or municipality takes final action.

*As added by P.L.1-1995, SEC.21.*

#### **IC 14-28-4-25**

##### **Legislative action on proposed amendment, supplement, or repeal; hearing**

Sec. 25. (a) Before the commission submits to the legislative body:

- (1) a petition; or
- (2) a report on a proposed ordinance referred to the commission;

for an amendment, a supplement, or a repeal of the zoning ordinance, the commission shall hold a public hearing.

(b) At least ten (10) days before the date set for the hearing, the commission shall publish in a newspaper of general circulation in the county or municipality a notice of the time and place of the hearing.

(c) After the public hearing has been held, the commission may by resolution recommend the proposed amendments to the legislative body of the county or municipality. However:

- (1) the commission may not recommend; and
- (2) the legislative body may not adopt;

flood plain district boundaries less extensive than those established by the United States Department of Housing and Urban Development or the department.

(d) The secretary shall do the following:

- (1) Certify a copy of an amendment to the legislative body.
- (2) Present the amendment at the legislative body's first meeting following commission action.

*As added by P.L.1-1995, SEC.21.*

#### **IC 14-28-4-26**

##### **Building or land violating ordinance declared public nuisance; investigations**

Sec. 26. (a) The legislative body of the county or municipality may declare:

- (1) a building erected, raised, or converted; or
- (2) land or premises used;

in violation of an ordinance or a regulation adopted under this chapter or under IC 13-2-22.6 (before its repeal) to be a common nuisance. The owner of the building, land, or premises is liable for maintaining a common nuisance.

(b) If penalties have been provided for violation of an ordinance, the attorney of the county or municipality shall, upon receipt of information of a violation of an ordinance or a regulation adopted under the county's or municipality's authority, make an investigation of the alleged violation. If the facts are sufficient to establish a reasonable belief that a violation has occurred, the attorney may file a complaint against the violator and prosecute the alleged violation.  
*As added by P.L.1-1995, SEC.21.*

#### **IC 14-28-4-27**

##### **Injunctive relief**

Sec. 27. (a) The commission may institute the following:

(1) A suit for injunction in the circuit court with jurisdiction in the county to restrain an individual or a governmental entity from violating this chapter or an ordinance adopted under this chapter or under IC 13-2-22.6 (before its repeal).

(2) A suit for a mandatory injunction directing an individual or a governmental entity to remove a structure erected in violation of:

(A) this chapter or IC 13-2-22.6 (before its repeal); or

(B) an ordinance adopted under this chapter or under IC 13-2-22.6 (before its repeal).

(b) If the commission is successful in the commission's suit, the respondent shall pay the costs of the action. A change of venue from the county may not be granted.

*As added by P.L.1-1995, SEC.21.*

#### **IC 14-28-4-28**

##### **Compensation or damages precluded for taking of or injury to building or land violating ordinance**

Sec. 28. In:

(1) a proceeding by a county or municipality for the taking, appropriation, or condemnation of land; or

(2) an action against a county or municipality;

compensation or damages may not be awarded for the taking of or injury to a structure erected in violation of an ordinance adopted under this chapter or under IC 13-2-22.6 (before its repeal).

*As added by P.L.1-1995, SEC.21.*

#### **IC 14-28-4-29**

##### **Purpose of chapter**

Sec. 29. (a) It is the purpose of this chapter to enable counties and municipalities that have not adopted effective land use ordinances under IC 36-7 to comply with the requirements of:

(1) the federal National Flood Insurance Act (42 U.S.C. 4001 through 4127);

- (2) IC 14-28-1; and
- (3) IC 14-28-3;

by permitting the establishment of a single-purpose zoning authority to adopt minimum standards and regulations for the management of identified flood hazard areas.

(b) Because zoning ordinances adopted under comprehensive planning legislation require extensive preparation time and because the national flood insurance program and the state statutes enacted under the program require identified counties and municipalities to regulate land use and improvements to the land in flood hazard areas before those zoning ordinances can be adequately prepared, this chapter authorizes counties and municipalities that do not have land use regulation ordinances in effect to form single-purpose flood plain commissions to administer certain local ordinances, including the following:

- (1) A set of minimum standards and regulations to meet the requirements of state and federal flood hazard area programs.
- (2) An improvement location permit system to ensure that every new location, land use, or structure in the jurisdiction conforms to flood hazard area regulations.
- (3) A set of enforcement procedures suitable to ensure minimum compliance with the regulations.

*As added by P.L.1-1995, SEC.21.*

#### **IC 14-28-4-30**

##### **Powers of state, agencies, and subdivisions not affected**

Sec. 30. (a) This chapter is supplemental to and does not abrogate the powers extended to agencies, bureaus, departments, commissions, divisions, or officials of state government by other statutes, and these powers remain in full effect. Except as otherwise provided in this chapter, powers of supervision and regulation by divisions of state government over counties, municipalities, individuals, firms, limited liability companies, or corporations also are not abrogated and continue in full effect.

(b) This chapter does not restrict or prohibit the state or any of the state's political subdivisions from the commemoration of persons or objects of historical or architectural interest or value as a part of our citizens' heritage.

*As added by P.L.1-1995, SEC.21.*

#### **IC 14-28-4-31**

##### **Effect of ordinances adopted under IC 36-7**

Sec. 31. The adoption of a zoning ordinance under IC 36-7 that provides for flood plain management within the jurisdiction of a county or municipality immediately voids a flood plain commission, ordinance, or regulation adopted under:

- (1) this chapter; or
- (2) IC 13-2-22.6 (before its repeal).

*As added by P.L.1-1995, SEC.21.*