

No. 68

AN ACT

Authorizing cities of the second class to purchase, acquire, enter upon, take, use and appropriate private property, within or without the corporate limits of such cities, for playgrounds, playfields, gymnasiums, public baths, swimming-pools and indoor recreation centers, and providing for annexation thereof.

Cities of second class.

Acquisition of property for playgrounds, &c.

Proceedings to ascertain damages or to assess benefit.

Section 1. Be it enacted, &c., That it shall be lawful for, and the right is hereby conferred upon, cities of the second class of this Commonwealth to purchase, acquire, enter upon, take, use, and appropriate private property for the purpose of acquiring, making, enlarging, extending, maintaining, and operating, playgrounds, playfields, gymnasiums, public baths, swimming-pools and indoor recreation centers, within or without the corporate limits of such cities, whenever the councils thereof shall, by ordinance or resolution, determine thereon, and provided that, where such property is outside of the city, it may be annexed thereto by ordinance of such city.

Section 2. In exercising the power aforesaid, all proceedings for ascertaining damages and the assessing of benefits incident thereto, shall be in accordance with the law authorizing cities of the second class of this Commonwealth to acquire, by purchase or otherwise, private property for public playgrounds, playfields, gymnasiums, public baths, swimming-pools and indoor recreation centers and public park purposes.

APPROVED—The 31st day of March, A. D. 1927.

JOHN S. FISHER

No. 69

A SUPPLEMENT

To an act, entitled "An act for the government of cities of the second class," approved the seventh day of March, one thousand nine hundred and one (Pamphlet Laws, twenty), authorizing cities of the second class to regulate and restrict the height, number of stories and size of buildings and other structures, and the size of yards, courts and other open spaces, the density of population, and to regulate and restrict the location, use and occupancy of buildings, structures and land for trade, industry, residence, specified uses or other purposes, and, for the above purposes, to divide the city into districts, and authorizing the City Planning Commission to recommend the boundaries of districts and appropriate regulations therein, and providing the method of adoption of said district regulations and restrictions, and providing methods to prevent the unlawful erection, construction, reconstruction, alteration, conversion, repair, maintenance, use, or occupancy of buildings, structures or land, and to prevent the unlawful occupancy or use of the said buildings, structures or land and any illegal act, conduct, business or use in or about such premises, and the method of amendment or change thereof, et cetera.

GRANT OF POWER

Section 1. Be it enacted, &c., That for the purpose of promoting health, safety, morals or the general

Cities of the second class.

welfare of the community, cities of the second class are hereby empowered to regulate, restrict or determine, the height, number of stories and size of buildings and other structures, the percentage of lot that may be built upon, the size of yards, courts and other open spaces, the density of population, and the location, use and occupancy of buildings, structures and land for trade, industry, residence or other purposes.

Regulation of use
of land and
buildings.

Section 2. Districts.—For any or all of said purposes, the council may, by ordinance, divide the city into districts of such number, shape and area as may be deemed best suited to carry out the purposes of this act and, within such districts, they may regulate and restrict the erection, construction, reconstruction, alteration, repair, use or occupancy of buildings, structures or land. All such regulations shall be uniform for each class or kind of buildings, structures or land throughout each district; but the regulations in one district may differ from those in other districts.

Districts.

Section 3. Purposes in View.—Such regulations shall be made in accordance with a comprehensive plan, and designed to lessen congestion in the streets; to secure safety from fire panic and other dangers; to promote health and the general welfare; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; to facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirements. Such regulations shall be made with reasonable consideration, among other things, to the topography and character of the district, with its peculiar suitability for particular uses, and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout such city.

Purposes in view.

Section 4. City Planning Commission.—It shall be the duty of the city planning commission of such city to recommend the boundaries of the various districts and appropriate regulations to be enforced therein. Such commission shall make a preliminary report and hold public meetings thereon before submitting its final reports, and council shall not hold its public meetings or take action until it has received the final report of such commission.

City Planning
Commission.

Section 5. Method of Procedure.—The council of such city shall provide for the manner in which such regulations and restrictions and the boundaries of such districts shall be determined, established and enforced, and, from time to time, amended, supplemented or changed. However no such regulation, restriction or boundary shall become effective until after a public hearing in relation thereto, at which parties in interest and citizens shall have an opportunity to be heard. At least fifteen days' notice of the time and place of such

Method of
procedure.

hearing shall be published in an official paper or a paper of general circulation in such city.

Changes in regulations, restrictions and boundaries.

Section 6. Changes.—Such regulations, restrictions and boundaries may, from time to time, be amended, supplemented, changed, modified or repealed. In case, however, of a protest against such change, signed by the owners of twenty (20) per cent or more, either of the area of the lots included in such proposed change, or of those immediately adjacent in the rear, or adjoining on the sides thereof extending one hundred (100) feet therefrom, or of those directly opposite thereto extending one hundred (100) feet from the street frontage of such opposite lots, or when disapproved by the city planning commission, such amendment shall not become effective except by the favorable vote of three-fourths of all the members of the council of such city: Provided, That before any such amendment, supplement or change shall be voted on by the council, the city planning commission shall have been given twenty (20) days' notice thereof and of the date of hearing. The provisions of the previous section relative to public hearings and official notice shall apply equally to all changes or amendments.

Board of adjustment.

Section 7. Board of Adjustment.—The mayor of every city of the second class shall, with the approval of the council, appoint a board of adjustment and in the regulations and restrictions adopted pursuant to the authority of this act, it shall be provided that the said board of adjustments may, in appropriate cases and subject to appropriate conditions and safeguards, make special exceptions to the terms of the ordinance, in harmony with its general purpose and intent and in accordance with general or specific rules therein contained.

Membership.

The board of adjustment shall consist of three members, one of whom shall be a member of the city planning commission; one of whom shall be designated to serve until the first day of January, one thousand nine hundred and twenty-eight; one until the first day of January, one thousand nine hundred and twenty-nine; and one until the first day of January, one thousand nine hundred and thirty. Their successors shall be appointed, on the expiration of their respective terms, to serve three years. Vacancies shall be filled for the unexpired term of any member whose term becomes vacant.

Vacancies.

Rules.

Meetings.

The board shall adopt rules in accordance with the provisions of any ordinance adopted pursuant to this act. Meetings of the board shall be held at the call of the chairman and at such other times as the board may determine. Such chairman, or in his absence the acting chairman, may administer oaths and compel the attendance of witnesses under penalty as may be provided in the ordinance. All meetings of

the board shall be open to the public. The board shall keep minutes of its proceedings showing the vote of each member upon each question or, if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the board and shall be a public record.

Records.

Appeals to the board of adjustment may be taken by any person aggrieved, or by the head of any department affected by or interested in any decision of the officer charged with the administration of the ordinance. Such appeal shall be taken within a reasonable time, as provided by the rules of the board, by filing with the officer from whom the appeal is taken and with the board of adjustment a notice of appeal specifying the grounds thereof. The officer from whom the appeal is taken shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken.

Appeals to board

An appeal shall stay all proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the board of adjustment, after the notice of appeal shall have been filed with him, that by reason of facts stated in the certificate a stay would in his opinion cause imminent peril to life or property. In such case proceedings shall not be stayed otherwise than by a restraining order, which may be granted by the court of common pleas of the county wherein said city may be situated, on application and notice to the officer from whom the appeal is taken and on due cause shown and the filing of a bond as in other injunction proceedings.

When appeal shall stay proceedings

The board of adjustment shall fix a reasonable time for the hearing of the appeal, give posted public notice thereof, and decide the same within a reasonable time. Upon the hearing, any party may appear in person or by agent or by attorney.

Hearing and notice.

The board of adjustment shall have the following powers:

Powers of board.

1. To hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination, made by an administrative official in the enforcement of any ordinance adopted pursuant to this act.

To hear and decide appeals.

2. To hear and decide special exceptions to the terms of the ordinance upon which such board is required to pass under such ordinance.

To hear and decide special exceptions.

3. To authorize upon appeal in specific cases such variance from the terms of the ordinance as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provisions of the ordinance will result in unnecessary

To authorize variance from terms of ordinance.

hardship and so that the spirit of the ordinance shall be observed and substantial justice done.

Modification of
order appealed
from.

In exercising the above-mentioned powers, such boards may, in conformity with the provisions of this act, reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from, and may make such order, requirement, decision or determination as ought to be made, and to that end shall have all the powers of the officer from whom the appeal is taken.

Appeal to court
of common pleas.

Any person or persons jointly or severally aggrieved by any decision of the board of adjustment, or any property owner, or the head of any department interested therein, may present to the court of common pleas of the county wherein said city may be located, a petition duly verified, setting forth that such decision is illegal in whole or in part, specifying the grounds of the illegality. Such petition shall be presented to the court within thirty (30) days after the filing of the decision in the office of the board.

Certiorari.

Upon the presentation of such petition, the court may allow a writ of certiorari, directed to the board of adjustment, to review such decision of the board of adjustment and shall prescribe therein the time within which a return thereto must be made and served upon the relator's attorney, which shall not be less than ten (10) days and may be extended by the court. The allowance of the writ shall not stay proceedings upon the decision appealed from, but the court may, on application, on notice to the board and on due cause shown, grant a restraining order, upon the petitioner giving a bond as in other injunction proceedings.

Return to writ.

The board of adjustment shall not be required to return the original papers acted upon by it, but it shall be sufficient to return certified or sworn copies thereof or of such portions thereof as may be called for by such writ. The return shall concisely set forth such other facts as may be pertinent and material to show the grounds of the decision appealed from and shall be verified. The board of adjustment shall be respondent in said appeal with the right to appear in person or by counsel and defend said action. The court may by order authorize intervenors to join in said proceedings.

Taking testimony.

If upon the hearing it shall appear to the court that testimony is necessary for the proper disposition of the matter, it may take evidence or appoint a referee to take such evidence, as it may direct, and report the same to the court with his findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which the determination of the court shall be made. The court may reverse or affirm wholly or partly or may modify the decision brought up for review.

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

Costs.

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

Issues to have preference.

Section 8. Conflict with Other Laws.—Whenever the regulations made under authority of this act require a greater width or size of yards, courts or other open spaces, or require a lower height of building, or less number of stories, or require a greater percentage of lot to be left unoccupied, or impose other higher standards than are required in any other statute or local ordinance, the provisions of the regulations made under authority of this act shall govern. Wherever the provisions of any other statute or local ordinance require a greater width or size of yards, courts or other open spaces, or require a lower height of building, or a less number of stories, or require a greater percentage of lot to be left unoccupied, or impose other higher standards than are required by the regulations made under authority of this act, the provisions of such statute or local ordinance or regulation shall govern.

Conflict with other laws.

Higher standards to govern.

Section 9. Acts of Assembly Repealed.—The following acts of Assembly are hereby repealed:

Repeal.

The act, entitled "A supplement to an act, entitled 'An act for the government of cities of the second class,' approved the seventh day of March, one thousand nine hundred and one; authorizing cities of the second class to regulate and limit the height and bulk of buildings and the areas of yards, courts and open spaces, and to regulate and restrict the location of trades and industries, and the location of buildings for specified uses, and to make regulations for trades and industries and for the use of buildings; and, for the above purposes, to divide the cities into districts; and authorizing the city planning commission to recommend the boundaries of districts and appropriate regulations therein; and providing the method of adoption of said districts, regulations and restrictions, and the method of amendment or change thereof," approved the twenty-first day of June, one thousand nine hundred and nineteen (Pamphlet Laws, five hundred and seventy).

Act of June 21, 1919 (P. L. 570)

"An act, amending an act, entitled 'A supplement to an act, entitled "An act for the government of cities of the second class," approved the seventh day of March, one thousand nine hundred and one; authorizing cities of the second class to regulate and limit the height and bulk of buildings and the area of yards, courts and open spaces, and to regulate and restrict the location of trades and industries, and the location of buildings

Act of May 11, 1921 (P. L. 503).

for specified uses; and to make regulations for trades and industries and for the use of buildings; and, for the above purposes, to divide the cities into districts; and authorizing the city planning commission to recommend the boundaries of districts and appropriate regulations therein; and providing the method of adoption of said districts, regulations and restrictions, and the method of amendment or change thereof,' approved the twenty-first day of June, one thousand nine hundred and nineteen (Pamphlet Laws, five hundred and seventy); providing for twenty days' notice to the city planning commission of any proposed amendment or change, for an enforcing officer, and a board of appeal to review his actions," approved the eleventh day of May one thousand nine hundred and twenty-one (Pamphlet Laws, five hundred and three).

Act of May 1,
1923 (P. L. 122).

"An act, supplementing an act, entitled 'A supplement to an act, entitled "An act for the government of cities of the second class," approved the seventh day of March, one thousand nine hundred and one; authorizing cities of the second class to regulate and limit the height and bulk of buildings and the area of yards, courts and open spaces, and to regulate and restrict the location of trades and industries, and the location of buildings for specified uses, and to make regulations for trades and industries and for the use of buildings; and, for the above purposes, to divide the cities into districts; and authorizing the city planning commission to recommend the boundaries of districts and appropriate regulations therein; and providing the method of adoption of said districts, regulations and restrictions, and the method of amendment or change thereof,' approved the twenty-first day of June, Anno Domini one thousand nine hundred and nineteen (Pamphlet Laws, five hundred seventy); providing for a board of appeals to review decisions of the officer charged with the enforcement of any zoning ordinance duly adopted by said cities; establishing the procedure upon said appeals; authorizing appeals from the decision of said board of appeals to the court of common pleas of the respective counties; and authorizing said appeals to be advanced," approved the first day of May, Anno Domini one thousand nine hundred and twenty-three (Pamphlet Laws, one hundred and twenty-two).

Inconsistent acts.

Also all acts or parts of acts general, special and local, inconsistent with the provisions of this act, are hereby repealed: Providing, Any ordinance, duly adopted pursuant to the powers conferred by said acts thus repealed, shall continue in force until changed by ordinance of the proper city.

APPROVED—The 31st day of March, A. D. 1927.

JOHN S. FISHER