

## Md. Land Use Code Ann. § 2-101

Current through all legislation from the 2023 Regular Session of the General Assembly.

*Michie's™ Annotated Code of Maryland > Land Use (Divs. I — II) > Division I. Single-Jurisdiction Planning and Zoning. (Titles 1 — 13) > Title 2. Planning Commission. (Subt. 1) > Subtitle 1. Organization and General Authority. (§§ 2-101 — 2-105)*

### **§ 2-101. Authority to establish.**

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A local jurisdiction may establish by local law a planning commission with the powers and duties set forth in this division.

### **History**

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An. Code 1957, art. 66B, § 3.01(a); *2012, ch. 426, § 2.*

Annotations

### **Notes**

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#### **Revisor's note. —**

This section is new language derived without substantive change from former Art. 66B, § 3.01(a), as it related to the establishment of a planning commission.

In this section and throughout this title, the references to “this division” are substituted for the former references to “this article” to reflect the reorganization of material derived from former Article 66B in Division I of this article. See General Revisor's Note to article.

#### **Defined terms:**

“Local jurisdiction” § 1-101

“Local law” § 1-101

### **Research References & Practice Aids**

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#### **University of Baltimore Law Review.**

For article, “Maryland's Growing Pains: The Need for State Regulation,” see 16 U. Balt. L. Rev. 201 (1987).

#### **Hierarchy Notes:**

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## Md. Land Use Code Ann. § 2-102

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### **§ 2-102. Membership.**

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**(a)**

- (1) Except as otherwise provided in this division, a planning commission established under this subtitle shall consist of three, five, or seven members.
- (2) One member of the planning commission may be a member of the legislative body, who serves as an ex officio member concurrent with the member's legislative term.
- (3)
  - (i) An ex officio member of a planning commission may not vote on any question in the result of which the ex officio member has an immediate personal or financial interest.
  - (ii) When an ex officio member abstains from voting on a question under subparagraph (i) of this paragraph, the ex officio member shall disclose the recusal.

**(b)**

- (1) Except as otherwise provided in paragraph (2) of this subsection, the members of a planning commission shall be appointed by:
  - (i) the legislative body; or
  - (ii) the person designated as the appointing authority in the local law establishing the planning commission.
- (2) If there is a single elected local executive, the members of a planning commission shall be appointed by the local executive and confirmed by the legislative body.

**(c)**

- (1) The term of a member of a planning commission other than an ex officio member is:
  - (i) 5 years; or
  - (ii) until the member's successor takes office.
- (2) The terms of the members of a planning commission shall be staggered.

**(d)**

- (1) A legislative body may remove a member of a planning commission for:
  - (i) incompetence;
  - (ii) misconduct; or
  - (iii) in the same manner as for a member of a State board or commission:
    1. failure to attend meetings under § 8-501 of the State Government Article; or
    2. conviction of a crime in accordance with § 8-502 of the State Government Article.

## § 2-102. Membership.

- (2) The legislative body shall provide to the member:
- (i) a written statement of charges stating the grounds for removal; and
  - (ii) an opportunity for a public hearing to contest the charges.
- (e) If a vacancy occurs during the term of an appointed member, the vacancy shall be filled for the unexpired term in the same manner as is required for appointment under subsection (b) of this section.
- (f)
- (1) The legislative body may designate one or more alternate members to sit on the planning commission in the absence of any member of the commission.
  - (2) If an alternate member is absent, the legislative body may designate a temporary alternate member to sit on the planning commission.

## History

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An. Code 1957, art. 66B, § 3.02(a), (b), (d)-(g); 2012, ch. 426, § 2; 2013, ch. 674.

Annotations

## Notes

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### Revisor's note. —

This section is new language derived without substantive change from former Art. 66B, § 3.02(a), (b), and (d) through (g).

In subsection (a)(2) of this section, the reference to the member's "legislative" term is substituted for the former reference to the member's "official" term for clarity.

In the introductory language to subsection (b)(1) of this section, the phrase "[e]xcept as otherwise provided in paragraph (2) of this subsection," is added for clarity.

In the introductory language to subsection (c)(1) of this section, the phrase "other than the ex officio member" is added for clarity.

In the introductory language to subsection (e) of this section, the reference to vacancies occurring "during the term of an appointed member" is substituted for the former phrase "other than through the expiration of a term" for clarity.

In subsection (e)(2) of this section, the phrase "establishing the planning commission" is added for clarity.

The Land Use Article Review Committee notes, for consideration by the General Assembly, that under subsections (a)(2) and (b) of this section, the authority of a legislative body to include one of its own members on a planning commission that it appoints presents an opportunity for a potential conflict of interest. The General Assembly may wish to reconsider the wisdom of allowing a local legislator to serve *ex officio* on a planning commission, or perhaps should consider enacting criteria for recusal of a local legislator serving on a planning commission.

The Land Use Article Review Committee also notes, for consideration by the General Assembly, that the provisions for removal of a planning commission member under subsection (d) of this section present several issues. Subsection (d)(1) of this section requires the legislative body to hold a "public hearing" before removing a member, but does not provide guidance as to the type of hearing or the due process protections available to the accused member. It may be presumed that the legislative body would conduct a quasi-judicial hearing to remove a planning

## § 2-102. Membership.

commission member. If the General Assembly considers that some other form of evidentiary or other hearing is intended, it may wish to add specific language to subsection (d) of this section, including more specific language on the due process to be afforded to the member sought to be removed.

Similarly, the criteria for removal under subsection (d)(1) of this section appear limited to “inefficiency”, “neglect of duty”, or “malfeasance in office”. It is unclear whether any of these criteria would cover common grounds for removal under other statutes, such as “incompetence”, “criminal activity”, whether or not related to planning commission activities, or “other good cause shown”, a catch-all found in other provisions of this article. The General Assembly may wish to compare the removal provisions for the various boards and commissions authorized under this article and conform the removal and related ethical provisions that apply to each type.

The Land Use Article Review Committee also notes, for consideration by the General Assembly, that, under subsection (e)(2) of this section, it is unclear whether the filling of a vacancy by a single elected local executive is subject to legislative confirmation under subsection (b)(2) of this section. If so, the General Assembly may wish to clarify subsection (e) of this section by referring to filling a vacancy “in the same manner as is required for appointment under subsection (b) of this section” or similar language.

The Land Use Article Review Committee also notes, for consideration by the General Assembly, that under subsection (f) of this section, only a municipal corporation is authorized to designate an alternate or temporary alternate member to serve on a planning commission. It seems to the committee that any rationale for allowing a municipal corporation to designate an alternate member would apply equally in a county subject to this division. The General Assembly may wish to consider authorizing counties as well as municipal corporations to designate alternates and temporary alternates. The committee also notes that alternates and temporary alternates are subject to the same educational requirements as full members of the planning commission.

For educational requirements for planning commission members, see § 1-206 of this article.

**Defined terms:**

“Legislative body” § 1-101

“Local executive” § 1-101

“Local law” § 1-101

“Person” § 1-101

**Effect of amendments. —**

Chapter 674, Acts 2013, effective July 1, 2013, added (a)(3); rewrote (d) and (e); in (f) deleted “In a municipal corporation” at the beginning and added “or more”; and made related and stylistic changes.

**Appointment by “local executive.” —**

The term “local executive” refers to an elected official who effectively exercises the executive authority of local government. 73 Md. Op. Att’y Gen. 264 (1988).

The legislative history of this section and § 1-101 of this article suggests that the term “local executive” is intended to refer only to elected officials, and that the reference in this section to “a single local elected executive” has become redundant as the result of statutory revision. 73 Md. Op. Att’y Gen. 264 (1988).

Where a mayor or other official is not the “local executive” within the meaning of § 1-101 of this article and this section, there is no requirement in this section that the mayor or other official appoint the members of the planning commission with the approval of the council. 73 Md. Op. Att’y Gen. 264 (1988).

## § 2-102. Membership.

**Board of County Commissioners not permitted to appoint commissioner as “citizen” member of planning commission. —**

Maryland common law generally prohibits a body from appointing one of its own members to a position on another body. Although § 2-102 of the Land Use Article provides an exception to the common law for ex officio appointments, that exception, construed narrowly, did not authorize a Board of County Commissioners to appoint one of its own members as a non-ex officio member of the planning commission. The board’s appointment of the outgoing president as a “citizen” member of the planning commission was thus ineffective; and an appointment as an ex officio member would be effective only until the expiration of his term as county commissioner on December 1, 2014. 99 Md. Op. Att’y Gen. 242 (December 23, 2014).

**Wrongful conduct of public official. —**

“Malfeasance in office” describes wrongful conduct of a public official with a direct relation to the performance of official duties that substantially affects the public interest; the wrongful conduct need not constitute a violation of the criminal law in order to meet this standard. 82 Md. Op. Att’y Gen. 117 (June 9, 1997).

**Research References & Practice Aids**

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## Md. Land Use Code Ann. § 2-103

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### **§ 2-103. Officers.**

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(a)

(1) From among its appointed members, a planning commission shall elect a chair.

(2)

(i) The term of a chair is 1 year.

(ii) A chair may be reelected.

(b) A planning commission may establish and select other officers that it considers appropriate.

### **History**

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An. Code 1957, art. 66B, § 3.03(a); 2012, ch. 426, § 2.

Annotations

### **Notes**

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**Revisor's note.** —

This section is new language derived without substantive change from former Art. 66B, § 3.03(a).

In subsection (a) of this section, the references to a "chair" are substituted for the former references to a "chairman" because SG § 2-1238 requires the use of terms that are neutral as to gender to the extent practicable. See General Revisor's Note to article.

In subsection (b) of this section, the phrase "may establish and select" is substituted for the former phrase "shall . . . create and fill" for clarity.

Also in subsection (b) of this section, the word "officers" is substituted for the former word "offices" for clarity.

### **Research References & Practice Aids**

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**Hierarchy Notes:**

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## Md. Land Use Code Ann. § 2-104

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### **§ 2-104. Meetings; compensation; employees; contractors.**

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(a)

(1) Except as provided in paragraph (2) of this subsection, a planning commission shall hold at least one regular meeting each month.

(2)

(i) Except as provided in subparagraph (ii) of this paragraph, a planning commission appointed by a municipal corporation shall hold meetings quarterly, or more often as the planning commission's duties require.

(ii) If there is no business before the planning commission, the chair may cancel the quarterly meeting.

(b) Each member of a planning commission is entitled to the compensation that the legislative body considers appropriate.

(c) A planning commission may:

(1) appoint the employees necessary for the performance of the planning commission's functions; and

(2) contract with planners, engineers, architects, and other consultants for services that the commission requires.

### **History**

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An. Code 1957, art. 66B, §§ 3.02(c), 3.03(b), 3.04(b)(1); 2012, ch. 426, § 2.

Annotations

### **Notes**

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**Revisor's note. —**

This section is new language derived without substantive change from former Art. 66B, §§ 3.02(c), 3.03(b), and 3.04(b)(1).

In subsection (a)(2)(ii) of this section, the reference to the "chair" is substituted for the former reference to the "chairman" because SG § 2-1238 requires the use of words that are neutral as to gender to the extent practicable. See General Revisor's Note to article.

§ 2-104. Meetings; compensation; employees; contractors.

In subsection (c)(1) of this section, the reference to "performance of the planning commission's functions" is substituted for the former phrase "its work" for clarity.

**Defined term:**

"Legislative body" § 1-101

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### **§ 2-105. Miscellaneous powers and duties.**

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(a)

- (1) A planning commission shall have the powers necessary to enable the commission to fulfill its functions, promote planning, and execute the purposes of this division.
- (2) On a planning commission's request, all public officials shall provide to the commission, within a reasonable time, available information that the commission may require for the performance of the planning commission's functions.
- (3) In the performance of the planning commission's functions, a planning commission and its members, officers, and employees may enter on any land and make examinations and surveys.
- (4) A planning commission may accept and use gifts and public or private grants for the performance of the commission's functions.

(b)

- (1) A planning commission's expenditures, other than gifts, shall be made in accordance with:
  - (i) the conditions of the legislative body; and
  - (ii) the amount appropriated by the legislative body.
- (2) The legislative body shall provide the funds, equipment, and accommodations necessary for the performance of the planning commission's functions.

(c)

- (1) A planning commission shall:
  - (i) adopt rules for the conduct of its business; and
  - (ii) keep records of its resolutions, transactions, findings, and determinations.
- (2) The records required under paragraph (1) of this subsection shall be open to the public.

### **History**

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An. Code 1957, art. 66B, §§ 3.03(c), 3.04(a), (b)(2); 2012, ch. 426, § 2.

Annotations

### **Notes**

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Revisor's note. —

## § 2-105. Miscellaneous powers and duties.

This section is new language derived without substantive change from former Art. 66B, §§ 3.03(c) and 3.04(a) and (b)(2).

In subsections (a)(2) and (b)(2) of this section, the references to “the performance of the planning commission’s functions” are substituted for the former references to “its program” and the “planning commission’s work” for clarity and consistency within this section.

In subsection (b)(1) of this section, the phrase “in accordance with the conditions . . . and the amount appropriated” is substituted for the former phrase “under the conditions and within the amounts appropriated for the purpose” for clarity.

In subsection (c)(2) of this section, the reference to records “required under paragraph (1) of this subsection” is substituted for the former reference to records “of the resolutions, transactions, findings, and determinations of a planning commission” for brevity.

**Defined term:**

“Legislative body” § 1-101

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