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8 A BILL

9 TO BE ENTITLED

10 AN ACT

11 Relating to Tuscaloosa County; to create the  
12 Tuscaloosa County Planning Commission; to provide for the  
13 organization, membership, powers, personnel, jurisdiction, and  
14 financial and legal status of the planning commission; to  
15 authorize the planning commission to make a master plan, and  
16 to recommend zoning regulations to be adopted by the county  
17 commission for the development of Tuscaloosa County outside  
18 the corporate limits of any municipality; to grant the  
19 planning commission power to zone certain areas within the  
20 county and provide a procedure for the amendment of zoning  
21 regulations; to prohibit zoning regulations from being  
22 retroactive; to provide remedies for the enforcement of the  
23 provisions of this act; to provide that the county commission  
24 may levy uniform planning fees; to provide exceptions to the  
25 zoning regulations and for appeals from the decisions of the  
26 planning commission; to provide for ordinance power to be

1 exercised by the county commission for areas zoned as  
2 residential; and to provide for a referendum.

3 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

4 Section 1. This act shall be known and cited as "The  
5 Tuscaloosa County Homeowners and Land Use Protection Act."

6 Section 2. There is hereby created a Planning  
7 Commission for Tuscaloosa County, which shall be appointed as  
8 provided by this act and shall have responsibilities and  
9 duties as provided by this act. The planning commission shall  
10 be known as the Tuscaloosa County Planning Commission.

11 Section 3. The planning commission shall be composed  
12 of seven members, each of whom shall be a qualified elector in  
13 and an actual resident of an unincorporated portion of  
14 Tuscaloosa County. Each commissioner and the judge of probate  
15 shall make one appointment and the remaining members shall be  
16 appointed by majority vote of the commission. One of the seven  
17 members appointed to serve on the planning commission shall be  
18 a person engaged in agriculture as his or her primary  
19 occupation and one shall be a person engaged in the sale of  
20 real estate. A member may be removed from office as a member  
21 of the planning commission on the same grounds as provided in  
22 Section 173 of the Constitution of Alabama of 1901 including,  
23 but not limited to, willful neglect of duty or corruption of  
24 office. Except for the initial terms of the original members,  
25 as provided in this section, each member shall serve a term of  
26 six years or until a successor is duly appointed and

1 qualified. Prior to taking office each member shall subscribe  
2 to an oath as provided by law for public officials and the  
3 same shall be recorded in the Office of the Judge of Probate  
4 of Tuscaloosa County. The original members of the planning  
5 commission shall draw lots to determine the period of time  
6 each is to serve and the terms of two members shall expire two  
7 years from the date of the organization of the planning  
8 commission; the terms of two other members shall expire four  
9 years from the date of the organization of the planning  
10 commission; and the terms of the remaining three members shall  
11 expire six years from the date of the organization of the  
12 planning commission. In the event of a vacancy on the planning  
13 commission, the vacancy shall be filled as in the case of the  
14 original appointment. All members shall be reimbursed  
15 reasonable and necessary expenses incurred and may be paid an  
16 expense allowance by the county commission not to exceed  
17 actual expenses. The county commission shall provide  
18 administrative support to the planning commission as needed.  
19 Members of the planning commission shall hold no other county  
20 office and expenses of members shall be paid from the General  
21 Fund of Tuscaloosa County.

22 Section 4. The jurisdiction of the planning  
23 commission for zoning shall extend to all areas of the county  
24 outside the boundaries of municipal corporations or outside  
25 any territory where municipalities are authorized to zone,  
26 unless a municipality expressly requests by resolution to have

1 the jurisdiction of the planning commission extend into its  
2 corporate area or other territory where the municipality is  
3 authorized to zone. However, a municipality that has requested  
4 by resolution to have the planning commission's jurisdiction  
5 extend into its corporate area or other territory where it is  
6 authorized to zone may, by resolution, reassume the  
7 municipality's zoning authority as provided by law. The  
8 jurisdiction of the planning commission to zone shall include  
9 the police jurisdiction of any municipality located in the  
10 county. Notwithstanding the authority to zone granted pursuant  
11 to this section, this section shall not be interpreted to  
12 supersede a municipality's police power within its police  
13 jurisdiction.

14 Section 5. The planning commission shall elect its  
15 chairman and create and fill such other offices as it may  
16 determine. The term of the chairman shall be for one year,  
17 with eligibility for reelection. The planning commission shall  
18 hold at least one regular meeting each month unless a majority  
19 of the members agree to postpone the meeting. However, the  
20 planning commission may not postpone more than two consecutive  
21 meetings in a calendar year. All meetings of the planning  
22 commission shall be open to the public. The planning  
23 commission shall adopt a regular meeting schedule establishing  
24 the date, time, and location of meetings and shall provide  
25 reasonable public notice of all meetings. It shall adopt  
26 bylaws for the transaction of business and shall keep a record

1 of its resolutions and transactions of business, all of which  
2 shall be a public record.

3 Section 6. The planning commission, with the  
4 approval of the county commission, may appoint, promote,  
5 demote, and remove employees of the planning commission as it  
6 deems necessary. The planning commission, with the approval of  
7 the county commission, may also contract with county or city  
8 planners, engineers, architects, and other consultants and  
9 with any local, state, or federal agency for such services as  
10 the planning commission may require. The planning commission  
11 may cooperate with and accept funds from federal, state, and  
12 local public or semi-public agencies, private individuals or  
13 corporations, and may expend funds and carry out cooperative  
14 undertakings and contracts for necessary planning studies. The  
15 expenditures of the planning commission, exclusive of gifts,  
16 grants, or contract receipts, shall be within the amounts  
17 appropriated for the purposes of the planning commission by  
18 the county commission. The planning commission shall provide  
19 to the county commission an annual accounting within 60 days  
20 of the close of the fiscal year for the county of all monies  
21 received and expenditures of the planning commission. The  
22 annual accounting provided to the county commission shall be a  
23 public document.

24 Section 7. (a) It shall be the function and duty of  
25 the planning commission to make and maintain in an up-to-date  
26 manner a master plan of various areas of the county as deemed

1 necessary by the planning commission. The master plan with  
2 accompanying maps, plats, charts, and descriptive material  
3 shall show the planning commission's recommendations for the  
4 use and development of the territory of the county. As the  
5 whole master plan progresses, the planning commission may from  
6 time to time adopt, with the approval of the county  
7 commission, and publish a part or parts thereof, any part to  
8 cover one or more major sections or divisions of the county.  
9 The planning commission, with the approval of the county  
10 commission, may from time to time amend, extend, or add to the  
11 plan. Nothing in this act shall be construed to impair the  
12 right of eminent domain conferred on railroads and utilities,  
13 both public and private, or their right to construct, use, and  
14 maintain structures reasonably required in the public service  
15 or their right to exercise authority conferred by statutes,  
16 franchises, certificates of convenience and necessity,  
17 licenses, easements, or conveyances.

18 (b) In the preparation of the master plan the  
19 planning commission shall make careful and comprehensive  
20 surveys and studies of the present conditions existing within  
21 the county. It shall give due regard to existing agricultural  
22 uses to land by virtue of its fertility, proximity to water  
23 supplies, and other geographical features particularly suited  
24 to agricultural uses. It shall also give due consideration to  
25 neighboring municipalities, towns, and villages, to the growth  
26 of subdivisions, to the general population growth of the

1 county, and make adequate provisions for traffic, recreational  
2 areas and industry, and other public requirements.

3 (c) The master plan should be made with the general  
4 purpose of guiding and accomplishing a coordinated, adjusted,  
5 and harmonious development of the county. The plan shall be  
6 made, in accordance with present and future needs, to best  
7 promote health, safety, order, convenience, prosperity, and  
8 general welfare, as well as efficiency and economy in the  
9 process of development. The plan should also promote safety  
10 from fire, flood, and other dangers as well as the healthful  
11 and convenient distribution of population and the wise and  
12 efficient expenditure of public funds.

13 (d) The plan shall be a public record and its  
14 purpose and effect shall be to aid the planning commission in  
15 the performance of its duties, including making  
16 recommendations to the county commission and assisting and  
17 cooperating with federal, state, and local agencies so as to  
18 achieve coordinated, adjusted, and harmonious development  
19 throughout Tuscaloosa County.

20 Section 8. For the purpose of promoting the health,  
21 safety, convenience, order, prosperity, and general welfare of  
22 the county, the planning commission with the approval of the  
23 county commission may divide the county within its zoning  
24 jurisdiction into zoning districts. The districts shall be of  
25 the number, shape, and area as may be found best suited to  
26 carry out the purposes of this act. Except to the extent it

1 conflicts with any municipal authority as provided by general  
2 law, the planning commission, with the approval of the county  
3 commission shall provide for standards, within districts,  
4 relating to the use of the land and the types and kinds of  
5 structures that may be erected in the districts, and all home  
6 remodeling or modification in the districts. The provision  
7 shall be made in accordance with a comprehensive plan for the  
8 area involved and shall be designed to lessen congestion in  
9 the streets and highways; to prevent the overcrowding of land;  
10 to avoid undue mixed use of land; to facilitate the adequate  
11 provision of transportation, water supply, sewerage, schools,  
12 parks, and other public requirements. The provision shall be  
13 made with reasonable consideration, among other things, of the  
14 character of the land and district and its peculiar  
15 suitability for particular uses and with a view of promoting  
16 desirable living conditions, sustaining the stability of  
17 neighborhoods, protecting property against blight and  
18 depreciation, securing economy in governmental expenditures,  
19 conserving the value of buildings; and encouraging the most  
20 appropriate use of land and of buildings and structures  
21 throughout the jurisdiction of the planning commission. For  
22 the purpose of providing for the division of the territory  
23 into districts, consonant with the conditions provided in this  
24 section, the planning commission may make a single zoning plan  
25 for all the territory within its jurisdiction or may make and  
26 certify separate and successive zoning plans for parts of such



1 territory which it deems suitable for urban or suburban  
2 development or which for other reasons it deems to have  
3 appropriate territorial unity for a zoning plan.  
4 Correspondingly, any zoning regulations proposed by the  
5 planning commission for enactment by the county commission may  
6 cover and include the whole territory lying within its  
7 jurisdiction or any part of the whole territory as the  
8 planning commission deems to be appropriate territorial unit  
9 for a zoning plan.

10 Section 9. (a) The planning commission shall develop  
11 and recommend for adoption by the county commission zoning  
12 regulations covering those areas within the planning  
13 commission's jurisdiction. The adoption of a master plan by a  
14 majority vote of the planning commission and approval of the  
15 master plan by the county commission shall be a prerequisite  
16 to the administration and enforcement of the zoning  
17 regulations.

18 (b) All zoning regulations shall be adopted by the  
19 county commission. The zoning regulations shall include a  
20 zoning plan for selected areas for the control of the height,  
21 area, bulk, location, and use of buildings and land. No zoning  
22 regulation shall be adopted by the county commission unless  
23 and until the proposed regulation has been published in full  
24 for one insertion and an additional insertion of a synopsis of  
25 the proposed regulation for one week after the first  
26 insertion, which synopsis shall refer to the date and name of

1 the newspaper in which the proposed regulation was first  
2 published; both such insertions shall be at least 15 days in  
3 advance of its passage and in a newspaper of general  
4 circulation published within the county, or, if there is no  
5 such newspaper, then by posting the proposed ordinance in four  
6 conspicuous places within the county together with a notice  
7 stating the time and place that the regulation is to be  
8 considered by the county commission and stating further that  
9 at such time and place all persons affected by the regulations  
10 who desire shall have an opportunity of being heard in  
11 opposition to or in favor of such regulation. No regulation  
12 shall become effective until after a public hearing in  
13 relation thereto, at which parties in interest and citizens  
14 shall have an opportunity to be heard.

15 Section 10. After zoning regulations have become  
16 applicable, those regulations shall not be changed until the  
17 proposed change has been published for three weeks in a  
18 newspaper of general circulation within the county together  
19 with a notice stating the time and place that the change in  
20 regulations will be considered by the planning commission and  
21 the county commission, and stating further that at the time  
22 and place all persons who desire shall have the opportunity to  
23 be heard in favor of or in opposition to the proposed change  
24 in zoning regulations. No change shall become effective until  
25 approved by the planning commission and the county commission  
26 after notice and hearing as provided in this section.

1           Section 11. Nonconforming/Grandfather clause and  
2 exemptions. No zoning regulation adopted by the planning  
3 commission and county commission shall do any of the  
4 following:

5           (1) Change any use to which land is being made at  
6 the time the zoning regulations become applicable.

7           (2) Prohibit the harvesting of agricultural crops or  
8 timber except as follows:

9           a. A regulation may require that best management  
10 practices established by the Alabama Forestry Commission for  
11 timber crops be employed to prevent erosion or pollution.

12           b. A regulation may require that the farm or farm  
13 operation conforms to generally accepted agricultural and farm  
14 management practices carried out consistently with the  
15 appropriate rules, regulations, and orders of the Alabama  
16 Department of Agriculture and Industries, the Alabama  
17 Department of Environmental Management, the Alabama Department  
18 of Public Health, the United States Environmental Protection  
19 Agency, and the United States Department of Agriculture,  
20 including, but not limited to, the Natural Resources  
21 Conservation Service, the Farm Service Agency, and the Animal  
22 and Plant Health Inspection Service.

23           (3) Prohibit or prevent land which has historically  
24 been used as agricultural land and has been dormant for not  
25 more than 20 years from being used to grow and harvest  
26 agricultural crops or timber.

1           (4) Prohibit or prevent the construction or  
2 alteration of buildings or equipment used for agricultural  
3 purposes including residences that are part of the farming  
4 operation.

5           Section 12. In case any building or structure is  
6 erected, constructed, reconstructed, altered, repaired,  
7 converted, or maintained, or any subdivision is established,  
8 or land used in violation of this enactment or of any  
9 regulation made under the authority conferred by this act, the  
10 county attorney, with the approval of the county commission,  
11 shall initiate any appropriate action or proceeding to prevent  
12 the unlawful erection, construction, reconstruction,  
13 alteration, repair, conversion, maintenance, or subdivision of  
14 the land or use of the land to restrain, correct, or abate the  
15 violation, or to prevent the occupancy of any building,  
16 structure, subdivision, or land or to prevent any illegal act,  
17 conduct, business, or misuse in or upon any premises regulated  
18 under the authority conferred by this act. The prevailing  
19 party in any proceedings shall be entitled to all court costs  
20 and reasonable attorney fees to be assessed against the  
21 non-prevailing party. In the event of any conflict of interest  
22 on the part of the county attorney, the county commission may  
23 appoint an attorney to pursue any action authorized by this  
24 act.

25           Section 13. (a) In those areas zoned residential  
26 pursuant to this act which are outside of the jurisdiction of

1 any municipality, the county commission may from time to time  
2 adopt ordinances and resolutions which are not inconsistent  
3 with the laws of the state or any other applicable provisions  
4 of law to provide for the safety, preserve the health, promote  
5 the prosperity and improve the order, comfort and convenience  
6 of the inhabitants of those areas which are zoned residential  
7 under the terms of this act. Notwithstanding the foregoing, a  
8 municipality may authorize, by resolution, the ordinance power  
9 provided herein to apply within the police jurisdiction of the  
10 municipality.

11 (b) The county commission may provide that a  
12 violation of the ordinance constitutes a public nuisance  
13 subject to a civil fine of not more than two hundred fifty  
14 dollars (\$250) to be assessed as provided in the ordinance.  
15 Any law enforcement officer or constable may issue a citation  
16 alleging a violation of the ordinance. The ordinance may  
17 provide that the person charged with a violation may pay a  
18 civil fine or request, within 30 days of receipt of the  
19 citation, a due process hearing before the county commission  
20 or its hearing officer on the validity of the citation. An  
21 order of the county commission finding a violation and an  
22 assessment of a civil fine shall be final within 30 days  
23 thereof unless appealed to the Circuit Court in Tuscaloosa  
24 County based on the administrative record of the hearing. Any  
25 fine due and owing shall be considered a debt owed to the  
26 Tuscaloosa County Commission and shall be enforceable by civil

1 action in the same manner as any other debt. The person owing  
2 the fine shall be liable for all costs, including court costs  
3 and attorney fees, and all other expenses of litigation if  
4 action is taken to collect the fine owed.

5 Section 14. The county commission may levy upon  
6 owners of any real property located within the jurisdiction of  
7 the planning commission, a uniform planning fee not in excess  
8 of five dollars (\$5) per parcel of real property per year.  
9 Provided, however, that no single individual, partnership,  
10 corporation, trust, limited liability company, or any other  
11 entity owning real property engaged primarily in the business  
12 of agriculture or any individual regardless of whether they  
13 are engaged in agriculture shall pay more than twenty-five  
14 dollars (\$25) per year regardless of the number of parcels of  
15 real property owned by the individual, partnership,  
16 corporation, trust, limited liability company, or other entity  
17 owning real property. The tax assessor of the county shall  
18 assess the uniform planning fee and the tax collector shall  
19 collect it at the same time and in the same manner as ad  
20 valorem taxes due on the property. Any person or entity that  
21 is exempt from paying ad valorem taxes shall be exempt from  
22 paying the uniform planning fee. The county commission may  
23 bring appropriate civil action for the collection of the fee  
24 upon the failure of a property owner to pay the fee as  
25 provided herein. The uniform planning fee shall only be  
26 assessed for as long as the fees are necessary to support the

1 operating and administration costs of the planning commission.  
2 The official charged with collecting ad valorem taxes in the  
3 county shall collect the fee and the proceeds therefrom shall  
4 be deposited into the general fund of the county to be  
5 expended for the purposes of administering the master plan and  
6 zoning and planning ordinances and regulations and for payment  
7 of the operating costs of the administrative office of the  
8 planning commission and the county board of adjustment created  
9 by this act. The planning commission shall provide to the  
10 county commission an annual accounting within 120 days of the  
11 close of the fiscal year for the county of all monies received  
12 and expenditures of the planning commission. Included in the  
13 accounting shall be a report from the official charged with  
14 collecting ad valorem taxes reporting any and all fees  
15 collected pursuant to this section.

16 Section 15. (a) The county commission shall appoint  
17 a Board of Adjustment consisting of five members who shall be  
18 residents of the unincorporated portion of Tuscaloosa County  
19 to hear appeals from any zoning regulation. At least one  
20 member of the Board of Adjustment shall be a person engaged in  
21 agriculture as his or her primary occupation. Members of the  
22 planning commission shall hold no other county office. A  
23 member may be removed from office as a member of the Board of  
24 Adjustment as provided in Section 3. Members of the Board of  
25 Adjustment shall serve for six-year terms. However, the  
26 original members of the Board of Adjustment shall serve a two

1 year, four year, or six year term respectively as determined  
2 by drawing lots. All members shall be reimbursed reasonable  
3 and necessary expenses incurred and may be paid an expense  
4 allowance by the county commission not to exceed actual  
5 expenses. The county commission shall provide administrative  
6 support to the Board of Adjustment as needed. The Board of  
7 Adjustment shall provide to the county commission an annual  
8 accounting as provided in Section 15.

9 (b) Anyone wishing to appeal from an existing zoning  
10 regulation may file a written petition stating the basis for  
11 their appeal whereupon the Board of Adjustment shall fix a  
12 date for a hearing on the appeal, giving at least 10 days'  
13 notice. With regard to the hearings, the board shall have the  
14 following powers:

15 (1) To hear and decide appeals where it is alleged  
16 there is error in any order, requirement, decision, or  
17 determination made by the planning commission or official in  
18 the enforcement of this act or any regulation adopted pursuant  
19 thereto.

20 (2) To hear and decide requests for special  
21 exceptions to the term or provisions of the regulation upon  
22 which the planning commission is required to pass.

23 (3) To authorize upon appeal in special cases a  
24 variance from the yard, open space, land use, bulk, and height  
25 requirements of the regulation as will not be contrary to the  
26 public interest where, owing to special conditions of the



1 building site or land, a literal enforcement of the provisions  
2 of the regulation will result in unnecessary hardship, all in  
3 order that the spirit of the regulations shall be observed and  
4 substantial justice done.

5 Section 16. Any party aggrieved by any final  
6 judgment or decision of the Board of Adjustment may, within 30  
7 days, appeal to the circuit court. The appeal shall specify  
8 the judgment or decision from which the appeal is taken and  
9 shall rest upon the contention that the zoning regulations or  
10 subdivision regulations in question are unreasonable,  
11 discriminatory, unconstitutional, or otherwise invalid, or  
12 that the Board of Adjustment misconstrued the regulations of  
13 the planning commission. The appeal shall be filed with and  
14 addressed to the Circuit Court of Tuscaloosa County. The Board  
15 of Adjustment, upon being served with the appeal to the  
16 circuit court, shall cause a transcript of the proceedings in  
17 the case to be certified to the circuit court within 30 days  
18 of being served.

19 Section 17. Sections 1 to 16, inclusive, of this  
20 act, shall become operative only if approved by a majority of  
21 the qualified electors of the unincorporated areas of  
22 Tuscaloosa County who vote in the next general election. The  
23 notice of the election shall be given by the judge of probate,  
24 and the election shall be held, conducted, and the results  
25 canvassed in the manner as other county elections. The  
26 election shall be held in conjunction with the next regularly

1 scheduled general election. The question shall be, "Do you  
2 favor the adoption of Act \_\_\_ of the 2001 Regular Session of  
3 the Alabama Legislature, "The Tuscaloosa County Homeowners and  
4 Land Use Protection Act," providing for planning and zoning in  
5 the unincorporated areas of Tuscaloosa County? Yes ( ) No ( )  
6 )." The county shall pay any costs and expenses not otherwise  
7 reimbursed by a governmental agency which are incidental to  
8 the election. If a majority of the votes cast in the election  
9 are "Yes," Sections 1 to 16, inclusive, of this act shall  
10 become operative immediately. If the majority of the votes are  
11 "No," this act shall be repealed and shall have no further  
12 effect. The Judge of Probate of Tuscaloosa County shall  
13 certify the results of the election to the Secretary of State.

14 Section 18. 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 19. This act shall become effective on the  
19 first day of the third month following its passage and  
20 approval by the Governor, or its otherwise becoming law.