

## **CHAPTER 40-48 MUNICIPAL MASTER PLANS AND PLANNING COMMISSIONS**

### **40-48-01. Definitions.**

In this chapter, unless the context or subject matter otherwise requires:

1. "Street" includes streets, highways, avenues, boulevards, parkways, roads, lanes, walks, alleys, viaducts, subways, tunnels, bridges, public easements and rights of way, and other ways.
2. "Subdivision" means the division of a tract or parcel of land into lots for the purpose, whether immediate or future, of sale or of building development, and any plat or plan which includes the creation of any part of one or more streets, public easements, or other rights of way, whether public or private, for access to or from such lots, and the creation of new or enlarged parks, playgrounds, plazas, or open spaces.

### **40-48-02. Official master plan may be established - Filing - Effect - Purpose.**

Any municipality, by an ordinance of its governing body, may establish an official master plan of the municipality. Such ordinance shall make it the duty of some appropriate official or employee of the municipality to file for record immediately, with the recorder of the county in which the area covered by the plan is situated, a certificate showing that the municipality has established an official master plan. Such plan shall be final and conclusive with respect to the location and width of streets, ways, plazas, open spaces, and public easements, and the location of parks and playgrounds, and the establishment of public rights in lands shown thereon. The official master plan is declared to be established to conserve and promote the public health, safety, and general welfare of the municipality.

### **40-48-03. Planning commission - Creation - Members - Ex officio members.**

The governing body of any city may create, by ordinance, a planning commission to consist of not more than ten members to be appointed by the executive officer of the city with the approval of its governing body. In addition to the members appointed by the city, the planning commission shall include at least one person residing outside of the corporate limits of a city having a population of less than five thousand, two persons residing outside the corporate limits of a city having a population of five thousand or more, but less than twenty-five thousand, or three persons residing outside the corporate limits of a city having a population of twenty-five thousand or more if zoning authority is exercised pursuant to section 40-47-01.1. Such persons shall be appointed by the board or boards of county commissioners of the county or counties within which such subdivision authority is to be exercised and shall reside within the territorial limits of the subdivision regulation authority exercised by the city, if such persons are available and will serve on the planning commission. Of the members of the commission appointed by a board or boards of county commissioners pursuant to this section, the first member appointed shall hold office for five years, the second member appointed shall hold office for three years, and the third member appointed shall hold office for one year. Thereafter, the members shall be appointed for terms of five years. The executive officer, the engineer, and the attorney of the city shall be ex officio members of the commission.

### **40-48-04. Terms of members of commission - Vacancies.**

The present members of the commission shall hold office for the balance of their tenure. Of the members of the commission newly appointed, pursuant to this chapter, the first member appointed, if one be appointed, shall hold office for the term of one year, if a second member is appointed that member shall hold office for the term of two years, if a third member is appointed that member shall hold office for the term of three years, if a fourth member is appointed that member shall hold office for the term of four years, and if a fifth member is appointed that member shall hold office for the term of five years from and after that member's appointment. Thereafter, the members shall be appointed for terms of five years. The terms of the ex officio members of the commission shall correspond to their respective official tenures. If a vacancy

occurs otherwise than by expiration of a term, it shall be filled by appointment for the unexpired portion of the term.

**40-48-05. Traveling expenses.**

When duly authorized by the commission, members thereof may attend planning conferences or meetings of planning institutes or hearings upon pending legislation, and the commission may pay the reasonable traveling expenses incident to such attendance pursuant to a resolution spread upon its minutes.

**40-48-06. President of commission - Meetings - Record to be kept - Appointment officers and employees - Power to contract.**

The planning commission shall elect its president for a term of one year from among the appointed members. The commission shall hold at least one regular meeting in each month. It shall adopt rules for the transaction of business and shall keep a record of its resolutions, transactions, findings, and determinations, and such record shall be a public record. The commission may appoint such officers and employees as it may deem necessary for its work, and the appointment, promotion, demotion, and removal of such officers and employees shall be subject to the same provisions of law as govern other corresponding civil employees. The commission may contract with architects, city planners, engineers, and other consultants for such services as it may require.

**40-48-07. Limitations on expenditures of commission - Tax levy authorized.**

The expenditures of the planning commission, exclusive of gifts, must be within the funding provided from revenues derived from the general fund levy authority of the governing body of the municipality. The governing body shall provide the funds, equipment, and accommodations it deems necessary for the commission's work.

**40-48-08. Master plan - Adoption - Contents - Part of plan may be published - Amending.**

The planning commission shall make and adopt a master plan for the physical development of the municipality and of any land outside its boundaries which, in the commission's judgment, bears a relation to the planning of the municipality. Such plan, with the accompanying maps, plats, charts, and descriptive matter, shall show the commission's recommendations for the development of the territory, including:

1. The general locations, character, and extent of streets, waterways, waterfronts, playgrounds, plazas, squares, and open spaces, parks, aviation fields, and other public ways and grounds;
2. The general location of public buildings and other public property;
3. The general location and extent of public utilities and terminals whether publicly or privately owned or operated;
4. The removal, relocation, widening, narrowing, vacation, abandonment, change of use, or extension of any of the foregoing ways, grounds, open spaces, buildings, property, terminals, or utilities; and
5. Other matters authorized by law.

The commission, from time to time, may adopt and publish a part of the plan covering one or more major sections or divisions of the territory under its jurisdiction or one or more of the subjects set out in this section or other subjects. The commission, from time to time, may amend, extend, or add to the master plan.

**40-48-09. Surveys and studies made before making plan - Purpose of plan.**

In the preparation of the master plan, the planning 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, in accordance with present and future needs, best will

promote the amenities of life, health, safety, morals, order, convenience, prosperity, and general welfare as well as efficiency and economy in the process of development, including adequate provision for light and air, distribution of population, good civic design and arrangement, wise and efficient expenditure of public funds, the adequate provision of public utilities and other public requirements, the improvement and control of architecture, and the general embellishment of the area under its jurisdiction.

**40-48-10. Hearing on plan before adoption by commission - Resolution to adopt - Action recorded on plan and maps - Governing body to receive copy of plan.**

Before adopting the master plan or any part of it or any substantial amendment thereof, the planning commission shall hold at least one public hearing thereon. Notice of the time of such hearing shall be given by one publication in the official municipal newspaper. The adoption of the plan, or of a part thereof or amendment thereto, shall be by a resolution of the commission carried by the affirmative votes of not less than two-thirds of the members thereof. The resolution shall refer expressly to the maps and descriptive matter intended by the commission to form the whole or part of the plan or amendment. The action taken by the commission shall be recorded on the map, plan, and descriptive matter by the identifying signature of the secretary of the commission. An attested copy of the master plan shall be certified to the governing body of the municipality.

**40-48-11. Hearing on plan by governing body - Notice - Changes in plan - Notice to planning commission - Disapproval of changes.**

Upon receipt of an attested copy of the master plan or of any part thereof after the adoption thereof by the planning commission, the governing body shall hold a public hearing thereon. At least ten days' notice of such hearing shall be published in the official municipal newspaper. No change or addition to the master plan or any part of it as adopted by the planning commission shall be made by the governing body until the proposed change or addition shall have been referred to the planning commission for report thereon and an attested copy of the commission's report is filed with the governing body. The failure of the planning commission to report within thirty days after the date of the request for the report by the governing body shall be deemed to be an approval by the commission of the additions or changes. If the additions or changes are disapproved by the commission, a two-thirds vote of the entire governing body shall be necessary to pass any ordinance overruling such disapproval.

**40-48-12. Permission to construct when plan adopted - Disapproval of permission - Overruling - Failure to act on permission.**

When the governing body shall have adopted the master plan of the municipality or any major section or district thereof, no street, square, park, or other public way, ground, or open space, or public building or structure shall be constructed or authorized in the area shown on the master plan until the location, character, and extent thereof shall have been submitted to and approved by the planning commission. In case of disapproval thereof, the commission shall communicate its reasons to the governing body, which may overrule such disapproval by a recorded vote of not less than two-thirds of its entire membership. If the public way, ground, space, building, or structure is one the construction, financing, or authorization of which does not fall within the province of the governing body, the submission to the planning commission shall be by the board, commission, or body having such jurisdiction, and the planning commission's disapproval may be overruled by said board, commission, or body by a vote of not less than two-thirds of its membership. The failure of the commission to act upon such submission within sixty days from and after the date of the official submission to the commission shall be deemed to be an approval.

**40-48-13. Miscellaneous duties of planning commission.**

The planning commission shall:

1. Recommend to the appropriate public officials, from time to time, programs for specific improvements and for the financing thereof.

2. Consult and advise with public officials and agencies, public utility companies, civic, educational, professional, and other organizations, and with citizens relative to the carrying out of the plan.

**40-48-14. Miscellaneous powers of planning commission.**

The planning commission may:

1. Promote public interest in and understanding of the master plan, and for that purpose, it may publish and distribute copies of the plan or of any part thereof or of any report, and may employ such other means of publicity and education as it may determine.
2. Accept and use gifts for the exercise of its functions.
3. By its members, officers, and employees in the performance of their functions, enter upon any land and make examinations and surveys thereof and place and maintain necessary monuments or marks thereon.
4. Exercise such other powers as may be necessary to enable it to fulfill its functions and carry out the provisions of this chapter.

**40-48-15. Public officials to cooperate with planning commission.**

All public officials, upon request, shall furnish to the planning commission, within a reasonable time after such request, such information as the commission may require in connection with its work.

**40-48-16. Governing body may add to or change master plan - Notice.**

Whenever the governing body of the municipality may deem it for the public interest, it may change or add to the official master plan by laying out new streets, improvements, or conveniences mentioned in this chapter or by widening, enlarging, closing, or abandoning existing streets, improvements, or conveniences. At least ten days' notice of a public hearing on any proposed action with reference to such change in the official master plan shall be published in the official newspaper of the municipality. Before any such addition or change is made, the matter shall be referred to the planning commission for report thereon as provided in section 40-48-11. Such additions and changes, when adopted by an ordinance of the governing body, shall become a part of the official master plan of the municipality and shall be deemed to be final and conclusive with respect to all matters shown thereon. The layout, widening, enlarging, closing, or abandoning of streets, plazas, open spaces, and parks or playgrounds by the municipality under provisions of the laws of this state other than those contained in this chapter shall be deemed to be a change or addition to the official master plan and shall be subject to all the provisions of this chapter.

**40-48-17. Submission of matters to planning commission before governing body takes action thereon.**

The governing body creating the planning commission, by a general or special rule, may provide for the reference of any other matter or class of matters to the commission before final action is taken thereon by the governing body, or by the municipal officer having the final authority thereon, with the provision that final action shall not be taken thereon until the planning commission has submitted its report or has had a reasonable time, as fixed in said rule, to do so. The planning commission may make such investigations, maps, reports, and recommendations in connection therewith relating to the planning and development of the municipality as to it seems desirable, but the total expenditures of the board in such matters shall not exceed the funds available therefor.

**40-48-18. Extraterritorial subdivision regulation - Mediation - Determination by administrative law judge.**

1. A city may, by ordinance, extend its regulation of subdivisions beyond its corporate limits to the same extent as a city is authorized to extend its zoning authority under section 40-47-01.1.

2. If two or more cities have boundaries at a distance where there is an overlap of extraterritorial subdivision regulation authority under this section, the governing bodies of the cities may enter into an agreement regarding the extraterritorial subdivision regulation authority of each city. The agreement must be for a specific term and is binding upon the cities unless the governing bodies of the cities agree to amend or rescind the agreement or unless determined otherwise by an administrative law judge in accordance with this chapter. If a dispute arises concerning the extraterritorial subdivision regulation authority of a city, and the governing bodies of the cities involved fail to resolve the dispute, the dispute must be submitted to a committee for mediation. The committee must be comprised of one member appointed by the governor, one member of the governing body of each city, and one member of the planning commission of each city who resides outside the corporate city limits. The governor's appointee shall arrange and preside over the meeting and act as mediator at the meeting. The meeting may be continued until the dispute has been resolved or until the mediator determines that continued mediation is no longer worthwhile.
3. If the mediation committee is unable to resolve the dispute to the satisfaction of the governing bodies of all the cities involved, the governing body of any of the cities may petition the office of administrative hearings to appoint an administrative law judge to determine the extraterritorial subdivision regulation authority of the cities in the disputed area. A hearing may not be held until after at least two weeks' written notice has been given to the governing bodies of the cities involved in the dispute. At the hearing, the governor's appointee who mediated the meetings under subsection 2 shall provide information to the administrative law judge on the dispute between the cities involved and any proposed resolutions or recommendations made by a majority of the committee members. Any resident of, or person owning property in, a city involved in the dispute or the unincorporated territory that is the subject of the proposed subdivision regulation, a representative of such a resident or property owner, and any representative of a city involved, may appear at the hearing and present evidence on any matter to be determined by the administrative law judge. A decision by the administrative law judge is binding upon all the cities involved in the dispute and remains effective until the governing bodies of the cities agree to a change in the subdivision regulation authority of the cities. The governing body of a city may request a review of a decision of an administrative law judge due to changed circumstances at any time ten years after the decision has become final. An administrative law judge shall consider the following factors in making a decision under this subsection:
  - a. The proportional extraterritorial subdivision regulation authority of the cities involved in the dispute;
  - b. The proximity of the land in dispute to the corporate limits of each city involved;
  - c. The proximity of the land in dispute to developed property in the cities involved;
  - d. Whether any of the cities has exercised extraterritorial subdivision regulation authority over the disputed land;
  - e. Whether natural boundaries such as rivers, lakes, highways, or other physical characteristics affecting the land are present;
  - f. The growth pattern of the cities involved in the dispute; and
  - g. Any other factor determined to be relevant by the administrative law judge.

**40-48-18.1. Agreements to not oppose annexation void.**

The planning commission or governing body may not require as a condition of approval of a request for approval of a plat the execution of an agreement by the owner of the property requesting the approval stating that the owner will not oppose the annexation of the property by the municipality. This section does not apply to property located within one quarter mile [.40 kilometer] of the municipality's corporate limits or to an agreement that contains a provision whereby the municipality agrees to provide a municipal service or services before the annexation. Any agreement entered in violation of this section is void.

**40-48-19. Major street plan adopted by commission - Filing and approval of plat.**

Whenever a planning commission shall have adopted a major street plan of the territory within its subdivision jurisdiction, or of a part thereof, and shall have filed a certified copy of such plan in the office of the recorder of the county in which such territory or part is located, no plat of a subdivision of land within such territory or part thereof shall be filed or recorded until it shall have been approved by such planning commission and such approval shall have been entered in writing on the plat by the chairman or secretary of the commission.

**40-48-20. Regulations governing subdivision of land - Contents - Hearing - Publication - Filing regulations.**

Before exercising the powers referred to in this chapter, the planning commission shall adopt general regulations governing the subdivision of land within its jurisdiction to provide:

1. For the proper arrangement of streets in relation to other existing and planned streets and to the master plan; and
2. For adequate and convenient open spaces for traffic, utilities, access of firefighting apparatus, recreation, light, and air, for the avoidance of congestion of population, and for easements for building setback lines or for public utility lines.

Such regulations may include requirements as to the minimum width and area of building lots, the extent to which streets and other public ways shall be graded and improved, and to which water and sewer and other utility mains or other facilities shall be installed as a condition precedent to the approval of the plat. Before the adoption of such regulations, a public hearing shall be held thereon. All such regulations shall be published as provided by law, and a copy thereof shall be certified by the governing body of the municipality and filed for record by the commission with the recorders of the counties in which the commission and territory are located.

**40-48-21. Approval of plats by commission - Hearings - Notice - Effect.**

Within thirty days after the submission of a plat, the planning commission shall approve or disapprove the plat. If the plat is not approved or disapproved within that time, the plat is deemed to have been approved, and a certificate to that effect must be issued by the commission on demand. The applicant, however, may waive the requirement that the commission act within thirty days and may consent to an extension of the period. The commission shall state the grounds upon which any plat is approved or disapproved, and written findings upon which the decision is based must be included within the records of the commission. Any plat submitted to the commission must contain the name and address of an individual to whom notice of a hearing must be sent. No action may be taken by the commission upon any plat until the commission has afforded a hearing thereon. At least five days before the date fixed for the hearing, a notice of the time and place of the hearing must be sent by registered mail to the address shown on the plat. Public notice of all hearings also must be given. Every plat approved by the commission may be adopted by the commission as an amendment of or addition to the master plan without further hearing.

**40-48-22. Items considered in approving plat - Notations made on plat - Deed delivered to municipality or county.**

Before the approval of a plat, the planning commission and the governing body shall take into consideration the prospective character of the development of the area included in the plat and of the surrounding territory. The owner of the land or the owner's agent who files the plat may add as a part of the plat a notation to the effect that no offer or dedication of the streets, parks, or playgrounds shown thereon, or of any of them, is made to the public. The owner or the owner's agent may show by a dotted line on the plat the dedication of an easement for building setback lines or for use in establishing public utility lines. At the time of the filing of the plat, the planning commission or the governing body may require that a deed to the fee for streets or other areas offered for dedication to the public on said plat be delivered to the municipality or county, as the case may be, where the same are located.

**40-48-23. Penalty for transfer of lots in unapproved subdivision - Injunction - Civil action.**

Any owner, or the agent of any owner, of land located within the territory of a subdivision that is subject to the approval of a planning commission or governing body of a municipality who transfers, sells, agrees to sell, or negotiates to sell any land by reference to or exhibition of a plat of a subdivision, or by any other use thereof, before such plat has been approved by the planning commission and governing body and recorded as approved in the office of the appropriate recorder, shall forfeit and pay a penalty of one hundred dollars for each lot or parcel 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, sale, or agreement by an action for injunction, or it may recover the penalty by a civil action.

**40-48-24. Improvements in unapproved streets.**

The municipality shall not accept, lay out, open, improve, grade, pave, or curb any street, or lay or authorize the laying of sewers or connections in any street or right of way within any portion of territory for which the planning commission shall have adopted a major traffic street plan unless such street:

1. Shall have been accepted or opened as, or otherwise shall have received the legal status of, a public street prior to the adoption of such plan; or
2. 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 map made and officially adopted by the commission.

The governing body, however, may accept any street not shown or not corresponding with a street on the official master plan or on an approved subdivision plat or an approved street map if the ordinance or other measure accepting such street first is submitted to the planning commission for its approval, and, if approved by the commission, it is enacted or passed by not less than a majority of the entire membership of the governing body, or, if disapproved by the commission, it is enacted or passed by not less than two-thirds of the entire membership of the governing body. A street approved by the planning commission upon submission by the governing body or a street accepted by a two-thirds vote of the governing body after disapproval by the planning commission shall have the status of an approved street as fully as though it originally had been shown on the official master plan or on a subdivision plat approved by the planning commission or originally had been mapped by the commission.

**40-48-25. Erection of buildings on unapproved streets.**

After the planning commission shall have adopted a major street plan of the territory within its subdivision jurisdiction, or of any part thereof, 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 it is proposed to place such building shall have been accepted or opened as is provided in section 40-48-24. Any building erected in violation of this section shall be deemed an unlawful structure, and the building inspector or other appropriate official may cause it to be vacated and to be removed.

**40-48-26. Exclusive jurisdiction of planning commission - Exception.**

After the adoption of a major traffic street plan by any planning commission, the jurisdiction of the planning commission over plats shall be exclusive within the territory under its jurisdiction, except as otherwise provided in section 40-48-18.

**40-48-27. Interpretation of harmonious and conflicting statutes.**

All statutory control over plats or subdivisions of land granted by other statutes, insofar as such control is in harmony with the provisions of this chapter, shall be deemed transferred to the planning commission, and insofar as such control is inconsistent with the provisions of this

chapter, the provisions of this chapter shall govern in a municipality which has established a planning commission.

**40-48-28. Maps showing reservations and future acquisitions for streets - Hearing - Notice - Approval by governing body - Modifications - Filing.**

After it has adopted any part of a master plan for any part of the territory within its planning jurisdiction, the planning commission may make or cause to be made, from time to time, surveys for the exact location of the lines of a street or streets shown in any portion of such master plan and may make a map of the land thus surveyed showing precisely the land which it recommends to be reserved for future acquisition for public streets. Before adopting any such map, the planning commission shall hold a public hearing thereon. A notice of the time and place of the hearing, with a general description of the district or area covered by the map, shall be given not less than ten days previous to the time fixed for the hearing by one publication in the official newspaper of the municipality if the district or area affected is within the municipality, and in a newspaper of general circulation in the county if the district or area affected is outside of the municipality. After such hearing, the commission may transmit the map as originally made, or as modified by it, to the governing body together with the commission's estimate of the time or times within which the lands shown on the map as street locations should be acquired by the municipality. The governing body, by resolution, may approve and adopt or may reject such map, or it may modify the map with the approval of the planning commission, or in the event of the planning commission's disapproval, the governing body by a favorable vote of not less than two-thirds of its entire membership, may modify such map and adopt the modified map. In the resolution adopting the map, the governing body shall fix the period of time for which the street locations shown upon the map shall be deemed reserved for future taking or acquisition. The city auditor shall file for record an attested copy of the map with the recorder of each county in which the mapped land is located and shall retain one copy for examination by the public.

**40-48-29. Effect of approval and adoption of map.**

The approval and adoption of a map as provided in section 40-48-28 shall not be deemed the opening or establishment of any street or the taking of any land for street purposes or for public use or as a public improvement, but shall operate solely as a reservation of the street location shown on the map for the period specified in the resolution for future taking or acquisition for public use.

**40-48-30. Commission may secure releases of claims for damages or compensation - Effect.**

The commission, at any time, may negotiate for or secure from the owner or owners of any lands described in any map releases of claims for damages or compensation for the reservations shown in the resolution adopting such map or agreements indemnifying the municipality or county from such claims by others. Such releases or agreements shall be binding upon the owner or owners executing the same and upon their successors in title. The commission, however, shall not make awards or fix compensation.

**40-48-31. Modification of street lines - When allowed - Agreement - Approval of new map - Filing map - Abandoning reservation.**

At any time after the filing of a map of the kind described in section 40-48-28 for record with the recorder and during the period specified for the reservation, the planning commission and the owner of any land containing a reserved street location may agree upon a modification of the location of the lines of the proposed street. Such agreement shall include a release by the owner of any claim for compensation or damages by reason of such modification. Thereupon, the commission may make a map corresponding to the modification and transmit the map to the governing body. If the modified map is approved by the governing body, the city auditor shall file for record an attested copy thereof with the recorder, and the modified map shall take the place

of the original map. The governing body, by resolution, may abandon any reservation at any time. Any such abandonment shall be filed for record with the recorder.

**40-48-32. Resolution adopting street map - When effective - Notice - Contents - Protest.**

The resolution of the governing body adopting any street map provided for in section 40-48-28 shall provide that it shall not become effective for forty days, and shall provide further that it shall not become effective until a notice of the adoption of such resolution has been published once each week for four successive weeks in the official newspaper of the city as provided by section 40-01-09. The resolution and the notice shall state a time within which the owners of property lying within or immediately adjoining the lines of the proposed future street opening or widening, or between any future street line and the street nearest the public highway may protest in writing against the adoption of the future street lines.

**40-48-33. Examination of protests by engineer and attorney - Hearing - Notice.**

Upon the receipt of any protests within the time fixed by the resolution and the notice, the governing body may cause the same to be examined by its engineer and by its attorney and shall set a time for the hearing of the same. Notice of the hearing shall be given to each protestant at that person's address, which shall be stated in the protest.

**40-48-34. Granting or denying protests - When resolution effective.**

Upon the hearing of any protest, the governing body may grant or deny the same except that it shall not deny the written protests of the owners of a majority of the area of property lying within any proposed street to be opened or of a majority of the owners of the frontage of a street to be widened and upon which a future street line is established except by a four-fifths vote of such governing body. The governing body may grant or sustain protests as to the entire proposed future street line or lines or only as to a portion thereof. The governing body may deny the protest or protests as to any portion of such proposed future street line or lines concerning which a protest is not granted or sustained. Upon the denial of any such protest, the resolution shall become effective immediately. If no protests are filed, such resolution shall take final effect at midnight of the last day for filing protests.

**40-48-35. Resolution and map recorded upon adoption.**

Whenever any resolution adopting a street map shall have become final, the city auditor shall record in the office of the recorder of the appropriate county a notice referring to the resolution by number and other appropriate description, including the date of its adoption, and setting forth a description of the property contained within the proposed opening and widening lines or between the future street lines and the nearest public highway, together with a copy of the map showing any such line or lines.

**40-48-36. Protest against resolution as a taking of property.**

If any owner of property lying within any lines for the proposed opening and widening, or the opening and widening of any street, or between any future street line and the nearest public highway, shall claim that the adoption of any resolution or ordinance or the refusal to issue a building permit to the owner or the prohibition of building or construction by the owner shall constitute a taking of the owner's property by the municipality, said owner, within three months after the recording in the office of the appropriate recorder of the notice provided in section 40-48-35, may file with the governing body a protest against the alleged taking of the owner's property and a demand that the municipality adopting such resolution either vacate the same as to the property of such owner, or compensate the owner therefor, or commence the condemnation thereof within three months after the filing of the owner's written protest and claim. If the municipality shall fail to vacate such resolution as to the property of the protesting owner, or to compensate the owner for the right to construct any building, fence, or other structure, or to commence proceedings for the condemnation thereof within three months after

the receipt of such written protest and demand, such resolution shall be vacated automatically and annulled as to the property of such protesting owner.

**40-48-37. Failure to file claim is waiver.**

Any owner of property lying within any of the lines set forth or described as future street lines in any resolution adopted as provided for in this chapter who shall fail, within the time specified, to file a protest and claim shall be deemed conclusively to have waived any such claim, but that person shall not be deemed to have waived any title to the property within any such future street line or lines or any interest therein other than the right to erect or construct thereon any building, fence, or other structure.

**40-48-38. Penalty for violations.**

A person who violates any of the provisions of this chapter shall be guilty of a class A misdemeanor.