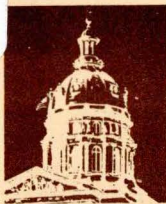


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Iowa Subdivision Law Explained

Chapter 409
Iowa Code

Introduction

Cities in Iowa have had the power to prepare and adopt rules and regulations governing the subdivision of land for many years. Such rules and regulations are generally known as subdivision ordinances. Such an ordinance must stay within the powers granted by Chapter 409 of the *Iowa Code*.

Chapter 409 is an enabling act which permits Iowa cities to prepare and adopt such regulations but does not require them to do so. Chapter 409 permits Iowa cities, which have adopted subdivision regulations, to exercise these powers in the two-mile area immediately adjacent to their corporate limits.

Counties, on the other hand, have not had the power to prepare, adopt and enforce subdivision regulations until very recently. These powers apparently accrued to counties with County Home Rule, which became effective in November of 1978.

Unlike cities, however, there is no enabling act governing or limiting the powers of counties in adopting subdivision regulations. For this reason, it appears that counties have more powers in subdivision regulations than cities. The reason for this is that home rule permits counties to function in any manner not limited by state or municipal laws. Since there are no state laws in this respect, counties are not limited.

The "two-mile area" immediately adjacent to cities appears to remain with the cities even though it is not within the boundary of such cities. Since Chapter 409 is "state law" and city subdivision ordinances are "municipal laws," the two-mile area appears to be within the subdivision jurisdiction of cities which have adopted a subdivision ordinance. Furthermore, it would seem that any city which hereafter adopts a subdivision ordinance may exercise its subdivision powers in the two-mile area.

The two-mile control area discussed here refers to "subdivisions" only and *not* to "zoning." Zoning laws and subdivision laws are entirely *separate* laws and

should not be confused. While city zoning laws also have a two-mile jurisdictional area, the zoning "two-mile area" is separate and distinct from the "two-mile area" for subdivision control.

Cities are required to use the definition of a subdivision as contained in Chapter 409.1. This definition provides that a subdivision must be the "division of land into *three* or more parcels." This definition provides a loophole which permits a landowner to divide land into only two parcels and circumvent the law. For example, a person who owns 10 acres can divide off a one acre lot and sell it without subdividing, after which he could divide off another one acre lot and sell it. The owner could continue this process until he or she disposed of the entire 10 acres without having to plat a subdivision.

Since there is no enabling act governing the establishment of a subdivision ordinance in counties, they are not required to abide by the "three-parcel" definition of a subdivision that applies to cities. Counties can simply define a subdivision as the division of land into *two* parcels of any size, say 40 acres or more.

Cities can avoid this loophole by simply defining a subdivision in their local ordinances as "the division of land into three parcels *at any time after the adoption of the ordinance*." Under this definition, only one parcel could be sold before a subdivision is required. When the second parcel is sold off, it makes the third parcel and would therefore subject the land to the subdivision ordinance.

Any city which desires to adopt subdivision regulations may do so, but such regulations must be kept within the powers granted by Chapter 409 of the *Iowa Code*. A discussion of Chapter 409 follows. Counties desiring to adopt subdivision regulations would be well advised to use Chapter 409 as a guide

Cooperative Extension Service

Iowa State University

Ames, Iowa 50011

Prepared by Burl A. Parks, extension community planning and development specialist.

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in preparing such regulations, even though Chapter 409 applies only to cities.

It is assumed that in the event the state legislature enacts a law enabling counties to regulate subdivisions, that law would be similar to Chapter

409 now used by cities. For this reason, the following discussion of Chapter 409 can be used by counties as an aid in adopting subdivision regulations. All that is necessary is for counties to substitute the word "county" in place of "city" and the phrase "board of supervisors" for the word "council."

Law

409.1 Subdivisions or additions. Every proprietor of any tract or parcel of land of forty acres or less or of more than forty acres if divided into parcels any of which are less than forty acres and every proprietor of any tract or parcel of land of any size located within a city or within two miles of a city subject to the provisions of section 409.14, who shall subdivide the same into three or more parts, shall cause a registered land surveyor's plat of such subdivision, with references to known or permanent monuments, to be made by a registered land surveyor holding a certificate issued under the provisions of chapter 114, giving the bearing and distance from some corner of the subdivision to some corner of the congressional division of which it is a part, which shall accurately describe all the subdivisions thereof, numbering the same by progressive numbers, giving their dimensions by length and breadth, and the breadth and courses of all the streets and alleys established therein. [C73, §559; C97, §914; C24, 27, 31, 35, 39, §6266; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §409.1; 67GA, ch 117, §§1, 2]

C97, §914, editorially divided
Referred to in §§409.2, 409.9

409.2 Covenant of warranty. The duty to file for record a plat as provided in section 409.1 shall attach as a covenant of warranty, in all conveyances of any part or parcel of such subdivisions, by the original proprietors against any and all assessments, costs, and damages paid, lost, or incurred by any grantee or person claiming under him, in consequence of the omission on the part of said proprietor to file such plat. [C73, §559; C97, §914; C24, 27, 31, 35, 39, §6267; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §409.2]

409.3 Conveyances according to plat. Description of lots or parcels of land in such subdivisions according to the number and designation thereof on said plat, in conveyances or for the purposes of taxation, shall be valid. [C73, §559; C97, §914; C24, 27, 31, 35, 39, §6268; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §409.3]

Explanation

409.1 Subdivisions or additions. This section defines a subdivision. Any division of land meeting this definition is subject to the regulations of any city which has adopted a subdivision ordinance in accordance with this law (CH 409). A subdivision is the division of any land into three parcels if it meets any of the following conditions:

1. If the tract being divided is 40 acres or less in size.
2. Any tract of land of more than 40 acres if any of the newly created parcels are less than 40 acres.
3. The division of land into three parcels regardless of its size if it is within the limits of a city or within two miles of a city which has adopted subdivision regulations.

Note: Since the granting of home rule powers to counties, numbers one and two above will be controlled by the subdivision regulations of any county which adopts a subdivision ordinance.

409.2 Covenant of warranty. When any parcel within the subdivision is sold or transferred to another, the subdivider must guarantee free title to said property. The purchaser is held harmless for any debts against the property incurred while owned by the subdivider.

409.3 Conveyances according to plat. The numbers and designations assigned to lots within the subdivision are adequate description of such lot for purposes of taxation and transfer of title.

Law

409.4 Streets and blocks. The plat of any addition to any city or subdivision of any part or parcel of lands lying within or adjacent to any city shall be divided by streets into blocks, and such blocks and streets shall conform as nearly as practicable to the size of blocks and the widths of streets therein, and shall be extensions of the existing system of streets. [C73,§559; C97,§916; S13,§916; C24, 27, 31, 35, 39, §6269; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77,§409.4]

Referred to in §409.7

40ExGA, ch 78, §1, editorially divided

409.5 Grade of streets. The council may require the owner of the land to bring all streets to a grade acceptable to the council and may also require the installation of sidewalks, paving, sewers, water, gas, and electric utilities before the plat is approved.

The council or commission may tentatively approve such plat prior to such installation, but any such tentative approval shall be revokable. In lieu of the completion of such improvements and utilities prior to the final approval of the plat, the council or commission may accept a bond with surety to secure to the city the actual construction and installation of such improvements or utilities within a fixed time and according to specifications determined by or in accordance with the regulation of the council or commission. The city is hereby granted the power to enforce such bond by all appropriate legal and equitable remedies. [C24, 27, 31, 35, 39,§6270; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77,§409.5]

Referred to in §409.7

409.6 Alleys. It may require alleys to be platted separating abutting lots and if so platted, the alleys shall conform as nearly as practicable to the width of alleys in the city and shall be extensions of the existing system of alleys. [S13,§916; C24, 27, 31, 35, 39,§6271; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77,§409.6]

Referred to in §409.7

409.7 Filing—approval. All such plats shall be filed with the clerk of the city and when so filed the council within a reasonable time shall consider the same, and shall, if it is found to conform to the provisions of sections 409.4, 409.5, and 409.6, by resolution approve the plat and direct the mayor and clerk to certify the resolution which shall be affixed to the plat. [C97,§916; S13,§916; C24, 27, 31, 35, 39,§6272; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77,§409.7]

Referred to in §409.14

Explanation

409.4 Streets and blocks. Whenever existing streets abut land that is being subdivided, such streets shall be extended into the new subdivision. The area bounded by streets are blocks. Blocks and streets within the new subdivision shall conform as nearly as possible to the size and width of existing streets and blocks.

409.5 Grade of streets. The council is empowered to require that the subdivider bring all streets to a grade established by the council and to install sidewalks, pavement, sewer, water, gas and electric utilities before the subdivision is approved.

The council may give preliminary approval to the proposed subdivision before the improvements are installed, but may revoke such approval at the council's discretion.

The subdivider has the choice of installing all required improvements before the final plat is approved or posting a surety bond with the city guaranteeing that the improvements will be installed within a specified time. The usual length of time in such cases is two years.

If the subdivider does not install the improvements as required, the council may take the bond and cause the improvements to be installed.

409.6 Alleys. Alleys may be required and if required, should conform to the width of existing alleys. They should be extensions of existing alleys. As a general rule, alleys are not required in modern subdivisions unless they are needed for service in commercial and industrial areas or as a means of access to residential property.

409.7 Filing—approval. When plats are filed with the city, the council shall consider such plats within a reasonable time. If the plat conforms to the requirements of the subdivision ordinance, it shall be approved.

Law

409.8 Acknowledgment. Each plat shall be accompanied by a correct description of the land or parcel of land subdivided and by a statement to the effect that the subdivision as it appears on the plat is with the free consent and in accordance with the desire of the proprietor, signed and acknowledged by such proprietor and his spouse, if any, before some officer authorized to take the acknowledgment of deeds. [C73,\$560; C97,\$915; S13,\$915; C24, 27, 31, 35, 39,\$6273; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77,\$409.8]

409.9 Abstract of title—opinion—certificates—utility easements. Every plat shall be accompanied by a complete abstract of title and an opinion from an attorney at law showing that the fee title is in the proprietor and that the land platted is free from encumbrance, or is free from encumbrance other than that secured by the bond provided for in section 409.11, and a certified statement from the treasurer of the county in which the land lies that it is free from taxes, and from the clerk of the district court that it is free from all judgments, attachments, mechanics' or other liens as appears by the record in his office, and from the recorder of the county that the title in fee is in such proprietor and that it is free from encumbrance or free from encumbrance other than that secured by the bond provided for in section 409.11, as shown by the records of his office; however, the opinion of the attorney or the certificate of the recorder may show a mortgage or encumbrance if the plat is accompanied by a consent to such platting by the holder of the mortgage or encumbrance and a release from the mortgage or encumbrance of all streets, easements and other areas to be conveyed or dedicated to the local governmental unit within which such land is located. Sections 409.10 and 409.11 shall not apply if a mortgage or encumbrance is shown on the opinion of the attorney or the certificate of the recorder and a release from the mortgage or encumbrance is obtained in accordance with the foregoing sentence.

Utility easements shall not be construed to be encumbrances hereunder and the location thereof with reference to the land platted may be shown by drawing on the plat described under section 409.1. Grantees of said utility easements shall not be construed to be original proprietors of the land to be platted and shall not join in platting or dedicating the platted land. [C97,\$915; S13,\$915; C24, 27, 31, 35, 39,\$6274; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77,\$409.9; 67GA, ch 117,\$3]

Explanation

409.8 Acknowledgment. The plat must be accompanied by a correct legal description of the property being subdivided and by a signed statement by the owner and spouse that the land is being subdivided with his/her consent. The signature must be witnessed by an officer authorized to take the acknowledgment of deeds.

409.9 Abstract of title—opinion—certificates—utility easements. The subdivision must be accompanied by the following:

1. Abstract of title and attorney's certificate showing that title is in the owner and that the land is free from encumbrance.
2. A certificate from the county treasurer that the land is free from taxes.
3. A certificate from the clerk of court that the land is free from judgments, attachments, mechanic's or other liens.
4. A certificate from the county recorder that the title is in the owner and the land is free from encumbrance.

If a mortgage is held on the property, the land may be cleared for subdividing if it is accompanied by a consent to such platting by the mortgage holder and a release from the mortgage of all streets, easements and other areas to be dedicated to the public.

Law

409.10 Encumbrances—payment—creditor's refusal. If the land so platted is encumbered with a debt certain in amount and which the creditor will not accept with accrued interest to the date of proffered payment if it draws interest, or with a rebate of six percent per annum if it draws no interest, or if the creditor cannot be found, then such proprietor, and if a corporation, its proper officer or agent, may make an affidavit stating either that the proprietor offered to pay the creditor the full amount of his debt, or the debt with the rebate, as the case may be, and that he would not accept the same, or that he cannot be found. [C97,§915; S13,§915; C24, 27, 31, 35, 39,§6275; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77,§409.10]

Referred to in §409.9

409.11 Encumbrance—bond. The proprietor shall then execute and file with the recorder a bond in double the amount of the encumbrance, which bond shall be approved by the recorder and clerk of the district court. The bond shall run to the county and be for the benefit of purchasers of land subdivided by the plat and shall be conditioned for the payment of the encumbrance, and the cancellation thereof, of record as soon as practicable after the same becomes due and to hold all purchasers and those claiming under them forever harmless from such encumbrance. [C97,§915; S13,§915; C24, 27, 31, 35, 39,§6276; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77,§409.11]

Referred to in §409.9

409.12 Record—filing. The signed and acknowledged plat and the attorney's opinion, together with the certificates of the clerk, recorder, and treasurer, and the affidavit and bond, if any, together with the certificate of approval of the local governing body, shall be entered of record in the proper record books in the office of the county recorder. When so entered, the plat only shall be entered of record in the offices of the county auditor and assessor and shall be of no validity until so filed, in those offices. A certified plat approved by the local governing body shall supersede any plat recorded for assessment and taxation purposes and any plat so superseded shall be voided. [C51, §§635, 636; R60, §§1019, 1020; C73, §560; C97, §§915, 917; S13, §915; C24, 27, 31, 35, 39, §6277; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §409.12; 67GA, ch 117, §4]

Referred to in §306.42

40ExGA, ch 78, §7, editorially divided

Exception as to plats filed before July 4, 1949, sec 53GA, ch 181, §3

Explanation

409.10 Encumbrances—payment—creditor's refusal. If the mortgage holder refuses to accept payment and interest for the mortgage or if the mortgage holder cannot be found, the subdivider may file an affidavit to this effect.

409.11 Encumbrance—bond. The subdivider may then file with the county recorder a bond in double the amount of the encumbrance. The bond shall be to the county for the purpose of holding all purchasers of lots in the subdivision harmless from such encumbrance.

409.12 Record—Filing. When the plat has been approved and signed, it shall be filed with the county recorder along with all certificates, affidavits and bonds. Only after such plat and accompaniments have been filed and recorded does it become a valid plat.

Law

409.13 Effect of record. Such acknowledgment and recording shall be equivalent to a deed in fee simple of such portion of the premises platted as is set apart for streets or other public use, or as is dedicated to charitable, religious, or educational purposes. [C51,§637; R60,§1021; C73,§561; C97,§917; C24, 27, 31, 35, 39,§6278; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77,§409.13]

409.14 Approval condition to filing and recording. No county recorder shall hereafter file or record, nor permit to be filed or recorded, any plat purporting to lay out or subdivide any tract of land into lots and blocks within any city having a population by the latest federal census of twenty-five thousand or over, or within a city of any size which by ordinance adopts the restrictions of this section or, except as hereinafter provided, within two miles of the limits of such city, unless such plat has been first filed with and approved by the council of such city as provided in section 409.7, after review and recommendation by the city plan commission in cities where such commission exists.

If in any case the limits of any such city are at any place less than four miles distant from the limits of any other city, then at such place jurisdiction to approve plats shall extend to a line equidistant between the limits of said cities.

For the information of the city council and the city plan commission, where such exists, and to facilitate action on proposed plats, the city council shall have authority by ordinance to prescribe reasonable rules and regulations governing the form of said plats and require such data and information to accompany same on presentation for approval as may be deemed necessary by the said council.

Said plats shall be examined by such city council, and city plan commission where such exists, with a view to ascertaining whether the same conform to the statutes relating to plats within the city and within the limits prescribed by this section, and whether streets, alleys, boulevards, parks and public places shall conform to the general plat of the city and conduce to an orderly development thereof, and not conflict or interfere with rights of way or extensions of streets or alleys already established, or otherwise interfere with the carrying out of the comprehensive city plan, in case such has been adopted by such city. If such plats shall conform to the statutes of the state and

Explanation

409.13 Effect of record. When the plat is recorded it shall have the effect of a deed for transferring streets, other public lands or land dedicated for charitable, religious, or educational purposes.

409.14 Approval condition to filing and recording.

a. The county recorder shall not accept a subdivision for recording unless it has been approved by the city as provided by this chapter.

b. If the limits of cities are less than four miles apart, the jurisdiction of each city shall extend to a line equidistant between them.

c. The city is empowered to prepare and adopt a subdivision ordinance to regulate the subdivision of land within its jurisdiction.

d. If the plat, after examination by the city, conforms to all requirements of the city and subdivision ordinance, it is the *duty* of the city to approve the plat. The council may, however, require that streets be brought to acceptable grades and that improvements deemed necessary by the council be installed.

e. The subdivider may post a surety bond guaranteeing the installment of all required improvements within two years in lieu of installing improvements before the plat is approved.

f. If the county recorder accepts a plat for recording which has not been approved in accordance with the subdivision ordinance it shall be deemed a "simple misdemeanor in office."

Law

ordinances of such city, and if they shall fall within the general plan for such city and the extensions thereof, regard being had for public streets, alleys, parks, sewer connections, water service, and service of other utilities, then it shall be the duty of said council and commission to endorse their approval upon the plat submitted to it; provided that the city council may require as a condition of approval of such plats that the owner of the land bring all streets to a grade acceptable to the council, and comply with such other reasonable requirements in regard to installation of public utilities, or other improvements, as the council may deem requisite for the protection of the public interest.

The council may require that the owner of the land or his contractor, furnish a good and sufficient bond for the installation of the said improvements according to city specifications and for the repairs necessitated by defects in material or workmanship not to exceed two years from and after completion.

The approval of the city council shall be deemed an acceptance of the proposed dedication for public use, and owners and purchasers shall be deemed to have notice of the public plans, maps and reports of the council and city plan commission, if any, having charge of the design, construction and maintenance of the city streets affecting such property within the jurisdiction of such cities.

If any such plat of land is tendered for recording in the office of the county recorder of any county in which any city of the above class may be situated, it shall be the duty of such county recorder to examine such plat, to ascertain whether the endorsement of approval by the city council, as herein provided for, shall appear thereon. If it shall, and the plat otherwise conforms to the provisions of law, said officer shall accept same for recording. If such endorsement does not appear thereon said officer shall refuse and decline to accept such plat, and any filing thereof shall be void. Any failure to observe the provisions of this section on the part of any county recorder shall constitute a simple misdemeanor in office. [C27, 31, 35, §6278-b1; C39, §6278.1; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §409.14; 66GA, ch 1245(4), §333]

Referred to in §§306.42, 409.1, 409.16

Explanation

Law

409.15 Disapproval—appeal. In case, on application for such approval of any plat, the city council shall fail to either approve or reject the same within sixty days from date of application, the person proposing said plat shall have the right to file the same with the county recorder, assessor and auditor. If said plat is disapproved by the council such disapproval shall point out wherein said proposed plat is objectionable. From the action of the council refusing to approve any such plat, the applicant shall have the right to appeal to the district court within twenty days after such rejection by filing written notice of appeal with the city clerk. Such appeal shall be triable de novo as an equitable proceeding and accorded such preference in assignment as to assure its prompt disposition. [C27, 31, 35, §6278-b2; C39, §6278.2; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §409.15]

Referred to in §409.16

409.16 Void plat—action to annul. In case any plat shall be filed and recorded in violation of sections 409.14 and 409.15, the same shall be void, and the mayor of any city who shall be authorized so to do by resolution of the council having authority to approve such plat, may institute a suit in equity in the district court in which suit the court may order such plat expunged from the records. [C27, 31, 35, §6278-b3; C39, §6278.3; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §409.16]

Sections 409.17-409.29

Section 409.30

Explanation

409.15 Disapproval—appeal. If the council does not approve or reject a subdivision within 60 days, the owner may file the plat with the recorder, auditor and assessor. Any disapproval shall point out where the plat is objectionable. Also, if the council rejects a plat, the owner may appeal the rejection to the district court within 20 days by filing written notice of the appeal with the city clerk. The appeal shall be tried as a new case as an equitable proceeding and given preference in assignment to assure prompt action by the court.

409.16 Void plat—action to annul. If a plat is filed and recorded in violation of 409.14 and 409.15 such plat is void. The city council may institute a suit in the district court in which the court may order the plat expunged from the records.

Sections 409.17 thru 409.29 deal with matters pertaining to vacation of plats, vacation of streets and alleys, changing street names, etc. Sections 409.27, 409.28 and 409.29 have been repealed. Since these sections do not apply to new subdivision platting, they are not discussed here.

Section 409.30 Monumentation. This section deals with requirements made of the engineer or surveyor who prepares the plat. These requirements must be adhered to and are an obligation of the engineer or surveyor as a condition of his registration under state law.

Law

Section 409.31

Sections 409.32-409.44

409.45 Sale or lease without plat. Any person who shall dispose of or offer for sale or lease any lots in any city or addition to any city, until the plat thereof has been acknowledged and recorded as provided in this chapter, shall forfeit and pay fifty dollars for each lot and part of lot sold or disposed of, leased, or offered for sale. [R60,\$1027; C73,\$572; C97,\$930; C24, 27, 31, 35, 39,\$6307; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77,\$409.45]

Sections 409.46-409.47

Section 409.48

Explanation

Section 409.31 Plats made for record. This section provides guidelines for the preparation of the plat. It requires specific plat sizes, scale, plat name, north point, monuments, survey and engineering data and the like. In addition, the names of surrounding property owners and subdivisions, the purpose and size of easements, lands intended for public dedication such as streets and alleys are required.

All of the above information must be verified by a registered land surveyor and bear his seal and registration number.

Sections 409.32 thru 409.44 deal with errors and resurveys. Since these are not frequently used sections and apply primarily to the surveyor, they are not discussed here.

409.45 Sale or lease without plat. This section establishes penalties for the sale or lease of lots that are a part of a subdivision which was not approved in accordance with the provisions of Chapter 409. A fine of \$50.00 is established for every lot sold, leased or *offered* for sale or lease.

Sections 409.46 and 409.47 have been repealed.

Section 409.48 Assessment of platted lots. Applies to the Assessor and establishes the formula for assessing lots in new subdivisions during the first three years after platting.

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