

MAINE STATE LEGISLATURE

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H. P. 1385

House of Representatives, February 11, 1941.

Referred to the Committee on Judiciary and 1,000 copies ordered printed.
Sent up for concurrence.

HARVEY R. PEASE, Clerk.

Presented by Mr. Leavitt of Portland by request.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
FORTY-ONE

AN ACT for the Establishment of Highway Protective Areas.

Be it enacted by the People of the State of Maine, as follows :

Sec. 1. Declaration of purposes. The people of the state of Maine hereby find that the health, safety, convenience, prosperity and welfare of this state and of its people will be protected and promoted by such reasonable regulation of land along the highways as will tend to reduce hazards to travellers on the highways, to increase or preserve the traffic capacity of the highways and to protect their scenic attractiveness, and that these purposes and objectives will be furthered by establishing a highway protective area, by dividing it into districts and by regulating the uses of structures and land within such districts, by providing set back lines in order to improve visibility along the highway and by other means of regulation as hereinafter set forth. The provisions of this act are declared necessary and reasonable for the aforesaid objectives and purposes.

Sec. 2. Highway protective area established. There is hereby established a highway protective area consisting of all the lands along the highways in the state highway system, lying between each highway and a line parallel to such highway on both sides 300 to 500 feet distant from the center of the travelled way of the highway, depending on the topography. Within this protective area there shall be permitted no new business or

industrial use of land or extensions or additions to present business and industrial uses of land and no new construction or use of buildings or structures for business and industry except in commercial districts as herein-after defined.

Sec. 3. "Uses", defined. For all the purposes of this act the following uses, whether of land or of buildings or structures, shall not be considered business uses:

(1) Single family and multi-family residences, boarding and rooming houses, motor camps, and residences used in part for professional offices or customary house occupations.

(2) Buildings for educational, religious or charitable uses, hospitals and sanatoria excepting places for the care and treatment of animals.

(3) Buildings used for agricultural purposes which shall include among other things, farming, pasturage, poultry and other live stock raising, horticulture, floriculture and forestry.

(4) Telephone exchanges without service yards or outside repair or storage facilities; or poles, wires, transformer, substations, hydrants and other equipment used in connection with the transmission and distribution of telegraph, telephone, electric or water service.

(5) Athletic fields, golf courses, country clubs and cemeteries.

(6) Name plates or signs not exceeding a total area of 2 square feet for professional offices and house occupations.

(7) Accessory signs advertising the sale or rental of the premises and containing no other advertising matter.

(8) Accessory signs on any farm, truck-garden or nursery exclusively advertising the use of the premises.

(9) Accessory signs, structures and devices on premises used for business or industry when such signs are located within 100 feet of the point of sale or manufacture of the goods or products advertised.

The number, size and location of the foregoing accessory signs shall be subject to the approval of the commission.

(10) Any lawful sign relative to government business displayed by a municipality, county, the state or the United States.

(11) Wayside stands for the sale by the owner or lessee of the premises of goods manufactured or of produce raised thereon except that parking space in connection with such stands adequate in the judgment of the commission shall be provided on private property.

Sec. 4. Commission to designate districts. Within the highway protective area the state highway commission shall designate districts and regulate the uses therein in accordance with the following principles:

(a) Commercial districts shall comprise lands suitable both for business and industrial purposes. Business purposes shall include the selling of goods or services at retail or wholesale and commercial advertising. Industrial purposes shall include the extraction of minerals, the processing of raw materials and the conduct of other types of manufacturing processes.

(b) Commercial districts for business purposes shall be intended as market or trade centers and in determining their location existing business districts and areas adjacent thereto shall be preferred.

(c) In the determination of the location of commercial districts for industrial purposes, areas which offer peculiar advantages to industrial uses shall be preferred. Areas utilized for established industries, areas which contain mineral resources of commercial value and areas adjacent to established manufacturing plants, railroads, power lines or navigable waters are examples of such locations.

(d) In determining the location and extent of the districts, the relationship of the development of the protective area to the present and prospective development of lands and uses outside of such area shall be taken into account.

(e) The uses of any land for residence or agriculture shall not be prohibited anywhere within the protective area, provided, however, that the location of residences or of any structures used for or in connection with agriculture may be required to conform to set-back lines.

(f) Districts shall not except under unusual circumstances be designated commercial unless they are compact or built up sections in which at least 50% of the buildings, exclusive of accessory buildings and structures, are used for business or industry.

Compact or built up sections shall be the lands contiguous to highways which, for a distance of not less than a quarter of a mile, on one side of the highway are built up with buildings situated less than 150 feet apart.

(g) The boundary lines of the highway protective area shall not be required to conform to lot lines and protective areas may include land which does not abut upon the highway.

(h) All land within the highway protective area which is not specifically included in commercial districts shall be designated non-commercial districts.

Sec. 5. Designation of districts. The designation of districts and all other regulations for the use of land within the highway protective area shall be in accordance with a plan and after studies of land uses, population distribution, trade areas, scenic areas, public reservations, the needs of motor travel and such other matters as influence development of the

land, safety of the users of the highway and welfare of the people in and near the highway protective area. Plans may be adopted and regulations established for protective areas on such highway or highways as in the judgment of the commission most need protection but before the regulations provided for herein shall become effective the commission shall hold public hearings at least 10 days' notice of which shall be published in newspapers of general circulation in the state and in the counties affected by the regulations. The regulations may be amended, supplemented and changed and the limits of commercial districts may be extended by the commission subject to the foregoing provisions for public hearing and notice.

Sec. 6. Limitation on structures. Within the highway protective area no structure or building shall be erected within 50 feet from the right of way line of the nearer side of the highway and not less than 73 feet from the nearer line of the travelled way. This limitation shall not apply to warning or directional signs erected and maintained by the state, county or municipality, or to poles, wires, transformer sub-stations or hydrants used in connection with the transmission and distribution of telegraph, telephone, electric or water service and shall be subject to the power of the Commission to make variances as provided in section 8.

Sec. 7. Permits. Within the highway protective area no person, firm or corporation shall commence to construct, reconstruct, move, alter or use any building or structure for any business or industrial purpose or shall use land for any such purpose until such person, firm or corporation has been granted a permit so to do by the commission or by such person or persons as the commission appoints for this purpose.

Sec. 8. Appeals. Where permits are refused, appeal may be had to the commission which shall hold a public hearing thereon, written notice of which shall be mailed 10 days before the date of the hearing to the applicant and to the owners of all real estate which the commission deems will be affected by the granting of the permit. After such hearing the commission may grant or refuse the permit applied for in accordance with the provisions of this act and in exceptional circumstances where strict adherence to the provisions of this act would involve unnecessary hardship to the applicant or to the travelling public, may grant variances subject to appropriate conditions and safeguards in harmony with the intent and purpose of this act.

Nothing in this act shall be construed as authorizing the commission to

grant a permit for a building, structure or use prohibited by any state law or by any municipal or county ordinance.

Sec. 9. Special powers. The commission shall have the power to issue subpoenas and process compelling the attendance of any person, and the production of any papers or books for any purpose covered in the act, and shall have the power to administer an oath to any person whose testimony may be required; and it shall be unlawful for any person to refuse to obey such subpoena or to make answer to any competent and material questions propounded to him by the commission.

The notices provided for in this act may be given by registered letter mailed to the last known address of persons involved, and the commission's certificate shall be sufficient evidence of such notice and the mailing thereof.

Sec. 10. Appeal. Any person aggrieved by a determination of an appeal to the commission may appeal to the superior court and the procedure on such appeal shall be such as is followed in zoning appeals, or where there is no special procedure in zoning appeals shall be such as is provided in civil actions.

Sec. 11. Provisions on present buildings. Any lawful building or structure or use of a building or structure or use of land or part thereof existing at the time of the adoption of regulations under this act may be continued although such building, structure or use does not conform to said regulations, provided, however, that all existing advertising signs and structures, junk yards and refuse dumps shall be required to conform to the regulations adopted under the authority of this act by being removed or relocated within two years after the adoption of said regulations. Whenever any non-conforming use has been abandoned for one year or more it shall not be resumed unless specially permitted under section 7.

Sec. 12. Penalty. Any person violating any provision of this act or any regulation thereof shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than \$100 or by imprisonment for not more than 10 days or by both such fine and imprisonment. Each and every day during which any such illegal act or omission continues or is maintained shall be deemed a separate offense. In case any building or structure is or is proposed to be constructed, located, altered, maintained or used or in case any land is or is proposed to be used in violation of this act or of any regulation thereunder, the attorney general of the state, the prosecuting attorney of any county, or any property owner who shall be damaged by such violation in addition to other remedies provided by law may institute injunction, mandamus, abatement or any

other appropriate action to prevent, enjoin, abate or remove such unlawful construction, location, alteration, maintenance, or use.

Sec. 13. Fees and penalties. The commission may determine and collect fees for the issuance of permits. Such fees and the penalties collected under this act shall be deposited in the treasury of the state to the credit of the general highway fund.

Sec. 14. Constitutionality. This act shall be liberally construed with a view to the effective accomplishment of its purposes. If any section or provision shall be held invalid or unconstitutional by any court such decision shall affect only the section or provision so declared invalid or unconstitutional and shall not affect any other section or provision. If any part of the regulations adopted under this act be held invalid or unconstitutional by any court, such decision shall not affect the validity of any other part of this act or of said regulations.

Wherever the regulations in this act or made under the authority thereof are more restrictive or impose higher standards than are required in or under other statutes or local ordinances, the regulations authorized by this act shall govern. Wherever the provisions of any other statute or local ordinance are more restrictive or impose higher standards than are required by this act the provisions of such other statute or ordinance shall govern.

Sec. 15. Definitions. The following words as used in this act shall have the meanings respectively ascribed to them in this section except in those instances where the context indicates a different meaning.

(a) The singular shall include the plural; the masculine shall include the feminine and neuter as requisite.

(b) "Commission" means the state highway commission.

(c) "Person" shall include individuals, partnerships, corporations, associations, receivers, trustees, executors and administrators.

(d) "Highway is every way or place of whatever nature open to the use of the public for the purpose of vehicular traffic which is under the jurisdiction of the state or which is constructed or maintained in whole or in part by the state, including state-aid roads.

(e) "Structure" includes building although the word is sometimes used in the act in addition to buildings.

(f) "Accessory sign" shall mean any outdoor advertising device which carries only advertisements strictly incidental and subordinate to a principal use of the premises on which it is located, including signs indicating business or goods sold on the premises by the owner or occupant thereof

but not including any sign which is controlled by any party except the owner or occupant of the premises.

(g) "Junk yards" shall mean a lot or area of land containing at least 200 square feet, whether enclosed or unenclosed, used for the dismantling or wrecking of automobiles, or other vehicles or machinery and/or for the storage of junk, including scrap metals or other scrap material.