



PLANNING LAW SEMINAR

MICHIGAN ZONING ENABLING ACT – PART ONE

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MICHIGAN CHAPTER OF THE AMERICAN PLANNING ASSOCIATION





Planning Law Seminar

Upcoming Events

Planning Law Seminar (in four parts)

6 AICP CM Law Credits

Book Group, *MAP Reads*, on May 27, June 24, July 22, August 26

1.5 CM Credits each

Workshops for Officials via ZOOM

Site Plan Review in two parts (June 8-9)

Zoning Administration in two parts (June 9-10) *3.5 CM Credits*

Planning and Zoning Essentials in two parts (June 17-18)

Clean Energy Planning (June 24) *2 CM Credits*



TODAY'S PRESENTER

Sarah Traxler, AICP
McKenna

Providing commentary. . . .

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TODAY'S PANELISTS

MAP'S Law Committee

Gerald Rowe, Chair

Keith Baker

Wayne Beyea, JD, AICP

Kevin Christiansen, AICP, PCP

Rebecca Harvey, AICP

Emily Palacios, JD

Richard Norton, JD, PhD

Doug Piggott, AICP

Justin Sprague

Mark Wyckoff, FAICP

MAP's primary Risk Management instructor

Catherine Kaufman, JD, AICP

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Michigan Zoning Enabling Act

May 26, 2020
Michigan Association of Planning
Zoning Law Seminar

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Purpose of Session

To review and begin discussing the Michigan Zoning Enabling Act

In-depth examination.

Reinforce our familiarity with the statute to provide professional advice and work products that are aligned with statutory requirements.

Practical application.

Help translate the Act's requirements to our real-world application and administration of zoning ordinances



Public Act 110 of 2006, as amended,
“Michigan Zoning Enabling Act”

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Purpose

“AN ACT to codify the laws regarding local units of government regulating the development and use of land;

to provide for the adoption of zoning ordinances;

to provide for the establishment in counties, townships, cities, and villages of zoning districts;

to prescribe the powers and duties of certain officials;

to provide for the assessment and collection of fees;

to authorize the issuance of bonds and notes;

to prescribe penalties and provide remedies;

and to repeal acts and parts of acts.”



Article 1, General Provisions

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Article 1 Sections

125.3101, Short title

125.3102, Definitions

125.3103, Notice; publication; mail or personal delivery; requirements

125.3101 Short title

Allows for referring to act as “Michigan Zoning Enabling Act”

Sidebar

- Frequently abbreviated as “MZEA”
- When referencing in more formal correspondence or plan / report:
*Michigan Public Act 110 of 2006, as amended,
“Michigan Zoning Enabling Act”*

125.3102 Definitions

23 definitions, from “agricultural land” to “zoning jurisdiction”

Section 125.3103

Title: Notice; publication; mail or personal delivery; requirements

1. Requires publication of the notice of the hearing for any public hearing required under this act, except as otherwise provided under this act
 - In a newspaper of general circulation in the local unit of government
 - Not less than 15 days before the date of the hearing

Sidebar

- What happens if our local newspaper folds?
- Routinize your newspaper publication schedule and deadlines

125.3103, con'd.

2. Requires providing notice of a public hearing to:
 - Owners of the subject property
 - All persons to whom real property is assessed within 300' of subject property (regardless of jurisdiction)
 - All occupants of all structures within 300' of subject property (regardless of jurisdiction)
 - If structure contains less than 4 units or spatial areas owned or leased by different persons, 1 occupant of each shall be given notice
 - If structure contains more than 4 units or other distinct spatial units, notice may be given to the manager or owner of structure for posting the notice at the primary entrance

Sidebar

- GIS and/or assessing records are key to complying with this requirement
- Subsection 3 provides acceptable methods of providing these notices

125.3103, con'd.

3. Not less than 15 days before the date of the public hearing, notice is considered given when personally delivered or when deposited during normal business hours for delivery with the USPS or other public or private delivery service; may use “occupant” if name not known
4. Notice required to do all of the following:
 - a. Describe nature of the request;
 - b. Indicate the subject property, including a listing of all existing street addresses within the property. If no street addresses, other means of ID
 - c. State when and where public hearing conducted
 - d. Indicate when and where written comments will be received concerning the request



Article 2, Zoning Authorization and Initiation

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Section 125.3201

Title: Regulation of land development and establishment of districts; provisions; uniformity of regulations; designations; limitations

125.3201

1. Local unit of gov't. may provide by zoning ordinance (ZO):

- For the regulation of land development; and
- The establishment of 1 or more districts within its zoning jurisdiction, which regulate the use of land and structures;
 - ✓ To meet the needs of the state's citizens for food, fiber, energy, and other natural resources, places of residence, recreation, industry, trade, service, and other uses of land;
 - ✓ To ensure that use of the land is situated in appropriate locations and relationships

- ✓ To meet the needs of the state's citizens for food, fiber, energy, and other natural resources, places of residence, recreation, industry, trade, service, and other uses of land;
- ✓ To ensure that use of the land is situated in appropriate locations and relationships
- ✓ To limit the inappropriate overcrowding of land and congestion of population, transportation systems, and other public facilities

125.3201, con'd.

1. con'd.
 - ✓ To facilitate adequate and efficient provision for transportation systems, sewage disposal, water, energy, education, recreation, and other public service and facility requirements;
 - ✓ And to promote the public health, safety, and welfare.
2. Regulations shall be uniform for each class of land or buildings, dwellings, and structures within a district
3. Local unit of gov't. may provide under the ZO for regulation of land development and establishment of districts which apply only to land areas and activities involved in a special program to achieve special land management objectives
 - To achieve special land management objectives
 - To avert or solve specific land use problems, including in areas subject to damage from flooding or beach erosion

125.3201, con'd.

4. Local unit of gov't. may adopt land development regulations under the ZO designating or limiting:

- Location;
- Height;
- Bulk;
- Number of stories;
- Uses; and
- Sizes...

...of dwellings, buildings, and structures that may be erected or altered, including tents and recreational vehicles

Section 125.3202

Title: Zoning ordinance; determination by local legislative body; amendments or supplements; notice of proposed rezoning

1. Legislative body may provide by ordinance for the manner in which regulations and boundaries of districts or zones shall be determined and enforced or amended or supplemented; amendments or supplements shall be adopted in the same manner as provided under act for adoption of original ZO
2. Zoning Commission shall give notice of proposed rezoning in same manner as described in section 3201

Sidebar

- What's a Zoning Commission?!?!

Section 125.3202, con'd.

3. For any group of adjacent properties numbering 11 or more proposed for rezoning, not required to deliver (mail) public hearing notice described in sub-section 103(2) nor required to list street addresses of subject properties pursuant to section 103(4)(b)
4. ZO amendments in cities and villages are subject to protest petitions under section 403
5. Legislative bodies have authority to adopt an amendment to conform ZO to the decree of a court of competent jurisdiction
 - Notice of adopted amendment may be published without referring amendment to any board or agency

Sidebar

- 11 or more still requires public hearing notice newspaper publication

Section 125.3203

Title: Zoning ordinance; plan; incorporation of airport layout plan or airport approach plan; zoning ordinance adopted before or after March 28, 2001; applicability of public transportation facilities

125.3203 (1)

A zoning ordinance shall be based upon a plan designed to promote the public health, safety, and general welfare, to encourage the use of lands in accordance with their character and adaptability, to limit the improper use of land, to conserve natural resources and energy, to meet the needs of the state's residents for food, fiber, and other natural resources, places of residence, recreation, industry, trade, service, and other uses of land, to ensure that uses of the land shall be situated in appropriate locations and relationships, to avoid the overcrowding of population, to provide adequate light and air, to lessen congestion on the public roads and streets, to reduce hazards to life and property, to facilitate adequate provision for a system of transportation including, subject to subsection (5), public transportation, sewage disposal, safe and adequate water supply, education, recreation, and other public requirements, and to conserve the expenditure of funds for public improvements and services to conform with the most advantageous uses of land, resources, and properties.

A zoning ordinance shall be made with reasonable consideration of the character of each district, its peculiar suitability for particular uses, the conservation of property values and natural resources, and the general and appropriate trend and character of land, building, and population development.

Section 125.3203, con'd.

2. If local unit of gov't. adopts or revises its plan after an airport layout plan or airport approach plan has been filed with the unit of gov'., it shall incorporate the plan
3. ZO adopted after 3/28/01 shall be adopted after reasonable consideration of the environs of any airport within a district and comments received from the airport manager
4. ZO adopted before 3/28/01 not required to be consistent with any airport zoning regulations; amendments or variances shall not increase inconsistencies, though petition provisions under section 402 and 403 still applicable

Sidebar

- Last sub-section clarifies applicability of reference to public transportation facilities in master plans

Section 125.3204

Title: Single-family residence; instruction in craft or fine art as home occupation

A ZO shall provide for use of single-family residence (SFR) by an occupant for a home occupation to give instruction in craft or fine art; allowed to regulate noise, advertising, traffic, house of operation, or other conditions that may accompany use of residence

Sidebar

- What about other home occupations?

Section 125.3205

Title: Zoning ordinance subject to certain acts; regulation or control of oil or gas wells; prohibition; extraction of valuable natural resource; challenge to zoning decision; serious consequences resulting from extraction; factors; regulations not limited

125.3205

1. ZO subject to electronic transmission line certification act; regional transit authority act; small wireless communications facilities deployment act
2. Counties and townships shall not regulate or control drilling, completion, or operation of oil or gas wells (or exploration) and shall not have permitting jurisdiction
3. ZO shall not prevent extraction, by mining, of valuable natural resources unless very serious consequences would result

Sidebar

- Sub-section 3 defines “valuable”
- Sub-section 5 defines “very serious consequences”

125.3205, con'd.

4. Person challenging zoning decision has initial burden of proof regarding “valuable” and “very serious consequences” and that there is a need for the extracted natural resources
5. Outlines how determine whether very serious consequences would result from extraction, including:
 - Silva v. Ada Township
 - Relationship of extraction to existing land uses, impacts, other impacts described
6. Notwithstanding the above, local unit still able to reasonably regulate hours of operation, blasting hours, noise, dust, traffic
7. State regulatory authority under other statutes or rules not limited by this act

Section 125.3205a

Title: Amateur radio service station antenna structures

1. References federal requirements for notifying FAA and registering with FCC for owners of antenna structures 200' + above ground level when near or at a public use airport
2. Regulation by local unit of gov't. must not preclude use, but reasonably accommodate the communications and must constitute minimum practicable regulation to accomplish unit's legitimate public purpose
3. References advisory board and state organizations to contact for add'l information

Sidebar

- Resource: MSU Extension's ["Restrictions on Zoning Authority"](#)
- Web address:
https://www.canr.msu.edu/resources/restrictions_on_zoning_authority

Section 125.3205d

Title: Zoning ordinance; prohibition or regulation of commemorative signs

1. ZO may not regulate or prohibit commemorative signs for fallen police officers, firefighters, medical first responders (defined), members of US armed forces, corrections officers, or veterans of US armed forces

Section 125.3206

Title: Residential use of property; adult foster care facilities; family or group child care homes

125.3206

1. **State licensed residential facility** (defined) and an **adult foster care facility** (references regulating act) are residential uses of property and permitted uses in all residential zones, not subject to special use or conditional use permit or procedure different from those required for other dwellings of similar density in the same zone
2. Subsection 1 does not apply to adult foster care facilities licensed by state agency for care of persons released from or assigned to adult correctional institutions

Sidebar

- Defines SLRF as described in this act as 6 or fewer residents
- SLRF with 7 or more residents can be special land use or not permitted

125.3206, con'd.

3. For county or township, a **family child care home** is residential use of property and permitted use in all residential zones, not subject to special use or conditional use permit or procedure different from those required for other dwellings of similar density in the same zone
4. For county or township, requires issuance of special use or conditional use permit for a **group child care home** if specific criteria are met (sub-section 9 allows for issuing permit even if criteria are not met)

Sidebar

- If county or township, consider including specific reviewing standards in ZO, but ensure maintained up-to-date if statute is amended

125.3206, con'd.

5. For city or village, a **group child care home** may be issued a special or conditional use permit (does not reference same criteria)
6. Licensed or registered family or group child care home operating before 3/30/89 not required to comply with this section
7. Local unit allowed to inspect family or group child care home for compliance with ZO
8. Establishment of any above facilities issued a special, conditional, or other similar use permit does not affect renewal of that permit
9. (covered in #4, above)
10. Distance criteria in sub-section 4 shall be measured along public a road, street, or place for vehicular traffic, not including an alley

Section 125.3207

Title: Zoning ordinance or decision; effect as prohibiting establishment of land use

1. ZO or zoning decision shall not have the effect of totally prohibiting the establishment of a land use within a local unit of gov't. in presence of demonstrated need for that land use (within local unit or surrounding area), unless a location within the local unit does not exist where the use may be appropriately located or the use is unlawful

Sidebar

- MI marijuana statutes' relationship to this provision ripe for discussion; other uses of land, too?

Section 125.3208

Title: Nonconforming uses or structures

1. If use of a dwelling, building, or structure is lawful at time of enactment or amendment of ZO, than use may be continued although does not conform
2. Legislative body may provide in a ZO for completion, resumption, restoration, extension, or substitution of nonconforming uses or structures upon listed terms and conditions; may establish different classes with different requirements applicable to each class
3. Legislative body may acquire by purchase, condemnation, or otherwise, private property or an interest for removal of nonconforming uses and structures; may use general funds or special assessment; property acquired under this sub-section by a city or village shall not be used for public housing

125.3208, con'd.

3. Elimination of nonconforming uses and structures in a zoning district is declared a public purpose and for a public use; legislative body may institute proceedings for condemnation under specific referenced act

Sidebar

- Local units rarely condemn under this provision

Section 125.3209

Title: Township zoning ordinance not subject to county ordinance, rule, or regulation

Except as otherwise provided in this act, a township with ZO not subject to an ordinance, rule, or regulation adopted by a county under the MZEA

Section 125.3210

Title: Ordinance as controlling

Except as otherwise provided in this act, ordinance adopted under this act shall be controlling in the case of any inconsistencies between the ordinance and an ordinance adopted under any other law

Sidebar

- Are there frequent conflicts that prompt citation of this section?



Article 3, Zoning Commission

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Sections 125.3301 - 3304

Sections no longer applicable, reference Zoning Commission powers and provisions transferred to Planning Commission by 7/1/11

Sidebar

- How do I know whether my community is in compliance with these requirements?

Section 125.3305

Title: Recommendations of zoning commission; adoption and filing

1. ZC shall adopt and file with the legislative body the following:
 - a. A zoning plan for areas subject to zoning
 - b. Establishment of zoning districts, including boundaries
 - c. Text of a ZO with necessary maps and zoning regulations
 - d. Manner of administering and enforcing the ZO

Sidebar

- Wait!?! I thought the Zoning Commission is no more?

Section 125.3306

Title: Recommendations of zoning commission; submission to legislative body; public hearing; notice; examination of proposed text and maps

1. Before submitting its proposed ZO to legislative body, the ZC (PC) shall hold at least 1 public hearing; notice of time and place shall be given in same manner as section 103(1) for initial adoption of a ZO or section 202 for subsequent text or map amendments
2. Notice of time and place shall be given by mail to each electric, gas, and pipeline public utility company, telecommunication service provider, each railroad within zone or district affected, and airport, if register name and mailing address with the clerk for this purpose
3. Notices must include places and times at which proposed text and map(s) of ZO may be examined

Section 125.3307

Title: Review and recommendations after hearing; submission to township; submission to coordinating zoning committee; waiver of right to review

1. Following public hearing in section 306, a township shall submit for review and recommendation the proposed ZO, including any maps, to the ZC (PC) of its county if one has been appointed as provided under the MZEA
2. If no county ZC (PC), the proposed ZO shall be submitted to the coordinating zoning committee, comprised of either 3 or 5 members appointed by county legislative body for purpose of coordinating ZOs of local units of gov't with common boundaries with the township
3. County waives right to review and recommend if not received by township within 30 days from date of receipt by county
4. Legislative body may waive right by resolution to review township ordinances and amendments

Section 125.3308

Title: Summary of public hearing comments; transmission to legislative body by zoning commission; report

1. Following required public hearing under 306, ZC (PC) shall transmit a summary of comments received and its proposed ZO, including maps and recommendations, to legislative body of local unit of gov't.
2. Following enactment of the ZO, ZC (PC) shall prepare at least once per year a report on the administration and enforcement of the ZO and recommendations for amendment or supplement to the ordinance

Sidebar

- Wait!? I thought the Zoning Commission is no more?



Article 4, Zoning Adoption and Enforcement

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Section 125.3401

Title: Public hearing to be held by legislative body; conditions; notice; approval of zoning ordinance and amendments by legislative body; filing; notice of ordinance adoption; notice mailed to airport manager; information to be included in notice; other statutory requirements superseded

125.3401

1. After receiving a ZO under section 308(1) (described above), or an amendment under 202 and 308(1), the legislative body may hold a public hearing if it considers it necessary or if otherwise required
2. Notice of a legislative body public hearing shall be given in same manner as required under section 103(1) for initial adoption of ZO or section 202 for text or map amendments
3. Legislative body may refer any proposed amendments to the ZC (PC) for consideration and comment within a time specified

125.3401, con'd.

4. Legislative body shall grant a hearing on a proposed ordinance provision to an interested property owner who requests by certified mail, addressed to the clerk; a hearing under this section is not subject to noticing requirements of section 103, except that notice shall be given to the interested property owner in the manner required in 103(3) and (4)
5. After any proceedings under the above 4 sub-sections, the legislative body shall consider and vote upon the adoption of a ZO, with or without amendments; approval subject to majority vote of members of legislative body
6. Except as otherwise provided under 402, ordinance shall take effect upon expiration of 7 days after publication under sub-section 7, below (unless different period of time specified in general code or charter)

125.3401, con'd.

7. Following adoption of ZO or amendments, they shall be filed with clerk and a notice of ordinance adoption shall be published in a newspaper of general circulation in the local unit of government within 15 days after adoption
8. Copy of notice of ordinance adoption in sub-section 7 shall be mailed to an airport manager entitled under section 306
9. The notice required under this section shall include:
 - a. In the case of a newly adopted ZO, provides specific language;
 - b. In the case of an amendment, a summary of the regulatory effect, including the geographic area affected, or the text of the amendment;
 - c. Effective date of ordinance or amendment;
 - d. Place and time when a copy of ordinance or amendment may be purchased or inspected
10. Filing and publication requirements under this section supersede other statutory or charter requirements related to ordinance filing and publication

Section 125.3402

Title: Notice of intent to file petition

1. Within 7 days after publication of a ZO under section 401, registered elector residing in zoning jurisdiction of a **county or township** may file with clerk a notice of intent to file a petition
2. If filed, petitioner shall have 30 days following publication of ZO to file petition - signed by at least 15% of registered electors with specific criteria for eligibility – requesting submission of ZO or part of ZO to the electors resident in zoning jurisdiction for their approval

125.3402, con'd.

3. Upon filing of a notice of intent, the ZO or part of ZO shall not take effect until 1 of the following occurs:
 - a. Expiration of 30 days after publication of ordinance, if petition not filed within that time
 - b. If petition filed within 30 days, the clerk determines that the petition is inadequate;
 - c. If petition filed within 30 days, the clerk determines that the petition is adequate and the ZO or part of ZO is approved by a majority of registered electors at next regular or special election; legislative body shall provide the manner of submitting the ZO or part of ZO to electors for their approval or rejection and determining the result of the election
4. Petition and election under this section subject to Michigan election law

Section 125.3403

Title: Amendment to zoning ordinance; filing of protest petition; vote

1. Amendment to ZO by a **city or village** is subject to a protest petition; if filed, approval of amendment shall require $2/3$ vote by legislative body, unless a larger vote, not to exceed $3/4$, is required by ordinance or charter; protest petition shall be presented to legislative body before final legislative action on amendment, signed by 1 or more of following:

125.3403, con'd.

1. con'd.:
 - a. Owners of at least 20% of area of land included in proposed change;
 - b. Owners of at least 20% of land included within an area extending outward 100' from any point on the boundary of land included in proposed change.
2. Publicly owned land shall be excluded from 20% calculation under sub-section 1

Section 125.3404

Title: Interim zoning ordinance

1. Legislative body of a local unit of gov't. may direct the ZC to submit, within a specified period of time, recommendations as to the provisions of an interim ZO
2. Before presenting its recommendations to the legislative body, the ZO of a **township** shall submit the interim ZO or amendment to ordinance, to the county zoning commission or the coordinating zoning committee, for the purpose of coordinating the ZO with the ZOs of a township, city, or village having a common boundary with the township; the ZO is considered approved 15 days from the date the interim ZO is submitted to the legislative body

125.3404, con'd.

3. The interim ZO, including any amendments, shall be limited to 1 year from its effective date and not more than 2 years of renewal thereafter by resolution of the local unit of gov't.

Sidebar

- Maximum 3 years to prepare and adopt a ZO if interim ZO is in effect

Section 125.3405

Title: Use and development of land as condition to rezoning

1. An owner of land may voluntarily offer in writing, and local unit of gov't. may approve, certain use and development of the land as a condition to a rezoning or an amendment to a zoning map

Sidebar

- Does your community's ZO contain conditional rezoning regulations?

125.3405, con'd.

2. In approving conditions, local unit of gov't. may establish a time period during which conditions apply to the land; except for an extension, if the conditions are not satisfied within time period, land shall revert to its former zoning classification
3. Local gov't. shall not add to or alter conditions approved during the specified time period
4. Specified time period may be extended upon application of the landowner and approval by the local unit of gov't.
5. Local unit of gov't. shall not require landowner to offer conditions for rezoning; lack of an offer shall not affect a landowner's right under the MZEA, the ordinances of local unit, or any other state laws

Section 125.3406

Title: Zoning permits; fees; effect of delinquent payment of fine, costs, or assessment

1. Legislative body may charge reasonable fees for zoning permits as condition of granting authority to use, erect, alter, or locate dwellings, buildings, and structures, including tents and recreational vehicles

Sidebar

- Does your community routinely review its fee schedule?

125.3406, con'd.

2. ZO by a **city** may provide for ineligibility for application for rezoning, site plan, special land use, planned unit development, variance, or other zoning authorization if person is delinquent on civil fine, costs, or a justice system assessment under home rule city act
3. ZO provision adopted under sub-section 2 does not apply to an applicant for a zoning authorization if applicant became owner by foreclosure or by taking a deed in lieu of foreclosure and is:
 - a. A government-sponsored enterprise (definitions referenced)
 - b. A financial institution
 - c. A mortgage servicer (definitions referenced)
 - d. A credit union service organization (organized under laws of MI or US)
4. Sub-section 2 does not apply if application will correct, in whole or in part, the blight violation that was the subject of the delinquent payment referred to in sub-section 2

Section 125.3407

Title: Certain violations as nuisance per se

1. A use of land or a dwelling, building, or structure (including tent or RV) used, erected, altered, razed, or converted in violation of a ZO or regulation adopted under the MZEA is a nuisance per se. The court shall order the nuisance abated and the owner or agent in charge is liable for maintaining a nuisance per se. ZO shall designate the proper official or officials who shall administer and enforce the ZO and do at least 1 of the following for each violation:
 - a. Impose a penalty
 - b. Designate as a municipal civil infraction and implies a civil fine
 - c. If city, designate as a blight violation and impose civil fine or other sanction if have administrative hearings bureau pursuant to home rule city act



Article 5, Special Zoning Provisions

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Section 125.3501

Title: Submission and approval of site plan; procedure and requirements

1. May require submission and approval of a site plan (SP) before authorization of a land use or activity; ZO shall specify body or official responsible for reviewing and granting approval
2. If SP approval required, SP shall become part of record of approval and all future actions related to activity shall be consistent, unless a change conforming to ZO is agreed to by landowner and the body or official initially approved
3. Procedures and requirements for submission and approval shall be specified; SP submission, review, and approval shall be required for special land uses and planned unit developments

125.3501, con'd.

4. A decision rejecting, approving, or approving with conditions shall be based upon standards in ZO and other statutorily authorized and properly adopted local unit planning documents and other applicable ordinances and state and federal laws
5. SP shall be approved if it contains the information required by the ZO and is in compliance with conditions imposed by ZO and properly adopted local unit planning documents and other applicable ordinances and state and federal laws

Sidebar

- How often do you have to remind your planning commissioners that they SHALL approve the site plan if complies with ZO, etc.?

Section 125.3502

Title: Special land uses; review and approval; application; notice of request; public hearing; incorporation of decision in statement of findings and conclusions

1. ZO may provide for special land uses (SLUs), subject to review and approval of ZO, PC, zoning administrator, or legislative body (as required by the ZO); ZO shall specify:
 - a. Eligible SLUs and activities and body or official responsible for review and approval
 - b. Requirements and standards of approval
 - c. Procedures and supporting materials required for application, review, and approval

125.3502, con'd.

2. Upon receipt of SLU application requiring discretionary decision, local unit shall provide notice as required under section 103; the notice shall indicate that a public hearing on the request may be requested by any property owner or occupancy of any structure within 300' of the subject property, regardless of whether located in subject zoning jurisdiction
3. Public hearing shall be held at the initiative of the public body or official responsible for approval or upon request of the applicant, property owner within 300', or occupant of structure within 300'
4. The body or official designated to review and approve SLU may deny, approve, or approve with conditions; the decision on a SLU shall be incorporated in a statement of findings and conclusions relative to the SLU, specifying the basis for the decisions and any imposed conditions

Section 125.3503

Title: Planned unit development

1. Planned Unit Development (PUD) includes such terms as cluster zoning, planned development, community unit plan, and planned residential development – and other terminology denoting zoning requirements designed to accomplish ZO objectives through a review process based on application of site planning criteria to achieve integration of proposed land development project with characteristics of the project area
2. Legislative body may establish PUD permitting flexibility in regulation of land development, encouraging innovation in land use and variety in design, layout, and type of structures constructed, achieving economy and efficiency in use of land, natural resources, energy, and provision of public services and utilities, encouraging useful open space, and providing better housing, employment, and shopping opportunities

125.3503, con'd.

3. Within a designated PUD, regulations relating to use of land, including (but not limited to) – permitted uses, lot sizes, setbacks, height limits, required facilities, buffers, open space, land use density – shall be determined in accordance with PUD standards of ZO. Also:
 - PUD regulations need not be uniform for each type of land use if equitable procedures recognizing due process principles and avoiding arbitrary decisions are followed in making regulatory decisions;
 - A local unit may approve a PUD with open space that is not contiguous with the rest of the PUD (unless prohibited by local ordinance)
4. PUD ordinance required to specify review and approval authority, conditions that create eligibility, participants in review process, requirements and standards upon which review and approval granted

125.3503, con'd.

5. Body or official responsible for review and approval shall hold at least 1 public hearing; ZO may provide for preapplication conferences and submission of preliminary site plans before public hearing; notice public hearing per section 103
6. After public hearing, body of official responsible for approval shall meet for final consideration and deny, approve, or approve with conditions; shall also prepare a report stating its conclusions, its decision, the basis for decision, and any conditions imposed in an affirmative decision
7. If ZO amendment is required by PUD regulations, the requirements of MZEA for amendment shall be followed, except that the public hearing requirements under this section shall fulfill requirements in section 306

125.3503, con'd.

8. If ZO amendment not required by ZO for authorization of a PUD, the body or official responsible for review and approval shall approve, approve with conditions, or deny a request
9. Final approval may be granted on each phase of a multiphased PUD if each phase contains necessary components to insure protection of natural resources and health, safety, and welfare of users of the PUD and surrounding residents
10. In establishing PUD requirements, a local unit may incorporate other ordinance or statutes by reference; PUD regulations in a ZO shall encourage complementary relationships between zoning regulations and other regulations affecting development of land

Section 125.3504

Title: Special land uses; regulations and standards; compliance; conditions; record of conditions

1. If a ZO provides for discretionary decisions, including for SLUs and PUDs, the regulations and standards upon which those decisions are made shall be specified
2. Standards must be consistent with and promote intent and purpose of ZO and insure that land use or activity compatible with adjacent uses of land, natural environment, and capacities of public services and facilities affected by land use. Standards shall also insure consistency with public health, safety, and welfare of local unit.
3. Request shall be approved if in compliance with standards, conditions imposed under ZO, and other applicable ordinances and state and federal laws

125.3504, con'd.

4. Reasonable conditions may be required for land uses subject to discretionary decisions; requirements for conditions listed in sub-sections a through c, including protecting natural resources, valid exercise of police power, intent and purpose of zoning requirements, etc.
5. Conditions of approval shall be recorded and remain unchanged except upon mutual consent of approving authority and landowner; approving authority shall maintain a record of conditions that are changed, if change occurs

Section 125.3505

Title: Performance guarantee

1. Local unit of gov't may require a performance guarantee (methods specified) in an amount covering the estimated cost of improvements, to be deposited to clerk of legislative body for faithful completion of improvements; shall be deposited at issuance of permit, not before; local unit shall establish rebate procedures in reasonable proportion to the ratio of work completed as work progresses
2. This section does not apply to improvements for which a performance guarantee has been deposited under the land division act

Section 125.3506

Title: Open space preservation

1. If the following apply, an open space preservation development option as specified in this sub-section must be provided for in a ZO for land zoned for residential development:
 - a. Land is zoned at density equivalent to 2 or fewer dwelling units (DUs) per acre or, if served by public sewer, 3 or fewer DUs/acre
 - b. Percentage of the land area specified in the ZO, but not less than 50% for a county or township or 20% for a city or village, will remain perpetually in an undeveloped state by means of a conservation easement, plat dedication, restrictive covenant, or other legal means that runs with the land, as prescribed by the ZO
 - c. The development does not depend on extension of public sewer or water unless to develop without the exercise of the option would also depend on the extension
 - d. The option provided under this sub-section has not been previously exercised

125.3506, con'd.

2. Land may be rezoned accordingly upon exercise of this option
3. Development of land is subject to other applicable ordinances, laws, and rules, including groundwater suitability and on-site sewage disposal
4. The above allowances do not apply for a local unit of gov't. if:
 - a. On or before 10/1/01, already provided for development of same number of DUs on smaller portion of land than could otherwise be developed under existing codes and if a landowner exercises this option, that the undeveloped portion of land will remain perpetually in an undeveloped state;
 - b. If an option with similar preservation results was exercised by a landowner on or before 12/15/01
5. ZO provisions shall be cited as “open space preservation” provisions in the ZO

125.3506, con'd.

6. Local units of gov't. qualified under this section mean county, township, city, or village that:
 - a. Has adopted a ZO
 - b. Has a population of 1,800 or more
 - c. Has land not developed and that is zoned for residential development at a density described in subsection 1(a)

Sections 125.3507 – 125.3509

- Title:**
- 3507** - Purchase of development rights program; adoption of ordinance; limitations; agreements with other local governments
 - 3508** – PDR program; purchase of development rights by local unit of government; conveyance; notice; requirements for certain purchases
 - 3509** – PDR program; financing sources; bonds or notes; special assessments

125.3507

Summary:

- PDR ordinance may be adopted for establishment, financing, and administration of a PDR program; only to protect agricultural and other eligible land; may be adopted as part of ZO
- Does not expand condemnation authority of a local unit of gov't, nor shall development rights be acquired by condemnation
- Legislative body may enter into agreements with other local units of government for PDR

Sidebar

- Interested to hear of active PDR programs around the state

125.3508

Summary:

- Development rights may only be purchased from willing landowner
- Ordinance must describe certain details of a PDR program
- If local unit of gov't. has ZO, PDR program must be consistent with plan
- Provides for notification of certain jurisdictions
- Describes instances in which a county may purchase land subject to a local unit of government's ZO

125.3509

Summary:

- Provides for all manners of financing PDR programs

Sections 125.3513

Title: Biofuel production facility as permitted use of property; requirements; special land use approval; application; hearing; conditions; applicability of subsections (2) to (5); authority of local unit of government; definitions

Sidebar

- This section added in 2011

125.3513

Summary:

- If land zoned to allow farms (or allowed as nonconforming use), then biofuel production facility that produces 100,000 gallons or less shall be a permitted use on a farm
- If more than 100,000 gallons or doesn't meet all permitted use criteria, may allow as special land use subject to certain conditions
- Requires public hearing within 60 days after filing of application
- SLU approval may only be granted subject to specific conditions in this section, though a local unit of government may adopt their own standards and criteria
- Defines “biofuel”, “ethanol”, “farm”, “proof gallon”

Sections 125.3514

Title: Wireless communications equipment as permitted use of property; application for special land use approval; approval or denial; authorization by local unit of government; definitions; applicability to small cell wireless communications facilities

Sidebar

- This section added in 2012

125.3514

Summary:

- Wireless communications equipment is permitted use (not SLU) if collocated on existing structure (which must be in compliance with ZO), will not increase the overall height of the structure by more than 20' or 10% original height, whichever is greater, and complies with prior terms and conditions
- Provides for SLU if doesn't meet above criteria, specific requirements
- Provides 14 days to determine whether SLU application packet is administratively complete, provisions concerning completeness and fees
- Body or official reviewing and approving SLU must determine within 60 days of application filing
- Local unit may authorize wireless communications equipment as permitted use
- Defines “collocate”, “equipment compound”, “wireless communications equipment” and “wireless communications support structure”



Article 6, Zoning Board of Appeals

MCKENNA

Section 125.3601

Title: Zoning board of appeals; appointment; procedural rules; membership; composition; alternate member; per diem; expenses; removal; terms of office; vacancies; conduct of meetings; conflict of interest

1. ZO shall create a zoning board of appeals (ZBA); members appointed by majority vote of the members of the legislative body
2. Legislative body of **city or village** may act as ZBA and may establish rules to govern its procedure
3. Number of ZBA members shall be specified in ZO and:

COMMUNITY	MINIMUM ZBA MEMBERS
5,000 or more population	Not fewer than 5 members
5,000 or less population	Not fewer than 3 members

125.3601, con'd.

4. through 6, additional requirements:

COMMUNITY	MEMBERSHIP PROVISION	MISC.
County or township	1 regular ZBA member must be member of PC	
City or village	1 regular ZBA member may be member of PC	Unless legislative body acts as ZBA
All units of government	<ul style="list-style-type: none"> Regular and alternate members shall be selected from the electors of the local unit of government Regular and alternate members shall be representative of the population distribution and various interests present in local unit of government 1 regular or alternate member may be member of legislative body, who shall not serve as chairperson Employee or contractor of legislative body may not serve 	<ul style="list-style-type: none"> Unless county ZBA, in which case must not reside in city or village Null if legislative body serves as ZBA

125.3601, con'd.

7. Regarding alternate members:

- Legislative body may appoint 2 or fewer alternate members for same term as regular members
- May be called as specified in the ZO to serve in absence of a regular member
- May also be called to serve on a case if a member has abstained for reasons of conflict of interest, serving until final decision is made
- Alternate members have same voting rights as regular member

Sidebar

- If multiple cases on one meeting agenda, would the alternate member only serve on case with abstention?
- Conduct routine membership audit

125.3601, con'd.

8. ZBA members may be paid reasonable per diem and reimbursed for expenses incurred in discharge of duties
9. ZBA member may be removed by legislative body for misfeasance, malfeasance, or nonfeasance in office upon written charges and after a public hearing; member shall disqualify himself or herself from vote in which member has conflict of interest; failure to disqualify constitutes malfeasance of office

Sidebar

- If multiple cases on one meeting agenda, would the alternate member only serve on case with abstention?
- Conduct routine membership audit

125.3601, con'd.

10. Members subject to three-year terms (except legislative body or PC members) with staggered terms upon first appointment (1/3 should expire each year); legislative body or PC members' terms shall be limited to time on other body; successors shall be appointed not more than 1 month after term of the preceding member has expired
11. Vacancy shall be filled for remainder of unexpired term in same manner as original appointment
12. ZBA shall not conduct business unless a majority of regular members are present
13. Member of ZBA with cross membership shall not participate in a public hearing on or vote on the same matter that the member voted on as member of the PC or legislative body; however, member may consider and vote on other unrelated matters involving the same property

Section 125.3602

Title: Meetings; call of the chairperson; oaths; attendance of witnesses; record of proceedings

1. Meetings shall be held at the call of the chairperson and at other times as the ZBA in its rules of procedure may specify; the chair or, in their absence, the acting chair, may administer oaths and compel the attendance of witnesses
2. ZBA shall maintain a record of its proceedings, which shall be filed in office of clerk of legislative body

Sidebar

- Is it best practice to refer to ZBA “rules of procedure”, not “bylaws”?

Section 125.3603

Title: Zoning board of appeals; powers; concurring vote of majority of members

1. ZBA shall hear and decide questions that arise in the administration of ZO, including interpretation of zoning maps, and may adopt rules to govern its procedures; hears and decides on matters referred to the ZBA or upon which ZO specifies; shall hear and decide appeals from and review any administrative order, requirement, decision, or determination made by administrative official or body charge with enforcement of a ZO; for SLU and PUD, an appeal may only be taken to ZBA if provided for in ZO

125.3603, con'd.

2. Concurring vote of **majority of members** is necessary to:
 - Reverse an order, requirement, decision, or determination of the administrative official or body
 - Decide in favor of an applicant on a matter upon which ZBA is required to pass under ZO
 - Grant variance to the ZO

Section 125.3604

Title: Zoning board of appeals; procedures

1. An appeal to ZBA may be taken by person aggrieved or by an officer, department, board, or bureau of MI or local unit of government; additionally, a variance to the ZO may be applied for under uniform condemnation procedures act; ZBA must state the grounds of any determination made by the board

Sidebar

- This is the “meat and potatoes” section relating to variances

125.3604, con'd.

2. Appeal under this section shall be taken within such time as prescribed by the ZBA by general rule by filing with the body or officer and with the ZBA a notice of appeal specifying the grounds for the appeal; the body or officer shall immediately transmit to the ZBA all records upon which the action appealed from was taken
3. Appeal stays all proceedings in furtherance of appealed action; provides for staying of proceedings by restraining order if body or officer certifies that staying would cause imminent peril to life or property body or administrator certifies to the ZBA
4. ZBA shall fix a reasonable time for the hearing upon receipt of application and provide public hearing notice consistent with section 103

125.3604, con'd.

5. If ZBA receives written request seeking interpretation of ZO or appeal of administrative decision, shall conduct public hearing on request after provide notice consistent with section 103; if request does not involve a specific parcel of property, notice need only be published in newspaper of general circulation and given to petitioner
6. During a hearing, a party may appear personally or by agent or attorney; ZBA may reverse or affirm, wholly or partly, or modify the order, requirement, decision, or determination and may issue or direct the issuance of a permit
7. If there are practical difficulties for nonuse variances or unnecessary hardship for use variances in way of carrying out the strict letter of the ZO, the ZBA may grant a variance so that the spirit of ZO observed, public safety secured, and substantial justice done; procedures shall establish review and standards for approval of all types of variances; ZBA may impose conditions as otherwise allowed under MZEA

125.3604, con'd.

8. ZBA of all local units of gov't. shall have authority to grant **nonuse variances** relating to construction, structural changes, or alternation of buildings or structures related to dimensional requirements of the ZO or to any other nonuse-related standard in the ordinance
9. Authority to grant **variances from uses of land** limited to following:
 - a. Cities and villages
 - b. Townships and counties that as of 2/15/06 had an ordinance that uses the phrase “use variance” or “variances from uses of land” to expressly authorize ZBA granting use variances
10. ZO must be in compliance with sub-section 7 for local unit of gov't. to have authority to issue use variances under sub-section 9
11. Authority to grant use variances is permissive; local unit of gov't. not required to adopt ordinance allowing for use variances

Section 125.3605

Title: Decision as final; appeal to circuit court

ZBA decision shall be final; party aggrieved by decision may appeal to circuit court for the county in which property is located pursuant to section 606

Section 125.3606

Title: Circuit court; review; duties

1. Aggrieved party may appeal to circuit court for county in which property is located, which shall review record and decision for compliance with requirements listed in this section
2. If court finds record inadequate to make review required or finds additional material evidence exists that was not presented, shall order further proceedings as considers property; ZBA may modify its findings and decision or may affirm original decision; supplementary record shall be filed with the court, which may affirm, reverse, or modify the decision
3. Provides deadline to file in circuit court; chair of ZBA must issue decision in writing and adopt minutes before may file

Section 125.3607

Title: Party aggrieved by order, determination, or decision; circuit court review; property party

1. Aggrieved party may obtain a review in the circuit court of the county in which the property is located
2. Any person required to be given notice under 604(4) related to section 208 (nonconformities) shall be a proper party to any action for review under this section



Article 7, Statutory Compliance and Repealer

MCKENNA

Section 125.3701

Title: Compliance with open meetings act; availability of writings to public

1. All meetings subject to MZEA subject to open meetings act
2. A writing prepared, owned, use, etc. under this act shall be made available in compliance with the freedom of information act

Section 125.3702

Title: Repeal of sections

1. Repeals city and village zoning act; county zoning act; township zoning act

Resources

MAP Resources – <https://www.planningmi.org/education-and-resources-for-officials>

Citizen Planner Program - https://www.canr.msu.edu/michigan_citizen_planner/

Michigan Zoning Guidebook: For Citizens and Local Officials, 3rd Edition

<https://www.canr.msu.edu/resources/michigan-zoning-guidebook-for-citizens-and-local-officials-3rd-edition>

Zoning Administration & Checklists -

https://www.canr.msu.edu/planning/zoning_ordinance_resources/zoning-administration-and-checklists



Write Additional Q&As for Next Session

MCKENNA

Thank you to our presenters

This presentation and other resources will be placed on MAP's website, www.planningmi.org

