ZONING BOARD OF APPEALS
WEDNESDAY, JANUARY 13, 2021
Electronic Meeting – 5:30 P.M.
201 West Ash Street, Mason MI

In accordance with State Law, which has authorized remote participation in public meetings for a defined reason, it has been determined by the City of Mason that an electronic meeting is necessary to protect the public health. Public participation is encouraged and procedures facilitating that participation are outlined in supplemental materials attached.

AGENDA

1. **OATH OF OFFICE**
2. **CALL TO ORDER**
3. **ROLL CALL**
4. **ELECTION OF OFFICERS**
5. **PUBLIC COMMENT**
6. **APPROVAL OF MINUTES**
   A. Approve Minutes of Zoning Board of Appeals Meeting December 9, 2020.
7. **UNFINISHED BUSINESS**
8. **NEW BUSINESS**
   A. 2021 Meeting Schedule
   B. ZBA Handbook
9. **LIAISON REPORT**
   A. City Manager Report
10. **ADJOURN**

ZONING BOARD OF APPEALS
ELECTRONIC MEETING INFORMATION

PLEASE TAKE NOTICE that the meeting of the City of Mason Zoning Board of Appeals scheduled for **January 13, 2021, starting at 5:30 p.m.,** will be conducted virtually (online and/or by phone) due to health concerns surrounding Coronavirus/COVID-19.

The City of Mason will be using Zoom to host this meeting. A free account is required to use Zoom. Please take the time to download and set-up Zoom prior to the meeting. Zoom may be accessed here: https://zoom.us/

MEETING INFORMATION:

Topic: **Zoning Board of Appeals Meeting**
Time: **January 13, 2021 at 5:30 p.m.** Eastern Time

Meeting ID: 810 5454 2592
Passcode: 854879

Video Conference Information: **Link to join online:**
https://us02web.zoom.us/j/81054542592?pwd=eFNPdUJZRVFLQUlsbnJhS1BMR2haQT09

- You may also join a meeting without the link by going to join.zoom.us on any browser and entering the Meeting ID identified above.

- Phone Information:
  Dial (312) 626 6799 (Enter meeting ID when prompted.)

To comply with the **Americans with Disabilities Act (ADA),** any citizen requesting accommodation to attend this meeting, and/or to obtain this notice in alternate formats, please contact Michigan Relay at https://hamiltonrelay.com/michigan/index.html.

Resources: More Questions? Please Contact our Customer Service Desk at 517.676.9155.

Note on Public Comments:
If you would like to provide comments beforehand, please send those comments in an email by 3:00 pm on the day of the meeting to marciah@mason.mi.us. They will be read aloud by Chair.

If you would like to speak during the meeting, you can send your name and address to marciah@mason.mi.us by 3:00 pm on the day of the meeting. You can still speak at the meeting if you do not notify us in advance.

General Procedures Related to Electronic Meetings

As required under Public Act 228 of 2020, the following procedures outline the accommodation of meetings held, in whole or in part, electronically by City Council or a City Board or City Commission. Additional procedures will be adopted at a later date, by the Council, to accommodate members that are eligible and cannot attend in person for meetings held on or after January 1, 2021.

Electronic Meeting Procedures for City Council, City Board or City Commission Members

- All attendees including City Council, City Board or City Commission Members will enter the meeting with a muted microphone.
- The meeting Chair's microphone will be unmuted to call the meeting to order.
- During initial roll call, each member will announce the physical location they are participating from by stating the county, city, township, or village and state which they are attending the meeting from.
- The meeting Chair will call for a motion and members will signify making a motion by either voice or the "Raise Hand" feature. The same process will be followed for a second to a motion. The meeting Chair will then acknowledge which member made the motion and which member seconded the motion.
- The meeting Chair will then ask if there is any discussion on the motion. Members will indicate a desire to discuss by either voice or the "Raise Hand" feature. The meeting Chair will then acknowledge the particular member granted the floor for discussion by name.
- Votes shall be taken by roll call.

Electronic Meeting Procedures for Public

- All public participants entering the meeting will automatically be muted upon entering.
- All public participants should either turn off or leave off their video camera. Only City Council, City Board or City Commission Members will be allowed to have their video cameras on. Your video camera will be turned off for you if you do not turn it off yourself.
- Public rules are displayed in the "Chat" Feature; however, the chat feature will not be turned on to allow for chat comments to be added.
- Public comment:
  - Public only will be allowed to address the members during Public Comments
  - Public is allowed three (3) minutes to speak.
  - Public must state the name and address slowly and clearly before they start to address the Council.
  - Public comments will be addressed in the following order:
    1. Those provided the day of the meeting and sent to the designated person in the meeting instructions by a certain time will be read during the meeting.
    2. Those using the Video Conference Portion (not calling on a telephone) will be asked to use the "Raise Your Hand" Feature in Zoom. The meeting Chair will call on individuals to speak and they will be unmuted at that time.
    3. Participants that are available only by phone, after the meeting Chair requests.
- Inappropriate or disruptive participants will not be allowed or tolerated and will be removed from the meeting.
- Due to the electronic nature of this type of meeting the meeting Chair, at his discretion, may adjourn the meeting with or without notice for any reason. Every attempt will be made to remain connected to the meeting, however two examples of abrupt adjournment may be computer connectivity issues or lack of appropriate participation.

ADDITIONAL ZOOM INSTRUCTIONS FOR PARTICIPANTS:

PHONE INSTRUCTIONS - to join the conference by phone

1. On your phone, dial the teleconferencing number provided above.
2. Enter the **Meeting ID number** (provide with agenda) when prompted using your touch- tone (DTMF) keypad.

VIDEOCONFERENCE INSTRUCTIONS – to watch and speak, but not to be seen

Before a videoconference:

1. You will need a computer, tablet, or smartphone with speaker or headphones. You will have the opportunity to check your audio immediately upon joining a meeting.
2. Details, phone numbers, and links to videoconference or conference call is provided above. The details include a link to "Join via computer" as well as phone numbers for a conference call option. It will also include the 9-digit Meeting ID.

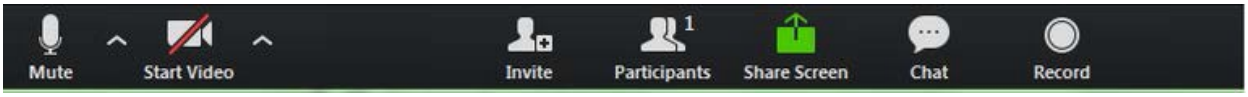
To join the videoconference:

1. At the start time of your meeting, enter the link to join via computer. You may be instructed to download the Zoom application.
2. You have an opportunity to test your audio at this point by clicking on "Test Computer Audio." Once you are satisfied that your audio works, click on "Join audio by computer."

If you are having trouble hearing the meeting, you can join via telephone while remaining on the video conference:

1. On your phone, dial the teleconferencing number provided above.
2. Enter the **Meeting ID number** when prompted using your touch- tone (DTMF) keypad.
3. If you have already joined the meeting via computer, you will have the option to enter your 2- digit participant ID to be associated with your computer.

Participant controls in the lower left corner of the Zoom screen:



Using the icons in the lower left corner of the Zoom screen, you can:

- Mute/Unmute your microphone (far left)
- Turn on/off camera ("Start/Stop Video")
- Invite other participants
- View Participant list – opens a pop-out screen that includes a **"Raise Hand"** icon that you may use to raise a virtual hand during Call to the Public
- Change your screen name that is seen in the participant list and video window

Somewhere (usually upper right corner on your computer screen) on your Zoom screen you will also see a choice to toggle between "speaker" and "gallery" view. "Speaker view" shows the active speaker. "Gallery view" tiles all of the meeting participants.

City of Mason

Boards and Commissions

Election of Officers - worksheet

Board/Commission	ZBA			
Year	2021			
Position	**Nomination**	**First**	**Second**	**Vote**
CHAIR *Facilitates meetings*	1			
	2			
	3			
	4			
VICE-CHAIR *Facilitation of meetings in Chair's absence*	1			
	2			
	3			
	4			
SECRETARY *Receives applications, keeps records, prepares meeting minutes*	Staff/Community Development Director			

NOTES:

CITY OF MASON
ZONING BOARD OF APPEALS
MINUTES OF DECEMBER 9, 2020
DRAFT

Sabbadin called the meeting to order at 5:30 p.m. at 201 West Ash Street, Mason MI, via Zoom Teleconference.

Roll Call		Present	Absent	Location
Board Member	Fisher	x		Mason, Michigan
Board Member	Harris	x		Mason, Michigan
Board Member	Madden	x		DeWitt, Michigan
Vice-Chair	McCormick	x		Mason, Michigan
Board Member - Alternate	Meredith		x	No notice received
Board Member	Preadmore	x		Mason, Michigan
Chairman	Sabbadin	x		Mason, Michigan
Board Member	Wilson		x	No notice received
Board Member – Alternate (Vacancy)				

Also Present: Elizabeth A. Hude, AICP, Community Development Director, Mason, Michigan; Sarah Jarvis, City Clerk, Mason, Michigan; Marcia Holmes, Administrative Assistant, Mason, Michigan

OATH OF OFFICE

Clerk Jarvis administered the Oath of Office to Board Member Scott Preadmore.

PUBLIC COMMENT

None.

APPROVAL OF MINUTES

MOTION by Preadmore second by Fisher, to approve the Zoning Board of Appeals minutes from the meeting February 12, 2020.

Yes (6) Fisher, Harris, Madden, McCormick, Preadmore, Sabbadin
No (0)
Absent (2) Meredith, Wilson

MOTION PASSED BY ROLL CALL VOTE

UNFINISHED BUSINESS

A. Resolution 2020-03 An amendment to Resolution 2019-01 for 934 and 965 Franklin Farm Drive.

Sabbadin briefly went over the history of the 2019 Resolution which was appealed to the Circuit Court in

Ingham County. The judge overturned the Zoning Board of Appeal's decision.

Director Hude referenced the memo from the City Attorney and the Judge's decision. It was presented to City Council, Chair Sabbadin was in attendance, and they decided to follow the City Attorney's advice and not pursue further action. The City Attorney noted that the decision was remanded back to the Zoning Board of Appeals and the permits would be granted without original conditions.

MOTION by Preadmore second by Madden, to approve Resolution 2020-03.

Yes (6) Fisher, Harris, Madden, McCormick, Preadmore, Sabbadin
No (0)
Absent (2) Meredith, Wilson

MOTION PASSED BY ROLL CALL VOTE

NEW BUSINESS

None.

LIAISON REPORT

Sabaddin noted the link to the City Manager's report in the packet.

Director Hude noted that the Planning Commission will be having a discussion on subdivisions and condominiums next week at their meeting. The current ordinances and the 2018 memo from the City Attorney will be reviewed to see if there are ways to communicate more clearly and clarify expectations when meeting with developers.

Sabbadin and Director Hude both acknowledged Council Member Madden and thanked her for her service to the Board.

ADJOURN

The meeting adjourned at approximately 5:44 p.m.

PUBLIC NOTICE
2021 Mason Public Meetings

All public meetings will be held openly, either at City Hall or via Zoom.

Details on when and how the meeting will be held will be included with each meeting's agenda; available on our website: mason.mi.us and posted to the front window of City Hall, prior to each meeting.

Meeting dates and times are subject to change.

Schedule may be adjusted in the future to address conflicts due to holidays or elections.

CITY COUNCIL 7:30 PM (1st & 3rd Monday)	DOWNTOWN DEVELOPMENT AUTHORITY 10:00 AM (2nd Monday, as needed)
January 4 & 18	January 11
February 1 & 15	February 8
March 1 & 15	March 8
April 5 & 19	April 12
May 3 & 17	May 10
June 7 & 21	June 14
July 5 & 19	July 12
August 2 & 16	August 9
September 6 & 20	September 13
October 4 & 18	October 11
November 1 & 15	November 8
December 6 & 20	December 13

HISTORIC DISTRICT COMMISSION 6:00 PM (3rd Monday, as needed)	PLANNING COMMISSION 6:30 PM (2nd Tuesday after the 1st Monday)	ZONING BOARD OF APPEALS 5:30 PM (2nd Wednesday, as needed)
January 18	January 12	January 13
February 15	February 9	February 10
March 15	March 9	March 10
April 19	April 13	April 14
May 17	May 11	May 12
June 21	June 15	June 9
July 19	July 13	July 14
August 16	August 10	August 11
September 20	September 14	September 8
October 18	October 12	October 13
November 15	November 9	November 10
December 20	December 14	December 8

Resources: More Questions? Please Contact our Customer Service Desk at 517.676.9155.

Zoning Board of Appeals Handbook

CITY OF MASON

City of Mason
ZONING BOARD OF APPEALS HANDBOOK

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Introduced by: Droscha

Seconded by: Madden

CITY OF MASON
CITY COUNCIL RESOLUTION NO. 2019-30

RULES OF ORDER FOR THE CITY COUNCIL AND FOR CITY BOARDS AND COMMISSIONS

December 2, 2019

WHEREAS, the process of government in the City of Mason includes the activity of a City Council as well as numerous Boards and Commissions sanctioned by the City Council, each of which can play a significant role in the conduct of the affairs of the City; and

WHEREAS, the citizens of the City of Mason are best served by a City Council as well as by City Boards and Commissions that function smoothly with a firm basis for resolving questions of procedure that may arise; and

WHEREAS, the City Council and City Boards and Commissions must each conduct business with the greatest measure of protection for the people and City of Mason, as well as for the Council and each Board and Commission as a body, and

WHEREAS, the City Council and City Boards and Commissions must each conduct business with the greatest measure of protection and consideration of the rights of individual members and the rights of individual citizens, and

WHEREAS, the application of parliamentary law is the best method yet devised to enable the City Council and City Boards and Commissions to arrive at the general will on the maximum number of questions of varying complexity in a minimum amount of time and under the most diverse set of conditions, ranging from total harmony to impassioned division of opinion, with due regard for the opinion of each member and for the right of every citizen to address the Council, a Board or a Commission; and

WHEREAS, Rules of Order are the written rules of parliamentary law and are critical to ensure the most effective and efficient operation of any deliberative body; and

WHEREAS, the citizens of the City of Mason will be best served when the meetings of all public bodies are conducted according to similar procedures.

NOW, THEREFORE, BE IT RESOLVED, that these Rules of Order shall be the parliamentary law of the City Council and all City Boards and Commissions of the City of Mason, and shall nullify and replace any other previously approved Rules of Order; and

BE IT FURTHER RESOLVED, that these Rules of Order shall be consistently applied and actively enforced at all times in relation to the orderly transaction of business in meetings, and in relation to the duties of officers in the conduct of meetings, of the City Council, as well as all City Boards and Commissions, and shall take effect at the first meeting following approval of this resolution.

YES: (5) Brown, Droscha, Ferris, Madden, Whipple
NO: (2) Schaffer, Vogel
ABSENT: (0)

CLERK'S CERTIFICATION: I hereby certify that the foregoing is a true and accurate copy of a resolution adopted by the City Council at its regular meeting held Monday, December 2, 2019, the original of which is part of the meeting minutes.

Sarah Jarvis, City Clerk
City of Mason
Ingham County, Michigan

RULES OF ORDER FOR THE CITY COUNCIL AND FOR CITY BOARDS AND COMMISSIONS

City Council Resolution No. 2019-30
City of Mason, Michigan

1) ORDER OF BUSINESS

a) City Council: At each regular meeting of the City Council the business to be considered shall be taken up, when applicable, for consideration and disposition in the following order:

1. Oath of Office
2. Call to Order
3. Roll Call
4. Pledge of Allegiance and Invocation
5. Election of Mayor and Mayor Pro Tem
6. Public Comment
7. Presentations
8. Consent Calendar
9. Public Hearings
10. Unfinished Business
11. New Business
12. Council Member Reports
13. Manager's Report
14. Adjourn (Adjourn Sine Die)

b) City Boards and Commissions: At each regular meeting of a City Board or Commission the business to be considered shall be taken up, when applicable, for consideration and disposition in the following order:

1. Oath of Office
2. Call to Order
3. Roll Call
4. Election of Leadership
5. Public Comment
6. Presentations
7. Approval of Minutes (if no Consent Calendar)
8. Correspondence (if no Consent Calendar)
9. Consent Calendar
10. Public Hearings
11. Unfinished Business
12. New Business
13. Liaison Report
14. Adjourn

2) MANAGEMENT OF THE ORDER OF BUSINESS. Any item of business to be considered shall be appropriately filed with the City Manager, or assigned secretary to the board/commission, by noon on the Wednesday preceding the subject meeting. Requests by members of the body and the City

Manager/secretary shall be automatically included in the Order of Business if filed in a timely manner. The City Manager/secretary shall send a complete Order of Business with supporting materials to each member by close of business on the last business day of the week preceding the subject meeting. Each item submitted for inclusion in the Order of Business shall include sufficient explanation to indicate intent. Any issue introduced at a meeting that does not appear on the Order of Business may be deferred for inclusion on the Order of Business of a subsequent meeting upon the request of any one member of the body, except that said issue may be added to the current Order of Business if so approved by a majority vote of the members present.

3) PUBLIC COMMENT

   a) It is the intent of these Rules to encourage public comment and participation by interested persons that is constructive, informative, and factual in a manner conducive to the conduct of an organized, efficient and professional business meeting. Public comment shall be allowed only during the Public Comment, Presentation and Public Hearing business items, or when permitted by the meeting Chair.

   b) The Public Comment business item is intended to receive comment on any topic a member of the public would like to bring to the attention of the body. A member of the public who wants to speak to a specific Order of Business item may inform the Chair that they would like to reserve their comments to a specific item of interest. The Chair will make note of the request. Prior to the debate of the specific business item by the body, the Chair will call on the individual, who may speak regarding that business item in accordance with subsection (c).

   c) All public comment shall be appropriate to the conduct of a public business meeting and, if applicable, the matter under consideration. Each person shall be allowed to speak for a maximum of three (3) minutes and the Chair may limit the number of times each person is allowed to speak. The limits on time and quantity for speaking may be extended at the discretion of the Chair.

   d) Any person in attendance at a meeting shall comply with the direction of the Chair as to the appropriateness of their actions or comments. The Chair shall retain discretion to disallow or stop a person from speaking or to temporarily recess the meeting at any time to maintain the order of the meeting.

   e) Any person that speaks before the body shall state for the record their name, residence address and group affiliation, if any.

4) PRESENTATIONS. Presentations will provide a venue in the Order of Business for brief presentations that do not require formal action.

5) PUBLIC HEARINGS. Business items requiring a public hearing shall be placed under the related Public Hearing item for immediate consideration following the public hearing.

6) CONSENT CALENDAR. A Consent Calendar may be used to allow the body to take action on numerous items at one time. Items in the Consent Calendar may include, but are not limited to, non-controversial matters such as approval of minutes, payment of bills, approval of simple motions, street closures, correspondence, etc. The body shall act upon all items listed in the Consent Calendar by a single vote without debate. Upon request by any member made prior to the vote on

the Consent Calendar, an item in the Consent Calendar shall be removed from the Consent Calendar and placed in the Order of Business appropriately as determined by the Chair.

7) MINUTES. Meeting minutes requiring approval shall be distributed to each member with the Order of Business for the next regular meeting. There shall not be a reading of the minutes at the meeting. If the Order of Business includes a Consent Calendar, approval of the minutes shall be included in the Consent Calendar. If the minutes are removed from, or not part of, the Consent Calendar and a substantial correction, as determined by the Chair, is suggested by the Chair or a member, said correction shall be agreed to by a two-thirds vote of the members present. Corrections not determined to be substantial shall be considered agreed to by consensus unless any member challenges such determination, in which case said correction shall be treated as a substantial correction. Minutes shall be considered approved by consensus without a vote if no corrections are suggested or after all suggested corrections are agreed to as required.

8) UNFINISHED BUSINESS. Items considered under Unfinished Business are items or matters that have been previously addressed by the body but have not received final action

9) NEW BUSINESS. Items considered under New Business are items or matters that may require immediate or future action by the body.

10) COUNCIL MEMBER REPORTS. A Council member may provide information regarding an event, a meeting or a conference that might be of interest to the City Council or local residents. A Council Member Report should not exceed three minutes. If the subject matter requires additional time the Council member may place the matter on the Order of Business of a subsequent meeting.

11) CONDUCT OF BUSINESS

    a) Parliamentarian: The meeting Chair shall serve as Parliamentarian unless that duty is assigned and accepted by another member. The application and enforcement of these rules is the responsibility of the Chair.

    b) Reconsideration: A motion to reconsider enables a majority to bring back for further consideration a motion that has been voted on previously. The motion to reconsider can be made only by a member voting on the prevailing side and is in order only until the adjournment of the next regular meeting following the meeting during which the motion to be reconsidered was acted upon.

    c) Appeal to Chair: Any decision of the Chair in applying or interpreting these Rules of Order may be appealed by a motion made at the time of the ruling being appealed and before any debate or business has intervened. The Chair shall be allowed to speak first to an appeal with each member allowed to speak once. The Chair may speak one last time after all members have been given an opportunity to speak. The question before the body on an appeal of the Chair shall be "Shall the decision of the Chair be sustained?" A majority or tie vote shall sustain the decision of the Chair.

    d) Abstain from Voting: No member of the body shall vote on any question in which the member has a financial interest, other than the common public interest, or on any question concerning the conduct of the member, but, on all other questions, each member who is present shall vote unless excused by unanimous consent of the remaining members present.

e) Considering a Motion: A motion that does not receive a second shall not be considered to be in order.

f) Meeting Decorum Guidelines: All members of the City Council and all City Boards and Commissions are expected to conduct themselves professionally, respectfully, and ethically at all times during meetings. To that end, all members shall:

1. Be prepared, ready to actively participate, and remain attentive without distractions during meetings.

2. Maintain civility in all discussions and support ideas and positions with data.

3. Exhibit decorum at all times and adhere to the Meeting Decorum Guidelines and the Rules of Order.

4. Respectfully hold all members accountable to the Meeting Decorum Guidelines and the Rules of Order.

5. Be concise, purposeful, and considerate of others when speaking.

6. Listen attentively and respectfully to the comments of others.

7. Focus discussions on conflict resolution and the development of solutions.

8. Respect the body and agenda by staying on-topic.

9. Respect the decisions of the body regardless of personal opinion.

12) ELECTION OF LEADERSHIP

a) Election: The Chair (Mayor), Vice-Chair (Mayor Pro Tem) and any other leadership of the body shall be elected pursuant to the applicable provisions of the City Charter or of the City Code if such provisions exist. Absent Charter or Code requirements, election shall be by majority vote of the members present during the first regular meeting of each calendar year.

b) Absence: In the absence or disability of the Chair and the Vice-Chair, the members present shall select by majority vote a member to be designated as Acting Chair to perform the duties of the Chair as necessary.

13) RULES OF ORDER

a) The rules contained in the current edition of Robert's Rules of Order Newly Revised shall govern the City Council and all City Boards and Commissions in all applicable cases in which Robert's Rules are consistent with these Rules of Order, the City Charter, City Code, and State Statute.

14) SUSPEND RULES

a) A request to suspend the Rules of Order shall be granted only by unanimous vote of the members present.

DIVISION 3.
CODE OF ETHICS

Sec. 2-101. Purpose.

Public officials, by virtue of their positions, are trustees of the public, chargeable with honesty, integrity, and openness in their handling of public affairs. When conduct inconsistent with this expectation occurs public suspicion is heightened and, therefore, public confidence is jeopardized. Where government is founded upon the consent of the governed, it is critical that each citizen have complete confidence in the integrity of the government. Each public official must endeavor to earn and honor the public trust in the conduct of all official duties and actions. The purpose of this division is to define standards of ethical conduct that are clearly established and uniformly applied. These standards will provide the public, as well as public officials, with guidance about ethical expectations for trustees of the public.

(Ord. No. 132, § 2, 9-7-1999)

Sec. 2-102. Policy.

It is the public policy of this city that all city officials shall construe and implement ethical standards and guidelines with sincerity, integrity and commitment so as to advance the spirit of this division in accordance with the following guiding principles:

(1) *Public interest:* City officials are delegated power from the public and are obliged to exercise that power as trustees of the public. The power and resources of government service therefore shall be used only to advance the public interest.

(2) *Objective judgment:* Loyalty to the public interest requires that all matters shall be decided with independent, objective judgment, free from avoidable conflicts of interest, improper influences, and competing loyalties.

(3) *Accountability:* Government affairs shall be conducted in an open, efficient, fair and honorable manner, which enables citizens to make informed judgments and to hold officials accountable.

(4) *Democratic leadership:* All city officials shall honor and respect the spirit and principles of representative democracy and will scrupulously observe the spirit as well as the letter of the law.

(5) *Respectfulness:* All city officials shall safeguard public confidence by being honest, fair, impartial, and respectful toward all persons and property with whom they have contact in an official capacity and by avoiding conduct which may tend to undermine respect for city officials and for the city as an institution.

(Ord. No. 132, § 3, 9-7-1999)

Sec. 2-103. Definition.

In this article "city official" means a person elected to the city council or appointed to the planning commission, zoning board of appeals, historic district commission, building code board of appeals, downtown development authority, local development finance authority or board of review. City official shall not include city administrator or city clerk.

(Ord. No. 132, § 4, 9-7-1999)

Sec. 2-104. Prohibited conduct.

(a) *Gifts:* A city official shall not, directly or indirectly, solicit or accept a gift that could influence the manner in which they perform their official duties.

(b) *Preferential treatment:* A city official shall not use his official position to unreasonably secure, request, or grant any privileges, exemptions, advantages, contracts, or preferential treatment for himself, his immediate family, or others.

(c) *Use of information:* A city official who acquires information in the course of his official duties, which by law or policy is confidential, shall not prematurely divulge that information to an unauthorized person. Information which is deemed exempt from disclosure under the Michigan Freedom of Information Act, (MCL 15.231 et seq.) or which is the subject of a duly called closed meeting held in accordance with the Michigan Open Meetings Act, (MCL 15.261 et seq.) is confidential. A city official shall not suppress or refuse to provide city reports or other information which is publicly available.

(d) *Conflicts of interest:*

(1) No person may be employed as a sworn police officer if such person and/or his spouse has an interest, directly or indirectly, in any business possessing any license issued by the Michigan Liquor Control Commission and operated within the jurisdiction of the Mason Police Department.

(2) The city building official shall not do any work for hire or have any interest, directly or indirectly, in any business doing work for hire within the city which requires a permit pursuant to the state construction code.

(3) The city assessor shall not assess for city record keeping purposes his own property.

(4) No city official shall engage in employment, render services, or engage in any business, transaction or activity which is in direct conflict of interest with his official duties.

(5) No city official may use any confidential information obtained in the exercise of his official duties for personal gain or for the gain of others.

(6) No city official shall intentionally take or refrain from taking any official action, or induce or attempt to induce any other city official or employee to take or refrain from taking any official action, on any matter before the city which would result in a financial benefit for any of the following:

a. The city official.

b. An immediate family member.

c. An outside employer.

d. Any business in which the city official or any immediate family member of the city official has a financial interest of the type described in subsection 2-105(b)(1).

e. Any business with which the city official or any immediate family member of the city official is negotiating or seeking prospective employment or other business or professional relationship.

(7) An appointed city official shall not discuss any matter pending before the body on which the appointed city official serves with the applicant or any person to whom written notice of the matter pending is required to be sent by city ordinance or other law except during duly called public meetings of the body. In the case of an inadvertent discussion between the appointed city official and the applicant or any person to whom written notice is required to be sent as described, such discussion shall be disclosed as a transaction in accordance with subsection 2-105(e).

(8) Except as otherwise permitted herein, no city official or any immediate family member of a city official shall be a party, directly or indirectly, to any contract with the city except for collective bargaining agreements. The foregoing shall not apply if the contract is awarded after public notice and competitive bidding, provided that the city official shall not have participated in establishing contract specifications or awarding the contract, shall not manage contract performance after the contract is awarded, and shall disclose the interest of the city official or any immediate family member in the contract in accordance with section 2-105(e).

(9) A city official shall not engage in a business transaction with the city except as permitted by Public Act No. 317 of 1968 (MCL 15.231 et seq.). Compliance with the requirements of said Act shall constitute compliance with subsection 2-104(d).

(e) *Use of city property or personnel:* A city official shall not, directly or indirectly, use or permit any other person to use any city property or personnel for personal gain or economic benefit. City employees may use city property for personal use as a convenience if first approved by the city administrator or authorized by city policy.

(f) *Political activity:* No city official shall use any city time or property for his own political benefit or for the political benefit of any other person seeking elective office, provided that the foregoing shall not prohibit the use of property or facilities available to the general public on an equal basis for due consideration paid.

(g) *Nepotism:* The spouse of any elected city official, or of the city administrator, shall be disqualified from holding any appointive office. The immediate family members of any elected city official, or of the city administrator, and the spouses of any such family members shall be disqualified from holding full-time or permanent part-time employment exceeding ten hours per week with the city during the term served by said elected official or during the tenure of the city administrator. This section shall in no way disqualify such relatives or their spouses who are bona fide appointed officers or employees of the city at the time of the election of said elected official or appointment of said city administrator.

(h) *Retaliation:* No person making a complaint or requesting an advisory opinion, or participating in any proceeding of the board of ethics, shall be discharged, threatened, or otherwise discriminated against regarding compensation, terms, conditions, location, or privileges of employment or contract because of such action or participation.

(Ord. No. 132, § 5, 9-7-1999)

Sec. 2-105. Disclosure.

(a) *Disclosure statement; who shall file.* The following city officials shall file an annual disclosure statement:

(1) The mayor;

(2) Members of the city council;

(b) *Disclosure statement; content.*

(1) The annual disclosure statement shall disclose the following financial interest of the city official or of the immediate family members of the city official with any person, business or other entity that has contracted with the city or which has received a license from the city in the two calendar years prior to the filing of the statement:

a. Any interest as a director, officer, partner, member, or employee in or for a corporation, partnership, limited liability company, or other unincorporated association;

b. Any interest as a landlord or tenant;

c. Any interest as a beneficiary or trustee in a trust;

d. Legal or beneficial ownership of one percent or more of the total outstanding stock of a company which is doing business with the city and which is not listed on a stock exchange;

e. Legal or beneficial ownership of stock with a market value in excess of $25,000.00 in a company which is doing business with the city and which is listed on a national or regional stock exchange.

(2) If there is no reportable financial interest or transaction applicable to the city official or to the immediate family members of the city official, the annual disclosure statement shall contain a certification as to that fact.

(c) *Disclosure statement; when and where filed.* One original executed disclosure statement and one copy shall be filed with the board of ethics on or before April 15 of each year.
(d) *Disclosure forms.* All disclosures shall be made on forms provided for that purpose by the board of ethics and shall become public documents.
(e) *Transactional disclosure.* A city official shall not participate, in the course of official duties, in any transaction which subsequently would be required to be disclosed in an annual disclosure statement or which would constitute a conflict of interest under subsection 2-104(d) without disclosing the interest in the transaction prior to participating in the transaction. If the official is a member of a decision-making or advising body, the disclosure must be made to the chair and other members and made part of the official record of the body. A council, board, or commission member who absents himself from a vote shall disclose the reason to the entire body.
(f) *Disclosure of gifts.* Any gift received by a city official which could influence the manner in which they enact their official duties should be reported immediately to the board of ethics. Such gifts should be returned to the donor, or donated to a charity, with the explanation to the donor that city policy will not permit the acceptance of the gift.
(Ord. No. 132, § 6, 9-7-1999)

Sec. 2-106. Board of ethics.

(a) *Creation.* There is hereby created an independent body called the "board of ethics."
(b) *Objective.* The objective of the board of ethics is to issue written opinions regarding ethical, not legal, questions and to engage in activities which will promote ethical behavior.
(c) *Board membership; terms; meetings; rules.*
(1) The board of ethics shall consist of five members who are city residents appointed by the mayor with the approval of the city council. City officials and the immediate family of city officials shall not be eligible for appointment to the board.
(2) Members shall be appointed for terms of three years, except that of those first appointed, two shall serve for three years, two shall serve for two years, and one shall serve for one year. Initial nominations shall be made by the mayor within 90 days of the effective date of this division, and nominations to fill vacancies and subsequent terms shall be made by the mayor within 60 days of occurrence of the vacancy or commencement of the term. The city council shall vote on confirmation within 30 days of receipt of nominations from the mayor. If nominations are not made within the periods specified, the city council shall appoint the member(s). If the city council shall not vote on confirmation within the period specified, the mayor's nominations shall be deemed confirmed and the member(s) shall be appointed.
(3) The affirmative vote of three members of the board of ethics shall be necessary for any action.
(4) The city clerk shall serve on an ex officio basis as secretary to the board without the right to vote.
(5) The board of ethics shall meet as frequently as necessary to promptly perform appointed duties. Meetings of the board shall be subject to the Michigan Open Meetings Act (MCL 15.26 et seq.).
(6) The board of ethics may adopt interpretative rules and procedures relating to the requirements and application of this division.
(7) The board of ethics shall conduct meetings in accordance with the rules of order adopted by the city council.
(d) *Powers and duties.* The board of ethics shall have the power to:
(1) Receive requests for advisory opinions from city officials.

(2) Receive complaints concerning alleged unethical conduct by a city official from any person or entity.

(3) Receive and retain on file copies of advisory opinions, disclosure statements, and other materials required to be filed under this division.

a. Advisory opinions shall be retained indefinitely.

b. Disclosure statements shall be retained throughout the tenure of the city official plus two years after the completion of said tenure.

c. Other materials required to be filed under this division shall be retained for ten years.

(4) Review the request for advisory opinion or the complaint to determine if the board has jurisdiction over the matter and/or persons identified in the request or complaint.

(5) If a complaint concerns an employee, the sole power of the board shall be to forward the complaint with no action forthwith to the city administrator. The board of ethics shall have no power or jurisdiction concerning employees except as specifically set forth in subsection 2-106(d)(5).

(6) Inquire into the circumstances surrounding alleged unethical conduct. The board of ethics, upon its own, may initiate an inquiry. The board is hereby authorized to exercise all of the powers granted by Chapter 6, Section 6.9, of the City Charter, except that the board shall not have the power to subpoena witnesses or compel the production of books, papers, and other evidence. The board may seek the assistance and opinion of the city attorney in the investigation of a matter. In the event that the city attorney is the subject of an investigation, the board may, subject to prior approval of a written retainer agreement by the city council, seek outside counsel in the investigation of a matter.

(7) Issue advisory opinions in response to complaints and requests and on its own motion. Advisory opinions of the board of ethics shall be maintained in the office of the city clerk and shall be available to the public upon request.

(8) Adopt and maintain disclosure forms, which may be revised by the board of ethics from time to time.

(9) Report to the mayor and the city council from time to time, but not less often than annually, regarding such matters pertaining to this division as the board deems appropriate, which may include, but not be limited to, the degree to which the policy of this division is being achieved; the numbers and nature of requests for advisory opinions and complaints and the ultimate disposition thereof; the implementation and effectiveness of this division; and any changes in this division recommended to more fully achieve the purposes and policy of this division.

(e) *Board actions.* Action to be taken in any individual case may include the following:

(1) Issue a written advisory opinion.

(2) Deem no action to be required.

(3) Refer the matter to the city attorney to determine whether legal action may be appropriate and what form by which to take such action.

(f) *Confidentiality and due process.* The board of ethics shall to the fullest extent permitted by law keep all complaints and requests for advisory opinions strictly confidential. All persons alleged to have violated this division shall be notified of said allegations and afforded the opportunity to be heard.

(g) *Advisory opinions.*

(1) The board of ethics may issue written advisory opinions interpreting this division and its provisions and relevant provisions of state law applicable to city officials. Advisory opinions

shall not disclose the identities of the person or entity making the request for an advisory opinion or the identity of the persons or positions who are the subject of a complaint or inquiry. Advisory opinions shall be issued within 60 days of a request. If additional time is needed, the time may be extended by action of the board.

(2) Advisory opinions may include guidance to any city official on questions including, but not limited to:

a. Whether an identifiable conflict of interest exists between his personal interests or obligations and his official duties.

b. Whether his participation in his official capacity would involve discretionary judgment with significant effect on the disposition of the matter in question.

c. Whether the result of the potential conflict of interest is substantial or constitutes a real threat to the independence of his judgment.

d. Whether he possesses certain knowledge or skill which the city will require to achieve a sound decision.

e. What effect his participation under the circumstances would have on the confidence of the people in the impartiality of city officials.

f. Whether a disclosure of his personal interests would be advisable and, if so, how such disclosure should be made.

g. Whether the public interest would be best served by his withdrawal or abstention.

h. Whether undue influence is being exerted on him.

(3) When the board of ethics issues an advisory opinion regarding ethical questions pursuant to this section, the board shall promptly send a copy of its opinion to:

a. The individual who requested the opinion;

b. The city official affected;

c. The mayor;

d. The city administrator.

(4) The board shall publicize summaries of its advisory opinions to all city officials.

(Ord. No. 132, § 7, 9-7-1999; Ord. No. 143, 5-3-2004)

Sec. 2-107. Penalties.

This section is intended to encourage and promote the highest standards of ethical conduct and behavior by city officials and is not intended to be a punitive measure. It is anticipated that the issuance by the board of ethics of advisory opinions will conclude all matters originating as requests for advice and substantially all matters originating as complaints. The board of ethics is not an adjudicative body and no finding of the board shall be deemed conclusive nor, in and of itself, subject any city official to penalties.

(Ord. No. 132, § 8, 9-7-1999)

Secs. 2-108--2-120. Reserved.

Ethical Principles in Planning

Ethical Principles in Planning

(As Adopted by the APA Board, May 1992)

This statement is a guide to ethical conduct for all who participate in the process of planning as advisors, advocates, and decision makers. It presents a set of principles to be held in common by certified planners, other practicing planners, appointed and elected officials, and others who participate in the process of planning.

The planning process exists to serve the public interest. While the public interest is a question of continuous debate, both in its general principles and in its case-by-case applications, it requires a conscientiously held view of the policies and actions that best serve the entire community.

Planning issues commonly involve a conflict of values and, often, there are large private interests at stake. These accentuate the necessity for the highest standards of fairness and honesty among all participants.

Those who practice planning need to adhere to a special set of ethical requirements that must guide all who aspire to professionalism.

The Code is formally subscribed to by each certified planner. It includes an enforcement procedure that is administered by AICP. The Code, however, provides for more than the minimum threshold of enforceable acceptability. It also sets aspirational standards that require conscious striving to attain.

The ethical principles derive both from the general values of society and from the planner's special responsibility to serve the public interest. As the basic values of society are often in competition with each other, so do these principles sometimes compete. For example, the need to provide full public information may compete with the need to respect confidences. Plans and programs often result from a balancing among divergent interests. An ethical judgment often also requires a conscientious balancing, based on the facts and context of a particular situation and on the entire set of ethical principles.

This statement also aims to inform the public generally. It is also the basis for continuing systematic discussion of the application of its principles that is itself essential behavior to give them daily meaning.

The planning process must continuously pursue and faithfully serve the public interest.

Planning Process Participants should:

1. Recognize the rights of citizens to participate in planning decisions;
2. Strive to give citizens (including those who lack formal organization or influence) full, clear and accurate information on planning issues and the opportunity to have a meaningful role in the development of plans and programs;
3. Strive to expand choice and opportunity for all persons, recognizing a special responsibility to plan for the needs of disadvantaged groups and persons;
4. Assist in the clarification of community goals, objectives and policies in plan-making;
5. Ensure that reports, records and any other non-confidential information which is, or will be, available to decision makers is made available to the public in a convenient format and sufficiently in advance of any decision;
6. Strive to protect the integrity of the natural environment and the heritage of the built environment;

7. Pay special attention to the interrelatedness of decisions and the long range consequences of present actions.

Planning process participants continuously strive to achieve high standards of integrity and proficiency so that public respect for the planning process will be maintained.

Planning Process Participants should:

1. Exercise fair, honest and independent judgment in their roles as decision makers and advisors;
2. Make public disclosure of all "personal interests" they may have regarding any decision to be made in the planning process in which they serve, or are requested to serve, as advisor or decision maker.
3. Define "personal interest" broadly to include any actual or potential benefits or advantages that they, a spouse, family member or person living in their household might directly or indirectly obtain from a planning decision;
4. Abstain completely from direct or indirect participation as an advisor or decision maker in any matter in which they have a personal interest, and leave any chamber in which such a matter is under deliberation, unless their personal interest has been made a matter of public record; their employer, if any, has given approval; and the public official, public agency or court with jurisdiction to rule on ethics matters has expressly authorized their participation;
5. Seek no gifts or favors, nor offer any, under circumstances in which it might reasonably be inferred that the gifts or favors were intended or expected to influence a participant's objectivity as an advisor or decision maker in the planning process;
6. Not participate as an advisor or decision maker on any plan or project in which they have previously participated as an advocate;
7. Serve as advocates only when the client's objectives are legal and consistent with the public interest.
8. Not participate as an advocate on any aspect of a plan or program on which they have previously served as advisor or decision maker unless their role as advocate is authorized by applicable law, agency regulation, or ruling of an ethics officer or agency; such participation as an advocate should be allowed only after prior disclosure to, and approval by, their affected client or employer; under no circumstance should such participation commence earlier than one year following termination of the role as advisor or decision maker;
9. Not use confidential information acquired in the course of their duties to further a personal interest;
10. Not disclose confidential information acquired in the course of their duties except when required by law, to prevent a clear violation of law or to prevent substantial injury to third persons; provided that disclosure in the latter two situations may not be made until after verification of the facts and issues involved and consultation with other planning process participants to obtain their separate opinions;
11. Not misrepresent facts or distort information for the purpose of achieving a desired outcome;
12. Not participate in any matter unless adequately prepared and sufficiently capacitated to render thorough and diligent service;
13. Respect the rights of all persons and not improperly discriminate against or harass others based on characteristics which are protected under civil rights laws and regulations.

APA members who are practicing planners continuously pursue improvement in their planning competence as well as in the development of peers and aspiring planners. They recognize that enhancement of planning as a profession leads to greater public respect for the planning process and thus serves the public interest.

APA Members who are practicing planners:

1. Strive to achieve high standards of professionalism, including certification, integrity, knowledge, and professional development consistent with the AICP Code of Ethics;

2. Do not commit a deliberately wrongful act which reflects adversely on planning as a profession or seek business by stating or implying that they are prepared, willing or able to influence decisions by improper means;
3. Participate in continuing professional education;
4. Contribute time and effort to groups lacking adequate planning resources and to voluntary professional activities;
5. Accurately represent their qualifications to practice planning as well as their education and affiliations;
6. Accurately represent the qualifications, views, and findings of colleagues;
7. Treat fairly and comment responsibly on the professional views of colleagues and members of other professions;
8. Share the results of experience and research which contribute to the body of planning knowledge;
9. Examine the applicability of planning theories, methods and standards to the facts and analysis of each particular situation and do not accept the applicability of a customary solution without first establishing its appropriateness to the situation;
10. Contribute time and information to the development of students, interns, beginning practitioners and other colleagues;
11. Strive to increase the opportunities for women and members of recognized minorities to become professional planners;
12. Systematically and critically analyze ethical issues in the practice of planning.

AICP Code of Ethics and Professional Conduct

AICP Code of Ethics and Professional Conduct

Adopted March 19, 2005
Effective June 1, 2005
Revised April 1, 2016

We, professional planners, who are members of the American Institute of Certified Planners, subscribe to our Institute's Code of Ethics and Professional Conduct. Our Code is divided into five sections:

Section A contains a statement of aspirational principles that constitute the ideals to which we are committed. We shall strive to act in accordance with our stated principles. However, an allegation that we failed to achieve our aspirational principles cannot be the subject of a misconduct charge or be a cause for disciplinary action.

Section B contains rules of conduct to which we are held accountable. If we violate any of these rules, we can be the object of a charge of misconduct and shall have the responsibility of responding to and cooperating with the investigation and enforcement procedures. If we are found to be blameworthy by the AICP Ethics Committee, we shall be subject to the imposition of sanctions that may include loss of our certification.

Section C contains the procedural provisions of the Code that describe how one may obtain either a formal or informal advisory ruling, as well as the requirements for an annual report.

Section D contains the procedural provisions that detail how a complaint of misconduct can be filed, as well as how these complaints are investigated and adjudicated.

Section E contains procedural provisions regarding the forms of disciplinary actions against a planner, including those situations where a planner is convicted of a serious crime or other conduct inconsistent with the responsibilities of a certified planner.

The principles to which we subscribe in Sections A and B of the Code derive from the special responsibility of our profession to serve the public interest with compassion for the welfare of all people and, as professionals, to our obligation to act with high integrity.

As the basic values of society can come into competition with each other, so can the aspirational principles we espouse under this Code. An ethical judgment often requires a conscientious balancing, based on the facts and context of a particular situation and on the precepts of the entire Code.

As Certified Planners, all of us are also members of the American Planning Association and share in the goal of building better, more inclusive communities. We want the public to be aware of the principles by which we practice our profession in the quest of that goal. We sincerely hope that the public will respect the commitments we make to our employers and clients, our fellow professionals, and all other persons whose interests we affect.

A: Principles to Which We Aspire

1. Our Overall Responsibility to the Public

Our primary obligation is to serve the public interest and we, therefore, owe our allegiance to a conscientiously attained concept of the public interest that is formulated through continuous and open debate. We shall achieve high standards of professional integrity, proficiency, and knowledge. To comply with our obligation to the public, we aspire to the following principles:

a) We shall always be conscious of the rights of others.

b) We shall have special concern for the long-range consequences of present actions.

c) We shall pay special attention to the interrelatedness of decisions.

d) We shall provide timely, adequate, clear, and accurate information on planning issues to all affected persons and to governmental decision makers.

e) We shall give people the opportunity to have a meaningful impact on the development of plans and programs that may affect them. Participation should be broad enough to include those who lack formal organization or influence.

f) We shall seek social justice by working to expand choice and opportunity for all persons, recognizing a special responsibility to plan for the needs of the disadvantaged and to promote racial and economic integration. We shall urge the alteration of policies, institutions, and decisions that oppose such needs.

g) We shall promote excellence of design and endeavor to conserve and preserve the integrity and heritage of the natural and built environment.

h) We shall deal fairly with all participants in the planning process. Those of us who are public officials or employees shall also deal even-handedly with all planning process participants.

2. Our Responsibility to Our Clients and Employers

We owe diligent, creative, and competent performance of the work we do in pursuit of our client or employer's interest. Such performance, however, shall always be consistent with our faithful service to the public interest.

a) We shall exercise independent professional judgment on behalf of our clients and employers.

b) We shall accept the decisions of our client or employer concerning the objectives and nature of the professional services we perform unless the course of action is illegal or plainly inconsistent with our primary obligation to the public interest.

c) We shall avoid a conflict of interest or even the appearance of a conflict of interest in accepting assignments from clients or employers.

3. Our Responsibility to Our Profession and Colleagues

We shall contribute to the development of, and respect for, our profession by improving knowledge and techniques, making work relevant to solutions of community problems, and increasing public understanding of planning activities.

a) We shall protect and enhance the integrity of our profession.

b) We shall educate the public about planning issues and their relevance to our everyday lives.

c) We shall describe and comment on the work and views of other professionals in a fair and professional manner.

d) We shall share the results of experience and research that contribute to the body of planning knowledge.

e) We shall examine the applicability of planning theories, methods, research and practice and standards to the facts and analysis of each particular situation and shall not accept the applicability of a customary solution without first establishing its appropriateness to the situation.

f) We shall contribute time and resources to the professional development of students, interns, beginning professionals, and other colleagues.

g) We shall increase the opportunities for members of underrepresented groups to become professional planners and help them advance in the profession.

h) We shall continue to enhance our professional education and training.

i) We shall systematically and critically analyze ethical issues in the practice of planning.

j) We shall contribute time and effort to groups lacking in adequate planning resources and to voluntary professional activities.

B: Our Rules of Conduct

We adhere to the following Rules of Conduct, and we understand that our Institute will enforce compliance with them. If we fail to adhere to these Rules, we could receive sanctions, the ultimate being the loss of our certification:

1. We shall not deliberately or with reckless indifference fail to provide adequate, timely, clear and accurate information on planning issues.

2. We shall not accept an assignment from a client or employer when the services to be performed involve conduct that we know to be illegal or in violation of these rules.

3. We shall not accept an assignment from a client or employer to publicly advocate a position on a planning issue that is indistinguishably adverse to a position we publicly advocated for a previous client or employer within the past three years unless (1) we determine in good faith after consultation with other qualified professionals that our change of position will not cause present detriment to our previous client or employer, and (2) we make full written disclosure of the conflict to our current client or employer and receive written permission to proceed with the assignment.

4. We shall not, as salaried employees, undertake other employment in planning or a related profession, whether or not for pay, without having made full written disclosure to the employer who furnishes our salary and having received subsequent written permission to undertake additional employment, unless our employer has a written policy which expressly dispenses with a need to obtain such consent.

5. We shall not, as public officials or employees, accept from anyone other than our public employer any compensation, commission, rebate, or other advantage that may be perceived as related to our public office or employment.

6. We shall not perform work on a project for a client or employer if, in addition to the agreed upon compensation from our client or employer, there is a possibility for direct personal or financial gain to us, our family members, or persons living in our household, unless our client or employer, after full written disclosure from us, consents in writing to the arrangement.

7. We shall not use to our personal advantage, nor that of a subsequent client or employer, information gained in a professional relationship that the client or employer has requested be held inviolate or that we should recognize as confidential because its disclosure could result in embarrassment or other detriment to the client or employer. Nor shall we disclose such confidential information except when (1) required by process of law, or (2) required to prevent a clear violation of law, or (3) required to prevent a substantial injury to the public. Disclosure pursuant to (2) and (3) shall not be made until after we have verified the facts and issues involved and, when practicable, exhausted efforts to obtain reconsideration of the matter and have sought separate opinions on the issue from other qualified professionals employed by our client or employer.

8. We shall not, as public officials or employees, engage in private communications with planning process participants if the discussions relate to a matter over which we have authority to make a binding, final determination if such private communications are prohibited by law or by agency rules, procedures, or custom.

9. We shall not engage in private discussions with decision makers in the planning process in any manner prohibited by law or by agency rules, procedures, or custom.

10. We shall neither deliberately, nor with reckless indifference, misrepresent the qualifications, views and findings of other professionals.

11. We shall not solicit prospective clients or employment through use of false or misleading claims, harassment, or duress.

12. We shall not misstate our education, experience, training, or any other facts which are relevant to our professional qualifications.

13. We shall not sell, or offer to sell, services by stating or implying an ability to influence decisions by improper means.

14. We shall not use the power of any office to seek or obtain a special advantage that is not a matter of public knowledge or is not in the public interest.

15. We shall not accept work beyond our professional competence unless the client or employer understands and agrees that such work will be performed by another professional competent to perform the work and acceptable to the client or employer.

16. We shall not accept work for a fee, or pro bono, that we know cannot be performed with the promptness required by the prospective client, or that is required by the circumstances of the assignment.

17. We shall not use the product of others' efforts to seek professional recognition or acclaim intended for producers of original work.

18. We shall not direct or coerce other professionals to make analyses or reach findings not supported by available evidence.

19. We shall not fail to disclose the interests of our client or employer when participating in the planning process. Nor shall we participate in an effort to conceal the true interests of our client or employer.

20. We shall not unlawfully discriminate against another person.

21. We shall not withhold cooperation or information from the AICP Ethics Officer or the AICP Ethics Committee if a charge of ethical misconduct has been filed against us.

22. We shall not retaliate or threaten retaliation against a person who has filed a charge of ethical misconduct against us or another planner, or who is cooperating in the Ethics Officer's investigation of an ethics charge.

23. We shall not use the threat of filing an ethics charge in order to gain, or attempt to gain, an advantage in dealings with another planner.

24. We shall not file a frivolous charge of ethical misconduct against another planner.

25. We shall neither deliberately, nor with reckless indifference, commit any wrongful act, whether or not specified in the Rules of Conduct, that reflects adversely on our professional fitness.

26. We shall not fail to immediately notify the Ethics Officer by both receipted Certified and Regular First Class Mail if we are convicted of a "serious crime" as defined in Section E of the Code; nor immediately following such conviction shall we represent ourselves as Certified Planners or Members of AICP until our membership is reinstated by the AICP Ethics Committee pursuant to the procedures in Section E of the Code.

C: Advisory Opinions

1. Introduction

Any person, whether or not an AICP member, may seek informal advice from the Ethics Officer, and any AICP member may seek a formal opinion from the Ethics Committee, on any matter relating to the Code of Ethics and Professional Conduct. In addition, the Ethics Committee may, from time to time, issue opinions applying the Code to ethical matters relating to planning.

2. Informal Advice

a) Any person with a question about whether specific conduct conforms to the Code of Ethics and Professional Conduct may seek informal advice from the Ethics Officer. Any such person should contact the Ethics Officer to arrange a time to discuss the issue.
The Ethics Officer will endeavor to schedule a call promptly and to provide the advice promptly.

b) Informal advice will be given orally. However, the Ethics Officer will keep a record of the issue raised and the advice given.

c) Informal advice is intended to assist the person who seeks it, but it is not binding on AICP. Nevertheless, the Ethics Committee will take it into consideration if the Committee is subsequently called upon to consider a charge of misconduct against a Certified Planner who relied on the advice.

3. Formal Advisory Opinions Requested By A Member

a) Any AICP member with a question about whether specific conduct conforms to the Code of Ethics and Professional Conduct may seek a formal opinion from the Ethics Committee. Any such member should send a detailed description of the relevant facts and a clear statement of the question to the Ethics Officer.

b) The Ethics Officer shall review each such request and determine whether there is sufficient information to permit a fully informed response or whether additional information is required.

c) The Ethics Committee will not issue an Advisory Opinion if it determines that the request concerns past conduct that may be the subject of a charge of misconduct. It may also decline to issue an Advisory Opinion for any other reason. The Committee may, but is not required to, provide a reason for a decision not to issue an opinion.

d) If the Ethics Committee determines to issue an Advisory Opinion, it will endeavor to do so within ninety (90) days after receiving all information necessary to the provision of the opinion. Every Advisory Opinion will be in writing.

e) Any member who acts in compliance with a formal Advisory Opinion will have a defense to a charge of misconduct that is based on conduct permitted by the Opinion.

f) The Ethics Committee, in its sole discretion, shall determine whether, and how, to publish any formal Advisory Opinion. If the Committee determines to publish an Advisory Opinion, the published Opinion will not, without appropriate consent, include the name or other identifying information of any person except to the extent that identifying information is helpful in setting forth the issue or in explaining the Committee's decision.

g) Any AICP member who believes that a published formal Advisory Opinion is incorrect or incomplete may write to the Ethics Officer explaining the member's thinking and requesting reconsideration. The Ethics Officer shall transmit all such communications to the Ethics Committee. That Committee shall review such communications and determine what, if any, changes to make. The decision of the Committee shall be final.

4. Formal Advisory Opinions Issued Without Request Of A Member

a) The Ethics Committee may from time to time issue, without a request from a member, formal Advisory Opinions relating to the Code of Ethics and Professional Conduct when it believes that an Opinion will provide useful guidance to members.

b) All formal Advisory Opinions issued under this paragraph shall be in writing and shall be published to the entire membership.

c) Any AICP member who believes that a formal Advisory Opinion issued under this paragraph is incorrect or incomplete may write to the Ethics Officer explaining the member's thinking and requesting reconsideration. The Ethics Officer shall transmit all such communications to the Ethics Committee. That Committee shall review such communications and determine what, if any, changes to make. The decision of the Committee shall be final.

5. Annual Report of the Ethics Officer

a) Prior to January 31 of each year, the Ethics Officer shall provide to the AICP Commission and to the Ethics Committee an Annual Report of all formal Advisory Opinions and all interpretations of the Code issued during the preceding calendar year. That report need not contain the full text of each formal Advisory Opinion and interpretation of the Code.

b) The AICP Commission shall publish an Annual Report on ethics matters to the membership.

D: Adjudication of Complaints of Misconduct

1. Filing a Complaint.

a) Any person, whether or not an AICP member, may file an ethics complaint against a Certified Planner. An ethics complaint shall be sent to the AICP Ethics Officer on a form developed by the Ethics Officer and posted on the AICP website. The complaint must be signed and include contact information so that the Ethics Committee and the Ethics Officer will know with whom to follow up if questions arise or if the situation otherwise requires follow up. The person making the complaint ("the complainant") may request confidentiality. The AICP will attempt to honor that request. However, it cannot guarantee confidentiality and will disclose the identity of the complainant if disclosure is needed in order to reach an informed result or otherwise to advance the thoughtful consideration of the complaint. The complaint may be accompanied by a brief cover letter.

b) The complaint shall identify the Certified Planner against whom the complaint is brought, describe the conduct at issue, cite the relevant provision(s) of the Code of Ethics and Professional Conduct, and explain the reasons that the conduct is thought to violate the Code.

c) The complaint should be accompanied by all relevant documentation available to the complainant.

d) The Ethics Officer shall determine whether the complaint contains all information necessary to making a fully informed decision. If the complaint does not contain all such information, the Ethics Officer shall contact the complainant to try to obtain the information.

e) The Ethics Officer shall maintain, for use by the Ethics Committee, a log of all complaints against Certified Planners.

2. Preliminary Review.

a) The Ethics Officer shall review each complaint, together with any supporting documentation, to make a preliminary determination of whether a violation may have occurred. Before making this determination, the Ethics Officer may request from the complainant any additional information that the Officer deems relevant.

b) Within thirty (30) days after receiving all information that the Ethics Officer deems necessary to make a preliminary determination, the Ethics Officer shall make a preliminary determination whether a violation may have occurred.

c) If the preliminary determination of the Ethics Officer is that it is clear that no violation has occurred, the complaint shall be dismissed. The complainant shall be so notified. The complainant shall have twenty (20) days from the date of notification to appeal the dismissal of the complaint to the Ethics Committee.

d) If the preliminary determination of the Ethics Officer is that a violation may have occurred — or if, on appeal, the Ethics Committee reverses a preliminary dismissal, the Ethics Officer shall, within thirty (30) days, provide the complaint to the Certified Planner against whom the complaint was made ("the respondent"). The Ethics Officer shall request from the respondent a detailed response to the complaint, and any supporting documentation.

3. Fact Gathering

a) The respondent shall have thirty (30) days from the date of notification from the Ethics Officer to provide a response to the complaint, as well as any supporting documentation. The Ethics Officer may extend this time, for good cause shown, for a period not to exceed fourteen (14)days.

b) The Ethics Officer shall provide the response of the respondent to the complainant and shall give the complainant an opportunity to comment on the response within fourteen (14) days.

c) If the Ethics Officer determines that additional information is needed from either the complainant or the respondent, the Ethics Officer shall attempt to obtain such information. The parties shall have fifteen (15) days to provide the requested additional information, with up to a fifteen (15) day extension at the discretion of the Ethics Officer if a request is made for additional time.

4. Exploration of Settlement

a) At any point in the process, the Ethics Officer may, after consultation with the Ethics Committee, attempt to negotiate a settlement of the complaint in accordance with the Code of Ethics and Professional Conduct.

b) The Ethics Committee shall be notified of — and permitted to comment on — any potential settlement at an early stage. Any settlement must be approved by the Ethics Committee before becoming final. Upon approval by the Ethics Committee, a settlement agreement shall be signed by the respondent and, where appropriate, by the complainant.

c) If a negotiated settlement is approved by the Ethics Committee and is signed in accordance with paragraph 4-b, the matter will be concluded, and no further action will be taken by AICP.

5. Decision

a) If neither the Ethics Officer nor the Ethics Committee determines to explore settlement — or if the parties are unwilling to engage in settlement discussions or if a settlement is not reached, the Ethics Officer shall, after considering timely input from the parties, issue a written decision on the complaint. The Ethics Officer, at his or her sole discretion, may determine whether a hearing needs to be held. A hearing will be held by telephone or other electronic means unless all parties and the Ethics Officer agree that it should be held in person. The expenses of each party in connection with any hearing, such as transcripts, travel, and attorneys' fees, will be borne by that party.

b) The Ethics Officer may determine that there is inadequate evidence of an ethics violation and therefore dismiss the complaint. Alternatively, the Ethics Officer may find that there has been an ethics violation. In either situation, the Ethics Officer shall explain the basis for the decision in a written opinion that cites and discusses the relevant provision(s) of the Code of Ethics and Professional Conduct.

c) If the decision is that there has been a violation, the Ethics Officer shall impose such discipline as that Officer deems appropriate. The discipline may be: (1) a confidential letter of admonition, (2) a public reprimand, (3) suspension of AICP membership, or (4) expulsion from AICP. The Ethics Officer shall explain the basis for the discipline imposed and may attach such conditions, *e.g.* requirement to get additional ethics training, as the Officer deems just.

d) The Ethics Officer shall transmit the decision to the Ethics Committee and shall notify the parties of the decision. However, the Ethics Officer may determine not to disclose the remedy to a complainant who is not a member of AICP.

6. Appeal

a) Within thirty (30)days after issuance of the written decision of the Ethics Officer, either the complainant or respondent may appeal the decision to the Ethics Committee by filing a timely written notice of appeal with the Ethics Officer.

b) If an appeal is timely filed, the party filing the appeal shall, within fourteen (14)days, provide the Ethics Officer with a written statement as to the basis for the appeal. The Ethics Officer shall, within ten (10) days, transmit that document to the party against whom the appeal is filed. That party shall have thirty (30) days to provide the Ethics Officer with a written statement of his or her position on the appeal. The Ethics Officer shall transmit all written statements of the parties to the Ethics Committee within ten (10)days after the record is complete.

c) After receiving any timely filed statements of the parties, the Ethics Committee shall issue a written decision on the appeal. Before issuing a decision, the Ethics Committee, in its sole discretion, may consult with the Ethics Officer. The Ethics Committee may also, in its sole discretion, determine whether to hold a hearing at which the parties may present their positions and answer questions posed by the Committee. A hearing will be held by telephone or other electronic means unless all parties and the Ethics Committee agree that it should be held in person. The expenses of each party in connection with any hearing, such as transcripts, travel, and attorneys' fees, will be borne by that party.

d) The Ethics Committee may (1) affirm the decision of the Ethics Officer; (2) affirm the decision but impose a different remedy; (3) vacate the decision of the Ethics Officer and return the case to the Ethics Officer for additional investigation, consideration of different Code sections or issues, or any other follow up; or (4) vacate the decision of the Ethics Officer and issue its own decision.

e) A decision to affirm the decision of the Ethics Officer, to impose a different remedy, or to vacate that decision and to issue the Ethics Committee's own decision shall be final.

f) If the decision is to return the case to the Ethics Officer for follow up, the Ethics Officer may seek to explore settlement or may issue a decision consistent with the decision of the Ethics Committee. Before issuing such a decision, the Ethics Officer may seek additional input from the parties in a manner and format consistent with the Code of Ethics and Professional Conduct.

7. Effect of Dropping of Charges by Complainant or Resignation by Respondent

a) If charges are dropped by the complainant, the Ethics Committee may, at its sole discretion, either terminate the ethics proceeding or continue the process without the complainant.

b) If the respondent resigns from AICP or lets membership lapse after a complaint is filed but before the case is finalized, the Ethics Committee may, at its sole discretion, either terminate the ethics proceeding or continue the process. As in any situation, the Ethics Committee may also determine to file a complaint with the appropriate law enforcement authority if it believes that a violation of law may have occurred.

8. Reporting

a) Any written decision of the Ethics Committee may, at the discretion of the Committee, be published and titled "Opinion of the AICP Ethics Committee".

b) Any written decision of the Ethics Officer shall be referenced in the Annual Report of the Ethics Officer.

E: Discipline of Members

1. General

AICP members are subject to discipline for certain conduct. This conduct includes (a) conviction of a serious crime as defined in paragraph 3; (b) conviction of other crimes as set forth in paragraph 4; (c) a finding by the Ethics Committee or Ethics Officer that the member has engaged in unethical conduct; (d) loss, suspension, or restriction of state or other governmental professional licensure; (e) failure to make disclosure to AICP of any conviction of a serious crime or adverse professional licensure action; or (f) such other action as the Ethics Committee or the Ethics Officer, in the exercise of reasonable judgment, determines to be inconsistent with the professional responsibilities of a Certified Planner.

2. Forms of Discipline

The discipline available under this Policy includes: (a) a confidential letter of admonition, (b) a public letter of censure, (c) suspension of AICP membership, or (d) revocation from AICP. The Ethics Officer or the Ethics Committee may attach conditions to these disciplinary actions, such as the writing of a letter of apology, the correction of a false statement or statements, the taking of an ethics course, the refunding of money, or any other conditions deemed just in light of the conduct in question.

3. Conviction of a Serious Crime

a) The membership of a Certified Planner shall be revoked if the Planner has been convicted of a "serious crime". Membership shall be revoked whether the conviction resulted from a plea of guilty or nolo contendere, from a verdict after trial, or otherwise. Membership shall be revoked even if the Planner is appealing a conviction, but it will be reinstated if the conviction is overturned upon appeal.

b) For purposes of this Policy, the term "serious crime" shall mean any crime that, in the judgment of the Ethics Committee or the Ethics Officer, involves false swearing, misrepresentation, fraud, failure to file income tax returns or to pay tax, deceit, bribery, extortion, misappropriation, theft, or physical harm to another.

4. Conviction of Other Crimes

a) Discipline may also be imposed if a Certified Planner has been convicted of a crime not included within the definition of "serious crime," including an action determined by the Ethics Committee or the Ethics Officer to be inconsistent with the professional responsibilities of a Certified Planner.

b) Before any discipline is imposed under this section, the member shall have a right to set forth his or her position in writing to the Ethics Officer. The Ethics Officer shall, in that Officer's sole discretion, determine whether or not to give the member a hearing. The Ethics Officer shall notify the member of the decision.

c) A member who has had discipline imposed by the Ethics Officer shall have thirty (30) days from the date of notification of the adverse decision to file an appeal to the Ethics Committee. The member may do so by filing a timely notice of appeal with the Ethics Officer. The notice shall be accompanied by a statement of the basis for the appeal. The Ethics Officer will transmit any appeal and accompanying notice to the Ethics Committee. That Committee shall determine, in its sole discretion, whether or not to grant a hearing. The Ethics Committee shall, after considering the relevant information, issue a written opinion on the appeal.

5. Unethical Conduct

The forms of discipline set forth in paragraph 2 shall apply to any member who is found to have engaged in unethical conduct in accordance with the procedures established in the Policy on Adjudication of Complaints of Misconduct.

6. Revocation, Suspension, or Restriction of Licensure

a) The Ethics Committee or Ethics Officer shall impose such discipline as the Committee or Officer regards as just if a state or other governmentally-issued professional license of a Certified Planner has been revoked, suspended, or restricted for any reason relating to improper conduct by the Planner.

b) Before any discipline is imposed under this section, the provisions of section 4 (b) and (c) shall apply.

7. Duty to Notify Ethics Officer

a) A member who has been convicted of a serious crime or who has had his or her state or other governmentally-issued professional license revoked, suspended, or restricted for any reason relating to improper conduct by the member shall promptly report the relevant development to the Ethics Officer.

b) Failure of a member to report that he or she has been convicted of a serious crime or has had a professional license revoked, suspended, or restricted for a reason relating to improper conduct by that member may itself result in discipline of that member.

8. Other Conduct Inconsistent with the Responsibilities of a Certified Planner

a) The Ethics Officer shall have the right to discipline any member for any conduct not otherwise covered by this Policy that the Officer determines to be inconsistent with the responsibilities of a Certified Planner.

b) Conduct covered by this section shall include, but not be limited to, a finding in a civil case that the member has engaged in defamation or similar unlawful action, has knowingly infringed the copyright or other intellectual property of another, or has engaged in perjury.

c) Before any discipline is imposed under this section, the provisions of section 4-b and 4-c shall apply.

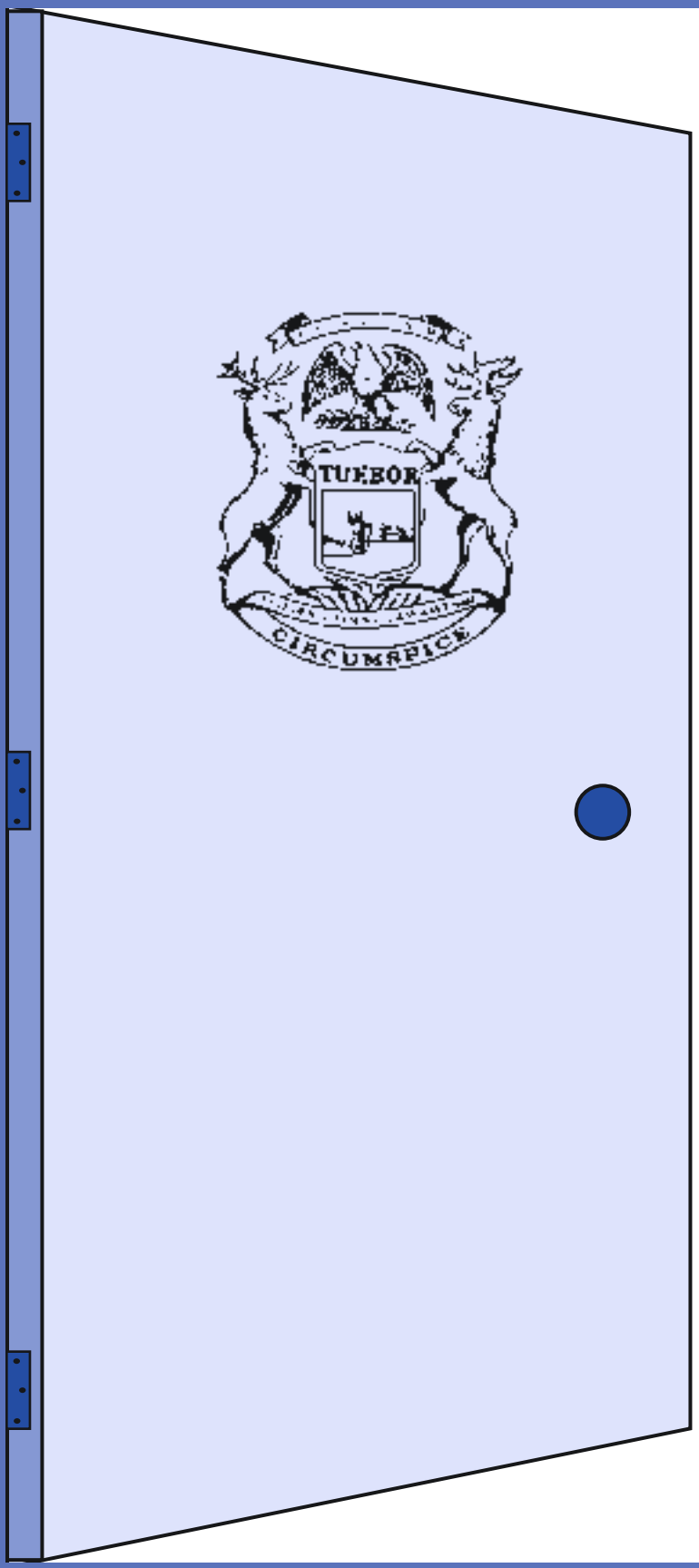
9. Petition for Reinstatement

a) Any Certified Planner whose membership or certification is revoked may petition the Ethics Committee for reinstatement no sooner than five years from the time of revocation. The Ethics Committee shall determine, in its sole discretion, whether to afford the petitioner a hearing and/or whether to seek additional information. The Committee shall determine, in its sole judgment, whether reinstatement is appropriate and what, if any, conditions should be applied to any such reinstatement. The Ethics Officer shall transmit the reinstatement determination to the Planner.

b) If the Ethics Committee denies the Petition, that Officer shall advise the Planner of the opportunity to file a subsequent petition after twelve (12) months have elapsed from the date of the determination.

10. Publication of Disciplinary Actions

The Ethics Committee, in its sole discretion, may publish the names of members who have had disciplinary action imposed and to state the nature of the discipline that was imposed. The authority to publish shall survive the voluntary or involuntary termination or suspension of AICP membership and certification. The Ethics Committee, in its sole discretion, may also determine not to publish such information or to publish only so much of that information as it deems appropriate.



The Michigan Open Meetings Act

and

Freedom of Information Act

Dear Citizen,

The ideal of a democratic government is too often thwarted by bureaucratic secrecy and unresponsive officials. Citizens frequently find it difficult to discover what decisions are being made and what facts lie behind those decisions.

The Michigan Freedom of Information Act, Public Act No. 442 of 1976, establishes procedures to ensure every citizen's right of access to government documents. The Act establishes the right to inspect and receive copies of records of state and local government bodies.

The Open Meetings Act, Public Act No. 267 of 1976, protects your right to know what's going on in government by opening to full public view the processes by which elected and nonelected officials make decisions on your behalf.

This guide to the Freedom of Information Act and the Open Meetings Act is designed to make it easier for citizens to keep track of what their government is doing.

The information in this publication is available, upon request, in an alternative, accessible format.

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Prepared by the Michigan Legislature

(376 Rev. 1/16/01)

Michigan's Freedom of Information Act

Public Act No. 442 of 1976, as amended

The following is a general outline of the Freedom of Information Act. When using the Freedom of Information Act, always rely on the specific provisions of the Act, which are republished immediately following this outline.

Basic Intent:

The Freedom of Information Act regulates and sets requirements for the disclosure of public records by all "public bodies" in the state.

Key Definitions:

"Public body" means:

- a state officer, employee, agency, department, division, bureau, board, commission, council, authority, or other body in the executive branch of the state government, but does not include the governor or lieutenant governor, the executive office of the governor or lieutenant governor, or employees thereof;
- an agency, board, commission, or council in the legislative branch of the state government;
- a county, city, township, village, intercounty, intercity, or regional governing body, council, school district, special district, or municipal corporation, or a board, department, commission, council or agency thereof; or
- any other body which is created by state or local authority or which is primarily funded by or through state or local authority.

"Public record" means a writing prepared, owned, used, in the possession of, or retained by a public body in the performance of an official function, from the time it is created. The term does not include computer software.

Coverage:

The Freedom of Information Act regulates and sets requirements for the disclosure of public records by all "public bodies" in the state. All state agencies, county and other local governments, school boards, other boards, departments, commissions, councils, and public colleges and universities are covered. The Act does not apply to the judicial branch and it does not apply to legislators. Any program primarily funded by the state or local authority is also covered.

Public Records Open to Disclosure:

In general, all records except those specifically cited as exceptions are covered by the Freedom of Information Act. The records covered include working papers and research material, minutes of open and closed meetings, officials' voting records, staff manuals, final orders or decisions in contested cases and the records on which they were made, and promulgated rules. Other written statements which implement or interpret laws, rules or policy, including, but not limited to, guidelines, manuals and forms with instructions, adopted or used by the agency in the discharge of its functions, are also included.

It does not matter what form the record is in. The act applies to any handwriting, typewriting, printing, photostating, photographing, photocopying and every other means of recording. It includes letters, words, pictures, sounds or symbols, or combinations thereof, as well as papers, maps, magnetic or punched cards, discs, drums, or other means of recording or retaining meaningful content, but not computer software.

Public Records Exempt From Disclosure:

A public body may (but is not required to) withhold from public disclosure certain categories of public records under the Freedom of Information Act. Among the categories of information that may be withheld under section 13 of the Act are the following:

—Specific information about an individual's private affairs, if their right to have the information protected from public scrutiny is greater than the public's right to the information.

—Investigating records compiled for law enforcement purposes, but only to the extent that disclosure as a public record would do any of the following:

- interfere with law enforcement proceedings;
- deprive a person of the right to a fair trial or impartial administrative adjudication;
- constitute an unwarranted invasion of personal privacy;
- disclose the identity of a confidential source or, if the record is compiled by a criminal law enforcement agency in the course of a criminal investigation, disclose confidential information furnished only by a confidential source;

- disclose law enforcement investigative techniques or procedures; or
- endanger the life or physical safety of law enforcement personnel.

—Public records which if disclosed would prejudice a public body's ability to maintain the physical security of custodial or penal institutions occupied by persons arrested or convicted of a crime or admitted because of a mental disability, unless the public interest in disclosure under this act outweighs the public interest in nondisclosure.

—Records which if disclosed would violate the Federal (Buckley) Educational Rights and Privacy Act (primarily student records).

—An exempt public record or exempt information which is furnished by the public body originally compiling, preparing, or receiving the record or information to a public officer or public body in connection with the performance of the duties of that public officer or public body, if the consideration originally giving rise to the exempt nature of the public record remains applicable.

—Trade secrets or commercial or financial information voluntarily provided to an agency for use in developing governmental policy.

—Information subject to attorney-client privilege.

—Information subject to other enunciated privileges such as counselor-client and those recognized by statute or court rule.

—Pending public bids to enter into contracts.

—Appraisals of real property to be acquired by a public body.

—Test questions and answers, scoring keys and other examination instruments.

—Medical counseling or psychological facts which would reveal an individual's identity.

—Internal communications and notes between and within public bodies of an advisory nature **to the extent that they cover other than purely factual materials and are preliminary to a final agency determination of policy or action.** This exemption shall not apply unless the public body shows that in the particular instance the public interest in encouraging frank communications between officials and employees of public bodies clearly outweighs the public interest in disclosure. (Note that factual materials in such memoranda are open records and must be separated out and made available upon request even if the other material is not.)

—Law enforcement communication codes and deployment plans unless the public interest in disclosure outweighs the public interest in nondisclosure.

—Information that would reveal the location of archeological sites.

—Product testing data developed by agencies buying products where only one bidder meets the agency's specifications.

—A student's college academic transcript where the student is delinquent on university payments.

—Records of any campaign committee including any committee that receives moneys from a state campaign fund. (These records are open to the public under Public Act 388 of 1976.)

Records and information pertaining to an investigation or a compliance conference under Article 15 of the Public Health Code, before a complaint is issued. These provisions do not apply to any of the following:

—The fact that an allegation has been received and an investigation is being conducted and the date the allegation was received.

—The fact that the allegation was received by the Department of Consumer and Industry Services; the fact that the department did not issue a complaint for the allegation; and the fact that the allegation was dismissed.

Availability of Public Records:

Any person may ask to inspect, copy or receive a copy of a public record. There are no qualifications such as residency or age that must be met in order to make a request. The reference to "person" in the act does not include those persons incarcerated in state or local correctional facilities.

As soon as practical, but not more than five business days after receiving a request, the public body must respond to a request for a public record. The public agency can, under unusual circumstances, notify the requester in writing and extend the time limit by ten days.

A person also has the right to subscribe to future issuances of public records which are created, issued or disseminated on a regular basis. A subscription is valid for up to six months, at the request of the subscriber, and is renewable.

The public body or agency has a responsibility to provide reasonable facilities so that persons making a request may examine and take notes from public records. The facilities must be available during the normal business hours of the public body.

A public body may make reasonable rules necessary to protect its public records and to prevent excessive and unreasonable interference with the discharge of its functions.

Salary Records:

Salary records of employees or other officials of institutions of higher education, school districts, intermediate school districts or community college districts must be made available to the public upon request and under certain conditions.

Fees for Public Records:

A government agency can charge a fee, but it must be limited to actual duplication, mailing and clerical labor costs. The first $20 of work must be free for a person who is on welfare or presents facts showing inability to pay because of indigency. A public body may require a good faith deposit at the time of request. The deposit shall not exceed ½ of the total cost.

Denial of a Record:

If a request for a record is denied, written notice of the denial must be provided to the requester within five days, or within 15 days under unusual circumstances. A failure to respond within the time limits, or a failure to respond at all, also amounts to a denial.

When a request is denied, the public body must provide the requestor with a full explanation of the reasons for the denial and the requester's right to seek judicial review. Notification of the right to judicial review must include notification of the right to receive attorney's fees and collect damages.

Enforcement:

A person has the right to commence an action in circuit court to compel disclosure of public records which are denied. If the request by a person was made verbally, the person must confirm the request in writing not less than five days before commencing the action.

The action may be brought in the county where the requester lives, the county where the requester does business, the county where the public document is located, or a county where the agency has an office.

Penalties for Violation of the Act:

If the circuit court finds that the public body has arbitrarily and capriciously violated the Freedom of Information Act by refusal or delay in disclosing or providing copies of a public record, it may, in addition to any actual or compensatory damages, award punitive damages of $500 to the person seeking the right to inspect or receive a copy of a public record.

Requesting a Public Record Pursuant to the Freedom of Information Act

The following is a checklist* for Freedom of Information Act requests:

1) Make sure you are addressing the correspondence to the correct department.

2) Make sure the correspondence is addressed to the Freedom of Information Act Administrator of that department.

3) Describe the information requested in detail so that it can be located by the Freedom of Information Act Administrator.

4) Describe the subject matter of the documents requested and, if possible, the date the documents were created.

5) Advise the department that you are requesting documents pursuant to the Freedom of Information Act and refer to the Act as MCL 15.231 et seq.

**Use of the checklist is suggested, not mandated. For example, it is not necessary to cite the Freedom of Information Act statute when making a request. Requests and responses to requests are governed by the specific language of the Freedom of Information Act, not by the checklist or this booklet's general information summary of the act.*

FREEDOM OF INFORMATION ACT

Act 442, 1976; Eff. Apr. 13, 1977

AN ACT to provide for public access to certain public records of public bodies; to permit certain fees; to prescribe the powers and duties of certain public officers and public bodies; to provide remedies and penalties; and to repeal certain acts and parts of acts.

The People of the State of Michigan enact:

15.231 Short title; public policy.

Sec. 1. (1) This act shall be known and may be cited as the "freedom of information act".

(2) It is the public policy of this state that all persons, except those persons incarcerated in state or local correctional facilities, are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and public employees, consistent with this act. The people shall be informed so that they may fully participate in the democratic process.

History: 1976, Act 442, Eff. Apr. 13, 1977;—Am. 1994, Act 131, Imd. Eff. May 19, 1994;—Am. 1996, Act 553, Eff. Mar. 31, 1997;—Am. 1997, Act 6, Imd. Eff. May 16, 1997.

15.232 Definitions.

Sec. 2. As used in this act:

(a) "Field name" means the label or identification of an element of a computer data base that contains a specific item of information, and includes but is not limited to a subject heading such as a column header, data dictionary, or record layout.

(b) "FOIA coordinator" means either of the following:

(*i*) An individual who is a public body.

(*ii*) An individual designated by a public body in accordance with section 6 to accept and process requests for public records under this act.

(c) "Person" means an individual, corporation, limited liability company, partnership, firm, organization, association, governmental entity, or other legal entity. Person does not include an individual serving a sentence of imprisonment in a state or county correctional facility in this state or any other state, or in a federal correctional facility.

(d) "Public body" means any of the following:

(*i*) A state officer, employee, agency, department, division, bureau, board, commission, council, authority, or other body in the executive branch of the state government, but does not include the governor or lieutenant governor, the executive office of the governor or lieutenant governor, or employees thereof.

(*ii*) An agency, board, commission, or council in the legislative branch of the state government.

(*iii*) A county, city, township, village, intercounty, intercity, or regional governing body, council, school district, special district, or municipal corporation, or a board, department, commission, council, or agency thereof.

(*iv*) Any other body which is created by state or local authority or which is primarily funded by or through state or local authority.

(*v*) The judiciary, including the office of the county clerk and employees thereof when acting in the capacity of clerk to the circuit court, is not included in the definition of public body.

(e) "Public record" means a writing prepared, owned, used, in the possession of, or retained by a public body in the performance of an official function, from the time it is created. Public record does not include computer software. This act separates public records into the following 2 classes:

(*i*) Those that are exempt from disclosure under section 13.

(*ii*) All public records that are not exempt from disclosure under section 13 and which are subject to disclosure under this act.

(f) "Software" means a set of statements or instructions that when incorporated in a machine usable medium is capable of causing a machine or device having information processing capabilities to indicate, perform, or achieve a particular function, task, or result. Software does not include computer-stored information or data, or a field name if disclosure of that field name does not violate a software license.

(g) "Unusual circumstances" means any 1 or a combination of the following, but only to the extent necessary for the proper processing of a request:

(*i*) The need to search for, collect, or appropriately examine or review a voluminous amount of separate and distinct public records pursuant to a single request.

(*ii*) The need to collect the requested public records from numerous field offices, facilities, or other establishments which are located apart from the particular office receiving or processing the request.

(h) "Writing" means handwriting, typewriting, printing, photostating, photographing, photocopying, and every other means of recording, and includes letters, words, pictures, sounds, or symbols, or combinations thereof, and papers, maps, magnetic or paper tapes, photographic films or prints, microfilm, microfiche, magnetic or punched cards, discs, drums, or other means of recording or retaining meaningful content.

(i) "Written request" means a writing that asks for information, and includes a writing transmitted by facsimile, electronic mail, or other electronic means.

History: 1976, Act 442, Eff. Apr. 13, 1977;—Am. 1994, Act 131, Imd. Eff. May 19, 1994;—Am. 1996, Act 553, Eff. Mar. 31, 1997.

15.233 Public records; right to inspect, copy, or receive; subscriptions; forwarding requests; file; inspection and examination; memoranda or abstracts; rules; compilation, summary, or report of information; creation of new public record; certified copies.

Sec. 3. (1) Except as expressly provided in section 13, upon providing a public body's FOIA coordinator with a written request that describes a public record sufficiently to enable the public body to find the public record, a person has a right to inspect, copy, or receive copies of the requested public record of the public body. A person has a right to subscribe to future issuances of public records that are created, issued, or disseminated on a regular basis. A subscription shall be valid for up to 6 months, at the request of the subscriber, and shall be renewable. An employee of a public body who receives a request for a public record shall promptly forward that request to the freedom of information act coordinator.

(2) A freedom of information act coordinator shall keep a copy of all written requests for public records on file for no less than 1 year.

(3) A public body shall furnish a requesting person a reasonable opportunity for inspection and examination of its public records, and shall furnish reasonable facilities for making memoranda or abstracts from its public records during the usual business hours. A public body may make reasonable rules necessary to protect its public records and to prevent excessive and unreasonable interference with the discharge of its functions. A public body shall protect public records from loss, unauthorized alteration, mutilation, or destruction.

(4) This act does not require a public body to make a compilation, summary, or report of information, except as required in section 11.

(5) This act does not require a public body to create a new public record, except as required in section 11, and to the extent required by this act for the furnishing of copies, or edited copies pursuant to section 14(1), of an already existing public record.

(6) The custodian of a public record shall, upon written request, furnish a requesting person a certified copy of a public record.

History: 1976, Act 442, Eff. Apr. 13, 1977;—Am. 1996, Act 553, Eff. Mar. 31, 1997.

15.234 Fee; waiver or reduction; affidavit; deposit; calculation of costs; limitation; provisions inapplicable to certain public records.

Sec. 4. (1) A public body may charge a fee for a public record search, the necessary copying of a public record for inspection, or for providing a copy of a public record. Subject to subsections (3) and (4), the fee shall be limited to actual mailing costs, and to the actual incremental cost of duplication or publication including labor, the cost of search, examination, review, and the deletion and separation of exempt from nonexempt information as provided in section 14. A search for a public record may be conducted or copies of public records may be furnished without charge or at a reduced charge if the public body determines that a waiver or reduction of the fee is in the public interest because searching for or furnishing copies of the public record can be considered as primarily benefiting the general public. A public record search shall be made and a copy of a public record shall be furnished without charge for the first $20.00 of the fee for each request to an individual who is entitled to information under this act and who submits an affidavit stating that the individual is then receiving public assistance or, if not receiving public assistance, stating facts showing inability to pay the cost because of indigency.

(2) A public body may require at the time a request is made a good faith deposit from the person requesting the public record or series of public records, if the fee authorized under this section exceeds $50.00. The deposit shall not exceed 1/2 of the total fee.

(3) In calculating the cost of labor incurred in duplication and mailing and the cost of examination, review, separation, and deletion under subsection (1), a public body may not charge more than the hourly wage of the lowest paid public body employee capable of retrieving the information necessary to comply with a request under this act. Fees shall be uniform and not dependent upon the identity of the requesting person. A public body shall utilize the most economical means available for making copies of public records. A fee shall not be charged for the cost of search, examination, review, and the deletion and separation of exempt from nonexempt information as provided in section 14 unless failure to charge a fee would result in unreasonably high costs to the public body because of the nature of the request in the particular instance, and the public body specifically identifies the nature of these unreasonably high costs. A public body shall establish and publish procedures and guidelines to implement this subsection.

(4) This section does not apply to public records prepared under an act or statute specifically authorizing the sale of those public records to the public, or if the amount of the fee for providing a copy of the public record is otherwise specifically provided by an act or statute.

History: 1976, Act 442, Eff. Apr. 13, 1977;—Am. 1988, Act 99, Imd. Eff. Apr. 11, 1988;—Am. 1996, Act 553, Eff. Mar. 31, 1997.

Constitutionality: The disclosure of public records under the freedom of information act impartially to the general public for the incremental cost of creating the record is not a granting of credit by the state in aid of private persons and does not justify nondisclosure on the theory that the information is proprietary information belonging to a public body. Kestenbaum v. Michigan State University, 414 Mich. 510, 417 N.W.2d 1102 (1982).

15.235 Request to inspect or receive copy of public record; response to request; failure to respond; damages; contents of notice denying request; signing notice of denial; notice extending period of response; action by requesting person.

Sec. 5. (1) Except as provided in section 3, a person desiring to inspect or receive a copy of a public record shall make a written request for the public record to the FOIA coordinator of a public body. A written request made by facsimile, electronic mail, or other electronic transmission is not received by a public body's FOIA coordinator until 1 business day after the electronic transmission is made.

(2) Unless otherwise agreed to in writing by the person making the request, a public body shall respond to a request for a public record within 5 business days after the public body receives the request by doing 1 of the following:

(a) Granting the request.

(b) Issuing a written notice to the requesting person denying the request.

(c) Granting the request in part and issuing a written notice to the requesting person denying the request in part.

(d) Issuing a notice extending for not more than 10 business days the period during which the public body shall respond to the request. A public body shall not issue more than 1 notice of extension for a particular request.

(3) Failure to respond to a request pursuant to subsection (2) constitutes a public body's final determination to deny the request. In a circuit court action to compel a public body's disclosure of a public record under section 10, the circuit court shall assess damages against the public body pursuant to section 10(8) if the circuit court has done both of the following:

(a) Determined that the public body has not complied with subsection (2).

(b) Ordered the public body to disclose or provide copies of all or a portion of the public record.

(4) A written notice denying a request for a public record in whole or in part is a public body's final determination to deny the request or portion of that request. The written notice shall contain:

(a) An explanation of the basis under this act or other statute for the determination that the public record, or portion of that public record, is exempt from disclosure, if that is the reason for denying all or a portion of the request.

(b) A certificate that the public record does not exist under the name given by the requester or by another name reasonably known to the public body, if that is the reason for denying the request or a portion of the request.

(c) A description of a public record or information on a public record that is separated or deleted pursuant to section 14, if a separation or deletion is made.

(d) A full explanation of the requesting person's right to do either of the following:

(*i*) Submit to the head of the public body a written appeal that specifically states the word "appeal" and identifies the reason or reasons for reversal of the disclosure denial.

(*ii*) Seek judicial review of the denial under section 10.

(e) Notice of the right to receive attorneys' fees and damages as provided in section 10 if, after judicial review, the circuit court determines that the public body has not complied with this section and orders disclosure of all or a portion of a public record.

(5) The individual designated in section 6 as responsible for the denial of the request shall sign the written notice of denial.

(6) If a public body issues a notice extending the period for a response to the request, the notice shall specify the reasons for the extension and the date by which the public body will do 1 of the following:

(a) Grant the request.

(b) Issue a written notice to the requesting person denying the request.

(c) Grant the request in part and issue a written notice to the requesting person denying the request in part.

(7) If a public body makes a final determination to deny in whole or in part a request to inspect or receive a copy of a public record or portion of that public record, the requesting person may do either of the following:

(a) Appeal the denial to the head of the public body pursuant to section 10.

(b) Commence an action in circuit court, pursuant to section 10.

History: 1976, Act 442, Eff. Apr. 13, 1977;—Am. 1978, Act 329, Imd. Eff. July 11, 1978;—Am. 1996, Act 553, Eff. Mar. 31, 1997.

15.236 FOIA coordinator.

Sec. 6. (1) A public body that is a city, village, township, county, or state department, or under the control of a city, village, township, county, or state department, shall designate an individual as the public body's FOIA coordinator. The FOIA coordinator shall be responsible for accepting and processing requests for the public body's public records under this act and shall be responsible for approving a denial under section 5(4) and (5). In a county not having an executive form of government, the chairperson of the county board of commissioners is designated the FOIA coordinator for that county.

(2) For all other public bodies, the chief administrative officer of the respective public body is designated the public body's FOIA coordinator.

(3) An FOIA coordinator may designate another individual to act on his or her behalf in accepting and processing requests for the public body's public records, and in approving a denial under section 5(4) and (5).

History: 1976, Act 442, Eff. Apr. 13, 1977;—Am. 1996, Act 553, Eff. Mar. 31, 1997.

15.240 Options by requesting person; appeal; orders; venue; de novo proceeding; burden of proof; private view of public record; contempt; assignment of action or appeal for hearing, trial, or argument; attorneys' fees, costs, and disbursements; assessment of award; damages.

Sec. 10. (1) If a public body makes a final determination to deny all or a portion of a request, the requesting person may do 1 of the following at his or her option:

(a) Submit to the head of the public body a written appeal that specifically states the word "appeal" and identifies the reason or reasons for reversal of the denial.

(b) Commence an action in the circuit court to compel the public body's disclosure of the public records within 180 days after a public body's final determination to deny a request.

(2) Within 10 days after receiving a written appeal pursuant to subsection (1)(a), the head of a public body shall do 1 of the following:

(a) Reverse the disclosure denial.

(b) Issue a written notice to the requesting person upholding the disclosure denial.

(c) Reverse the disclosure denial in part and issue a written notice to the requesting person upholding the disclosure denial in part.

(d) Under unusual circumstances, issue a notice extending for not more than 10 business days the period during which the head of the public body shall respond to the written appeal. The head of a public body shall not issue more than 1 notice of extension for a particular written appeal.

(3) A board or commission that is the head of a public body is not considered to have received a written appeal under subsection (2) until the first regularly scheduled meeting of that board or commission following submission of the written appeal under subsection (1)(a). If the head of the public body fails to respond to a written appeal pursuant to subsection (2), or if the head of the public body upholds all or a portion of the disclosure denial that is the subject of the written appeal, the requesting person may seek judicial review of the nondisclosure by commencing an action in circuit court under subsection (1)(b).

(4) In an action commenced under subsection (1)(b), a court that determines a public record is not exempt from disclosure shall order the public body to cease withholding or to produce all or a portion of a public record wrongfully withheld, regardless of the location of the public record. The circuit court for the county in which the complainant resides or has his or her principal place of business, or the circuit court for the county in which the public record or an office of the public body is located has venue over the action. The court shall determine the matter de novo and the burden is on the public body to sustain its denial. The court, on its own motion, may view the public record in controversy in private before reaching a decision. Failure to comply with an order of the court may be punished as contempt of court.

(5) An action commenced under this section and an appeal from an action commenced under this section shall be assigned for hearing and trial or for argument at the earliest practicable date and expedited in every way.

(6) If a person asserting the right to inspect, copy, or receive a copy of all or a portion of a public record prevails in an action commenced under this section, the court shall award reasonable attorneys' fees, costs, and disbursements. If the person or public body prevails in part, the court may, in its discretion, award all or an appropriate portion of reasonable attorneys' fees, costs, and disbursements. The award shall be assessed against the public body liable for damages under subsection (7).

(7) If the circuit court determines in an action commenced under this section that the public body has arbitrarily and capriciously violated this act by refusal or delay in disclosing or providing copies of a public record, the court shall award, in addition to any actual or compensatory damages, punitive damages in the amount of $500.00 to the person seeking the right to inspect or receive a copy of a public record. The damages shall not be assessed against an individual, but shall be assessed against the next succeeding public body that is not an individual and that kept or maintained the public record as part of its public function.

History: 1976, Act 442, Eff. Apr. 13, 1977;—Am. 1978, Act 329, Imd. Eff. July 11, 1978;—Am. 1996, Act 553, Eff. Mar. 31, 1997.

15.241 Matters required to be published and made available by state agencies; form of publications; effect on person of matter not published and made available; exception; action to compel compliance by state agency; order; attorneys' fees, costs, and disbursements; jurisdiction; definitions.

Sec. 11. (1) A state agency shall publish and make available to the public all of the following:

(a) Final orders or decisions in contested cases and the records on which they were made.

(b) Promulgated rules.

(c) Other written statements which implement or interpret laws, rules, or policy, including but not limited to guidelines, manuals, and forms with instructions, adopted or used by the agency in the discharge of its functions.

(2) Publications may be in pamphlet, loose-leaf, or other appropriate form in printed, mimeographed, or other written matter.

(3) Except to the extent that a person has actual and timely notice of the terms thereof, a person shall not in any manner be required to resort to, or be adversely affected by, a matter required to be published and made available, if the matter is not so published and made available.

(4) This section does not apply to public records which are exempt from disclosure under section 13.

(5) A person may commence an action in the circuit court to compel a state agency to comply with this section. If the court determines that the state agency has failed to comply, the court shall order the state agency to comply and shall award reasonable attorneys' fees, costs, and disbursements to the person commencing the action. The circuit court for the county in which the state agency is located shall have jurisdiction to issue the order.

(6) As used in this section, "state agency", "contested case", and "rules" shall have the same meanings as ascribed to those terms in Act No. 306 of the Public Acts of 1969, as amended, being sections 24.201 to 24.315 of the Michigan Compiled Laws.

History: 1976, Act 442, Eff. Apr. 13, 1977.

15.243 Exemptions from disclosure; withholding of information required by law or in possession of executive office.

Sec. 13. (1) A public body may exempt from disclosure as a public record under this act:

(a) Information of a personal nature where the public disclosure of the information would constitute a clearly unwarranted invasion of an individual's privacy.

(b) Investigating records compiled for law enforcement purposes, but only to the extent that disclosure as a public record would do any of the following:

(*i*) Interfere with law enforcement proceedings.

(*ii*) Deprive a person of the right to a fair trial or impartial administrative adjudication.

(*iii*) Constitute an unwarranted invasion of personal privacy.

(*iv*) Disclose the identity of a confidential source, or if the record is compiled by a law enforcement agency in the course of a criminal investigation, disclose confidential information furnished only by a confidential source.

(*v*) Disclose law enforcement investigative techniques or procedures.

(*vi*) Endanger the life or physical safety of law enforcement personnel.

(c) A public record that if disclosed would prejudice a public body's ability to maintain the physical security of custodial or penal institutions occupied by persons arrested or convicted of a crime or admitted because of a mental disability, unless the public interest in disclosure under this act outweighs the public interest in nondisclosure.

(d) Records or information specifically described and exempted from disclosure by statute.

(e) Information the release of which would prevent the public body from complying with section 444 of subpart 4 of part C of the general education provisions act, title IV of Public Law 90-247, 20 U.S.C. 1232g, commonly referred to as the family educational rights and privacy act of 1974.

(f) A public record or information described in this section that is furnished by the public body originally compiling, preparing, or receiving the record or information to a public officer or public body in connection with the performance of the duties of that public officer or public body, if the considerations originally giving rise to the exempt nature of the public record remain applicable.

(g) Trade secrets or commercial or financial information voluntarily provided to an agency for use in developing governmental policy if:

(*i*) The information is submitted upon a promise of confidentiality by the public body.

(*ii*) The promise of confidentiality is authorized by the chief administrative officer of the public body or by an elected official at the time the promise is made.

(*iii*) A description of the information is recorded by the public body within a reasonable time after it has been submitted, maintained in a central place within the public body, and made available to a person upon request. This subdivision does not apply to information submitted as required by law or as a condition of receiving a governmental contract, license, or other benefit.

(h) Information or records subject to the attorney-client privilege.

(i) Information or records subject to the physician-patient privilege, the psychologist-patient privilege, the minister, priest, or Christian Science practitioner privilege, or other privilege recognized by statute or court rule.

(j) A bid or proposal by a person to enter into a contract or agreement, until the time for the public opening of bids or proposals, or if a public opening is not to be conducted, until the deadline for submission of bids or proposals has expired.

(k) Appraisals of real property to be acquired by the public body until (*i*) an agreement is entered into; or (*ii*) 3 years has elapsed since the making of the appraisal, unless litigation relative to the acquisition has not yet terminated.

(*l*) Test questions and answers, scoring keys, and other examination instruments or data used to administer a license, public employment, or academic examination, unless the public interest in disclosure under this act outweighs the public interest in nondisclosure.

(m) Medical, counseling, or psychological facts or evaluations concerning an individual if the individual's identity would be revealed by a disclosure of those facts or evaluation.

(n) Communications and notes within a public body or between public bodies of an advisory nature to the extent that they cover other than purely factual materials and are preliminary to a final agency determination of policy or action. This exemption does not apply unless the public body shows that in the particular instance the public interest in encouraging frank communications between officials and employees of public bodies clearly outweighs the public interest in disclosure. This exemption does not constitute an exemption under state law for purposes of section 8(h) of the open meetings act, Act No. 267 of the Public Acts of 1976, being section 15.268 of the Michigan Compiled Laws. As used in this subdivision, "determination of policy or action" includes a determination relating to collective bargaining, unless the public record is otherwise required to be made available under Act No. 336 of the Public Acts of 1947, being sections 423.201 to 423.217 of the Michigan Compiled Laws.

(o) Records of law enforcement communication codes, or plans for deployment of law enforcement personnel, that if disclosed would prejudice a public body's ability to protect the public safety unless the public interest in disclosure under this act outweighs the public interest in nondisclosure in the particular instance.

(p) Information that would reveal the exact location of archaeological sites. The secretary of state may promulgate rules pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws, to provide for the disclosure of the location of archaeological sites for purposes relating to the preservation or scientific examination of sites.

(q) Testing data developed by a public body in determining whether bidders' products meet the specifications for purchase of those products by the public body, if disclosure of the data would reveal that only 1 bidder has met the specifications. This subdivision does not apply after 1 year has elapsed from the time the public body completes the testing.

(r) Academic transcripts of an institution of higher education established under section 5, 6, or 7 of article VIII of the state constitution of 1963, if the transcript pertains to a student who is delinquent in the payment of financial obligations to the institution.

(s) Records of any campaign committee including any committee that receives money from a state campaign fund.

(t) Unless the public interest in disclosure outweighs the public interest in nondisclosure in the particular instance, public records of a law enforcement agency, the release of which would do any of the following:

(*i*) Identify or provide a means of identifying an informer.

(*ii*) Identify or provide a means of identifying a law enforcement undercover officer or agent or a plain clothes officer as a law enforcement officer or agent.

(*iii*) Disclose the personal address or telephone number of law enforcement officers or agents or any special skills that they may have.

(*iv*) Disclose the name, address, or telephone numbers of family members, relatives, children, or parents of law enforcement officers or agents.

(*v*) Disclose operational instructions for law enforcement officers or agents.

(*vi*) Reveal the contents of staff manuals provided for law enforcement officers or agents.

(*vii*) Endanger the life or safety of law enforcement officers or agents or their families, relatives, children, parents, or those who furnish information to law enforcement departments or agencies.

(*viii*) Identify or provide a means of identifying a person as a law enforcement officer, agent, or informer.

(*ix*) Disclose personnel records of law enforcement agencies.

(*x*) Identify or provide a means of identifying residences that law enforcement agencies are requested to check in the absence of their owners or tenants.

(u) Except as otherwise provided in this subdivision, records and information pertaining to an investigation or a compliance conference conducted by the department of consumer and industry services under article 15 of the public health code, Act No. 368 of the Public Acts of 1978, being sections 333.16101 to 333.18838 of the Michigan Compiled Laws, before a complaint is issued. This subdivision does not apply to records and information pertaining to 1 or more of the following:

(*i*) The fact that an allegation has been received and an investigation is being conducted, and the date the allegation was received.

(*ii*) The fact that an allegation was received by the department of consumer and industry services; the fact that the department of consumer and industry services did not issue a complaint for the allegation; and the fact that the allegation was dismissed.

(v) Records of a public body's security measures, including security plans, security codes and combinations, passwords, passes, keys, and security procedures, to the extent that the records relate to the ongoing security of the public body.

(w) Records or information relating to a civil action in which the requesting party and the public body are parties.

(x) Information or records that would disclose the social security number of any individual.

(y) Except as otherwise provided in this subdivision, an application for the position of president of an institution of higher education established under section 4, 5, or 6 of article VIII of the state constitution of 1963, materials submitted with such an application, letters of recommendation or references concerning an applicant, and records or information relating to the process of searching for and selecting an individual for a position described in this subdivision, if the records or information could be used to identify a candidate for the position. However, after 1 or more individuals have been identified as finalists for a position described in this subdivision, this subdivision does not apply to a public record described in this subdivision, except a letter of recommendation or reference, to the extent that the public record relates to an individual identified as a finalist for the position.

(2) This act does not authorize the withholding of information otherwise required by law to be made available to the public or to a party in a contested case under Act No. 306 of the Public Acts of 1969.

(3) Except as otherwise exempt under subsection (1), this act does not authorize the withholding of a public record in the possession of the executive office of the governor or lieutenant governor, or an employee of either executive office, if the public record is transferred to the executive office of the governor or lieutenant governor, or an employee of either executive office, after a request for the public record has been received by a state officer, employee, agency, department, division, bureau, board, commission, council, authority, or other body in the executive branch of government that is subject to this act.

History: 1976, Act 442, Eff. Apr. 13, 1977;—Am. 1978, Act 329, Imd. Eff. July 11, 1978;—Am. 1993, Act 82, Eff. Apr. 1, 1994;—Am. 1996, Act 553, Eff. Mar. 31, 1997.

15.243a Salary records of employee or other official of institution of higher education, school district, intermediate school district, or community college available to public on request.

Sec. 13a. Notwithstanding section 13, an institution of higher education established under section 5, 6, or 7 of article 8 of the state constitution of 1963; a school district as defined in section 6 of Act No. 451 of the Public Acts of 1976, being section 380.6 of the Michigan Compiled Laws; an intermediate school district as defined in section 4 of Act No. 451 of the Public Acts of 1976, being section 380.4 of the Michigan Compiled Laws; or a community college established under Act No. 331 of the Public Acts of 1966, as amended, being sections 389.1 to 389.195 of the Michigan Compiled Laws shall upon request make available to the public the salary records of an employee or other official of the institution of higher education, school district, intermediate school district, or community college.

History: Add. 1979, Act 130, Imd. Eff. Oct. 26, 1979.

15.244 Separation of exempt and nonexempt material; design of public record; description of material exempted.

Sec. 14. (1) If a public record contains material which is not exempt under section 13, as well as material which is exempt from disclosure under section 13, the public body shall separate the exempt and nonexempt material and make the nonexempt material available for examination and copying.

(2) When designing a public record, a public body shall, to the extent practicable, facilitate a separation of exempt from nonexempt information. If the separation is readily apparent to a person requesting to inspect or receive copies of the form, the public body shall generally describe the material exempted unless that description would reveal the contents of the exempt information and thus defeat the purpose of the exemption.

History: 1976, Act 442, Eff. Apr. 13, 1977.

15.245 Repeal of §§ 24.221, 24.222, and 24.223.

Sec. 15. Sections 21, 22 and 23 of Act No. 306 of the Public Acts of 1969, as amended, being sections 24.221, 24.222 and 24.223 of the Michigan Compiled Laws, are repealed.

History: 1976, Act 442, Eff. Apr. 13, 1977.

15.246 Effective date.

Sec. 16. This act shall take effect 90 days after being signed by the governor.

History: 1976, Act 442, Eff. Apr. 13, 1977.

Court Decisions on the Freedom of Information Act

Michigan courts have rendered decisions which, when published, become precedent and are the law of the state until changed by a higher court or by the Legislature. The following list contains the principal published decisions of Michigan's appellate courts and is current through July 1997. Court decisions may be obtained in law libraries or from the courts of record for a fee.

Because the Legislature has amended the Freedom of Information Act from time to time after its enactment, the cases interpreting and applying the Act may not reflect the current law. For example, the cases listed below concerning prisoner requests for public records were decided under the Act before the amendment that excludes prisoners from the persons entitled to make requests for public records.

1. **Kestenbaum v Michigan State University,** 97 Mich App 5 (1980), aff'd 414 Mich 510 (1982), reh den

   An equally divided Supreme Court affirmed the lower court in holding that a list of names and addresses of students on a computer tape would appear to be a public record, but the nature of the information is within an enumerated exception, being personal, and public disclosure of such tape would constitute a clearly unwarranted invasion of a person's privacy.

2. **Tobin v Michigan Civil Service Commission,** 98 Mich App 604 (1980), aff'd 416 Mich 661 (1982)

   The Freedom of Information Act does not compel a public body to conceal information at the insistence of one who opposes its release.

3. **Evening News Association v City of Troy,** 417 Mich 481 (1983), reh den

   To claim exemption for investigative records used in law enforcement proceedings, the agency must show how disclosure of particular requested document would interfere with proceedings.

   To determine whether an agency has met its burden under the Freedom of Information Act, the following rules should apply:

   a. The burden of proof is on the party claiming exemption from disclosure.
   b. The exemptions must be interpreted narrowly.
   c. The agency shall separate the exempt and nonexempt material and make the nonexempt material available for examination and copying.
   d. Detailed affidavits describing the material withheld must be supplied by the agency.
   e. The justification for withholding must not be conclusory, i.e., a repetition of the statutory language.
   f. The mere showing of a direct relationship between the records sought and an investigation is inadequate.

4. **UPGWA v State Police,** 422 Mich 432 (1985), remanded for determination of costs

   Request for a record need not be predicated on core purpose of the Freedom of Information Act, the disclosure of public records to permit the requesters to participate in the democratic process.

5. **MSEA v Department of Management and Budget,** 428 Mich 104 (1987)

   The State generally cannot exempt employee lists containing names and home addresses from disclosure under the Freedom of Information Act.

6. **Hagen v Department of Education,** 431 Mich 118 (1988)

   State Tenure Commission decisions may be withheld only during the administrative stage of a teacher's appeal.

7. **Michigan Tax Management Services v City of Warren,** 437 Mich 506 (1991)

   The trial court must make an independent determination as to what constitutes the reasonable fees and expenses of a requester who prevails in a Freedom of Information Act action.

8. **Swickard v Wayne County Medical Examiner,** 438 Mich 536 (1991)

   To determine whether a disclosure would constitute a clearly unwarranted invasion of privacy, privacy rights as they existed at common law, as well as the constitution and the customs and mores of the community must be considered. Release of autopsy test results by a medical examiner is not subject to physician-patient privilege and is not clearly an unwarranted invasion of privacy as the right to privacy ends with the deceased's death.

9. **Walen v Department of Corrections,** 443 Mich 240 (1993)

   The Freedom of Information Act applies to records of department of corrections disciplinary hearings.

10. **Hubka v Pennfield Township,** 197 Mich App 117 (1992), rev in part, 443 Mich 864 (1993)

    If the requester asks to inspect original records, supplying copies does not meet the Freedom of Information Act's requirements. The requester does not have to demonstrate that copies are inadequate to inspect the originals. Township attorney's letter to the township board containing opinions, conclusions, and recommendations is privileged.

11. **Booth Newspapers, Inc v University of Michigan Board of Regents,** 444 Mich 211 (1993)

    Travel records in connection with a search for a university president are public records subject to disclosure.

12. **Bradley v Saranac Community Schools Board of Education**

    Lansing Association of School Administrators v Lansing School District Board of Education, 216 Mich App 79 (1996), 455 Mich 285 (1997). (Consolidated Cases)

    Personnel records of public school teachers and administrators including performance evaluations, disciplinary records and complaints, must be disclosed because they are public records and are not within any exemption under the Freedom of Information Act.

13. **Alpena Title, Inc v Alpena County,** 84 Mich App 308 (1978)

    A county board of commissioners may charge a reasonable fee for access to, and the copying of, county tract index information, in accordance with the statute regarding fees for the inspection of such records.

14. **Williams v Martimucci,** 88 Mich App 198 (1979)

    Action of manager of general office services at state prison in denying inmate's request for copies of certain documents in inmate's file because inmate did not pay the $3 fee for the cost of processing the request was not arbitrary and capricious, since manager of general office services checked institutional indigency list for the month and found that inmate's name was not on it.

15. **Booth Newspapers, Inc v Regents of University of Michigan,** 93 Mich App 100 (1979)

    Board's contention that the disclosure of audit reports would produce an unwarranted invasion of personal privacy is an affirmative defense. The burden of proving that defense is on defendant. Board not entitled to summary judgment on pleadings alone.

16. **Penokie v Michigan Technological University,** 93 Mich App 650 (1979)

    Disclosure of the names and salaries of employees of the defendant university is not a "clearly unwarranted" invasion of personal privacy under the Freedom of Information Act.

17. **Bredemeier v Kentwood Board of Education,** 95 Mich App 767 (1980)

    The Freedom of Information Act does not require that information be recorded by a public body, but if it is, it must be disclosed. Attorney fees, costs, and disbursements are awarded to prevailing party under the Act. However, to prevail, party must show, at a minimum, that prosecution of action could reasonably have been regarded as necessary, and action had causative effect on delivery of information. Lack of court-ordered disclosure precludes award of punitive damages under the Act.

18. **Nabkey v Kent Community Action Program,** 99 Mich App 480 (1980)

    Under the Freedom of Information Act, plaintiff, as prevailing party, is entitled to reasonable attorneys' fees, costs, and disbursements. Since plaintiff was not represented by an attorney, no award of attorneys' fees was possible.

19. **Jordan v Martimucci,** 101 Mich App 212 (1980)

    For plaintiff to prevail in action for punitive damages under the Freedom of Information Act, the plaintiff must demonstrate that disclosure of information was result of court order and that defendant acted arbitrarily and capriciously in failing to timely comply with the disclosure request.

20. **Blue Cross/Blue Shield v Insurance Bureau,** 104 Mich App 113 (1981), lv den

    Information may be revealed under the Freedom of Information Act despite claim of exemption. Decision to deny disclosure of exempt records is committed to discretion of agency and should not be disturbed unless abuse of discretion is found. Trade secret exemption does not apply to information required by law or as a condition of receiving a government contract, license, or benefit.

21. **Schinzel v Wilkerson,** 110 Mich App 600 (1981), lv den

    A plaintiff appearing in propria persona who prevails in an action commenced pursuant to the Freedom of Information Act is entitled to an award of his or her actual expenditures, but is not entitled to an award of attorney fees.

22. **Local 79 v Lapeer County Hospital,** 111 Mich App 441 (1981)

    The circuit court is the proper forum to seek relief from a violation of the Freedom of Information Act.

23. **Ridenour v Dearborn Board of Education,** 111 Mich App 798 (1981)

    Public disclosure of performance evaluation of school administrators is not an invasion of privacy as defined by the Freedom of Information Act because people have a strong interest in public education and because taxpayers are increasingly holding administrators accountable for expenditures of tax money.

24. **Palladium v River Valley School District,** 115 Mich App 490 (1982), lv den

    The Freedom of Information Act does not prevent the disclosure of the names of students suspended by school board action.

25. **Cashel v Smith,** 117 Mich App 405 (1982), lv den

    Depositions may sometimes be appropriate in Freedom of Information Act cases, but they must be justified. The Legislature intended that the flow of information from public bodies and persons should not be impeded by long court process.

26. **Ballard v Department of Corrections,** 122 Mich App 123 (1982), lv den

    A film made by the Department of Corrections showing a prisoner being forcibly removed from his prison cell is a public record and must be disclosed.

27. **Perlongo v Iron River TV,** 122 Mich App 433 (1983)

    The Freedom of Information Act does not apply to a nonstock, nonprofit corporation that was not created by state or local authority.

28. **Pennington v Washtenaw County Sheriff,** 125 Mich App 556 (1983)

    Once a request is made under the Freedom of Information Act, the public body has a duty to either provide access to or release copies of the records sought unless they are exempt from disclosure.

29. **Bechtel v Treasury Department,** 128 Mich App 324 (1983), lv den

    The Freedom of Information Act applies to the State Tax Tribunal. Also, where the requested information contains exempt and nonexempt material, the exempt material should be deleted in order to allow for the release of the nonexempt sections.

30. **Dawkins v Civil Service Department,** 130 Mich App 669 (1983), lv den

    By prevailing on part of a claim under the Freedom of Information Act, the plaintiff was entitled to an award of all attorney fees, costs, and disbursements incurred during the trial and the appeal.

31. **Mullin v Detroit Police Department,** 133 Mich App 46 (1984)

    The court found that the Detroit Police Department was justified in withholding their traffic accident computer tape because: (a) the tape contained private and potentially embarrassing private facts; and, (b) the nonprivate information was available in other forms.

32. **Hoffman v Bay City School District,** 137 Mich App 333 (1984), lv den

    An attorney hired to undertake an investigation for a public body is not a public body and, thus, is not required to turn over a personal investigatory file under the Freedom of Information Act. Also, a public body has no duty to create a record.

33. **Capitol Info Assn v Ann Arbor Police Dept,** 138 Mich App 655 (1984)

    A request for a copy of "all correspondence with all federal law enforcement/ investigative agencies . . . pertaining to persons living in Ann Arbor, Michigan" was found "absurdly overbroad". The public body was not required to comply.

34. **Soave v Department of Education,** 139 Mich App 99 (1984)

    Under the Federal Rehabilitation Act regulations, records that may be harmful to a former participant in the vocational rehabilitation program can be withheld. This is sufficient to withhold those same records under the "exempted from disclosure by statute" exemption (section 13(1)(d) of the Freedom of Information Act).

35. **Cashel v University of Michigan Regents,** 141 Mich App 541 (1985)

    The Freedom of Information Act requires that a public body furnish "a reasonable opportunity for inspection and examination of its public records." A request to access extremely large quantities of documents was found to be an excessive and unreasonable interference with the public body's function and, therefore, access could be limited to a reasonable length of time.

36. **Paprocki v Jackson Clerk,** 142 Mich App 785 (1985), reconsideration den

    The county in which a prisoner is incarcerated is not the county in which a suit may be brought under the Freedom of Information Act. Jurisdiction for such a suit, where the prisoner "resides", refers to the place where the prisoner last lived before being sent to prison. (See the **Curry** case below.)

37. **Milford v Gilb,** 148 Mich App 778 (1985)

    Documents pertaining to the city's urban renewal projects must be disclosed because the city failed to show that the documents were: (a) other than purely factual material; and (b) preliminary to a final determination of policy or action. Even if these two requirements had been met, the public body's interest in frank communication must outweigh the public interest in disclosure.

38. Curry v Jackson Circuit Court, 151 Mich App 754 (1986)

The term "resides", as used in section 10(1) of the Freedom of Information Act, means a person's legal residence or domicile. A prisoner may establish the county in which the prison is located as his or her legal residence or domicile.

39. Health Central v Commissioner of Insurance, 152 Mich App 336 (1986)

Nondisclosure of public records is at the discretion of the public body applying the Freedom of Information Act's enumerated exceptions. The Act does not confer the right to prevent disclosure and, therefore, a third party must have a basis independent of the Act in order to prohibit the public body from disclosing a public record.

40. DeMaria v Department of Management and Budget, 159 Mich App 729 (1987)

Communications of independent consultants to a public body are not "communications and notes within a public body," and are, therefore, not exempt under section 13(1)(n) of the Freedom of Information Act.

41. Laracey v Financial Inst Bureau, 163 Mich App 437 (1987), lv den

An attorney representing himself or herself in a Freedom of Information Act claim is not entitled to attorney fees.

42. Walloon Water v Melrose Township, 163 Mich App 726 (1987)

The defendant-township violated the Freedom of Information Act when it disposed of a letter after the plaintiff made a request for it. The court awards plaintiff costs, fees, and punitive damages.

43. Mithrandir v Department of Corrections, 164 Mich App 143 (1987), lv den

Prison can set reasonable restrictions on a prisoner's right to inspect its public records.

44. Free Press v Oakland Sheriff, 164 Mich App 656 (1987)

Release of "mug shots" is not a clearly unwarranted invasion of an individual's privacy. Therefore, the "mug shots" may be disclosed.

45. Jones v Wayne Prosecutor, 165 Mich App 62 (1987), lv den

Information available through county clerk covered by court rule need not be released by another agency under a request made under the Freedom of Information Act.

46. Kearney v Mental Health Department, 168 Mich App 406 (1988)

Release of mental health records not sufficiently in public interest so as to require copies to be provided without cost.

47. Ratepayer Consortium v PSC #2, 168 Mich App 476 (1987)

Agency is not precluded from raising defenses in court for nondisclosure under the Freedom of Information Act, if defenses not raised at administrative level.

48. Oakland Press v Pontiac Stadium Building Authority, 173 Mich App 41 (1988)

Whichever balancing test suggested by MSEA v Department of Management and Budget is used, the authority must give the names and addresses of the lessees of stadium suites, if claim is made that the release would be a violation of the privacy protections of the Act.

49. Booth Newspapers v Kent County Treasurer, 175 Mich App 523 (1989)

Corporations have no right of privacy in corporate tax records.

50. Payne v Grand Rapids Police, 178 Mich App 193 (1989), lv den

To find exemption from disclosure information that would interfere with law enforcement proceedings, it is insufficient for summary disposition purposes to find the information could interfere with law enforcement proceedings.

51. Easley v University of Michigan, 178 Mich App 723 (1989), lv den

Court will not order an award or impose sanctions for an agency's failure to produce a record it cannot locate even if the agency agrees that the record once existed.

52. Post-Newsweek Stations, Michigan, Inc v Detroit, 179 Mich App 331 (1989)

The trial court must do one of the following in analyzing a claim that records are exempt from disclosure:

1) Receive complete and particularized justification for nondisclosure; or

2) Conduct an in camera, de novo review to determine whether complete, particularized justification for nondisclosure exists; or

3) Make the records available to the requesting party's attorney to inspect in camera under special agreement.

53. Kincaid v Department of Corrections, 180 Mich App 176 (1989)

Department's denial of a request for a record on the basis that the record did not exist was arbitrary and capricious when department's own files acknowledged existence of record.

54. **Booth Newspapers, Inc v Kalamazoo School Dist,** 181 Mich App 752 (1989), lv den
    Following the settlement of a tenure action, the disclosure of a tenure proceeding report from which the name of the teacher involved was deleted is not a clearly unwarranted invasion of privacy.

55. **Tallman v Cheboygan Schools,** 183 Mich App 123 (1990)
    A board's adoption of a policy is not an act or statute permitting the board to charge more for a copy of a record than the actual cost of copying.

56. **Hartzell v Mayville School District,** 183 Mich App 782 (1990)
    If a requested record does not exist, the public body must so inform the requester.

57. **Traverse City Record Eagle v Traverse City Area Public Schools,** 184 Mich App 609 (1990), lv den
    A tentative bargaining agreement between a school and a union is exempt from compelled disclosure under the exemption for advisory communications preliminary to a final decision of a public body.

58. **Wayne Prosecutor v Detroit,** 185 Mich App 265 (1990), lv den
    A public person is as entitled to the release of public information under the Freedom of Information Act as is a private person.

59. **Clerical-Technical Union of Michigan State University v Michigan State University,** 190 Mich App 300 (1991), lv den
    The names and addresses of anonymous, and the addresses of non-anonymous, donors to a public university are exempt from disclosure under the privacy exemption of the Freedom of Information Act because the release of that information would constitute a clearly unwarranted invasion of the donors' privacy and disclosure would serve no public interest.

60. **Lepp v Cheboygan Area Schools,** 190 Mich App 726 (1991)
    The privacy exemption of the Freedom of Information Act is inapplicable when the requested information pertains to the party making the request.

61. **Favors v Department of Corrections,** 192 Mich App 131 (1991), lv den
    A worksheet used in determining whether a prisoner should be awarded disciplinary credits is exempt from disclosure because it: (a) contains material that is not purely factual; (b) is only recommendatory, and (c) is preliminary to a final determination. Further, the public interest in keeping this communication private encourages frank discussions within the department of corrections that clearly outweighs the public interest in the worksheet's disclosure.

62. **Wilson v Eaton Rapids,** 196 Mich App 671 (1992)
    A plaintiff in a Freedom of Information Act action may not recover attorney fees or costs when judicial action is not necessary to force the disclosure of the requested documents.

63. **Yarbrough v Department of Corrections,** 199 Mich App 180 (1993)
    Documents compiled during an internal sexual harassment claim investigation are for the purpose of law enforcement and exempt from disclosure while the investigation is ongoing. The plaintiff prevails for the purpose of awarding costs and fees if the action is reasonably necessary to compel disclosure and it had a substantial causative effect on the delivery of the information.

64. **Patterson v Allegan County Sheriff,** 199 Mich App 638 (1993).
    A jail inmate's booking photograph is a public record subject to disclosure.

65. **Densmore, Jr v Department of Corrections,** 203 Mich App 363 (1994)
    The department need not release a record that a prisoner has already received without a showing that the first copy was not adequate.

66. **Newark Morning Ledge Co v Saginaw County Sheriff,** 204 Mich App 215 (1994)
    The location of the requested records in personnel files does not determine the application of the exemption for personnel records.

67. **Curley v Cheboygan Area Schools**
    Quatrine v Mackinaw City Public Schools, 204 Mich App 342 (1994) (Consolidated cases)
    The Freedom of Information Act does not require school districts to disclose pupil records if they have not received a parental release.

68. **Detroit News, Inc v City of Detroit,** 204 Mich App 720 (1994)
    Expense records of public officials and employees in performance of official functions are public records subject to the Freedom of Information Act. A record created by a nonpublic body can become a public record.

69. **Mackey v Department of Corrections,** 205 Mich App 330 (1994)
    A record about a prison inmate falls under the exemption for records that would jeopardize prison security if the record is requested by another inmate.

70. Hyson v Department of Corrections, 205 Mich App 422 (1994)
If documents would reveal an informer's identity or jeopardize prison security, disclosure is not required.

71. *In re* Subpoena Duces Tecum to Wayne County Prosecutor, 205 Mich App 700 (1994), lv den
The qualified privilege from disclosure for agency evaluative and deliberative documents does not extend to information in those documents of a purely factual nature. The privilege can be overcome by a showing that the requester's need outweighs the public interest promoted by the privilege.

72. Local 312 of American Federation of State, County, and Municipal Employees, AFL-CIO v City of Detroit, 207 Mich App 472 (1994), lv den
The Freedom of Information Act does not include an exemption from disclosure for documents that are sought for purposes of litigation.

73. Farrell v City of Detroit, 209 Mich App 7 (1995)
Computer records are public records that are disclosable under the Freedom of Information Act. If a person requests computer records in the form of a computer backup tape, supplying a computer printout of the information does not meet the requirements for disclosure under the Act.

74. Thomas v Board of Law Examiners, 210 Mich App 279 (1995)
The judiciary and judicial agencies are excluded from the definition of public body under the Freedom of Information Act.

75. Michigan Council of Trout Unlimited v Department of Military Affairs, 213 Mich App 203 (1995)
The circuit court has jurisdiction over a complaint against the department under the Freedom of Information Act concerning a Michigan Army National Guard matter.

76. Jackson v Eastern Michigan University Foundation, 215 Mich App 240 (1996)
A foundation funded primarily by a state university is a public body subject to the Freedom of Information Act.

77. Grebner v Clinton Charter Twp, 216 Mich App 736 (1996)
A statute must specifically authorize sale of government information to collect a fee that is greater than the incremental costs of complying with a Freedom of Information Act request under the Act.

78. Nicita v City of Detroit, 194 Mich App 657 (1992); on rem, 216 Mich App 746 (1996), lv den
The exemption for bids only applies to solicited bids and does not exempt any bid from disclosure after a bid has been selected. Business records do not quality for the exemption for records that invade personal privacy. A defendant must give more than general allegations to support the claim that records qualify for an exemption from disclosure.

79. Grebner v Oakland County Clerk, 220 Mich App 513 (1996)
The county in which the plaintiff resides is proper venue for an action under the Freedom of Information Act.

80. Schroeder v City of Detroit, 221 Mich App 364 (1997)
A police officer preemployment psychological exam is exempt from disclosure under the Freedom of Information Act's exemption for examination instruments used for public employment.

81. Oakland Prosecutor v Department of Corrections, 222 Mich App 654 (1997)
Department of corrections records of a prisoner's psychological examination are not privileged or exempt from disclosure under the Freedom of Information Act, if sought by the prosecutor for use in proceedings relating to parole of the prisoner.

82. Central Michigan University Supervisory-Technical Ass'n v Board of Trustees of Central Michigan University, 223 Mich App 727 (1997)
Court rules governing discovery in litigation do not conflict with the Freedom of Information Act so as to exempt a public body from complying with a plaintiff's request for public records. (Partially overruling Jones v Wayne Prosecutor, above).

83. The Herald Co v Ann Arbor Public Schools, 224 Mich App 266 (1997)
A memorandum containing personal information was disclosable because it addressed a legitimate public concern and the public interest in disclosing observations regarding a teacher convicted of carrying a concealed weapon outweighed privacy interests. The physician-patient privilege applies to attendance and medical records only as to statements made for the purpose of obtaining medical treatment. Records of a discussion with an attorney are disclosable since the interview was adversarial and not for the purpose of obtaining legal advice.

Opinions of the Attorney General Relating to the Freedom of Information Act

The Attorney General has issued numerous Opinions of the Attorney General (OAG) which explain various applications of the Freedom of Information Act. This list of the principal opinions issued is current through July of 1997. Copies of OAGs may be obtained by writing to:

Attorney General Frank Kelley
525 West Ottawa
Law Building, 7th Floor
Lansing, Michigan 48913

Because the Legislature has amended the Freedom of Information Act from time to time after its enactment, the Opinions of the Attorney General interpreting and applying the Act may not pertain to its current provisions. For example, the opinions listed below concerning prisoner requests for public records were rendered under the Act before the amendment that excludes prisoners from the persons entitled to make requests for public records.

1. Unless exempt from disclosure by law, records of the Brown-McNeely insurance fund are public records. Attorney General Opinion No. 5156, p. 66, March 24, 1977.
2. The office of county sheriff is subject to the provisions of the Freedom of Information Act. Attorney General Opinion No. 5419, p. 758, December 29, 1978.
3. Since certain records are protected from disclosure by the Social Welfare Act, they are exempt from disclosure under section 13(1)(d) of the Freedom of Information Act, which section exempts records that are exempted from disclosure by another statute. Attorney General Opinion No. 5436, p. 31, February 1, 1979.
4. The Insurance Commissioner is required to charge a rate for making copies of public records requested in accordance with the Freedom of Information Act. Attorney General Opinion No. 5465, p. 104, March 26, 1979.
5. The following responses to specific inquiries are found in Attorney General Opinion No. 5500, published on July 23, 1979:
   a. A government agency does not fall within the meaning of "person" for purposes of obtaining information under the Act. p. 261
   b. The Civil Service Commission is subject to the provisions of the Freedom of Information Act. p. 261
   c. Since the President's Council of State Colleges and Universities is wholly funded by state universities and colleges, it is a public body as defined by the Freedom of Information Act. p. 262
   d. A board of trustees of a county hospital may refuse to make available records of its proceedings or reports received and records compiled, if disclosure would constitute a clearly unwarranted invasion of an individual's privacy under section 13(1)(a) of the Act; or if the records disclose medical, counseling, or psychological facts or evaluations concerning a named individual under section 13(m) of the Act; or if disclosure would violate the physician-patient or psychologist-patient privilege under section 13(1)(i) of the Act. p. 263
   e. Transcripts of depositions taken in the course of an administrative hearing are subject to disclosure to a person who was not a party to the proceeding, as there is no specific exemption in section 13(1) of the Act or any other statute that exempts a deposition or a document referring to the deposition from disclosure. These documents may, however, contain statements that are exempt from disclosure and, therefore, pursuant to section 14 of the Act, where a person who is not a party to the proceeding requests a copy, it will be necessary to separate the exempt material and make only the nonexempt records available. p. 263
   f. Stenographer's notes or the tape recordings or dictaphone records of a municipal meeting used to prepare minutes are public records under the Act and must be made available to the public. p. 264
   g. Computer software developed by and in the possession of a public body is not a public record. p. 264
   h. Although a state university must release a report of the performance of its official functions in its files, regardless of who prepared it, if a report prepared by an outside agency is retained only by the private agency, it is not subject to public disclosure. p. 265
   i. Copyrighted materials are not subject to the Act. p. 266
   j. If a public body maintains a file of the names of employees it has fired or suspended over a certain designated period of time, it must disclose the list if requested. p. 268
   k. A public body may charge a fee for providing a copy of a public record. p. 268
   l. A request for data that refers to an extensive period of time and contains no other reference by which the public record may be found does not comply with the requirement of section 3 of the Act that the request describe the public record sufficiently to enable the public body to find it. p. 268

m. The five-day response provision begins the day after the public body has received the request sufficiently describing the public record. If the request does not contain sufficient information describing the public record, it may be denied on that ground. If, subsequently, additional information is provided that sufficiently describes the public record, the period within which the response must be made dates from the time that the additional information is received. p. 269

n. A school board may meet in closed session pursuant to the Open Meetings Act to consider matters which are exempt from disclosure under the Freedom of Information Act. p. 270

o. The names and addresses of students may be released unless the parent of the student or the student has informed the institution in writing that such information should not be released. p. 281

p. A law enforcement agency may refuse to release the name of a person who has been arrested, but not charged in a complaint or information, with the commission of a crime. p. 282

q. Since motor vehicle registration lists have not been declared to be confidential, they are required to be open to public inspection. p. 300

6. File photographs routinely taken of criminal suspects by law enforcement agencies are public records as defined by the Freedom of Information Act. To the extent that the release of a photograph of a person would constitute a clearly unwarranted invasion of personal privacy, a public body may refuse to permit a person to inspect or make copies of the photograph. Attorney General Opinion No. 5593, p. 468, November 14, 1979.

7. The exemption contained in section 13(1)(n) of the Freedom of Information Act for communications and notes within a public body or between public bodies of an advisory nature does not constitute an exemption for the purposes of the Open Meetings Act in view of a specific statutory provision which states that this exemption does not constitute an exemption for the purposes of section 8(h) of the Open Meetings Act. Attorney General Opinion No. 5608, p. 496, December 17, 1979.

8. The meetings of a board of education expelling a student from school must list a student's name. Unedited minutes must be furnished to the public on request in accordance with law. Attorney General Opinion No. 5632, p. 563, January 24, 1980.

9. The confidentiality mandated by the Banking Code of 1969 is not limited to facts and information furnished by state chartered banks, but applies to all facts and information received by the Financial Institutions Bureau. Such facts and information are not subject to disclosure pursuant to the Freedom of Information Act. Attorney General Opinion No. 5725, p. 842, June 23, 1980.

10. Since the Law Enforcement Information Network (LEIN) Policy Council does not receive and maintain records in the LEIN system, it does not possess copies of records and as a result has no material to furnish persons seeking such records under the Freedom of Information Act. Attorney General Opinion No. 5797, p. 1038, October 14, 1980.

11. A public body is not required to disclose both the questions and answers of a sheriff's promotional test unless the public body finds it in the public interest to disclose both the test questions and answers. Attorney General Opinion No. 5832, p. 1125, December 18, 1980.

12. Employment records disclosing salary history and employment dates are subject to disclosure under the Freedom of Information Act. Attorney General Opinion No. 6019, p. 507, December 29, 1981.

13. Copies of receipts maintained by a register of deeds for amounts paid as real estate transfer taxes fall within the mandatory exemption from disclosure established by section 11b of 1966 P.A. 134 and are exempt from disclosure under the Freedom of Information Act. Attorney General Opinion No. 6023, p. 518, January 8, 1982.

14. A township is not required to enact its own freedom of information act in order to comply with the state Freedom of Information Act. Attorney General Opinion No. 6042, p. 584, February 25, 1982.

15. A school district must furnish the records of a student upon request of another school district in which the student is enrolled as an incident to the operation of free public elementary and secondary schools required by section 2 of article VIII of the Michigan Constitution of 1963 and is precluded from withholding the records because the student or his or her parents is indebted to the school district possessing the records for fees or other charges. Attorney General Opinion No. 6064, p. 641, April 30, 1982.

16. Records of a public body showing the number of days a public employee is absent from work are not exempt from disclosure under the Freedom of Information Act. Attorney General Opinion No. 6087, p. 698, July 28, 1982.

17. A county sheriff may exempt from disclosure "jail booking records" where disclosure would constitute a clearly unwarranted invasion of privacy of a person booked into the county jail. Attorney General Opinion No. 6389, p. 374, September 24, 1986.

18. State legislators are exempt from the provisions of the Freedom of Information Act. Attorney General Opinion No. 6390, p. 375, September 26, 1986.

19. The specific exemption of information evaluating worker's compensation magistrates from disclosure under the Freedom of Information Act does not exempt the information from disclosure under any other law that may require disclosure. Attorney General Opinion No. 6504, p. 295, March 4, 1988.

20. The Freedom of Information Act does not apply to private bodies, whether or not primarily funded by or through state or local authority, because the title of the Act refers only to public bodies. Attorney General Opinion No. 6563, p. 27, January 26, 1989.
21. The personal records of the Auditor General are excluded from the Freedom of Information Act's disclosure requirements, but the general records of that office are subject to disclosure. Attorney General Opinion No. 6613, p. 299, March 14, 1990.
22. The provision of the Open Meetings Act permitting a public body to meet in closed session for a personnel evaluation is not a statute that specifically describes and exempts the evaluation from disclosure under the Freedom of Information Act so as to exempt the personnel evaluation from disclosure. Evaluations prepared by individual members of a board are subject to disclosure, if there is no intervening deliberative process between the creation of the individual evaluations and the adoption of a final evaluation by the board. Attorney General Opinion No. 6668, p. 409, November 28, 1990.
23. A public body that provides information to an indigent person and waives the fee cannot refuse to provide additional copies of identical records, but need not again waive the fee. Attorney General Opinion No. 6766, p. 52, August 19, 1993.
24. Only the department of state police must search for and disclose records on the STATUS system upon a request under the Freedom of Information Act. A participating law enforcement agency need only respond to a request under the Act for STATUS system information if it downloads the information or provides the information to the system. Attorney General Opinion No. 6820, p. 196, October 11, 1994.
25. A public body may establish a fee in advance of providing a requested record if the fee is calculated based on actual costs as specified in the Freedom of Information Act. Attorney General Opinion No. 6923, p. 224, October 23, 1996.
26. A private, voluntary, unincorporated association of lake property owners is not subject to the Freedom of Information Act. A resort owners association incorporated under 1929 PA 137 must comply with the Act. Attorney General Opinion No. 6942, p. ____, July 3, 1997.

Special Note on the Federal Freedom of Information Act

Michigan's Freedom of Information Act is a law which guarantees public access to vital public information held at the state level. There is also a federal Freedom of Information Act which opens files of the United States government to all citizens. For information on the federal Freedom of Information Act, contact the Member of Congress from your community or write to:

The Honorable Carl Levin
United States Senator
459 Russell Senate Office Building
Washington, D.C. 20510

or

The Honorable Debbie Stabenow
United States Senator
Washington, D.C. 20510

You should also know that an excellent publication entitled *Using the Freedom of Information Act: A Step by Step Guide* is made available by the American Civil Liberties Union. A copy of that guide may be obtained by sending $4.00 (check or money order) to ACLU Publications, 122 Maryland Ave., N.E., Washington, D.C. 20002; (202) 544-5380.

Michigan's Open Meetings Act

Public Act No. 267 of 1976,
as amended

The following is a general outline and digest of the Open Meetings Act. When asserting any rights under the Open Meetings Act, always refer to the specific provisions of the Act, which are republished immediately following this outline.

Basic Intent:

The basic intent of the Open Meetings Act is to strengthen the right of all Michigan citizens to know what goes on in government by requiring public bodies to conduct nearly all business at open meetings.

Key Definitions:

"Public body" means any state or local legislative or governing body, including a board, commission, committee, subcommittee, authority, or council, which is empowered by state constitution, statute, charter, ordinance, resolution, or rule to exercise governmental or proprietary authority or perform a governmental or proprietary function, or a lessee thereof performing an essential public purpose and function pursuant to the lease agreement.

"Meeting" means the convening of a public body at which a quorum is present for the purpose of deliberating toward or rendering a decision on a public policy.

"Closed session" means a meeting or part of a meeting of a public body which is closed to the public.

"Decision" means a determination, action, vote or disposition upon a motion, proposal, recommendation, resolution, order, ordinance, bill or measure on which a vote by members of a public body is required and by which a public body effectuates or formulates public policy.

Coverage:

The coverage of the new law is very broad, including the state Legislature as well as the legislative or governing bodies of all cities, villages, townships, charter townships and all county units of government.

The law also applies to:

- local and intermediate school districts;
- government boards of community colleges, state colleges and universities; and
- special boards and commissions created by law (i.e., public hospital authorities, road commissions, health boards and zoning boards, etc.).

Several public bodies are exempted from the requirements of the act when they are deliberating the merits of a case. They are the Worker's Compensation Appeal Board, the Employment Security Appeals Board, the Michigan Veterans' Trust Fund Board (or a county or district committee when the board of trustees or county or district committee is deliberating the merits of an emergent need), the Teacher Tenure Commission (when acting as a board of review), the Michigan Public Service Commission, and arbitration panels selected by the Employment Relations Commission or under other laws.

The act also does not apply to a meeting of a public body which is a social or chance gathering not designed to avoid the law.

Notification of Meetings:

The law states that within 10 days of the first meeting of a public body in each calendar or fiscal year, the body must publicly post a list stating the dates, times and places of all its regular meetings at its principal office.

If a public body does not have a principal office, the notice would be posted in the office of the county clerk for a local public body or the office of the Secretary of State for a state public body.

If there is a change in schedule, within three days of the meeting in which the change is made, the public body must post a notice stating the new dates, times and places of regular meetings.

Special and Irregular Meetings:

For special and irregular meetings, public bodies must post a notice indicating the date, time and place at least 18 hours before the meetings.

NOTE: A regular meeting of a public body, which is recessed for more than 36 hours, can only be reconvened if a notice is posted 18 hours in advance.

Emergency Meetings:

Public bodies may hold emergency sessions without a written notice or time constraints if the public health, safety or welfare is severely threatened and if two-thirds of the body's members vote to hold the emergency meeting.

Individual Notification of Meetings by Mail:

Any citizen can request that public bodies put them on a mailing list so that they are notified in advance of all meetings. Section 6 of the new law states that:

> "Upon the written request of an individual, organization, firm or corporation, and upon the requesting party's payment of a yearly fee of not more than the reasonable estimated cost for printing and postage of such notices, a public body shall send to the requesting party by first-class mail, a copy of any notice required to be posted . . .".

In addition, upon written request, public bodies are required to send free notices of meetings to newspapers, radio and television stations at the same time that they are required to post those notices.

Closed Meetings:

The law provides for closed meetings in a few specified circumstances. In order for a public body to hold a closed meeting, two-thirds of its members must vote affirmatively in a roll call. Also, the purpose for which the closed meeting is being called has to be stated in the meeting when the roll call is taken.

Closed meetings may be called without a two-thirds vote for the following reasons:

(1) considering the dismissal, suspension or disciplining of, or to hear complaints or charges brought against a public officer, employee, staff member or individual when the person requests a closed hearing;

(2) considering the dismissal, suspension or disciplining of a student of a public school when the student or guardian requests a closed hearing;

(3) strategy and negotiation sessions necessary in reaching a collective bargaining agreement when either party requests a closed hearing; and

(4) partisan caucuses of the State Legislature.

(5) for a compliance conference the department of commerce conducts under MCL §333.16231, concerning an investigation of certain licensed medical professionals.

(6) to conduct searches for a university president, until the board has narrowed the search to 5 candidates.

Other reasons a public body may hold a closed meeting are:

(1) to consider the purchase or lease of real property;

(2) to consult with its attorney about trial or settlement strategy in pending litigation, but only when an open meeting would have detrimental financial effect on the public body's position;

(3) to review the contents of an application for employment or appointment to a public office when the candidate requests the application to remain confidential. However, all interviews by a public body for employment or appointment to a public office have to be conducted in an open meeting; and

(4) to consider material exempt from discussion or disclosure by state or federal statute.

Minutes of a Meeting:

Minutes must be kept for all meetings and are required to contain:

(1) a statement of the time, date and place of the meeting;

(2) the members present as well as absent;

(3) a record of any decisions made at the meeting and a record of all roll call votes; and

(4) an explanation for the purpose(s) if the meeting is a closed session.

Except for minutes taken during a closed session, all minutes are considered public records, open for public inspection, and must be available for review as well as copying at the address designated on the public notice for the meeting.

Proposed minutes must be available for public inspection within 8 business days after a meeting. Approved minutes must be available within 5 business days after the meeting at which they were approved.

Corrections in the minutes must be made no later than the next meeting after the meeting to which the minutes refer. Corrected minutes must be available no later than the next meeting after the correction and must show both the original entry and the correction.

Explanation of Minutes of Closed Meeting:

Minutes of closed meetings must also be recorded although they are not available for public inspection and would only be disclosed if required by a civil action. These minutes may be destroyed one year and one day after approval of the minutes of the regular meeting at which the closed session was approved.

Enforcement of the Act:

Under the law, the attorney general, prosecutor or any citizen can challenge in circuit court the validity of a decision of a public body made in violation of its provisions. If a decision is made by the body in violation of the law, that decision can be invalidated by the court.

In any case where an action has been initiated to invalidate a decision of a public body, the public body may reenact the disputed decision in conformity with the act. A decision reenacted in this manner shall be effective from the date of reenactment and will not be declared invalid by reason of a deficiency in the procedure used for its initial enactment.

Penalties Under the Act:

The first time a public official intentionally breaks the law, he or she can be punished by a maximum fine of $1,000. For a second offense within the same term of office, he or she can be fined up to $2,000, jailed for a maximum of one year or both. A public official who intentionally violates the act is also personally liable for actual and exemplary damages up to $500, plus court costs and attorney fees.

OPEN MEETINGS ACT

Act 267 of 1976; Eff. Mar. 31, 1977

AN ACT to require certain meetings of certain public bodies to be open to the public; to require notice and the keeping of minutes of meetings; to provide for enforcement; to provide for invalidation of governmental decisions under certain circumstances; to provide penalties; and to repeal certain acts and parts of acts.

The People of the State of Michigan enact:

15.261 Short title; effect of act on certain charter provisions, ordinances, or resolutions.

Sec. 1. (1) This act shall be known and may be cited as the "Open meetings act".

(2) This act shall supersede all local charter provisions, ordinances, or resolutions which relate to requirements for meetings of local public bodies to be open to the public.

(3) After the effective date of this act, nothing in this act shall prohibit a public body from adopting an ordinance, resolution, rule, or charter provision which would require a greater degree of openness relative to meetings of public bodies than the standards provided for in this act.

History: 1976, Act 267, Eff. Mar. 31, 1977.

15.262 Definitions.

Sec. 2. As used in this act:

(a) "Public body" means any state or local legislative or governing body, including a board, commission, committee, subcommittee, authority, or council, which is empowered by state constitution, statute, charter, ordinance, resolution, or rule to exercise governmental or proprietary authority or perform a governmental or proprietary function, or a lessee thereof performing an essential public purpose and function pursuant to the lease agreement.

(b) "Meeting" means the convening of a public body at which a quorum is present for the purpose of deliberating toward or rendering a decision on a public policy.

(c) "Closed session" means a meeting or part of a meeting of a public body which is closed to the public.

(d) "Decision" means a determination, action, vote, or disposition upon a motion, proposal, recommendation, resolution, order, ordinance, bill, or measure on which a vote by members of a public body is required and by which a public body effectuates or formulates public policy.

History: 1976, Act 267, Eff. Mar. 31, 1977.

15.263 Meetings, decisions, and deliberations of public body; requirements; attending or addressing meeting of public body; tape-recording, videotaping, broadcasting, and telecasting proceedings; rules and regulations; exclusion from meeting; exemptions.

Sec. 3. (1) All meetings of a public body shall be open to the public and shall be held in a place available to the general public. All persons shall be permitted to attend any meeting except as otherwise provided in this act. The right of a person to attend a meeting of a public body includes the right to tape-record, to videotape, to broadcast live on radio, and to telecast live on television the proceedings of a public body at a public meeting. The exercise of this right shall not be dependent upon the prior approval of the public body. However, a public body may establish reasonable rules and regulations in order to minimize the possibility of disrupting the meeting.

(2) All decisions of a public body shall be made at a meeting open to the public.

(3) All deliberations of a public body constituting a quorum of its members shall take place at a meeting open to the public except as provided in this section and sections 7 and 8.

(4) A person shall not be required as a condition of attendance at a meeting of a public body to register or otherwise provide his or her name or other information or otherwise to fulfill a condition precedent to attendance.

(5) A person shall be permitted to address a meeting of a public body under rules established and recorded by the public body. The legislature or a house of the legislature may provide by rule that the right to address may be limited to prescribed times at hearings and committee meetings only.

(6) A person shall not be excluded from a meeting otherwise open to the public except for a breach of the peace actually committed at the meeting.

(7) This act does not apply to the following public bodies only when deliberating the merits of a case:

(a) The worker's compensation appeal board created under the worker's disability compensation act of 1969, Act No. 317 of the Public Acts of 1969, as amended, being sections 418.101 to 418.941 of the Michigan Compiled Laws.

(b) The employment security board of review created under the Michigan employment security act, Act No. 1 of the Public Acts of the Extra Session of 1936, as amended, being sections 421.1 to 421.73 of the Michigan Compiled Laws.

(c) The state tenure commission created under Act No. 4 of the Public Acts of the Extra Session of 1937, as amended, being sections 38.71 to 38.191 of the Michigan Compiled Laws, when acting as a board of review from the decision of a controlling board.

(d) An arbitrator or arbitration panel appointed by the employment relations commission under the authority given the commission by Act No. 176 of the Public Acts of 1939, as amended, being sections 423.1 to 423.30 of the Michigan Compiled Laws.

(e) An arbitration panel selected under chapter 50A of the revised judicature act of 1961, Act No. 236 of the Public Acts of 1961, being sections 600.5040 to 600.5065 of the Michigan Compiled Laws.

(f) The Michigan public service commission created under Act No. 3 of the Public Acts of 1939, being sections 460.1 to 460.8 of the Michigan Compiled Laws.

(8) This act does not apply to an association of insurers created under the insurance code of 1956, Act No. 218 of the Public Acts of 1956, being sections 500.100 to 500.8302 of the Michigan Compiled Laws, or other association or facility formed under Act No. 218 of the Public Acts of 1956 as a nonprofit organization of insurer members.

(9) This act does not apply to a committee of a public body which adopts a nonpolicymaking resolution of tribute or memorial which resolution is not adopted at a meeting.

(10) This act does not apply to a meeting which is a social or chance gathering or conference not designed to avoid this act.

(11) This act shall not apply to the Michigan veterans' trust fund board of trustees or a county or district committee created under Act No. 9 of the Public Acts of the first extra session of 1946, being sections 35.601 to 35.610 of the Michigan Compiled Laws, when the board of trustees or county or district committee is deliberating the merits of an emergent need. A decision of the board of trustees or county or district committee made under this subsection shall be reconsidered by the board or committee at its next regular or special meeting consistent with the requirements of this act. "Emergent need" means a situation which the board of trustees, by rules promulgated under the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, as amended, being sections 24.201 to 24.328 of the Michigan Compiled Laws, determines requires immediate action.

History: 1976, Act 267, Eff. Mar. 31, 1977;—Am. 1981, Act 161, Imd. Eff. Nov. 30, 1981;—Am. 1986, Act 269, Imd. Eff. Dec. 19, 1986;—Am. 1988, Act 158, Imd. Eff. June 14, 1988;—Am. 1988, Act 278, Imd. Eff. July 27, 1988.

Administrative rules: R 35.621 of the Michigan Administrative Code.

15.264 Public notice of meetings generally; contents; places of posting.

Sec. 4. The following provisions shall apply with respect to public notice of meetings:

(a) A public notice shall always contain the name of the public body to which the notice applies, its telephone number if one exists, and its address.

(b) A public notice for a public body shall always be posted at its principal office and any other locations considered appropriate by the public body. Cable television may also be utilized for purposes of posting public notice.

(c) If a public body is a part of a state department, part of the legislative or judicial branch of state government, part of an institution of higher education, or part of a political subdivision or school district, a public notice shall also be posted in the respective principal office of the state department, the institution of higher education, clerk of the house of representatives, secretary of the state senate, clerk of the supreme court, or political subdivision or school district.

(d) If a public body does not have a principal office, the required public notice for a local public body shall be posted in the office of the county clerk in which the public body serves and the required public notice for a state public body shall be posted in the office of the secretary of state.

History: 1976, Act 267, Eff. Mar. 31, 1977;—Am. 1984, Act 87, Imd. Eff. Apr. 19, 1984.

15.265 Public notice of regular meetings, change in schedule of regular meetings, rescheduled regular meetings, or special meetings; time for posting; statement of date, time, and place; applicability of subsection (4); recess or adjournment; emergency sessions; meeting in residential dwelling; notice.

Sec. 5. (1) A meeting of a public body shall not be held unless public notice is given as provided in this section by a person designated by the public body.

(2) For regular meetings of a public body, there shall be posted within 10 days after the first meeting of the public body in each calendar or fiscal year a public notice stating the dates, times, and places of its regular meetings.

(3) If there is a change in the schedule of regular meetings of a public body, there shall be posted within 3 days after the meeting at which the change is made, a public notice stating the new dates, times, and places of its regular meetings.

(4) Except as provided in this subsection or in subsection (6), for a rescheduled regular or a special meeting of a public body, a public notice stating the date, time, and place of the meeting shall be posted at least 18 hours before the meeting. The requirement of 18-hour notice shall not apply to special meetings of subcommittees of a public body or conference committees of the state legislature. A conference committee shall give a 6-hour notice. A second conference committee shall give a 1-hour notice. Notice of a conference committee meeting shall include written notice to each member of the conference committee and the majority and minority leader of each house indicating time and place of the meeting. This subsection does not apply to

a public meeting held pursuant to section 4(2) to (5) of Act No. 239 of the Public Acts of 1955, as amended, being section 200.304 of the Michigan Compiled Laws.

(5) A meeting of a public body which is recessed for more than 36 hours shall be reconvened only after public notice, which is equivalent to that required under subsection (4), has been posted. If either house of the state legislature is adjourned or recessed for less than 18 hours, the notice provisions of subsection (4) are not applicable. Nothing in this section shall bar a public body from meeting in emergency session in the event of a severe and imminent threat to the health, safety, or welfare of the public when 2/3 of the members serving on the body decide that delay would be detrimental to efforts to lessen or respond to the threat.

(6) A meeting of a public body may only take place in a residential dwelling if a nonresidential building within the boundary of the local governmental unit or school system is not available without cost to the public body. For a meeting of a public body which is held in a residential dwelling, notice of the meeting shall be published as a display advertisement in a newspaper of general circulation in the city or township in which the meeting is to be held. The notice shall be published not less than 2 days before the day on which the meeting is held, and shall state the date, time, and place of the meeting. The notice, which shall be at the bottom of the display advertisement and which shall be set off in a conspicuous manner, shall include the following language: “This meeting is open to all members of the public under Michigan’s open meetings act”.

History: 1976, Act 267, Eff. Mar. 31, 1977;—Am. 1978, Act 256, Imd. Eff. June 21, 1978;—Am. 1982, Act 134, Imd. Eff. Apr. 22, 1982;—Am. 1984, Act 167, Imd. Eff. June 29, 1984.

15.266 Providing copies of public notice on written request; fee.

Sec. 6. (1) Upon the written request of an individual, organization, firm, or corporation, and upon the requesting party’s payment of a yearly fee of not more than the reasonable estimated cost for printing and postage of such notices, a public body shall send to the requesting party by first class mail a copy of any notice required to be posted pursuant to section 5(2) to (5).

(2) Upon written request, a public body, at the same time a public notice of a meeting is posted pursuant to section 5, shall provide a copy of the public notice of that meeting to any newspaper published in the state and to any radio and television station located in the state, free of charge.

History: 1976, Act 267, Eff. Mar. 31, 1977.

15.267 Closed sessions; roll call vote; separate set of minutes.

Sec. 7. (1) A 2/3 roll call vote of members elected or appointed and serving is required to call a closed session, except for the closed sessions permitted under section 8(a), (b), (c), (g), (i), and (j). The roll call vote and the purpose or purposes for calling the closed session shall be entered into the minutes of the meeting at which the vote is taken.

(2) A separate set of minutes shall be taken by the clerk or the designated secretary of the public body at the closed session. These minutes shall be retained by the clerk of the public body, are not available to the public, and shall only be disclosed if required by a civil action filed under section 10, 11, or 13. These minutes may be destroyed 1 year and 1 day after approval of the minutes of the regular meeting at which the closed session was approved.

History: 1976, Act 267, Eff. Mar. 31, 1977;—Am. 1993, Act 81, Eff. Apr. 1, 1994;—Am. 1996, Act 464, Imd. Eff. Dec. 26, 1996.

15.268 Closed sessions; permissible purposes.

Sec. 8. A public body may meet in a closed session only for the following purposes:

(a) To consider the dismissal, suspension, or disciplining of, or to hear complaints or charges brought against, or to consider a periodic personnel evaluation of, a public officer, employee, staff member, or individual agent, if the named person requests a closed hearing. A person requesting a closed hearing may rescind the request at any time, in which case the matter at issue shall be considered after the rescission only in open sessions.

(b) To consider the dismissal, suspension, or disciplining of a student if the public body is part of the school district, intermediate school district, or institution of higher education that the student is attending, and if the student or the student’s parent or guardian requests a closed hearing.

(c) For strategy and negotiation sessions connected with the negotiation of a collective bargaining agreement if either negotiating party requests a closed hearing.

(d) To consider the purchase or lease of real property up to the time an option to purchase or lease that real property is obtained.

(e) To consult with its attorney regarding trial or settlement strategy in connection with specific pending litigation, but only if an open meeting would have a detrimental financial effect on the litigating or settlement position of the public body.

(f) To review and consider the contents of an application for employment or appointment to a public office if the candidate requests that the application remain confidential. However, except as otherwise provided in this subdivision, all interviews by a public body for employment or appointment to a public office shall be held in an open meeting pursuant to this act. This subdivision does not apply to a public office described in subdivision (j).

(g) Partisan caucuses of members of the state legislature.

(h) To consider material exempt from discussion or disclosure by state or federal statute.

(i) For a compliance conference conducted by the department of commerce under section 16231 of the public health code, Act No. 368 of the Public Acts of 1978, being section 333.16231 of the Michigan Compiled Laws, before a complaint is issued.

(j) In the process of searching for and selecting a president of an institution of higher education established under section 4, 5, or 6 of article VIII of the state constitution of 1963, to review the specific contents of an application, to conduct an interview with a candidate, or to discuss the specific qualifications of a candidate if the particular process of searching for and selecting a president of an institution of higher education meets all of the following requirements:

(*i*) The search committee in the process, appointed by the governing board, consists of at least 1 student of the institution, 1 faculty member of the institution, 1 administrator of the institution, 1 alumnus of the institution, and 1 representative of the general public. The search committee also may include 1 or more members of the governing board of the institution, but the number shall not constitute a quorum of the governing board. However, the search committee shall not be constituted in such a way that any 1 of the groups described in this subparagraph constitutes a majority of the search committee.

(*ii*) After the search committee recommends the 5 final candidates, the governing board does not take a vote on a final selection for the president until at least 30 days after the 5 final candidates have been publicly identified by the search committee.

(*iii*) The deliberations and vote of the governing board of the institution on selecting the president take place in an open session of the governing board.

History: 1976, Act 267, Eff. Mar. 31, 1977;—Am. 1984, Act 202, Imd. Eff. July 3, 1984;—Am. 1993, Act 81, Eff. Apr. 1, 1994;—Am. 1996, Act 464, Imd. Eff. Dec. 26, 1996.

15.269 Minutes generally.

Sec. 9. (1) Each public body shall keep minutes of each meeting showing the date, time, place, members present, members absent, any decisions made at a meeting open to the public, and the purpose or purposes for which a closed session is held. The minutes shall include all roll call votes taken at the meeting. Corrections in the minutes shall be made not later than the next meeting after the meeting to which the minutes refer. Corrected minutes shall be available no later than the next subsequent meeting after correction. The corrected minutes shall show both the original entry and the correction.

(2) Minutes shall be public records open to public inspection and shall be available at the address designated on posted public notices pursuant to section 4. Copies of the minutes shall be available to the public at the reasonable estimated cost for printing and copying.

(3) Proposed minutes shall be available for public inspection not more than 8 business days after the meeting to which the minutes refer. Approved minutes shall be available for public inspection not later than 5 business days after the meeting at which the minutes are approved by the public body.

History: 1976, Act 267, Eff. Mar. 31, 1977;—Am. 1982, Act 130, Imd. Eff. Apr. 20, 1982.

15.270 Decisions of public body; presumption; civil action to invalidate; jurisdiction; venue; reenactment of disputed decision.

Sec. 10. (1) Decisions of a public body shall be presumed to have been adopted in compliance with the requirements of this act. The attorney general, the prosecuting attorney of the county in which the public body serves, or any person may commence a civil action in the circuit court to challenge the validity of a decision of a public body made in violation of this act.

(2) A decision made by a public body may be invalidated if the public body has not complied with the requirements of section 3(1), (2), and (3) in making the decision or if failure to give notice in accordance with section 5 has interfered with substantial compliance with section 3(1), (2), and (3) and the court finds that the noncompliance or failure has impaired the rights of the public under this act.

(3) The circuit court shall not have jurisdiction to invalidate a decision of a public body for a violation of this act unless an action is commenced pursuant to this section within the following specified period of time:

(a) Within 60 days after the approved minutes are made available to the public by the public body except as otherwise provided in subdivision (b).

(b) If the decision involves the approval of contracts, the receipt or acceptance of bids, the making of assessments, the procedures pertaining to the issuance of bonds or other evidences of indebtedness, or the submission of a borrowing proposal to the electors, within 30 days after the approved minutes are made available to the public pursuant to that decision.

(4) Venue for an action under this section shall be any county in which a local public body serves or, if the decision of a state public body is at issue, in Ingham county.

(5) In any case where an action has been initiated to invalidate a decision of a public body on the ground that it was not taken in conformity with the requirements of this act, the public body may, without being deemed to make any admission contrary to its interest, reenact the disputed decision in conformity with this act. A decision reenacted in this manner shall be effective from the date of reenactment and shall not be declared invalid by reason of a deficiency in the procedure used for its initial enactment.

History: 1976, Act 267, Eff. Mar. 31, 1977.

15.271 Civil action to compel compliance or enjoin noncompliance; commencement; venue; security not required; commencement of action for mandamus; court costs and attorney fees.

Sec. 11. (1) If a public body is not complying with this act, the attorney general, prosecuting attorney of the county in which the public body serves, or a person may commence a civil action to compel compliance or to enjoin further noncompliance with this act.

(2) An action for injunctive relief against a local public body shall be commenced in the circuit court, and venue is proper in any county in which the public body serves. An action for an injunction against a state public body shall be commenced in the circuit court and venue is proper in any county in which the public body has its principal office, or in Ingham county. If a person commences an action for injunctive relief, that person shall not be required to post security as a condition for obtaining a preliminary injunction or a temporary restraining order.

(3) An action for mandamus against a public body under this act shall be commenced in the court of appeals.

(4) If a public body is not complying with this act, and a person commences a civil action against the public body for injunctive relief to compel compliance or to enjoin further noncompliance with the act and succeeds in obtaining relief in the action, the person shall recover court costs and actual attorney fees for the action.

History: 1976, Act 267, Eff. Mar. 31, 1977.

15.272 Violation as misdemeanor; penalty.

Sec. 12. (1) A public official who intentionally violates this act is guilty of a misdemeanor punishable by a fine of not more than $1,000.00.

(2) A public official who is convicted of intentionally violating a provision of this act for a second time within the same term shall be guilty of a misdemeanor and shall be fined not more than $2,000.00, or imprisoned for not more than 1 year, or both.

History: 1976, Act 267, Eff. Mar. 31, 1977.

15.273 Violation; liability.

Sec. 13. (1) A public official who intentionally violates this act shall be personally liable in a civil action for actual and exemplary damages of not more than $500.00 total, plus court costs and actual attorney fees to a person or group of persons bringing the action.

(2) Not more than 1 action under this section shall be brought against a public official for a single meeting. An action under this section shall be commenced within 180 days after the date of the violation which gives rise to the cause of action.

(3) An action for damages under this section may be joined with an action for injunctive or exemplary relief under section 11.

History: 1976, Act 267, Eff. Mar. 31, 1977.

15.273a Selection of president by governing board of higher education institution; violation; civil fine.

Sec. 13a. If the governing board of an institution of higher education established under section 4, 5, or 6 of article VIII of the state constitution of 1963 violates this act with respect to the process of selecting a president of the institution at any time after the recommendation of final candidates to the governing board, as described in section 8(j), the institution is responsible for the payment of a civil fine of not more than $500,000.00. This civil fine is in addition to any other remedy or penalty under this act. To the extent possible, any payment of fines imposed under this section shall be paid from funds allocated by the institution of higher education to pay for the travel and expenses of the members of the governing board.

History: Add. 1996, Act 464, Imd. Eff. Dec. 26, 1996.

15.274 Repeal of §§ 15.251 to 15.253.

Sec. 14. Act No. 261 of the Public Acts of 1968, being sections 15.251 to 15.253 of the Compiled Laws of 1970, is repealed.

History: 1976, Act 267, Eff. Mar. 31, 1977.

15.275 Effective date.

Sec. 15. This act shall take effect January 1, 1977.

History: 1976, Act 267, Eff. Mar. 31, 1977.

Court Decisions on the Open Meetings Act

Michigan courts have rendered decisions which, when published, become precedent and are the law of the state until changed by a higher court or by the Legislature. The following list contains the principal published decisions of Michigan's appellate courts and is current through July 1997. Court decisions may be obtained in law libraries or from the courts of record at a nominal fee.

Because the Legislature has amended the Open Meetings Act after its enactment, the cases interpreting and applying the Act may not reflect the current law. For example, the cases listed below concerning university presidential searches were decided under the Act before the effective date of the amendment that permits closed meetings at early stages of university presidential searches.

1. **In re "Sunshine Law" 1976 PA 267,** 400 Mich 660 (1977)

   Section of the Open Meetings Act that retains the requirement that the Act applies "to a court while exercising rulemaking authority and while deliberating or deciding upon the issuance of an administrative order" is unconstitutional as intrusion into exercise of constitutionally derived judicial powers.

2. **Midland Township v Michigan State Boundary Commission,** 401 Mich 641 (1977), reh den, app dis 435 US 1004

   An annexation proceeding is not a "contested case" even though the Boundary Commission must hold a public hearing and representatives of a city, village, or township and other persons have a right to be heard at such a hearing before the commission makes its determination. Affording the public an opportunity to be heard on an annexation decision does not create a substantive personal right in the decision which requires procedural protection under the Administrative Procedures Act.

3. **Hubka v Department of Corrections,** 197 Mich App 117 (1992); rev in part, 443 Mich 864 (1993)

   The 60-day period for bringing action to invalidate a decision taken at a meeting closed in violation of the Open Meetings Act did not apply to divest circuit court of jurisdiction to determine that the meeting violated the Act and to require disclosure of the meeting minutes.

4. **Booth Newspapers, Inc v University of Michigan Board of Regents,** 192 Mich App 574 (1992); rev in part 444 Mich 211 (1993)

   A university board of regents must comply with Open Meetings Act requirements in the process of selecting a university president, when conducting interviews, undertaking deliberations, and making decisions about candidates, whether or not a vote is taken.

5. **Wexford County Prosecuting Attorney v Pranger,** 83 Mich App 197 (1978)

   Closed session exceptions of the Open Meetings Act are to be construed strictly to limit the situations that are not open to the public.

6. **Esperance v Chesterfield Township,** 89 Mich App 456 (1979)

   Those seeking to have decision of public body invalidated under the Open Meetings Act must allege not only that the public body failed to comply with the Act, but also that such failure impaired rights of the public.

7. **Booth Newspapers, Inc v Regents of University of Michigan,** 93 Mich App 100 (1979)

   Written opinion of counsel to university board of regents was "material" that need not have been disclosed under the Freedom of Information Act, and, thus, was exempt from open meeting requirement of the Open Meetings Act.

8. **Southland Corporation v Liquor Control Commission,** 95 Mich App 466 (1980)

   Plaintiff's claim that committee had violated the Open Meetings Act because certain committee members' votes were counted although they had not been present for deliberations or for the final vote on the rules was sufficient to withstand a motion for summary judgment for failure to state a claim.

9. **Regents of University of Michigan v Washtenaw County Coalition Against Apartheid,** 97 Mich App 532 (1980), lv den

   The Open Meetings Act permits public body to exclude those who breach the peace at meeting by reconvening at new location, accompanied by notice to general public of new time and location.

10. **Arnold Transit Company v City of Mackinac Island,** 99 Mich App 266 (1980), aff'd 415 Mich 362 (1982); reh den; app dis 464 US 804; reh den

    Rigid adherence to procedural mandate of the Open Meetings Act will not be required if it is clear that a substantial compliance provides realistic fulfillment of the purpose for which the mandate was included in the statute. Public bodies cannot call themselves "committees" to avoid the requirements of the Act.

11. **Coldwater Township v City of Coldwater,** 101 Mich App 322 (1980)

    The State Boundary Commission must notify interested parties of the public hearing on an annexation petition by publication at least seven days before date of hearing, by sending notification by certified mail to clerks of the affected townships, and by giving notice in the manner required by the Open Meetings Act.

12. **Felice v Cheboygan County Zoning Commission,** 103 Mich App 742 (1981)

    Where plaintiff stipulated to dismiss the claim for injunctive relief and abandoned invalidation action, obviating the necessity for the court to make a finding and order such relief, plaintiff has not succeeded in obtaining "relief in the action" so as to allow award of costs and attorney fees under the Open Meetings Act.

13. **Rochester Board of Education v Michigan State Board of Education,** 104 Mich App 569 (1981)

    Where the State Board of Education provided parties with the full panoply of procedural safeguards guaranteed by the Administrative Procedures Act in contested cases, it should not allow parties or nonparties to address it concerning the merits of a contested case at a public meeting, because the Administrative Procedures Act requires that contested cases be decided solely on record evidence.

14. **Local 79 v Lapeer County Hospital,** 111 Mich App 441 (1981)

    The circuit court is the proper forum to seek relief for a violation of the Open Meetings Act.

15. **Ridenour v Dearborn Board of Education,** 111 Mich App 798 (1981)

    The evaluation of the performance of school administrators is not an action that is exempt from the requirements of the Open Meetings Act.

16. **Palladium Publishing Company v River Valley School District,** 115 Mich App 490 (1982), lv den

    The Open Meetings Act requires the naming of a suspended or expelled student at the meeting and in the board's minutes when a student is expelled or suspended by action of a board of education.

17. **Perlongo v Iron River TV,** 122 Mich App 433 (1983)

    The Open Meetings Act does not apply to a nonstock, nonprofit corporation that was created independent of state or local authority and without the assistance of public funds.

18. **Menominee County Taxpayers v Menominee Clerk,** 139 Mich App 814 (1984), lv den

    When the county clerk, county prosecutor, and probate judge, come together to appoint a county treasurer, pursuant to statute, they constituted a "public body" for purposes of the Open Meetings Act.

19. **Rasch v East Jordan,** 141 Mich App 336 (1985)

    An action under section 13 of the Open Meetings Act must be commenced within 180 days after the date of the violation. Where the 180 days have elapsed, the action is barred.

20. **Goode v DSS,** 143 Mich App 756 (1985), lv den

    A hearing conducted by teleconference over speaker phones where all interested persons are allowed to attend, conforms with the requirements of the Open Meetings Act. Also, the release of a written opinion to the public rather than calling a second hearing to announce the same, would meet the requirements of the Act.

21. **Cape v Howell Board of Education,** 145 Mich App 459 (1985)

    In extending the time period of an option contract, the Board of Education made a "decision" requiring compliance with the Open Meetings Act. Also, the time period for commencing an action under the Open Meetings Act begins to run when the minutes of the meeting in question are approved and made available to the public.

22. **Crowley v Governor,** 167 Mich App 539 (1988), lv den

    Legislative leadership committee does not deliberate on or make decisions regarding legislation or public policy and is not subject to the Open Meetings Act.

23. **Booth Newspapers v Wyoming,** 168 Mich App 459 (1988)

    Public body may not hold closed sessions with attorney under the attorney-client privilege, if the discussion is of nonlegal matters.

24. **Detroit News v Detroit,** 185 Mich App 296 (1990), lv den

    Burden of establishing that a meeting of a public body is exempt from the Open Meetings Act is on the public body.

25. St. Aubin v Ishpeming City Council, 197 Mich App 100 (1992)

An informal canvas by one member of a public body of all the members of the body is not a meeting for purposes of the Open Meetings Act.

26. Jackson v Eastern Michigan University Foundation, 215 Mich App 240 (1996)

A foundation empowered to exercise delegated authority by resolution of a university board of regents is a public body subject to the Open Meetings Act.

27. Meyers v Patchkowski, 216 Mich App 513 (1996)

The public body is a necessary party to an action seeking injunctive relief for noncompliance with the Open Meetings Act.

28. Wilkins v Gagliardi, 219 Mich App 260 (1996)

A person must allege facts that show impairment of public rights when seeking to invalidate a decision made at a legislative meeting held in violation of the Open Meetings Act. The speech or debate clause of the Michigan Constitution of 1963 provides immunity for the chair of a legislative committee in a suit alleging violation of the Act.

29. Federated Publications, Inc v Board of Trustees of Michigan State University, 221 Mich App 103 (1997)

Universities' constitutional autonomy does not preclude application of the Open Meetings Act to university presidential searches.

30. Moore v Fennville Public Schools Board of Education, 223 Mich App 196 (1997)

A public body may arrive at a conclusion as to negotiating strategy at a closed meeting. That conclusion is not a "decision" that the Open Meetings Act requires to be made at an open meeting.

Opinions of the Attorney General Relating to the Open Meetings Act

The Attorney General has issued numerous Opinions of the Attorney General (OAG) which explain various applications of the Open Meetings Act. This list of the principal opinions issued is current through July 1997. Copies of OAGs may be obtained by writing to:

Attorney General Frank Kelley
525 West Ottawa
Law Building, 7th Floor
Lansing, Michigan 48913

Because the Legislature has amended the Open Meetings Act after its enactment, the Opinions of the Attorney General interpreting and applying the Act may not pertain to its current provisions. For example, opinions concerning university presidential searches were rendered under the Act before the effective date of the amendment that permits closed meetings at early stages of university presidential searches.

1. The following responses to specific inquiries are from Attorney General Opinion No. 5183, dated March 8, 1977:
   a. The Open Meetings Act provisions apply to Michigan Employment Security Commission referee hearings. p. 29
   b. The Michigan Traffic Safety Information Council is a "public body" within the definition of the Open Meetings Act. p. 29
   c. The Michigan Environmental Review Board and the Interdepartmental Environmental Review Committee are subject to the provisions of the Open Meetings Act. p. 29
   d. The Blind Stand Operators Advisory Committee is not controlled by the provisions of the Open Meetings Act. p. 30
   e. Hearings under the Teachers Tenure Act fall within the provisions of the closed meeting exceptions provided for in section 8(a) of the Open Meetings Act. p. 32
   f. Section 8(b) of the Act allows the school district to consider dismissal, suspension, or disciplining of a student in closed session when requested by the student or the student's parent or guardian. p. 32
   g. The Boundary Commission is prohibited from adopting and approving findings of fact and order through a conference call meeting under the provisions of the Open Meetings Act. p. 32
   h. Where a large organized group knows in advance that it will attend a public meeting and the regular meeting place of the public body is insufficient to contain the number of persons wishing to attend the meeting, the group is required to give advance notice to the public body. However, the public body is under a duty to exercise sincere efforts to accommodate the number of people who may reasonably be expected to attend. p. 33
   i. To facilitate the orderly conduct of the meeting and communication between persons who wish to address the public body, it is reasonable to require a person to identify himself or herself and give advance indication that he or she wishes to speak. Such a condition may be adopted as a rule in accordance with section 3(5)of the Act. p. 34
   j. Organizations are not required to establish a regular meeting schedule as a result of the Open Meetings Act. p. 37
   k. The provisions of section 8(f) of the Act apply to employment interviews for the position of school superintendent with the local K-12 school boards. p. 41
   l. Where an ex officio member of a committee is authorized to appoint or designate another person to represent him or her at a meeting, the designee is the proper attendant at the meeting and it is his or her presence or absence that should be noted in the minutes as required in section 9(1) of the Act. p. 43
2. A single member officer, whether serving in an adjudicative capacity or rendering a policy decision, is not subject to the requirement of the Open Meetings Act. Attorney General Opinion No. 5183-A, p. 97, April 18, 1977.
3. The provision in the Open Meetings Act which defines a public body so as to include a lessee performing an essential public purpose is unconstitutional because the title of the Act does not refer to organizations other than "public bodies". Attorney General Opinion No. 5207, p. 157, June 24, 1977.
4. A board of education may not: (a) deny a person the right to address a meeting of the board on the sole ground that that person is a representative of an organization of board employees; (b) limit the subject and issues that certain persons may cover in the course of addressing the meeting; (c) require persons to exhaust administrative remedies before addressing issues at a public meeting; nor (d) prohibit a person from addressing it on grounds the matter to be addressed is or might be the subject of a closed meeting. Attorney General Opinion No. 5218, p. 224, September 13, 1977.
5. A legislative committee is included within the purview of the Open Meetings Act and may not engage in the practice of "round-robining" by which votes on a measure are obtained by a member of the committee going to other members and obtaining their signatures on a tally sheet. Attorney General Opinion No. 5222, p. 216, September 1, 1977.

6. The Huron River Watershed Council established pursuant to the local river management act is a public body performing a governmental function and must comply with the provisions of the Open Meetings Act. Attorney General Opinion No. 5256, p. 329, January 23, 1978.
7. The Open Meetings Act prohibits a voting procedure at a public meeting which prevents citizens from knowing how members of the public body have voted. Attorney General Opinion No. 5262, p. 338, January 31, 1978.
8. Meetings of the tax boards of review must comply with the requirements of the Open Meetings Act. Attorney General Opinion No. 5281, p. 377, March 8, 1978.
9. A public body may not hold a closed session for the purpose of discussing the disposition of real property by sale or lease. Attorney General Opinion No. 5284, p. 389, March 21, 1978.
10. Section 8(c) of the Open Meetings Act authorizes a city council to meet in closed session to discuss strategy connected with collective bargaining agreements. Attorney General Opinion No. 5286, p. 403, March 31, 1978.
11. A political party caucus at which a quorum of the members of the board of county commissioners are present to discuss business that will arise at a meeting of the board is subject to the Open Meetings Act. Attorney General Opinion No. 5298, p. 434, May 2, 1978.
12. Meetings of legislative joint conference committees are subject to the Open Meetings Act. Attorney General Opinion No. 5300, p. 451, May 22, 1978.
13. Every decision of the Michigan Public Service Commission must be discussed at an open meeting except those specifications exempted under section 8 of the Open Meetings Act, discussions of matters involving section 11 of the Motor Carriers Act and accident reports and certain trade secrets pursuant to the Gas Safety Standards Act. Attorney General Opinion No. 5310, p. 465, June 7, 1978.
14. A public body may adopt a rule imposing time limits during which a member of the public may address the public body. Attorney General Opinion No. 5332, p. 536, July 13, 1978.
15. A public body may adopt a rule prohibiting a personal attack on an officer, employee, or board member only if the personal attack is totally unrelated to the manner in which the officer, employee, or board member performs his or her duties. Attorney General Opinion No. 5332, p. 536, July 13, 1978.
16. A public body may meet in a closed session to vote upon the rejection of an owner's offer to sell at a designated price. Attorney General Opinion No. 5364, p. 606, September 7, 1978.
17. A public body may meet in a closed session to direct its agents as to their limits in negotiating for the purchase of real property. Attorney General Opinion No. 5364, p. 606, September 7, 1978.
18. The designated electors of constituent school districts may elect members of an intermediate school board by secret ballot. Attorney General Opinion No. 5412, p. 737, December 20, 1978.
19. The exemption from the Open Meetings Act which permits members of a public body constituting a quorum to attend a conference permits members of the public body to listen to the concerns of members of the public or of persons with special knowledge in the presence of other interested persons. It does not permit public bodies to conduct closed sessions to listen to presentations by department heads and administrators of the public body. Attorney General Opinion No. 5433, p. 29, January 31, 1979.
20. Youth Parole and Review Board proceedings are subject to the Open Meetings Act. Part of the Board proceedings may be closed pursuant to section 8(h) of the Open Meetings Act, however, when confidential records are discussed. Attorney General Opinion No. 5436, p. 31, February 1, 1979.
21. When members of a public body constituting a quorum are unaware that they are being brought together by another, this is a "chance gathering" that is exempt from the provisions of the Open Meetings Act and there is no violation of the Act as long as matters of public policy are not discussed by the members with each other at that meeting. Attorney General Opinion No. 5437, p. 36, February 2, 1979.
22. A city council must hold an open meeting pursuant to the Open Meetings Act when it wishes to discuss the course of action to be taken in resolving a dispute between the police department and the city council. Attorney General Opinion No. 5444, p. 55, February 21, 1979.
23. A public body may not take final action on any matter during a closed meeting. Attorney General Opinion No. 5445, p. 57, February 22, 1979.
24. The following responses to specific inquiries are from Attorney General Opinion No. 5500, dated July 23, 1979:
    a. Access to notes of a public meeting may not be denied solely because the notes may be revised. p. 264
    b. School boards may meet in closed sessions to consider matters exempt from disclosure under the Freedom of Information Act. p. 270

25. The promotion and tenure committee and the budget committee of a state university are advisory boards and are therefore not subject to the provisions of the Open Meetings Act. Attorney General Opinion No. 5505, p. 221, July 3, 1979.

26. When a public body convenes in a closed session in accordance with section 8 of the Open Meetings Act, it may request its officers, employees, or certain private citizens to meet with it in closed session to assist in its consideration. Attorney General Opinion No. 5532, p. 324, August 7, 1979.

27. Although a public meeting of a public body need not be held within the boundaries of the governmental unit, such a meeting may not be held at a distance from the governmental unit that would make it difficult or inconvenient for citizens residing in the area served by the public body to attend. Attorney General Opinion No. 5560, p. 386, September 13, 1979.

28. The Open Meetings Act does not permit a public body to sequester witnesses at a public meeting convened to consider a contract grievance. Attorney General Opinion No. 5595, p. 474, November 20, 1979.

29. A public body may not meet in closed session to consider an evaluation of its officers and employees. Attorney General Opinion No. 5608, p. 496, December 17, 1979.

30. A public body may not exclude a member of the public from its public meeting for failing to stand for the pledge of allegiance. Attorney General Opinion No. 5614, p. 519, December 21, 1979.

31. Where a larger than anticipated group wishes to attend a public meeting, the Open Meetings Act does not require the public body to adjourn the meeting to a larger meeting room, but the public body should exercise reasonable efforts to accommodate interested members of the public, including reconvening the meeting in a larger room where practicable. Attorney General Opinion No. 5614, p. 519, December 31, 1979.

32. The meetings of a board of education expelling a student from school for repeated violations of rules and regulations must list a student's name. Unedited minutes must be furnished to the public on request in accordance with law. Attorney General Opinion No. 5632, p. 563, January 24, 1980.

33. The practice of the Criminal Justice Commission providing that the members of the public may address the commission at the end of its official business is consistent with the Open Meetings Act. Attorney General Opinion No. 5716, p. 812, June 4, 1980.

34. The minimum 18-hour notice required for a special meeting of a public body is not fulfilled if the public is denied access to the notice of the meeting for any part of the 18 hours. The requirement may be met by posting a notice at least 18 hours in advance of the special meeting at the main entrance of the building that houses the principal office of the public body. Attorney General Opinion No. 5724, p. 840, June 20, 1980.

35. The state Board of Ethics is subject to the Open Meetings Act. Attorney General Opinion No. 5760, p. 935, August 26, 1980.

36. When either a committee comprising a quorum of a public body or subcommittees of a public body that constructively constitute a quorum of the public body collectively deliberate on or render decisions on the appointment of a person to fill a vacancy in a public office in a closed session, failure to open such meetings to the public is a violation of the Open Meetings Act. Attorney General Opinion No. 5788, p. 1015, September 23, 1980.

37. The public does not have any right to ask questions during an interview of a candidate for public employment held at an open meeting. Minutes of a closed session of a public body may not be released to the public without a court order. Attorney General Opinion No. 6019, p. 507, December 29, 1981.

38. A resident alien who has not yet become a United States citizen may not vote at the annual meeting of a township. Attorney General Opinion No. 6031, p. 535, January 22, 1982.

39. A township is not required to enact its own freedom of information act in order to comply with the provisions of the state Freedom of Information Act. Attorney General Opinion No. 6042, p. 584, February 25, 1982.

40. The legislature has not required student advisory committees making recommendations to state university officers to be subject to the provisions of the Open Meetings Act. Attorney General Opinion No. 6053, p. 616, April 13, 1982.

41. A public body may, without complying with the Open Meetings Act, attend a conference or informational gathering designed to focus upon issues of general concern and intended primarily to provide training and/or background information, provided that a public body may not, without complying with the Open Meetings Act, engage in discussions or deliberations during such a meeting or otherwise enter into the process of addressing or resolving issues of public policy. Attorney General Opinion No. 6074, p. 662, June 11, 1982.

42. Members of a township's volunteer fire department, who are not authorized to make final decisions on applications for membership or upon matters of public policy generally, do not constitute a "public body" subject to the Open Meetings Act. Attorney General Opinion No. 6077, p. 676, June 16, 1982.

43. A board of education of a school district may not conduct the public business of evaluation of the performance of the superintendent at private meetings of two or more committees of the board, each composed of less than a quorum of the members of the board and including the president of the board to provide continuity in the evaluation deliberations, from which the members of the public are excluded. Attorney General Opinion No. 6091, p. 711, August 18, 1982.

44. A bargaining committee authorized by a board of education to conduct negotiations with school officers and employees, may conduct such negotiations in closed sessions. Attorney General Opinion No. 6172, p. 161, July 20, 1983.

45. A public body is required to furnish a copy of its posted notice of meeting to Michigan newspapers, television stations, and radio stations, when a written request for such a copy is made. It should be sent by first class mail, postage paid, free of charge. Attorney General Opinion No. 6305, p. 115, July 18, 1985.

46. Hearings before the Michigan High School Athletic Association's executive committee or representative council are not subject to the provisions of the Open Meetings Act. Attorney General Opinion No. 6352, p. 252, April 8, 1986.

47. A public officer, elected or appointed, may request that a meeting be closed where allowed by the Open Meetings Act. The minutes of a closed session held pursuant to section 8 of the Act, may only be disclosed upon order of a court in accordance with the Act. Attorney General Opinion No. 6353, p. 255, April 11, 1986.

48. The following responses to specific inquiries are found in Attorney General Opinion No. 6358, p. 269, April 29, 1986:

    a. A public body conducting a lawful closed session meeting under the Open Meetings Act, may selectively include certain individuals while excluding others such as elected municipal officers, department heads, and other officers and individuals who are not members of the public body. p. 269

    b. A public body conducting a lawful closed session meeting with its attorney concerning pending litigation may exclude co-parties to the litigation from attending. p.270

    c. A public body may, if necessary, exclude an unauthorized individual who intrudes upon a closed session by either: (i) having the individual forcibly removed; or (ii) by recessing and moving the session to a new location. p. 271

    d. A public body that recesses and moves a meeting to a new location need not satisfy the 18-hour notice requirement if done within 36 hours. p. 272

49. A public body may meet in closed session in order to approve the minutes of a closed session. Attorney General Opinion No. 6365, p. 288, June 2, 1986.

50. A senior citizen organization that is a private, nonprofit corporation is not subject to the provisions of the Open Meetings Act. Attorney General Opinion No. 6386, p. 369, September 16, 1986.

51. The governing board of the Senate Fiscal Agency is a "public body" and is subject to the provisions of the Open Meetings Act. Attorney General Opinion No. 6487, p. 242, January 14, 1988.

52. A teacher may close a disciplinary hearing if cameras will be present even if the teacher had not originally requested a closed hearing. A public body may impose reasonable restrictions on the filming of a public meeting. Attorney General Opinion No. 6499, p. 280, February 24, 1988.

53. If a joint meeting of two committees of a public board is held and a quorum of the board results, the Open Meetings Act applies to that meeting. If some of the members of a public board serve on a second public board and other members of the first board attend a meeting of the second board as observers and a quorum of the first board results, no meeting of the first board is held requiring notice. Attorney General Opinion No. 6636, p. 253, October 23, 1989.

54. Hunting area control committees are subject to the Open Meetings Act. Attorney General Opinion No. 6652, p. 359, July 25, 1990.

55. A regular meeting of a public body may recess to hold committee meetings for which no notice has been posted only if all of these conditions exist: 1) a quorum of the public body will not be present, 2) the committees are of an advisory nature, and 3) the committees will not deliberate on a common topic leading to a decision of the public body. Attorney General Opinion No. 6752, p. 18, March 10, 1993.

56. A public officer's conviction of a violation of the Open Meetings Act does not automatically create a vacancy in the office. Attorney General Opinion No. 6800, p. 139, May 11, 1994.

57. A public body must make its decisions at meetings that are open to the public. The public body must take minutes of closed sessions that include the place, date, and time of the meeting, the members present and absent, and the purposes of the session. Attorney General Opinion No. 6817, p. 190, September 14, 1994.

58. The Open Meetings Act requires the notice of a special meeting to state the general nature of the business to be conducted. Stating that the purpose of the closed meeting is to discuss an issue does not preclude the body from acting on the matter. Attorney General Opinion No. 6821, p. 199, October 18, 1994.

59. The Open Meetings Act does not preclude an intermediate school district from allowing representatives of member districts to attend a meeting via interactive television. Attorney General Opinion No. 6835, p. 10, February 13, 1995.

60. The Open Meetings Act does not require an advisory board formed by a board of education to recommend athletic policy to open its meetings to the public. Attorney General Opinion No. 6935, p. ____, April 2, 1997.

61. A private, voluntary, unincorporated association of lake property owners is not subject to the Open Meetings Act. A resort owners association incorporated under 1929 PA 137 must comply with the Act. Attorney General Opinion No. 6942, p. ____, July 3, 1997.

— Notes —

MICHIGAN PLANNING ENABLING ACT
Act 33 of 2008

AN ACT to codify the laws regarding and to provide for county, township, city, and village planning; to provide for the creation, organization, powers, and duties of local planning commissions; to provide for the powers and duties of certain state and local governmental officers and agencies; to provide for the regulation and subdivision of land; and to repeal acts and parts of acts.

History: 2008, Act 33, Eff. Sept. 1, 2008.

The People of the State of Michigan enact:

ARTICLE I.
GENERAL PROVISIONS

125.3801 Short title.

Sec. 1. This act shall be known and may be cited as the "Michigan planning enabling act".

History: 2008, Act 33, Eff. Sept. 1, 2008.

125.3803 Definitions.

Sec. 3. As used in this act:

(a) "Chief administrative official" means the manager or other highest nonelected administrative official of a city or village.

(b) "Chief elected official" means the mayor of a city, the president of a village, the supervisor of a township, or, subject to section 5, the chairperson of the county board of commissioners of a county.

(c) "County board of commissioners", subject to section 5, means the elected county board of commissioners, except that, as used in sections 39 and 41, county board of commissioners means 1 of the following:

(*i*) A committee of the county board of commissioners, if the county board of commissioners delegates its powers and duties under this act to the committee.

(*ii*) The regional planning commission for the region in which the county is located, if the county board of commissioners delegates its powers and duties under this act to the regional planning commission.

(d) "Ex officio member", in reference to a planning commission, means a member, with full voting rights unless otherwise provided by charter, who serves on the planning commission by virtue of holding another office, for the term of that other office.

(e) "Legislative body" means the county board of commissioners of a county, the board of trustees of a township, or the council or other elected governing body of a city or village.

(f) "Local unit of government" or "local unit" means a county or municipality.

(g) "Master plan" means either of the following:

(*i*) As provided in section 81(1), any plan adopted or amended before September 1, 2008 under a planning act repealed under section 85.

(*ii*) Any plan adopted or amended under this act. This includes, but is not limited to, a plan prepared by a planning commission authorized by this act and used to satisfy the requirement of section 203(1) of the Michigan zoning enabling act, 2006 PA 110, MCL 125.3203, regardless of whether it is entitled a master plan, basic plan, county plan, development plan, guide plan, land use plan, municipal plan, township plan, plan, or any other term.

(h) "Municipality" or "municipal" means or refers to a city, village, or township.

(i) "Planning commission" means either of the following, as applicable:

(*i*) A planning commission created pursuant to section 11(1).

(*ii*) A planning commission retained pursuant to section 81(2) or (3), subject to the limitations on the application of this act provided in section 81(2) and (3).

(j) "Planning jurisdiction" for a county, city, or village refers to the areas encompassed by the legal boundaries of that county, city, or village, subject to section 31(1). Planning jurisdiction for a township refers to the areas encompassed by the legal boundaries of that township outside of the areas of incorporated villages and cities, subject to section 31(1).

(k) "Population" means the population according to the most recent federal decennial census or according to a special census conducted under section 7 of the Glenn Steil state revenue sharing act of 1971, 1971 PA 140, MCL 141.907, whichever is the more recent.

(*l*) "Public transportation agency" means a governmental entity that operates or is authorized to operate

intercity or local commuter passenger rail service in this state or a public transit authority created under 1 of the following acts:

(*i*) The metropolitan transportation authorities act of 1967, 1967 PA 204, MCL 124.401 to 124.426.

(*ii*) The public transportation authority act, 1986 PA 196, MCL 124.451 to 124.479.

(*iii*) 1963 PA 55, MCL 124.351 to 124.359.

(*iv*) The home rule city act, 1909 PA 279, MCL 117.1 to 117.38.

(*v*) The revenue bond act of 1933, 1933 PA 94, MCL 141.101 to 141.140.

(*vi*) The charter township act, 1947 PA 359, MCL 42.1 to 42.34.

(*vii*) The urban cooperation act of 1967, 1967 (Ex Sess) PA 7, MCL 124.501 to 124.512.

(m) "Public transportation facility" means that term as defined in section 2 of the metropolitan transportation authorities act of 1967, 1967 PA 204, MCL 124.402.

(n) "Street" means a street, avenue, boulevard, highway, road, lane, alley, viaduct, or other public way intended for use by motor vehicles, bicycles, pedestrians, and other legal users.

History: 2008, Act 33, Eff. Sept. 1, 2008;—Am. 2010, Act 134, Imd. Eff. Aug. 2, 2010;—Am. 2010, Act 306, Imd. Eff. Dec. 17, 2010.

125.3805 Assignment of power or duty to county officer or body.

Sec. 5. The assignment of a power or duty under this act to a county officer or body is subject to 1966 PA 293, MCL 45.501 to 45.521, or 1973 PA 139, MCL 45.551 to 45.573, in a county organized under 1 of those acts.

History: 2008, Act 33, Eff. Sept. 1, 2008.

125.3807 Master plan; adoption, amendment, and implementation by local government; purpose.

Sec. 7. (1) A local unit of government may adopt, amend, and implement a master plan as provided in this act.

(2) The general purpose of a master plan is to guide and accomplish, in the planning jurisdiction and its environs, development that satisfies all of the following criteria:

(a) Is coordinated, adjusted, harmonious, efficient, and economical.

(b) Considers the character of the planning jurisdiction and its suitability for particular uses, judged in terms of such factors as trends in land and population development.

(c) Will, in accordance with present and future needs, best promote public health, safety, morals, order, convenience, prosperity, and general welfare.

(d) Includes, among other things, promotion of or adequate provision for 1 or more of the following:

(*i*) A system of transportation to lessen congestion on streets and provide for safe and efficient movement of people and goods by motor vehicles, bicycles, pedestrians, and other legal users.

(*ii*) Safety from fire and other dangers.

(*iii*) Light and air.

(*iv*) Healthful and convenient distribution of population.

(*v*) Good civic design and arrangement and wise and efficient expenditure of public funds.

(*vi*) Public utilities such as sewage disposal and water supply and other public improvements.

(*vii*) Recreation.

(*viii*) The use of resources in accordance with their character and adaptability.

History: 2008, Act 33, Eff. Sept. 1, 2008;—Am. 2010, Act 134, Imd. Eff. Aug. 2, 2010.

ARTICLE II.
PLANNING COMMISSION CREATION AND ADMINISTRATION

125.3811 Planning commission; creation; adoption of ordinance by local unit of government; notice required; exception; adoption of charter provision by city or home rule village; effect of repeal of planning act; continued exercise or transfer of powers and duties of zoning board or zoning commission.

Sec. 11. (1) A local unit of government may adopt an ordinance creating a planning commission with powers and duties provided in this act. The planning commission of a local unit of government shall be officially called "the planning commission", even if a charter, ordinance, or resolution uses a different name such as "plan board" or "planning board".

(2) Within 14 days after a local unit of government adopts an ordinance under subsection (1) creating a planning commission, the clerk of the local unit shall transmit notice of the adoption to the planning

commission of the county where the local unit is located. However, if there is not a county planning commission or if the local unit adopting the ordinance is a county, notice shall be transmitted to the regional planning commission engaged in planning for the region within which the local unit is located. Notice under this subsection is not required when a planning commission created before the effective date of this act continues in existence under this act, but is required when an ordinance governing or creating a planning commission is amended or superseded under section 81(2)(b) or (3)(b).

(3) If, after the effective date of this act, a city or home rule village adopts a charter provision providing for a planning commission, the charter provision shall be implemented by an ordinance that conforms to this act. Section 81(2) provides for the continuation of a planning commission created by a charter provision adopted before the effective date of this act.

(4) Section 81(3) provides for the continuation of a planning commission created under a planning act repealed under section 85.

(5) Section 83 provides for the continued exercise by a planning commission, or the transfer to a planning commission, of the powers and duties of a zoning board or zoning commission.

History: 2008, Act 33, Eff. Sept. 1, 2008.

125.3813 Planning commission; effect of township ordinance; number of days; petition requesting submission of ordinance to electors; filing; petition subject to Michigan election law; violation.

Sec. 13. (1) Subject to subsection (2), a township ordinance creating a planning commission under this act shall take effect 63 days after the ordinance is published by the township board in a newspaper having general circulation in the township.

(2) Subject to subsection (3), before a township ordinance creating a planning commission takes effect, a petition may be filed with the township clerk requesting the submission of the ordinance to the electors residing in the unincorporated portion of the township for their approval or rejection. The petition shall be signed by a number of qualified and registered electors residing in the unincorporated portion of the township equal to not less than 8% of the total vote cast for all candidates for governor, at the last preceding general election at which a governor was elected. If such a petition is filed, the ordinance shall not take effect until approved by a majority of the electors residing in the unincorporated portion of the township voting thereon at the next regular or special election that allows reasonable time for proper notices and printing of ballots or at any special election called for that purpose, as determined by the township board. The township board shall specify the language of the ballot question.

(3) Subsection (2) does not apply if the planning commission created by the ordinance is the successor to an existing zoning commission or zoning board as provided for under section 301 of the Michigan zoning enabling act, 2006 PA 110, MCL 125.3301.

(4) If a township board does not on its own initiative adopt an ordinance under this act creating a planning commission, a petition may be filed with the township clerk requesting the township board to adopt such an ordinance. The petition shall be signed by a number of qualified and registered electors as provided in subsection (2). If such a petition is filed, the township board, at its first meeting following the filing shall submit the question to the electors of the township in the same manner as provided under subsection (2).

(5) A petition under this section, including the circulation and signing of the petition, is subject to section 488 of the Michigan election law, 1954 PA 116, MCL 168.488. A person who violates a provision of the Michigan election law, 1954 PA 116, MCL 168.1 to 168.992, applicable to a petition described in this section is subject to the penalties prescribed for that violation in the Michigan election law, 1954 PA 116, MCL 168.1 to 168.992.

History: 2008, Act 33, Eff. Sept. 1, 2008.

125.3815 Planning commission; membership; appointment; terms; vacancy; representation; qualifications; ex-officio members; board serving as planning commission; removal of member; conditions; conflict of interest; additional requirements.

Sec. 15. (1) In a municipality, the chief elected official shall appoint members of the planning commission, subject to approval by a majority vote of the members of the legislative body elected and serving. In a county, the county board of commissioners shall determine the method of appointment of members of the planning commission by resolution of a majority of the full membership of the county board.

(2) A city, village, or township planning commission shall consist of 5, 7, or 9 members. A county planning commission shall consist of 5, 7, 9, or 11 members. Members of a planning commission other than ex officio members under subsection (5) shall be appointed for 3-year terms. However, of the members of the planning commission, other than ex officio members, first appointed, a number shall be appointed to 1-year or

2-year terms such that, as nearly as possible, the terms of 1/3 of all the planning commission members will expire each year. If a vacancy occurs on a planning commission, the vacancy shall be filled for the unexpired term in the same manner as provided for an original appointment. A member shall hold office until his or her successor is appointed.

(3) The membership of a planning commission shall be representative of important segments of the community, such as the economic, governmental, educational, and social development of the local unit of government, in accordance with the major interests as they exist in the local unit of government, such as agriculture, natural resources, recreation, education, public health, government, transportation, industry, and commerce. The membership shall also be representative of the entire territory of the local unit of government to the extent practicable.

(4) Members of a planning commission shall be qualified electors of the local unit of government, except that the following number of planning commission members may be individuals who are not qualified electors of the local unit of government but are qualified electors of another local unit of government:

(a) 3, in a city that on September 1, 2008 had a population of more than 2,700 but less than 2,800.

(b) 2, in a city or village that has, or on September 1, 2008 had, a population of less than 5,000, except as provided in subdivision (a).

(c) 1, in local units of government other than those described in subdivision (a) or (b).

(5) In a township that on September 1, 2008 had a planning commission created under former 1931 PA 285, 1 member of the legislative body or the chief elected official, or both, may be appointed to the planning commission, as ex officio members. In any other township, 1 member of the legislative body shall be appointed to the planning commission, as an ex officio member. In a city, village, or county, the chief administrative official or a person designated by the chief administrative official, if any, the chief elected official, 1 or more members of the legislative body, or any combination thereof, may be appointed to the planning commission, as ex officio members, unless prohibited by charter. However, in a city, village, or county, not more than 1/3 of the members of the planning commission may be ex officio members. Except as provided in this subsection, an elected officer or employee of the local unit of government is not eligible to be a member of the planning commission. The term of an ex officio member of a planning commission shall be as follows:

(a) The term of a chief elected official shall correspond to his or her term as chief elected official.

(b) The term of a chief administrative official shall expire with the term of the chief elected official that appointed him or her as chief administrative official.

(c) The term of a member of the legislative body shall expire with his or her term on the legislative body.

(6) For a county planning commission, the county shall make every reasonable effort to ensure that the membership of the county planning commission includes a member of a public school board or an administrative employee of a school district included, in whole or in part, within the county's boundaries. The requirements of this subsection apply whenever an appointment is to be made to the planning commission, unless an incumbent is being reappointed or an ex officio member is being appointed under subsection (5).

(7) Subject to subsection (8), a city or village that has a population of less than 5,000, and that has not created a planning commission by charter, may by an ordinance adopted under section 11(1) provide that 1 of the following boards serve as its planning commission:

(a) The board of directors of the economic development corporation of the city or village created under the economic development corporations act, 1974 PA 338, MCL 125.1601 to 125.1636.

(b) The board of a downtown development authority created under 1975 PA 197, MCL 125.1651 to 125.1681, if the boundaries of the downtown district are the same as the boundaries of the city or village.

(c) A board created under the tax increment finance authority act, 1980 PA 450, MCL 125.1801 to 125.1830, if the boundaries of the authority district are the same as the boundaries of the city or village.

(8) Subsections (1) to (5) do not apply to a planning commission established under subsection (7). All other provisions of this act apply to a planning commission established under subsection (7).

(9) The legislative body may remove a member of the planning commission for misfeasance, malfeasance, or nonfeasance in office upon written charges and after a public hearing. Before casting a vote on a matter on which a member may reasonably be considered to have a conflict of interest, the member shall disclose the potential conflict of interest to the planning commission. The member is disqualified from voting on the matter if so provided by the bylaws or by a majority vote of the remaining members of the planning commission. Failure of a member to disclose a potential conflict of interest as required by this subsection constitutes malfeasance in office. Unless the legislative body, by ordinance, defines conflict of interest for the purposes of this subsection, the planning commission shall do so in its bylaws.

(10) An ordinance creating a planning commission may impose additional requirements relevant to the subject matter of, but not inconsistent with, this section.

History: 2008, Act 33, Eff. Sept. 1, 2008;—Am. 2010, Act 105, Imd. Eff. June 29, 2010.

125.3817 Chairperson, secretary, and other offices; election; terms; appointment of advisory committees.

Sec. 17. (1) A planning commission shall elect a chairperson and secretary from its members and create and fill other offices as it considers advisable. An ex officio member of the planning commission is not eligible to serve as chairperson. The term of each officer shall be 1 year, with opportunity for reelection as specified in bylaws adopted under section 19.

(2) A planning commission may appoint advisory committees whose members are not members of the planning commission.

History: 2008, Act 33, Eff. Sept. 1, 2008.

125.3819 Bylaws; adoption; public record requirements; annual report by planning commission.

Sec. 19. (1) A planning commission shall adopt bylaws for the transaction of business, and shall keep a public record of its resolutions, transactions, findings, and determinations.

(2) A planning commission shall make an annual written report to the legislative body concerning its operations and the status of planning activities, including recommendations regarding actions by the legislative body related to planning and development.

History: 2008, Act 33, Eff. Sept. 1, 2008.

125.3821 Meetings; frequency; time; place; special meeting; notice; compliance with open meetings act; availability of writings to public.

Sec. 21. (1) A planning commission shall hold not less than 4 regular meetings each year, and by resolution shall determine the time and place of the meetings. Unless the bylaws provide otherwise, a special meeting of the planning commission may be called by the chairperson or by 2 other members, upon written request to the secretary. Unless the bylaws provide otherwise, the secretary shall send written notice of a special meeting to planning commission members not less than 48 hours before the meeting.

(2) The business that a planning commission may perform shall be conducted at a public meeting of the planning commission held in compliance with the open meetings act, 1976 PA 267, MCL 15.261 to 15.275. Public notice of the time, date, and place of a regular or special meeting shall be given in the manner required by that act.

(3) A writing prepared, owned, used, in the possession of, or retained by a planning commission in the performance of an official function shall be made available to the public in compliance with the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

History: 2008, Act 33, Eff. Sept. 1, 2008.

125.3823 Compensation; expenses; preparation of budget; acceptance of gifts.

Sec. 23. (1) Members of a planning commission may be compensated for their services as provided by the legislative body. A planning commission may adopt bylaws relative to compensation and expenses of its members and employees for travel when engaged in the performance of activities authorized by the legislative body, including, but not limited to, attendance at conferences, workshops, educational and training programs, and meetings.

(2) After preparing the annual report required under section 19, a planning commission may prepare a detailed budget and submit the budget to the legislative body for approval or disapproval. The legislative body annually may appropriate funds for carrying out the purposes and functions permitted under this act, and may match local government funds with federal, state, county, or other local government or private grants, contributions, or endowments.

(3) A planning commission may accept gifts for the exercise of its functions. However, in a township, other than a township that on the effective date of this act had a planning commission created under former 1931 PA 285, only the township board may accept such gifts, on behalf of the planning commission. A gift of money so accepted in either case shall be deposited with the treasurer of the local unit of government in a special nonreverting planning commission fund for expenditure by the planning commission for the purpose designated by the donor. The treasurer shall draw a warrant against the special nonreverting fund only upon receipt of a voucher signed by the chairperson and secretary of the planning commission and an order drawn by the clerk of the local unit of government. The expenditures of a planning commission, exclusive of gifts and grants, shall be within the amounts appropriated by the legislative body.

History: 2008, Act 33, Eff. Sept. 1, 2008.

125.3825 Employment of planning director and other personnel; contract for services; use of information and advice provided by public officials, departments, and agencies.

Sec. 25. (1) A local unit of government may employ a planning director and other personnel as it considers necessary, contract for the services of planning and other technicians, and incur other expenses, within a budget authorized by the legislative body. This authority shall be exercised by the legislative body, unless a charter provision or ordinance delegates this authority to the planning commission or another body or official. The appointment of employees is subject to the same provisions of law as govern other corresponding civil employees of the local unit of government.

(2) For the purposes of this act, a planning commission may make use of maps, data, and other information and expert advice provided by appropriate federal, state, regional, county, and municipal officials, departments, and agencies. All public officials, departments, and agencies shall make available public information for the use of planning commissions and furnish such other technical assistance and advice as they may have for planning purposes.

History: 2008, Act 33, Eff. Sept. 1, 2008.

ARTICLE III.
PREPARATION AND ADOPTION OF MASTER PLAN

125.3831 Master plan; preparation by planning commission; meetings with other governmental planning commissions or agency staff; powers.

Sec. 31. (1) A planning commission shall make and approve a master plan as a guide for development within the planning jurisdiction subject to section 81 and the following:

(a) For a county, the master plan may include planning in cooperation with the constituted authorities for incorporated areas in whole or to the extent to which, in the planning commission's judgment, they are related to the planning of the unincorporated area or of the county as a whole.

(b) For a township that on September 1, 2008 had a planning commission created under former 1931 PA 285, or for a city or village, the planning jurisdiction may include any areas outside of the municipal boundaries that, in the planning commission's judgment, are related to the planning of the municipality.

(2) In the preparation of a master plan, a planning commission shall do all of the following, as applicable:

(a) Make careful and comprehensive surveys and studies of present conditions and future growth within the planning jurisdiction with due regard to its relation to neighboring jurisdictions.

(b) Consult with representatives of adjacent local units of government in respect to their planning so that conflicts in master plans and zoning may be avoided.

(c) Cooperate with all departments of the state and federal governments, public transportation agencies, and other public agencies concerned with programs for economic, social, and physical development within the planning jurisdiction and seek the maximum coordination of the local unit of government's programs with these agencies.

(3) In the preparation of the master plan, the planning commission may meet with other governmental planning commissions or agency staff to deliberate.

(4) In general, a planning commission has such lawful powers as may be necessary to enable it to promote local planning and otherwise carry out the purposes of this act.

History: 2008, Act 33, Eff. Sept. 1, 2008;—Am. 2010, Act 306, Imd. Eff. Dec. 17, 2010.

125.3833 Master plan; land use and infrastructure issues; inclusion of maps, plats, charts, and other related matter; recommendations for physical development; additional subjects; implementation of master street plan or certain elements; specifications; section subject to MCL 125.3881(1); public transportation facilities.

Sec. 33. (1) A master plan shall address land use and infrastructure issues and may project 20 years or more into the future. A master plan shall include maps, plats, charts, and descriptive, explanatory, and other related matter and shall show the planning commission's recommendations for the physical development of the planning jurisdiction.

(2) A master plan shall also include those of the following subjects that reasonably can be considered as pertinent to the future development of the planning jurisdiction:

(a) A land use plan that consists in part of a classification and allocation of land for agriculture, residences, commerce, industry, recreation, ways and grounds, subject to subsection (5), public transportation facilities, public buildings, schools, soil conservation, forests, woodlots, open space, wildlife refuges, and other uses and purposes. If a county has not adopted a zoning ordinance under former 1943 PA 183 or the Michigan

zoning enabling act, 2006 PA 110, MCL 125.3101 to 125.3702, a land use plan and program for the county may be a general plan with a generalized future land use map.

(b) The general location, character, and extent of all of the following:

(*i*) All components of a transportation system and their interconnectivity including streets and bridges, public transit including public transportation facilities and routes, bicycle facilities, pedestrian ways, freight facilities and routes, port facilities, railroad facilities, and airports, to provide for the safe and efficient movement of people and goods in a manner that is appropriate to the context of the community and, as applicable, considers all legal users of the public right-of-way.

(*ii*) Waterways and waterfront developments.

(*iii*) Sanitary sewers and water supply systems.

(*iv*) Facilities for flood prevention, drainage, pollution prevention, and maintenance of water levels.

(*v*) Public utilities and structures.

(c) Recommendations as to the general character, extent, and layout of redevelopment or rehabilitation of blighted areas; and the removal, relocation, widening, narrowing, vacating, abandonment, change of use, or extension of streets, grounds, open spaces, buildings, utilities, or other facilities.

(d) For a local unit of government that has adopted a zoning ordinance, a zoning plan for various zoning districts controlling the height, area, bulk, location, and use of buildings and premises. The zoning plan shall include an explanation of how the land use categories on the future land use map relate to the districts on the zoning map.

(e) Recommendations for implementing any of the master plan's proposals.

(3) If a master plan is or includes a master street plan or 1 or more elements described in subsection (2)(b)(*i*), the means for implementing the master street plan or elements in cooperation with the county road commission and the state transportation department shall be specified in the master street plan in a manner consistent with the respective powers and duties of and any written agreements between these entities and the municipality.

(4) This section is subject to section 81(1).

(5) The reference to public transportation facilities in subsection (2)(a) only applies to a master plan that is adopted or substantively amended more than 90 days after the effective date of the amendatory act that added this subsection.

History: 2008, Act 33, Eff. Sept. 1, 2008;—Am. 2010, Act 134, Imd. Eff. Aug. 2, 2010;—Am. 2010, Act 306, Imd. Eff. Dec. 17, 2010.

125.3835 Subplan; adoption.

Sec. 35. A planning commission may, by a majority vote of the members, adopt a subplan for a geographic area less than the entire planning jurisdiction, if, because of the unique physical characteristics of that area, more intensive planning is necessary for the purposes set forth in section 7.

History: 2008, Act 33, Eff. Sept. 1, 2008.

125.3837 Metropolitan county planning commission; designation; powers.

Sec. 37. (1) A county board of commissioners may designate the county planning commission as the metropolitan county planning commission. A county planning commission so designated shall perform metropolitan and regional planning whenever necessary or desirable. The metropolitan county planning commission may engage in comprehensive planning, including, but not limited to, the following:

(a) Preparation, as a guide for long-range development, of general physical plans with respect to the pattern and intensity of land use and the provision of public facilities, together with long-range fiscal plans for such development.

(b) Programming of capital improvements based on relative urgency, together with definitive financing plans for the improvements to be constructed in the earlier years of the program.

(c) Coordination of all related plans of local governmental agencies within the metropolitan area or region.

(d) Intergovernmental coordination of all related planning activities among the state and local governmental agencies within the metropolitan area or region.

(2) In addition to the powers conferred by other provisions of this act, a metropolitan county planning commission may apply for, receive, and accept grants from any local, regional, state, or federal governmental agency and agree to and comply with the terms and conditions of such grants. A metropolitan county planning commission may do any and all things necessary or desirable to secure the financial aid or cooperation of a regional, state, or federal governmental agency in carrying out its functions, when approved by a 2/3 vote of the county board of commissioners.

History: 2008, Act 33, Eff. Sept. 1, 2008.

125.3839 Master plan; adoption; procedures; notice; submittals; use of electronic mail.

Sec. 39. (1) A master plan shall be adopted under the procedures set forth in this section and sections 41 and 43. A master plan may be adopted as a whole or by successive parts corresponding with major geographical areas of the planning jurisdiction or with functional subject matter areas of the master plan.

(2) Before preparing a master plan, a planning commission shall send to all of the following, by first-class mail or personal delivery, a notice explaining that the planning commission intends to prepare a master plan and requesting the recipient's cooperation and comment:

(a) For any local unit of government undertaking a master plan, the planning commission, or if there is no planning commission, the legislative body, of each municipality located within or contiguous to the local unit of government.

(b) For a county undertaking a master plan, the regional planning commission for the region in which the county is located, if any.

(c) For a county undertaking a master plan, the county planning commission, or if there is no county planning commission, the county board of commissioners, for each county located contiguous to the county.

(d) For a municipality undertaking a master plan, the regional planning commission for the region in which the municipality is located, if there is no county planning commission for the county in which that municipality is located. If there is a county planning commission, the municipal planning commission may consult with the regional planning commission but is not required to do so.

(e) For a municipality undertaking a master plan, the county planning commission, or if there is no county planning commission, the county board of commissioners, for the county in which that municipality is located.

(f) For any local unit of government undertaking a master plan, each public utility company, railroad company, and public transportation agency owning or operating a public utility, railroad, or public transportation system within the local unit of government, and any government entity that registers its name and mailing address for this purpose with the planning commission.

(g) If the master plan will include a master street plan, the county road commission and the state transportation department.

(3) A submittal under section 41 or 43 by or to an entity described in subsection (2) may be made by personal or first-class mail delivery of a hard copy or by electronic mail. However, the planning commission preparing the plan shall not make such submittals by electronic mail unless, in the notice described in subsection (2), the planning commission states that it intends to make such submittals by electronic mail and the entity receiving that notice does not respond by objecting to the use of electronic mail. Electronic mail may contain a link to a website on which the submittal is posted if the website is accessible to the public free of charge.

History: 2008, Act 33, Eff. Sept. 1, 2008;—Am. 2010, Act 306, Imd. Eff. Dec. 17, 2010.

125.3841 Preparation of proposed master plan; submission to legislative body for review and comment; approval required; notice; submission of comments; statements as advisory.

Sec. 41. (1) After preparing a proposed master plan, a planning commission shall submit the proposed master plan to the legislative body for review and comment. The process of adopting a master plan shall not proceed further unless the legislative body approves the distribution of the proposed master plan.

(2) If the legislative body approves the distribution of the proposed master plan, it shall notify the secretary of the planning commission, and the secretary of the planning commission shall submit, in the manner provided in section 39(3), a copy of the proposed master plan, for review and comment, to all of the following:

(a) For any local unit of government proposing a master plan, the planning commission, or if there is no planning commission, the legislative body, of each municipality located within or contiguous to the local unit of government.

(b) For a county proposing a master plan, the regional planning commission for the region in which the county is located, if any.

(c) For a county proposing a master plan, the county planning commission, or if there is no county planning commission, the county board of commissioners, for each county located contiguous to the county.

(d) For a municipality proposing a master plan, the regional planning commission for the region in which the municipality is located, if there is no county planning commission for the county in which that local unit of government is located. If there is a county planning commission, the secretary of the municipal planning commission may submit a copy of the proposed master plan to the regional planning commission but is not required to do so.

(e) For a municipality proposing a master plan, the county planning commission, or if there is no county planning commission, the county board of commissioners, for the county in which that municipality is located. The secretary of the municipal planning commission shall concurrently submit to the county planning commission, in the manner provided in section 39(3), a statement that the requirements of subdivision (a) have been met or, if there is no county planning commission, shall submit to the county board of commissioners, in the manner provided in section 39(3), a statement that the requirements of subdivisions (a) and (d) have been met. The statement shall be signed by the secretary and shall include the name and address of each planning commission or legislative body to which a copy of the proposed master plan was submitted under subdivision (a) or (d), as applicable, and the date of submittal.

(f) For any local unit of government proposing a master plan, each public utility company, railroad company, and public transportation agency owning or operating a public utility, railroad, or public transportation system within the local unit of government, and any government entity that registers its name and address for this purpose with the secretary of the planning commission. An entity described in this subdivision that receives a copy of a proposed master plan, or of a final master plan as provided in section 43(5), shall reimburse the local unit of government for any copying and postage costs thereby incurred.

(g) If the proposed master plan is or includes a proposed master street plan, the county road commission and the state transportation department.

(3) An entity described in subsection (2) may submit comments on the proposed master plan to the planning commission in the manner provided in section 39(3) within 63 days after the proposed master plan was submitted to that entity under subsection (2). If the county planning commission or the county board of commissioners that receives a copy of a proposed master plan under subsection (2)(e) submits comments, the comments shall include, but need not be limited to, both of the following, as applicable:

(a) A statement whether the county planning commission or county board of commissioners considers the proposed master plan to be inconsistent with the master plan of any municipality or region described in subsection (2)(a) or (d).

(b) If the county has a county master plan, a statement whether the county planning commission considers the proposed master plan to be inconsistent with the county master plan.

(4) The statements provided for in subsection (3)(a) and (b) are advisory only.

History: 2008, Act 33, Eff. Sept. 1, 2008;—Am. 2010, Act 306, Imd. Eff. Dec. 17, 2010.

125.3843 Proposed master plan; public hearing; notice; approval by resolution of planning commission; statement; submission of copy of master plan to legislative body; approval or rejection by legislative body; procedures; submission of adopted master plan to certain entities.

Sec. 43. (1) Before approving a proposed master plan, a planning commission shall hold not less than 1 public hearing on the proposed master plan. The hearing shall be held after the expiration of the deadline for comment under section 41(3). The planning commission shall give notice of the time and place of the public hearing not less than 15 days before the hearing by publication in a newspaper of general circulation within the local unit of government. The planning commission shall also submit notice of the public hearing in the manner provided in section 39(3) to each entity described in section 39(2). This notice may accompany the proposed master plan submitted under section 41.

(2) The approval of the proposed master plan shall be by resolution of the planning commission carried by the affirmative votes of not less than 2/3 of the members of a city or village planning commission or not less than a majority of the members of a township or county planning commission. The resolution shall refer expressly to the maps and descriptive and other matter intended by the planning commission to form the master plan. A statement recording the planning commission's approval of the master plan, signed by the chairperson or secretary of the planning commission, shall be included on the inside of the front or back cover of the master plan and, if the future land use map is a separate document from the text of the master plan, on the future land use map. Following approval of the proposed master plan by the planning commission, the secretary of the planning commission shall submit a copy of the master plan to the legislative body.

(3) Approval of the proposed master plan by the planning commission under subsection (2) is the final step for adoption of the master plan, unless the legislative body by resolution has asserted the right to approve or reject the master plan. In that case, after approval of the proposed master plan by the planning commission, the legislative body shall approve or reject the proposed master plan. A statement recording the legislative body's approval of the master plan, signed by the clerk of the legislative body, shall be included on the inside of the front or back cover of the master plan and, if the future land use map is a separate document from the text of the master plan, on the future land use map.

(4) If the legislative body rejects the proposed master plan, the legislative body shall submit to the planning commission a statement of its objections to the proposed master plan. The planning commission shall consider the legislative body's objections and revise the proposed master plan so as to address those objections. The procedures provided in subsections (1) to (3) and this subsection shall be repeated until the legislative body approves the proposed master plan.

(5) Upon final adoption of the master plan, the secretary of the planning commission shall submit, in the manner provided in section 39(3), copies of the adopted master plan to the same entities to which copies of the proposed master plan were required to be submitted under section 41(2).

History: 2008, Act 33, Eff. Sept. 1, 2008.

125.3845 Extension, addition, revision, or other amendment to master plan; adoption; procedures; review and findings.

Sec. 45. (1) An extension, addition, revision, or other amendment to a master plan shall be adopted by following the procedure under sections 39, 41, and 43, subject to all of the following:

(a) Any of the following amendments to a master plan may be made without following the procedure under sections 39, 41, and 43:

(*i*) A grammatical, typographical, or similar editorial change.

(*ii*) A title change.

(*iii*) A change to conform to an adopted plat.

(b) Subject to subdivision (a), the review period provided for in section 41(3) shall be 42 days instead of 63 days.

(c) When a planning commission sends notice to an entity under section 39(2) that it intends to prepare a subplan, the notice may indicate that the local unit of government intends not to provide that entity with further notices of or copies of proposed or final subplans otherwise required to be submitted to that entity under section 39, 41, or 43. Unless the entity responds that it chooses to receive notice of subplans, the local unit of government is not required to provide further notice of subplans to that entity.

(2) At least every 5 years after adoption of a master plan, a planning commission shall review the master plan and determine whether to commence the procedure to amend the master plan or adopt a new master plan. The review and its findings shall be recorded in the minutes of the relevant meeting or meetings of the planning commission.

History: 2008, Act 33, Eff. Sept. 1, 2008.

125.3847 Part of county master plan covering incorporated area; adoption by appropriate city or village required; exception.

Sec. 47. (1) Subject to subsection (2), a part of a county master plan covering an incorporated area within the county shall not be recognized as the official master plan or part of the official master plan for that area unless adopted by the appropriate city or village in the manner prescribed by this act.

(2) Subsection (1) does not apply if the incorporated area is subject to county zoning pursuant to the Michigan zoning enabling act, 2006 PA 110, MCL 125.3101 to 125.3702, and a contract under the urban cooperation act, 1967 (Ex Sess) PA 7, MCL 124.501 to 124.512, or 1967 (Ex Sess) PA 8, MCL 124.531 to 124.536.

History: 2008, Act 33, Eff. Sept. 1, 2008.

125.3849 City or village planning department; authority to submit proposed master plan, or proposed extension, addition, revision, or other amendment.

Sec. 49. (1) This act does not alter the authority of a planning department of a city or village created by charter to submit a proposed master plan, or a proposed extension, addition, revision, or other amendment to a master plan, to the planning commission, whether directly or indirectly as provided by charter.

(2) Subsection (1) notwithstanding, a planning commission described in subsection (1) shall comply with the requirements of this act.

History: 2008, Act 33, Eff. Sept. 1, 2008.

125.3851 Public interest and understanding; promotion.

Sec. 51. (1) To promote public interest in and understanding of the master plan, a planning commission may publish and distribute copies of the master plan or of any report, and employ other means of publicity and education.

(2) A planning commission shall consult with and advise public officials and agencies, public utility companies, civic, educational, professional, and other organizations, and citizens concerning the promotion or

implementation of the master plan.

History: 2008, Act 33, Eff. Sept. 1, 2008.

ARTICLE IV.

SPECIAL PROVISIONS, INCLUDING CAPITAL IMPROVEMENTS AND SUBDIVISION REVIEW

125.3861 Construction of certain projects in area covered by municipal master plan; approval; initiation of work on project; requirements; report and advice.

Sec. 61. (1) A street; square, park, playground, public way, ground, or other open space; or public building or other structure shall not be constructed or authorized for construction in an area covered by a municipal master plan unless the location, character, and extent of the street, public way, open space, structure, or utility have been submitted to the planning commission by the legislative body or other body having jurisdiction over the authorization or financing of the project and has been approved by the planning commission. The planning commission shall submit its reasons for approval or disapproval to the body having jurisdiction. If the planning commission disapproves, the body having jurisdiction may overrule the planning commission by a vote of not less than 2/3 of its entire membership for a township that on the enactment date of this act had a planning commission created under former 1931 PA 285, or for a city or village, or by a vote of not less than a majority of its membership for any other township. If the planning commission fails to act within 35 days after submission of the proposal to the planning commission, the project shall be considered to be approved by the planning commission.

(2) Following adoption of the county plan or any part of a county plan and the certification by the county planning commission to the county board of commissioners of a copy of the plan, work shall not be initiated on any project involving the expenditure of money by a county board, department, or agency for the acquisition of land, the erection of structures, or the extension, construction, or improvement of any physical facility by any county board, department, or agency unless a full description of the project, including, but not limited to, its proposed location and extent, has been submitted to the county planning commission and the report and advice of the planning commission on the proposal have been received by the county board of commissioners and by the county board, department, or agency submitting the proposal. However, work on the project may proceed if the planning commission fails to provide in writing its report and advice upon the proposal within 35 days after the proposal is filed with the planning commission. The planning commission shall provide copies of the report and advice to the county board, department, or agency sponsoring the proposal.

History: 2008, Act 33, Eff. Sept. 1, 2008.

125.3863 Approval of construction project before effective date of act; rescission of authorization; failure of planning commission to act within certain period of time.

Sec. 63. If the opening, widening, or extension of a street, or the acquisition or enlargement of any square, park, playground, or other open space has been approved by a township planning commission that was created before the effective date of this act under former 1931 PA 285 or by a city or village planning commission and authorized by the legislative body as provided under section 61, the legislative body shall not rescind its authorization unless the matter has been resubmitted to the planning commission and the rescission has been approved by the planning commission. The planning commission shall hold a public hearing on the matter. The planning commission shall submit its reasons for approval or disapproval of the rescission to the legislative body. If the planning commission disapproves the rescission, the legislative body may overrule the planning commission by a vote of not less than 2/3 of its entire membership. If the planning commission fails to act within 63 days after submission of the proposed rescission to the planning commission, the proposed rescission shall be considered to be approved by the planning commission.

History: 2008, Act 33, Eff. Sept. 1, 2008.

125.3865 Capital improvements program of public structures and improvements; preparation; basis.

Sec. 65. (1) To further the desirable future development of the local unit of government under the master plan, a planning commission, after adoption of a master plan, shall annually prepare a capital improvements program of public structures and improvements, unless the planning commission is exempted from this requirement by charter or otherwise. If the planning commission is exempted, the legislative body either shall prepare and adopt a capital improvements program, separate from or as a part of the annual budget, or shall delegate the preparation of the capital improvements program to the chief elected official or a nonelected administrative official, subject to final approval by the legislative body. The capital improvements program

shall show those public structures and improvements, in the general order of their priority, that in the commission's judgment will be needed or desirable and can be undertaken within the ensuing 6-year period. The capital improvements program shall be based upon the requirements of the local unit of government for all types of public structures and improvements. Consequently, each agency or department of the local unit of government with authority for public structures or improvements shall upon request furnish the planning commission with lists, plans, and estimates of time and cost of those public structures and improvements.

(2) Any township may prepare and adopt a capital improvement program. However, subsection (1) is only mandatory for a township if the township, alone or jointly with 1 or more other local units of government, owns or operates a water supply or sewage disposal system.

History: 2008, Act 33, Eff. Sept. 1, 2008.

125.3867 Programs for public structures and improvements; recommendations.

Sec. 67. A planning commission may recommend to the appropriate public officials programs for public structures and improvements and for the financing thereof, regardless of whether the planning commission is exempted from the requirement to prepare a capital improvements program under section 65.

History: 2008, Act 33, Eff. Sept. 1, 2008.

125.3869 Copy of zoning ordinance and amendments; request by county planning commission for submission by municipal planning commission.

Sec. 69. If a municipal planning commission has zoning duties pursuant to section 83 and the municipality has adopted a zoning ordinance, the county planning commission, if any, may, by first-class mail or personal delivery, request the municipal planning commission to submit to the county planning commission a copy of the zoning ordinance and any amendments. The municipal planning commission shall submit the requested documents to the county planning commission within 63 days after the request is received and shall submit any future amendments to the zoning ordinance within 63 days after the amendments are adopted. The municipal planning commission may submit a zoning ordinance or amendment under this subsection electronically.

History: 2008, Act 33, Eff. Sept. 1, 2008.

125.3871 Recommendations for ordinances or rules governing subdivision of land; public hearing; notice; action on proposed plat; approval, approval with conditions, or disapproval by planning commission; approval of plat as amendment to master plan.

Sec. 71. (1) A planning commission may recommend to the legislative body provisions of an ordinance or rules governing the subdivision of land authorized under section 105 of the land division act, 1967 PA 288, MCL 560.105. If a township is subject to county zoning consistent with section 209 of the Michigan zoning enabling act, 2006 PA 110, MCL 125.3209, or a city or village is subject to county zoning pursuant to the Michigan zoning enabling act, 2006 PA 110, MCL 125.3101 to 125.3702, and a contract under the urban cooperation act of 1967, 1967 (Ex Sess) PA 7, MCL 124.501 to 124.512, or 1967 (Ex Sess) PA 8, MCL 124.531 to 124.536, the county planning commission may recommend to the legislative body of the municipality provisions of an ordinance or rules governing the subdivision of land authorized under section 105 of the land division act, 1967 PA 288, MCL 560.105. A planning commission may proceed under this subsection on its own initiative or upon request of the appropriate legislative body.

(2) Recommendations for a subdivision ordinance or rule may address plat design, including the proper arrangement of streets in relation to other existing or planned streets and to the master plan; adequate and convenient open spaces for traffic, utilities, access of firefighting apparatus, recreation, light, and air; and the avoidance of congestion of population, including minimum width and area of lots. The recommendations may also address the extent to which streets shall be graded and improved and to which water and sewer and other utility mains, piping, or other facilities shall be installed as a condition precedent to the approval of a plat.

(3) Before recommending an ordinance or rule described in subsection (1), the planning commission shall hold a public hearing on the proposed ordinance or rule. The planning commission shall give notice of the time and place of the public hearing not less than 15 days before the hearing by publication in a newspaper of general circulation within the local unit of government.

(4) If a municipality has adopted a master plan or master street plan, the planning commission of that municipality shall review and make recommendations on plats before action thereon by the legislative body under section 112 of the land division act, 1967 PA 288, MCL 560.112. If a township is subject to county zoning consistent with section 209 of the Michigan zoning enabling act, 2006 PA 110, MCL 125.3209, or a city or village is subject to county zoning pursuant to the Michigan zoning enabling act, 2006 PA 110, MCL 125.3101 to 125.3702, and a contract under the urban cooperation act of 1967, 1967 (Ex Sess) PA 7, MCL

124.501 to 124.512, or 1967 (Ex Sess) PA 8, MCL 124.531 to 124.536, and the municipality has adopted a master plan or master street plan, the county planning commission shall also review and make recommendations on plats before action thereon by the legislative body of the municipality under section 112 of the land division act, 1967 PA 288, MCL 560.112.

(5) A planning commission shall not take action on a proposed plat without affording an opportunity for a public hearing thereon. A plat submitted to the planning commission shall contain the name and address of the proprietor or other person to whom notice of a hearing shall be sent. Not less than 15 days before the date of the hearing, notice of the date, time, and place of the hearing shall be sent to that person at that address by mail and shall be published in a newspaper of general circulation in the municipality. Similar notice shall be mailed to the owners of land immediately adjoining the proposed platted land.

(6) A planning commission shall recommend approval, approval with conditions, or disapproval of a plat within 63 days after the plat is submitted to the planning commission. If applicable standards under the land division act, 1967 PA 288, MCL 560.101 to 560.293, and an ordinance or published rules governing the subdivision of land authorized under section 105 of that act, MCL 560.105, are met, the planning commission shall recommend approval of the plat. If the planning commission fails to act within the required period, the plat shall be considered to have been recommended for approval, and a certificate to that effect shall be issued by the planning commission upon request of the proprietor. However, the proprietor may waive this requirement and consent to an extension of the 63-day period. The grounds for any recommendation of disapproval of a plat shall be stated upon the records of the planning commission.

(7) A plat approved by a municipality and recorded under section 172 of the land division act, 1967 PA 288, MCL 560.172, shall be considered to be an amendment to the master plan and a part thereof. Approval of a plat by a municipality does not constitute or effect an acceptance by the public of any street or other open space shown upon the plat.

History: 2008, Act 33, Eff. Sept. 1, 2008.

ARTICLE V.
TRANSITIONAL PROVISIONS AND REPEALER

125.3881 Plan adopted or amended under planning act repealed under MCL 125.3885; effect; city or home rule village charter provision creating planning commission or ordinance implementing provision before effective date of act; ordinance creating planning commission under former law; ordinance or rules governing subdivision of land.

Sec. 81. (1) Unless rescinded by the local unit of government, any plan adopted or amended under a planning act repealed under section 85 need not be readopted under this act but continues in effect as a master plan under this act, regardless of whether it is entitled a master plan, basic plan, county plan, development plan, guide plan, land use plan, municipal plan, township plan, plan, or any other term. This includes, but is not limited to, a plan prepared by a planning commission and adopted before the effective date of this act to satisfy the requirements of section 1 of the former city and village zoning act, 1921 PA 207, section 3 of the former township zoning act, 1943 PA 184, section 3 of the former county zoning act, 1943 PA 183, or section 203(1) of the Michigan zoning enabling act, 2006 PA 110, MCL 125.3203. The master plan is subject to the requirements of this act, including, but not limited to, the requirement for periodic review under section 45(2) and the amendment procedures set forth in this act. However, the master plan is not subject to the requirements of section 33 until it is first amended under this act.

(2) Unless repealed, a city or home rule village charter provision creating a planning commission before the effective date of this act and any ordinance adopted before the effective date of this act implementing that charter provision continues in effect under this act, and the planning commission need not be newly created by an ordinance adopted under this act. However, both of the following apply:

(a) The legislative body may by ordinance increase the powers and duties of the planning commission to correspond with the powers and duties of a planning commission created under this act. Provisions of this act regarding planning commission powers and duties do not otherwise apply to a planning commission created by charter before the effective date of this act and provisions of this act regarding planning commission membership, appointment, and organization do not apply to such a planning commission. All other provisions of this act, including, but not limited to, provisions regarding planning commission selection of officers, meetings, rules, records, appointment of employees, contracts for services, and expenditures, do apply to such a planning commission.

(b) The legislative body shall amend any ordinance adopted before the effective date of this act to implement the charter provision, or repeal the ordinance and adopt a new ordinance, to fully conform to the requirements of this act made applicable by subdivision (a), by the earlier of the following dates:

(*i*) The date when an amendatory or new ordinance is first adopted under this act for any purpose.

(*ii*) July 1, 2011.

(3) Unless repealed, an ordinance creating a planning commission under former 1931 PA 285 or former 1945 PA 282 or a resolution creating a planning commission under former 1959 PA 168 continues in effect under this act, and the planning commission need not be newly created by an ordinance adopted under this act. However, all of the following apply:

(a) Beginning on the effective date of this act, the duties of the planning commission are subject to the requirements of this act.

(b) The legislative body shall amend the ordinance, or repeal the ordinance or resolution and adopt a new ordinance, to fully conform to the requirements of this act by the earlier of the following dates:

(*i*) The date when an amendatory or new ordinance is first adopted under this act for any purpose.

(*ii*) July 1, 2011.

(c) An ordinance adopted under subdivision (b) is not subject to referendum.

(4) Unless repealed or rescinded by the legislative body, an ordinance or published rules governing the subdivision of land authorized under section 105 of the land division act, 1967 PA 288, MCL 560.105, need not be readopted under this act or amended to comply with this act but continue in effect under this act. However, if amended, the ordinance or published rules shall be amended under the procedures of this act.

History: 2008, Act 33, Eff. Sept. 1, 2008.

125.3883 Transfer of powers, duties, and records.

Sec. 83. (1) If, on the effective date of this act, a planning commission had the powers and duties of a zoning board or zoning commission under the former city and village zoning act, 1921 PA 207, the former county zoning act, 1943 PA 183, or the former township zoning act, 1943 PA 184, and under the Michigan zoning enabling act, 2006 PA 110, MCL 125.3101 to 125.3702, the planning commission may continue to exercise those powers and duties without amendment of the ordinance, resolution, or charter provision that created the planning commission.

(2) If, on the effective date of this act, a local unit of government had a planning commission without zoning authority created under former 1931 PA 285, former 1945 PA 282, or former 1959 PA 168, the legislative body may by amendment to the ordinance creating the planning commission, or, if the planning commission was created by resolution, may by resolution, transfer to the planning commission all the powers and duties provided to a zoning board or zoning commission created under the Michigan zoning enabling act, 2006 PA 110, MCL 125.3101 to 125.3702. If an existing zoning board or zoning commission in the local unit of government is nearing the completion of its draft zoning ordinance, the legislative body shall postpone the transfer of the zoning board's or zoning commission's powers, duties, and records until the completion of the draft zoning ordinance, but is not required to postpone the transfer more than 1 year.

(3) If, on or after the effective date of this act, a planning commission is created in a local unit of government that has had a zoning board or zoning commission since before the effective date of this act, the legislative body shall transfer all the powers, duties, and records of the zoning board or zoning commission to the planning commission before July 1, 2011. If the existing zoning board or zoning commission is nearing the completion of its draft zoning ordinance, the legislative body may, by resolution, postpone the transfer of the zoning board's or zoning commission's powers, duties, and records until the completion of the draft zoning ordinance, but not later than until 1 year after creation of the planning commission or July 1, 2011, whichever comes first.

History: 2008, Act 33, Eff. Sept. 1, 2008.

125.3885 Repeal of certain acts.

Sec. 85. (1) The following acts are repealed:

(a) 1931 PA 285, MCL 125.31 to 125.45.

(b) 1945 PA 282, MCL 125.101 to 125.115.

(c) 1959 PA 168, MCL 125.321 to 125.333.

(2) Any plan adopted or amended under an act repealed under subsection (1) is subject to section 81(1).

History: 2008, Act 33, Eff. Sept. 1, 2008.

MICHIGAN ZONING ENABLING ACT
Act 110 of 2006

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.

History: 2006, Act 110, Eff. July 1, 2006.

The People of the State of Michigan enact:

ARTICLE I
GENERAL PROVISIONS

125.3101 Short title.

Sec. 101. This act shall be known and may be cited as the "Michigan zoning enabling act".

History: 2006, Act 110, Eff. July 1, 2006.

125.3102 Definitions.

Sec. 102. As used in this act:

(a) "Agricultural land" means substantially undeveloped land devoted to the production of plants and animals useful to humans, including, but not limited to, forage and sod crops, grains, feed crops, field crops, dairy products, poultry and poultry products, livestock, herbs, flowers, seeds, grasses, nursery stock, fruits, vegetables, Christmas trees, and other similar uses and activities.

(b) "Airport" means an airport licensed by the Michigan department of transportation, bureau of aeronautics under section 86 of the aeronautics code of the state of Michigan, 1945 PA 327, MCL 259.86.

(c) "Airport approach plan" and "airport layout plan" mean a plan, or an amendment to a plan, filed with the zoning commission under section 151 of the aeronautics code of the state of Michigan, 1945 PA 327, MCL 259.151.

(d) "Airport manager" means that term as defined in section 2 of the aeronautics code of the state of Michigan, 1945 PA 327, MCL 259.2.

(e) "Airport zoning regulations" means airport zoning regulations under the airport zoning act, 1950 (Ex Sess) PA 23, MCL 259.431 to 259.465, for an airport hazard area that lies in whole or part in the area affected by a zoning ordinance under this act.

(f) "Conservation easement" means that term as defined in section 2140 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.2140.

(g) "Coordinating zoning committee" means a coordinating zoning committee as described under section 307.

(h) "Development rights" means the rights to develop land to the maximum intensity of development authorized by law.

(i) "Development rights ordinance" means an ordinance, which may comprise part of a zoning ordinance, adopted under section 507.

(j) "Family child care home" and "group child care home" mean those terms as defined in section 1 of 1973 PA 116, MCL 722.111, and only apply to the bona fide private residence of the operator of the family or group child care home.

(k) "Greenway" means a contiguous or linear open space, including habitats, wildlife corridors, and trails, that links parks, nature reserves, cultural features, or historic sites with each other, for recreation and conservation purposes.

(*l*) "Improvements" means those features and actions associated with a project that are considered necessary by the body or official granting zoning approval to protect natural resources or the health, safety, and welfare of the residents of a local unit of government and future users or inhabitants of the proposed project or project area, including roadways, lighting, utilities, sidewalks, screening, and drainage. Improvements do not include the entire project that is the subject of zoning approval.

(m) "Intensity of development" means the height, bulk, area, density, setback, use, and other similar characteristics of development.

(n) "Legislative body" means the county board of commissioners of a county, the board of trustees of a township, or the council or other similar elected governing body of a city or village.

(o) "Local unit of government" means a county, township, city, or village.

(p) "Other eligible land" means land that has a common property line with agricultural land from which development rights have been purchased and is not divided from that agricultural land by a state or federal limited access highway.

(q) "Person" means an individual, partnership, corporation, association, governmental entity, or other legal entity.

(r) "Population" means the population according to the most recent federal decennial census or according to a special census conducted under section 7 of the Glenn Steil state revenue sharing act of 1971, 1971 PA 140, MCL 141.907, whichever is the more recent.

(s) "Site plan" includes the documents and drawings required by the zoning ordinance to ensure that a proposed land use or activity is in compliance with local ordinances and state and federal statutes.

(t) "State licensed residential facility" means a structure constructed for residential purposes that is licensed by the state under the adult foster care facility licensing act, 1979 PA 218, MCL 400.701 to 400.737, or 1973 PA 116, MCL 722.111 to 722.128, and provides residential services for 6 or fewer individuals under 24-hour supervision or care.

(u) "Undeveloped state" means a natural state preserving natural resources, natural features, scenic or wooded conditions, agricultural use, open space, or a similar use or condition. Land in an undeveloped state does not include a golf course but may include a recreational trail, picnic area, children's play area, greenway, or linear park. Land in an undeveloped state may be, but is not required to be, dedicated to the use of the public.

(v) "Zoning commission" means a zoning commission as described under section 301.

(w) "Zoning jurisdiction" means the area encompassed by the legal boundaries of a city or village or the area encompassed by the legal boundaries of a county or township outside the limits of incorporated cities and villages. The zoning jurisdiction of a county does not include the areas subject to a township zoning ordinance.

History: 2006, Act 110, Eff. July 1, 2006;—Am. 2007, Act 219, Imd. Eff. Dec. 28, 2007;—Am. 2008, Act 12, Imd. Eff. Feb. 29, 2008.

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

Sec. 103. (1) Except as otherwise provided under this act, if a local unit of government conducts a public hearing required under this act, the local unit of government shall publish notice of the hearing in a newspaper of general circulation in the local unit of government not less than 15 days before the date of the hearing.

(2) Notice required under this act shall be given as provided under subsection (3) to the owners of property that is the subject of the request. Notice shall also be given as provided under subsection (3) to all persons to whom real property is assessed within 300 feet of the property that is the subject of the request and to the occupants of all structures within 300 feet of the subject property regardless of whether the property or structure is located in the zoning jurisdiction. Notification need not be given to more than 1 occupant of a structure, except that if a structure contains more than 1 dwelling unit or spatial area owned or leased by different persons, 1 occupant of each unit or spatial area shall be given notice. If a single structure contains more than 4 dwelling units or other distinct spatial areas owned or leased by different persons, notice may be given to the manager or owner of the structure, who shall be requested to post the notice at the primary entrance to the structure.

(3) The notice under subsection (2) is considered to be given when personally delivered or when deposited during normal business hours for delivery with the United States postal service or other public or private delivery service. The notice shall be given not less than 15 days before the date the request will be considered. If the name of the occupant is not known, the term "occupant" may be used for the intended recipient of the notice.

(4) A notice under this section shall do all of the following:

(a) Describe the nature of the request.

(b) Indicate the property that is the subject of the request. The notice shall include a listing of all existing street addresses within the property. Street addresses do not need to be created and listed if no such addresses currently exist within the property. If there are no street addresses, other means of identification may be used.

(c) State when and where the request will be considered.

(d) Indicate when and where written comments will be received concerning the request.

History: 2006, Act 110, Eff. July 1, 2006;—Am. 2008, Act 12, Imd. Eff. Feb. 29, 2008.

ARTICLE II

ZONING AUTHORIZATION AND INITIATION

125.3201 Regulation of land development and establishment of districts; provisions; uniformity of regulations; designations; limitations.

Sec. 201. (1) A local unit of government may provide by zoning ordinance 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 limit the inappropriate overcrowding of land and congestion of population, transportation systems, and other public facilities, 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 public health, safety, and welfare.

(2) Except as otherwise provided under this act, the regulations shall be uniform for each class of land or buildings, dwellings, and structures within a district.

(3) A local unit of government may provide under the zoning ordinance for the regulation of land development and the establishment of districts which apply only to land areas and activities involved in a special program to achieve specific land management objectives and avert or solve specific land use problems, including the regulation of land development and the establishment of districts in areas subject to damage from flooding or beach erosion.

(4) A local unit of government may adopt land development regulations under the zoning ordinance designating or limiting the location, height, bulk, number of stories, uses, and size of dwellings, buildings, and structures that may be erected or altered, including tents and recreational vehicles.

History: 2006, Act 110, Eff. July 1, 2006.

125.3202 Zoning ordinance; determination by local legislative body; amendments or supplements; notice of proposed rezoning.

Sec. 202. (1) The legislative body of a local unit of government may provide by ordinance for the manner in which the regulations and boundaries of districts or zones shall be determined and enforced or amended or supplemented. Amendments or supplements to the zoning ordinance shall be adopted in the same manner as provided under this act for the adoption of the original ordinance.

(2) Except as provided in subsection (3), the zoning commission shall give a notice of a proposed rezoning in the same manner as required under section 103.

(3) For any group of adjacent properties numbering 11 or more that is proposed for rezoning, the requirements of section 103(2) and the requirement of section 103(4)(b) that street addresses be listed do not apply to that group of adjacent properties.

(4) An amendment to a zoning ordinance by a city or village is subject to a protest petition under section 403.

(5) An amendment to conform a provision of the zoning ordinance to the decree of a court of competent jurisdiction as to any specific lands may be adopted by the legislative body and the notice of the adopted amendment published without referring the amendment to any other board or agency provided for under this act.

History: 2006, Act 110, Eff. July 1, 2006;—Am. 2008, Act 12, Imd. Eff. Feb. 29, 2008.

125.3203 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.

Sec. 203. (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.

(2) If a local unit of government adopts or revises a plan required under subsection (1) after an airport layout plan or airport approach plan has been filed with the local unit of government, the local unit of government shall incorporate the airport layout plan or airport approach plan into the plan adopted under subsection (1).

(3) In addition to the requirements of subsection (1), a zoning ordinance adopted after March 28, 2001 shall be adopted after reasonable consideration of both of the following:

(a) The environs of any airport within a district.

(b) Comments received at or before a public hearing under section 306 from the airport manager of any airport.

(4) If a zoning ordinance was adopted before March 28, 2001, the zoning ordinance is not required to be consistent with any airport zoning regulations, airport layout plan, or airport approach plan. A zoning ordinance amendment adopted or variance granted after March 28, 2001 shall not increase any inconsistency that may exist between the zoning ordinance or structures or uses and any airport zoning regulations, airport layout plan, or airport approach plan. This section does not limit the right to petition for submission of a zoning ordinance amendment to the electors under section 402 or the right to file a protest petition under section 403.

(5) The reference to public transportation facilities in subsection (1) only applies to a plan that is adopted or substantively amended more than 90 days after the effective date of the amendatory act that added this subsection.

History: 2006, Act 110, Eff. July 1, 2006;—Am. 2010, Act 305, Imd. Eff. Dec. 17, 2010.

125.3204 Single-family residence; instruction in craft or fine art as home occupation.

Sec. 204. A zoning ordinance adopted under this act shall provide for the use of a single-family residence by an occupant of that residence for a home occupation to give instruction in a craft or fine art within the residence. This section does not prohibit the regulation of noise, advertising, traffic, hours of operation, or other conditions that may accompany the use of a residence under this section.

History: 2006, Act 110, Eff. July 1, 2006.

125.3205 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.

Sec. 205. (1) A zoning ordinance is subject to all of the following:

(a) The electric transmission line certification act, 1995 PA 30, MCL 460.561 to 460.575.

(b) The regional transit authority act, 2012 PA 387, MCL 124.541 to 124.558.

(c) The small wireless communications facilities deployment act.

(2) A county or township shall not regulate or control the drilling, completion, or operation of oil or gas wells or other wells drilled for oil or gas exploration purposes and shall not have jurisdiction with reference to the issuance of permits for the location, drilling, completion, operation, or abandonment of such wells.

(3) An ordinance shall not prevent the extraction, by mining, of valuable natural resources from any property unless very serious consequences would result from the extraction of those natural resources. Natural resources shall be considered valuable for the purposes of this section if a person, by extracting the natural resources, can receive revenue and reasonably expect to operate at a profit.

(4) A person challenging a zoning decision under subsection (3) has the initial burden of showing that there are valuable natural resources located on the relevant property, that there is a need for the natural resources by the person or in the market served by the person, and that no very serious consequences would result from the extraction, by mining, of the natural resources.

(5) In determining under this section whether very serious consequences would result from the extraction, by mining, of natural resources, the standards set forth in *Silva v Ada Township*, 416 Mich 153 (1982), shall be applied and all of the following factors may be considered, if applicable:

(a) The relationship of extraction and associated activities with existing land uses.

(b) The impact on existing land uses in the vicinity of the property.

(c) The impact on property values in the vicinity of the property and along the proposed hauling route serving the property, based on credible evidence.

(d) The impact on pedestrian and traffic safety in the vicinity of the property and along the proposed hauling route serving the property.

(e) The impact on other identifiable health, safety, and welfare interests in the local unit of government.

(f) The overall public interest in the extraction of the specific natural resources on the property.

(6) Subsections (3) to (5) do not limit a local unit of government's reasonable regulation of hours of

operation, blasting hours, noise levels, dust control measures, and traffic, not preempted by part 632 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.63201 to 324.63223. However, such regulation shall be reasonable in accommodating customary mining operations.

(7) This act does not limit state regulatory authority under other statutes or rules.

History: 2006, Act 110, Eff. July 1, 2006;—Am. 2011, Act 113, Imd. Eff. July 20, 2011;—Am. 2012, Act 389, Eff. Mar. 28, 2013;—Am. 2018, Act 366, Eff. Mar. 12, 2019.

125.3205a Amateur radio service station antenna structures.

Sec. 205a. (1) 47 CFR 97.15 provides that owners of certain amateur radio service station antenna structures more than 60.96 meters (200 feet) above ground level at the site or located near or at a public use airport must notify the federal aviation administration and register with the federal communications commission as required by 47 CFR part 17.

(2) An amateur radio service station antenna structure may be erected at heights and dimensions sufficient to accommodate amateur radio service communications. Regulation of an amateur radio service station antenna structure by a local unit of government must not preclude amateur radio service communications. Rather, it must reasonably accommodate those communications and must constitute the minimum practicable regulation to accomplish the local unit of government's legitimate purpose.

(3) To obtain information about the regulation of amateur radio service station antenna structures, a person may contact any advisory board that is jointly established by the Michigan section of the American radio relay league and 1 or more state organizations representing local units of government.

History: Add. 2014, Act 556, Imd. Eff. Jan. 15, 2014.

125.3205d Zoning ordinance; prohibition or regulation of commemorative signs.

Sec. 205d. (1) A zoning ordinance shall not regulate or prohibit a sign that is located on or within a building and that commemorates any of the following:

(a) Any of the following who die in the line of duty:

(*i*) Police officers.

(*ii*) Firefighters.

(*iii*) Medical first responders.

(*iv*) Members of the United States Armed Forces.

(*v*) Corrections officers.

(b) Veterans of the United States Armed Forces.

(2) As used in this section, "medical first responder" means that term as defined in section 20906 of the public health code, 1978 PA 368, MCL 333.20906.

History: Add. 2018, Act 506, Eff. Mar. 28, 2019.

125.3206 Residential use of property; adult foster care facilities; family or group child care homes.

Sec. 206. (1) Except as provided in subsection (2), each of the following is a residential use of property for the purposes of zoning and a permitted use in all residential zones and is not subject to a special use or conditional use permit or procedure different from those required for other dwellings of similar density in the same zone:

(*i*) A state licensed residential facility.

(*ii*) A facility in use as described in section 3(4)(k) of the adult foster care facility licensing act, 1979 PA 218, MCL 400.703.

(2) Subsection (1) does not apply to adult foster care facilities licensed by a state agency for care and treatment of persons released from or assigned to adult correctional institutions.

(3) For a county or township, a family child care home is a residential use of property for the purposes of zoning and a permitted use in all residential zones and is not subject to a special use or conditional use permit or procedure different from those required for other dwellings of similar density in the same zone.

(4) For a county or township, a group child care home shall be issued a special use permit, conditional use permit, or other similar permit if the group child care home meets all of the following standards:

(a) Is located not closer than 1,500 feet to any of the following:

(*i*) Another licensed group child care home.

(*ii*) An adult foster care small group home or large group home licensed under the adult foster care facility licensing act, 1979 PA 218, MCL 400.701 to 400.737.

(*iii*) A facility offering substance use disorder services to 7 or more people that is licensed under part 62 of the public health code, 1978 PA 368, MCL 333.6230 to 333.6251.

(*iv*) A community correction center, resident home, halfway house, or other similar facility that houses an inmate population under the jurisdiction of the department of corrections.

(b) Has appropriate fencing for the safety of the children in the group child care home as determined by the local unit of government.

(c) Maintains the property consistent with the visible characteristics of the neighborhood.

(d) Does not exceed 16 hours of operation during a 24-hour period. The local unit of government may limit but not prohibit the operation of a group child care home between the hours of 10 p.m. and 6 a.m.

(e) Meets regulations, if any, governing signs used by a group child care home to identify itself.

(f) Meets regulations, if any, requiring a group child care home operator to provide off-street parking accommodations for his or her employees.

(5) For a city or village, a group child care home may be issued a special use permit, conditional use permit, or other similar permit.

(6) A licensed or registered family or group child care home that operated before March 30, 1989 is not required to comply with this section.

(7) This section does not prohibit a local unit of government from inspecting a family or group child care home for the home's compliance with and enforcing the local unit of government's zoning ordinance. For a county or township, an ordinance shall not be more restrictive for a family or group child care home than 1973 PA 116, MCL 722.111 to 722.128.

(8) The establishment of any of the facilities listed under subsection (4)(a) after issuance of a special use permit, conditional use permit, or other similar permit pertaining to the group child care home does not affect renewal of that permit.

(9) This section does not prohibit a local unit of government from issuing a special use permit, conditional use permit, or other similar permit to a licensed group child care home that does not meet the standards listed under subsection (4).

(10) The distances required under subsection (4)(a) shall be measured along a road, street, or place maintained by this state or a local unit of government and generally open to the public as a matter of right for the purpose of vehicular traffic, not including an alley.

History: 2006, Act 110, Eff. July 1, 2006;—Am. 2007, Act 219, Imd. Eff. Dec. 28, 2007;—Am. 2018, Act 513, Eff. Mar. 28, 2019.

125.3207 Zoning ordinance or decision; effect as prohibiting establishment of land use.

Sec. 207. A zoning ordinance or zoning decision shall not have the effect of totally prohibiting the establishment of a land use within a local unit of government in the presence of a demonstrated need for that land use within either that local unit of government or the surrounding area within the state, unless a location within the local unit of government does not exist where the use may be appropriately located or the use is unlawful.

History: 2006, Act 110, Eff. July 1, 2006.

125.3208 Nonconforming uses or structures.

Sec. 208. (1) If the use of a dwelling, building, or structure or of the land is lawful at the time of enactment of a zoning ordinance or an amendment to a zoning ordinance, then that use may be continued although the use does not conform to the zoning ordinance or amendment. This subsection is intended to codify the law as it existed before July 1, 2006 in section 16(1) of the former county zoning act, 1943 PA 183, section 16(1) of the former township zoning act, 1943 PA 184, and section 3a(1) of the former city and village zoning act, 1921 PA 207, as they applied to counties, townships, and cities and villages, respectively, and shall be construed as a continuation of those laws and not as a new enactment.

(2) The legislative body may provide in a zoning ordinance for the completion, resumption, restoration, reconstruction, extension, or substitution of nonconforming uses or structures upon terms and conditions provided in the zoning ordinance. In establishing terms for the completion, resumption, restoration, reconstruction, extension, or substitution of nonconforming uses or structures, different classes of nonconforming uses may be established in the zoning ordinance with different requirements applicable to each class.

(3) The legislative body may acquire, by purchase, condemnation, or otherwise, private property or an interest in private property for the removal of nonconforming uses and structures. The legislative body may provide that the cost and expense of acquiring private property may be paid from general funds or assessed to a special district in accordance with the applicable statutory provisions relating to the creation and operation of special assessment districts for public improvements in local units of government. Property acquired under this subsection by a city or village shall not be used for public housing.

(4) The elimination of the nonconforming uses and structures in a zoning district is declared to be for a

public purpose and for a public use. The legislative body may institute proceedings for condemnation of nonconforming uses and structures under 1911 PA 149, MCL 213.21 to 213.25.

History: 2006, Act 110, Eff. July 1, 2006;—Am. 2008, Act 12, Imd. Eff. Feb. 29, 2008;—Am. 2010, Act 330, Imd. Eff. Dec. 21, 2010.

125.3209 Township zoning ordinance not subject to county ordinance, rule, or regulation.

Sec. 209. Except as otherwise provided under this act, a township that has enacted a zoning ordinance under this act is not subject to an ordinance, rule, or regulation adopted by a county under this act.

History: 2006, Act 110, Eff. July 1, 2006.

125.3210 Ordinance as controlling.

Sec. 210. Except as otherwise provided under this act, an 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.

History: 2006, Act 110, Eff. July 1, 2006.

125.3211 Appointment of zoning commission by legislative body; purposes; petition; initiation of action to formulate zoning commission and zoning ordinance.

Sec. 211. (1) The legislative body may proceed with the adoption of a zoning ordinance containing land development regulations and establishing zoning districts under this act upon appointment of a zoning commission as provided in section 301.

(2) The legislative body may appoint a zoning commission for purposes of formulating a zoning ordinance on its own initiative or upon receipt of a petition requesting that action as provided under subsection (3).

(3) Upon receipt of a petition signed by a number of qualified and registered voters residing in the zoning jurisdiction equal to not less than 8% of the total votes cast within the zoning jurisdiction for all candidates for governor at the last preceding general election at which a governor was elected, filed with the clerk of the local unit of government requesting the legislative body to appoint a zoning commission for purposes of formulating a zoning ordinance, the legislative body, at the next regular meeting, may initiate action to formulate a zoning commission and zoning ordinance under this act.

History: 2006, Act 110, Eff. July 1, 2006.

ARTICLE III
ZONING COMMISSION

125.3301 Zoning commission; creation; transfer of powers to planning commission; resolution; membership; terms; successors; vacancy; limitation; removal of member; officers.

Sec. 301. (1) Each local unit of government in which the legislative body exercises authority under this act shall create a zoning commission unless 1 of the following applies:

(a) A county zoning commission created under former 1943 PA 183, a township zoning board created under former 1943 PA 184, or a city or village zoning commission created under former 1921 PA 207 was in existence in the local unit of government as of June 30, 2006. Unless abolished by the legislative body, that existing board or commission shall continue as and exercise the powers and perform the duties of a zoning commission under this act, subject to a transfer of power under subsection (2).

(b) A planning commission was, as of June 30, 2006, in existence in the local unit of government and pursuant to the applicable planning enabling act exercising the powers and performing the duties of a county zoning commission created under former 1943 PA 185, of a township zoning board created under former 1943 PA 184, or of a city or village zoning commission created under former 1921 PA 207. Unless abolished by the legislative body, that existing planning commission shall continue and exercise the powers and perform the duties of a zoning commission under this act.

(c) The local unit of government has created a planning commission on or after July 1, 2006 and transferred the powers and duties of a zoning commission to the planning commission pursuant to the applicable planning enabling act.

(2) Except as otherwise provided under this subsection, if the powers and duties of the zoning commission have been transferred to the planning commission as provided by law, the planning commission shall function as the zoning commission of the local unit of government. By July 1, 2011, the legislative body shall transfer the powers and duties of the zoning commission to the planning commission. Except as provided under this subsection, beginning July 1, 2011, a zoning commission's powers or duties under this act or an ordinance

adopted under this act shall only be exercised or performed by a planning commission.

(3) If a zoning commission is created on or after July 1, 2006, the zoning commission shall be created by resolution and be composed of not fewer than 5 or more than 11 members appointed by the legislative body. Not fewer than 2 of the members of a county zoning commission shall be recommended for membership by the legislative bodies of townships that are, or will be, subject to the county zoning ordinance. This requirement may be met as vacancies occur on a county zoning commission that existed on June 30, 2006.

(4) The members of a zoning commission shall be selected upon the basis of the members' qualifications and fitness to serve as members of a zoning commission.

(5) The first zoning commission appointed under subsection (3) shall be divided as nearly as possible into 3 equal groups, with terms of each group as follows:

(a) One group for 1 year.

(b) One group for 2 years.

(c) One group for 3 years.

(6) Upon the expiration of the terms of the members first appointed, successors shall be appointed in the same manner for terms of 3 years each. A member of the zoning commission shall serve until a successor is appointed and has been qualified.

(7) A vacancy on a zoning commission shall be filled for the remainder of the unexpired term in the same manner as the original appointment.

(8) An elected officer of a local unit of government shall not serve simultaneously as a member or an employee of the zoning commission of that local unit of government, except that 1 member of the legislative body may be a member of the zoning commission.

(9) The legislative body shall provide for the removal of a member of a zoning commission for misfeasance, malfeasance, or nonfeasance in office upon written charges and after public hearing.

(10) A zoning commission shall elect from its members a chairperson, a secretary, and other officers and establish such committees it considers necessary and may engage any employees, including for technical assistance, it requires. The election of officers shall be held not less than once in every 2-year period.

History: 2006, Act 110, Eff. July 1, 2006;—Am. 2008, Act 12, Imd. Eff. Feb. 29, 2008.

125.3302 Expenses; compensation.

Sec. 302. Members of the zoning commission may be reimbursed for reasonable expenses actually incurred in the discharge of their duties and may receive compensation as fixed by the legislative body.

History: 2006, Act 110, Eff. July 1, 2006.

125.3303 Planning expert; compensation.

Sec. 303. (1) With the approval of the legislative body, the zoning commission may engage the services of a planning expert. Compensation for the planning expert shall be paid by the legislative body.

(2) The zoning commission shall consider any information and recommendations furnished by appropriate public officials, departments, or agencies.

History: 2006, Act 110, Eff. July 1, 2006.

125.3304 Regular meetings; notice; zoning commission subject to open meetings act.

Sec. 304. The zoning commission shall hold a minimum of 2 regular meetings annually, giving notice of the time and place by publication in a newspaper of general circulation in the zoning jurisdiction. Notice shall be given not less than 15 days before the meeting. The zoning commission is subject to the open meetings act, 1976 PA 267, MCL 15.261 to 15.275.

History: 2006, Act 110, Eff. July 1, 2006.

125.3305 Recommendations of zoning commission; adoption and filing.

Sec. 305. The zoning commission shall adopt and file with the legislative body the following recommendations:

(a) A zoning plan for the areas subject to zoning of the local unit of government.

(b) The establishment of zoning districts, including the boundaries of those districts.

(c) The text of a zoning ordinance with the necessary maps and zoning regulations to be adopted for a zoning district or the zoning jurisdiction as a whole.

(d) The manner of administering and enforcing the zoning ordinance.

History: 2006, Act 110, Eff. July 1, 2006.

125.3306 Recommendations of zoning commission; submission to legislative body; public

hearing; notice; examination of proposed text and maps.

Sec. 306. (1) Before submitting its recommendations for a proposed zoning ordinance to the legislative body, the zoning commission shall hold at least 1 public hearing. Notice of the time and place of the public hearing shall be given in the same manner as required under section 103(1) for the initial adoption of a zoning ordinance or section 202 for any other subsequent zoning text or map amendments.

(2) Notice of the time and place of the public hearing shall also be given by mail to each electric, gas, and pipeline public utility company, each telecommunication service provider, each railroad operating within the district or zone affected, and the airport manager of each airport, that registers its name and mailing address with the clerk of the legislative body for the purpose of receiving the notice of public hearing.

(3) The notices required under this section shall include the places and times at which the proposed text and any maps of the zoning ordinance may be examined.

History: 2006, Act 110, Eff. July 1, 2006.

125.3307 Review and recommendations after hearing; submission to township; submission to coordinating zoning committee; waiver of right to review.

Sec. 307. (1) Following the hearing required in section 306, a township shall submit for review and recommendation the proposed zoning ordinance, including any zoning maps, to the zoning commission of the county in which the township is situated if a county zoning commission has been appointed as provided under this act.

(2) If there is not a county zoning commission or county planning commission, the proposed zoning ordinance shall be submitted to the coordinating zoning committee. The coordinating zoning committee shall be composed of either 3 or 5 members appointed by the legislative body of the county for the purpose of coordinating the zoning ordinances proposed for adoption under this act with the zoning ordinances of a township, city, or village having a common boundary with the township.

(3) The county will have waived its right for review and recommendation of an ordinance if the recommendation of the county zoning commission, planning commission, or coordinating zoning committee has not been received by the township within 30 days from the date the proposed ordinance is received by the county.

(4) The legislative body of a county by resolution may waive its right to review township ordinances and amendments under this section.

History: 2006, Act 110, Eff. July 1, 2006.

125.3308 Summary of public hearing comments; transmission to legislative body by zoning commission; report.

Sec. 308. (1) Following the required public hearing under section 306, the zoning commission shall transmit a summary of comments received at the hearing and its proposed zoning ordinance, including any zoning maps and recommendations, to the legislative body of the local unit of government.

(2) Following the enactment of the zoning ordinance, the zoning commission shall at least once per year prepare for the legislative body a report on the administration and enforcement of the zoning ordinance and recommendations for amendments or supplements to the ordinance.

History: 2006, Act 110, Eff. July 1, 2006.

ARTICLE IV
ZONING ADOPTION AND ENFORCEMENT

125.3401 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.

Sec. 401. (1) After receiving a zoning ordinance under section 308(1) or an amendment under sections 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 public hearing to be held by the legislative body shall be given in the same manner as required under section 103(1) for the initial adoption of a zoning ordinance or section 202 for any zoning text or map amendments.

(3) The legislative body may refer any proposed amendments to the zoning commission for consideration and comment within a time specified by the legislative body.

(4) The legislative body shall grant a hearing on a proposed ordinance provision to an interested property owner who requests a hearing by certified mail, addressed to the clerk of the legislative body. A hearing under

this subsection is not subject to the requirements of section 103, except that notice of the hearing shall be given to the interested property owner in the manner required in section 103(3) and (4).

(5) After any proceedings under subsections (1) to (4), the legislative body shall consider and vote upon the adoption of a zoning ordinance, with or without amendments. A zoning ordinance and any amendments shall be approved by a majority vote of the members of the legislative body.

(6) Except as otherwise provided under section 402, a zoning ordinance shall take effect upon the expiration of 7 days after publication as required by subsection (7) or at such later date after publication as may be specified by the legislative body or charter.

(7) Following adoption of a zoning ordinance or any subsequent amendments by the legislative body, the zoning ordinance or subsequent amendments shall be filed with the clerk of the legislative body, 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) A copy of the notice required under subsection (7) shall be mailed to the airport manager of an airport entitled to notice under section 306.

(9) The notice required under this section shall include all of the following information:

(a) In the case of a newly adopted zoning ordinance, the following statement: "A zoning ordinance regulating the development and use of land has been adopted by the legislative body of the [county, township, city, or village] of _____.".

(b) In the case of an amendment to an existing zoning ordinance, either a summary of the regulatory effect of the amendment, including the geographic area affected, or the text of the amendment.

(c) The effective date of the ordinance or amendment.

(d) The place where and time when a copy of the ordinance or amendment may be purchased or inspected.

(10) The filing and publication requirements under this section supersede any other statutory or charter requirements relating to the filing and publication of county, township, city, or village ordinances.

History: 2006, Act 110, Eff. July 1, 2006;—Am. 2008, Act 12, Imd. Eff. Feb. 29, 2008.

125.3402 Notice of intent to file petition.

Sec. 402. (1) Within 7 days after publication of a zoning ordinance under section 401, a registered elector residing in the zoning jurisdiction of a county or township may file with the clerk of the legislative body a notice of intent to file a petition under this section.

(2) If a notice of intent is filed under subsection (1), the petitioner shall have 30 days following the publication of the zoning ordinance to file a petition signed by a number of registered electors residing in the zoning jurisdiction not less than 15% of the total vote cast within the zoning jurisdiction for all candidates for governor at the last preceding general election at which a governor was elected, with the clerk of the legislative body requesting the submission of a zoning ordinance or part of a zoning ordinance to the electors residing in the zoning jurisdiction for their approval.

(3) Upon the filing of a notice of intent under subsection (1), the zoning ordinance or part of the zoning ordinance adopted by the legislative body shall not take effect until 1 of the following occurs:

(a) The expiration of 30 days after publication of the ordinance, if a petition is not filed within that time.

(b) If a petition is filed within 30 days after publication of the ordinance, the clerk of the legislative body determines that the petition is inadequate.

(c) If a petition is filed within 30 days after publication of the ordinance, the clerk of the legislative body determines that the petition is adequate and the ordinance or part of the ordinance is approved by a majority of the registered electors residing in the zoning jurisdiction voting on the petition at the next regular election or at any special election called for that purpose. The legislative body shall provide the manner of submitting the zoning ordinance or part of the zoning ordinance to the electors for their approval or rejection and determining the result of the election.

(4) A petition and an election under this section are subject to the Michigan election law, 1954 PA 116, MCL 168.1 to 168.992.

History: 2006, Act 110, Eff. July 1, 2006.

125.3403 Amendment to zoning ordinance; filing of protest petition; vote.

Sec. 403. (1) An amendment to a zoning ordinance by a city or village is subject to a protest petition as required by this subsection. If a protest petition is filed, approval of the amendment to the zoning ordinance shall require a 2/3 vote of the legislative body, unless a larger vote, not to exceed a 3/4 vote, is required by ordinance or charter. The protest petition shall be presented to the legislative body of the city or village before final legislative action on the amendment and shall be signed by 1 or more of the following:

(a) The owners of at least 20% of the area of land included in the proposed change.

(b) The owners of at least 20% of the area of land included within an area extending outward 100 feet from any point on the boundary of the land included in the proposed change.

(2) Publicly owned land shall be excluded in calculating the 20% land area requirement under subsection (1).

History: 2006, Act 110, Eff. July 1, 2006.

125.3404 Interim zoning ordinance.

Sec. 404. (1) To protect the public health, safety, and general welfare of the inhabitants and the lands and resources of a local unit of government during the period required for the preparation and enactment of an initial zoning ordinance under this act, the legislative body of a local unit of government may direct the zoning commission to submit, within a specified period of time, recommendations as to the provisions of an interim zoning ordinance.

(2) Before presenting its recommendations to the legislative body, the zoning commission of a township shall submit the interim zoning ordinance, or an amendment to the ordinance, to the county zoning commission or the coordinating zoning committee, for the purpose of coordinating the zoning ordinance with the zoning ordinances of a township, city, or village having a common boundary with the township. The ordinance shall be considered approved 15 days from the date the zoning ordinance is submitted to the legislative body.

(3) After approval, the legislative body, by majority vote of its members, may give the interim ordinance or amendments to the interim ordinance immediate effect. An interim ordinance and subsequent amendments shall be filed and published as required under section 401.

(4) The interim ordinance, including any amendments, shall be limited to 1 year from the effective date and to not more than 2 years of renewal thereafter by resolution of the local unit of government.

History: 2006, Act 110, Eff. July 1, 2006.

125.3405 Use and development of land as condition to rezoning.

Sec. 405. (1) An owner of land may voluntarily offer in writing, and the local unit of government may approve, certain use and development of the land as a condition to a rezoning of the land or an amendment to a zoning map.

(2) In approving the conditions under subsection (1), the local unit of government may establish a time period during which the conditions apply to the land. Except for an extension under subsection (4), if the conditions are not satisfied within the time specified under this subsection, the land shall revert to its former zoning classification.

(3) The local government shall not add to or alter the conditions approved under subsection (1) during the time period specified under subsection (2) of this section.

(4) The time period specified under subsection (2) may be extended upon the application of the landowner and approval of the local unit of government.

(5) A local unit of government shall not require a landowner to offer conditions as a requirement for rezoning. The lack of an offer under subsection (1) shall not otherwise affect a landowner's rights under this act, the ordinances of the local unit of government, or any other laws of this state.

History: 2006, Act 110, Eff. July 1, 2006.

125.3406 Zoning permits; fees; effect of delinquent payment of fine, costs, or assessment.

Sec. 406. (1) The legislative body may charge reasonable fees for zoning permits as a condition of granting authority to use, erect, alter, or locate dwellings, buildings, and structures, including tents and recreational vehicles, within a zoning district established under this act.

(2) A zoning ordinance adopted by a city may provide that a person is not eligible to apply for a rezoning, site plan approval, special land use approval, planned unit development approval, variance, or other zoning authorization if the person is delinquent in paying a civil fine, costs, or a justice system assessment imposed by an administrative hearings bureau established in that city pursuant to section 4q of the home rule city act, 1909 PA 279, MCL 117.4q.

(3) A zoning ordinance provision adopted under subsection (2) does not apply to an applicant for a zoning authorization if the applicant became the owner of the property by foreclosure or by taking a deed in lieu of foreclosure and is 1 of the following:

(a) A government-sponsored enterprise. As used in this subdivision, "government-sponsored enterprise" means that term as defined in 2 USC 622(8), or the Michigan state housing development authority created under the state housing development authority act of 1966, 1966 PA 346, MCL 125.1401 to 125.1499c.

(b) A financial institution. As used in this subdivision, "financial institution" means that term as defined in

section 4(c) of the Michigan strategic fund act, 1984 PA 270, MCL 125.2004.

(c) A mortgage servicer, as that term is defined in section 1a of the mortgage brokers, lenders, and servicers licensing act, 1987 PA 173, MCL 445.1651a, that is subject to the mortgage brokers, lenders, and servicers licensing act, 1987 PA 173, MCL 445.1651 to 445.1684.

(d) A credit union service organization that is organized under the laws of this state or the United States.

(4) Subsection (2) does not apply to a zoning authorization if the authorization will correct, in whole or in part, the blight violation that was the subject of the delinquent payment referred to in subsection (2).

History: 2006, Act 110, Eff. July 1, 2006;—Am. 2013, Act 189, Eff. Mar. 14, 2014.

125.3407 Certain violations as nuisance per se.

Sec. 407. Except as otherwise provided by law, a use of land or a dwelling, building, or structure, including a tent or recreational vehicle, used, erected, altered, razed, or converted in violation of a zoning ordinance or regulation adopted under this act is a nuisance per se. The court shall order the nuisance abated, and the owner or agent in charge of the dwelling, building, structure, tent, recreational vehicle, or land is liable for maintaining a nuisance per se. The legislative body shall in the zoning ordinance enacted under this act designate the proper official or officials who shall administer and enforce the zoning ordinance and do 1 of the following for each violation of the zoning ordinance:

(a) Impose a penalty for the violation.

(b) Designate the violation as a municipal civil infraction and impose a civil fine for the violation.

(c) Designate the violation as a blight violation and impose a civil fine or other sanction authorized by law. This subdivision applies only to a city that establishes an administrative hearings bureau pursuant to section 4q of the home rule city act, 1909 PA 279, MCL 117.4q.

History: 2006, Act 110, Eff. July 1, 2006;—Am. 2008, Act 12, Imd. Eff. Feb. 29, 2008.

ARTICLE V
SPECIAL ZONING PROVISIONS

125.3501 Submission and approval of site plan; procedures and requirements.

Sec. 501. (1) The local unit of government may require the submission and approval of a site plan before authorization of a land use or activity regulated by a zoning ordinance. The zoning ordinance shall specify the body or official responsible for reviewing site plans and granting approval.

(2) If a zoning ordinance requires site plan approval, the site plan, as approved, shall become part of the record of approval, and subsequent actions relating to the activity authorized shall be consistent with the approved site plan, unless a change conforming to the zoning ordinance is agreed to by the landowner and the body or official that initially approved the site plan.

(3) The procedures and requirements for the submission and approval of site plans shall be specified in the zoning ordinance. Site plan submission, review, and approval shall be required for special land uses and planned unit developments.

(4) A decision rejecting, approving, or conditionally approving a site plan shall be based upon requirements and standards contained in the zoning ordinance, other statutorily authorized and properly adopted local unit of government planning documents, other applicable ordinances, and state and federal statutes.

(5) A site plan shall be approved if it contains the information required by the zoning ordinance and is in compliance with the conditions imposed under the zoning ordinance, other statutorily authorized and properly adopted local unit of government planning documents, other applicable ordinances, and state and federal statutes.

History: 2006, Act 110, Eff. July 1, 2006;—Am. 2008, Act 12, Imd. Eff. Feb. 29, 2008.

125.3502 Special land uses; review and approval; application; notice of request; public hearing; incorporation of decision in statement of findings and conclusions.

Sec. 502. (1) The legislative body may provide in a zoning ordinance for special land uses in a zoning district. A special land use shall be subject to the review and approval of the zoning commission, the planning commission, an official charged with administering the zoning ordinance, or the legislative body as required by the zoning ordinance. The zoning ordinance shall specify all of the following:

(a) The special land uses and activities eligible for approval and the body or official responsible for reviewing and granting approval.

(b) The requirements and standards for approving a request for a special land use.

(c) The procedures and supporting materials required for the application, review, and approval of a special

land use.

(2) Upon receipt of an application for a special land use which requires a discretionary decision, the local unit of government shall provide notice of the request as required under section 103. The notice shall indicate that a public hearing on the special land use request may be requested by any property owner or the occupant of any structure located within 300 feet of the property being considered for a special land use regardless of whether the property or occupant is located in the zoning jurisdiction.

(3) At the initiative of the body or official responsible for approving the special land use or upon the request of the applicant, a real property owner whose real property is assessed within 300 feet of the property, or the occupant of a structure located within 300 feet of the property, a public hearing shall be held before a discretionary decision is made on the special land use request.

(4) The body or official designated to review and approve special land uses may deny, approve, or approve with conditions a request for special land use approval. The decision on a special land use shall be incorporated in a statement of findings and conclusions relative to the special land use which specifies the basis for the decision and any conditions imposed.

History: 2006, Act 110, Eff. July 1, 2006.

125.3503 Planned unit development.

Sec. 503. (1) As used in this section, "planned unit development" includes such terms as cluster zoning, planned development, community unit plan, and planned residential development and other terminology denoting zoning requirements designed to accomplish the objectives of the zoning ordinance through a land development project review process based on the application of site planning criteria to achieve integration of the proposed land development project with the characteristics of the project area.

(2) The legislative body may establish planned unit development requirements in a zoning ordinance that permit flexibility in the regulation of land development, encourage innovation in land use and variety in design, layout, and type of structures constructed, achieve economy and efficiency in the use of land, natural resources, energy, and the provision of public services and utilities, encourage useful open space, and provide better housing, employment, and shopping opportunities particularly suited to the needs of the residents of this state. The review and approval of planned unit developments shall be by the zoning commission, an individual charged with administration of the zoning ordinance, or the legislative body, as specified in the zoning ordinance.

(3) Within a land development project designated as a planned unit development, regulations relating to the use of land, including, but not limited to, permitted uses, lot sizes, setbacks, height limits, required facilities, buffers, open space areas, and land use density, shall be determined in accordance with the planned unit development regulations specified in the zoning ordinance. The planned unit development regulations need not be uniform with regard to each type of land use if equitable procedures recognizing due process principles and avoiding arbitrary decisions are followed in making regulatory decisions. Unless explicitly prohibited by the planned unit development regulations, if requested by the landowner, a local unit of government may approve a planned unit development with open space that is not contiguous with the rest of the planned unit development.

(4) The planned unit development regulations established by the local unit of government shall specify all of the following:

(a) The body or official responsible for the review and approval of planned unit development requests.

(b) The conditions that create planned unit development eligibility, the participants in the review process, and the requirements and standards upon which applicants will be reviewed and approval granted.

(c) The procedures required for application, review, and approval.

(5) Following receipt of a request to approve a planned unit development, the body or official responsible for the review and approval shall hold at least 1 public hearing on the request. A zoning ordinance may provide for preapplication conferences before submission of a planned unit development request and the submission of preliminary site plans before the public hearing. Notification of the public hearing shall be given in the same manner as required under section 103.

(6) Within a reasonable time following the public hearing, the body or official responsible for approving planned unit developments shall meet for final consideration of the request and deny, approve, or approve with conditions the request. The body or official shall prepare a report stating its conclusions, its decision, the basis for its decision, and any conditions imposed on an affirmative decision.

(7) If amendment of a zoning ordinance is required by the planned unit development regulations of a zoning ordinance, the requirements of this act for amendment of a zoning ordinance shall be followed, except that the hearing and notice required by this section shall fulfill the public hearing and notice requirements of section 306.

(8)If the planned unit development regulations of a zoning ordinance do not require amendment of the zoning ordinance to authorize a planned unit development, 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 planned unit development if each phase contains the necessary components to insure protection of natural resources and the health, safety, and welfare of the users of the planned unit development and the residents of the surrounding area.

(10)In establishing planned unit development requirements, a local unit of government may incorporate by reference other ordinances or statutes which regulate land development. The planned unit development regulations contained in zoning ordinances shall encourage complementary relationships between zoning regulations and other regulations affecting the development of land.

History: 2006, Act 110, Eff. July 1, 2006.

125.3504 Special land uses; regulations and standards; compliance; conditions; record of conditions.

Sec. 504. (1) If the zoning ordinance authorizes the consideration and approval of special land uses or planned unit developments under section 502 or 503 or otherwise provides for discretionary decisions, the regulations and standards upon which those decisions are made shall be specified in the zoning ordinance.

(2) The standards shall be consistent with and promote the intent and purpose of the zoning ordinance and shall insure that the land use or activity authorized shall be compatible with adjacent uses of land, the natural environment, and the capacities of public services and facilities affected by the land use. The standards shall also insure that the land use or activity is consistent with the public health, safety, and welfare of the local unit of government.

(3) A request for approval of a land use or activity shall be approved if the request is in compliance with the standards stated in the zoning ordinance, the conditions imposed under the zoning ordinance, other applicable ordinances, and state and federal statutes.

(4) Reasonable conditions may be required with the approval of a special land use, planned unit development, or other land uses or activities permitted by discretionary decision. The conditions may include conditions necessary to insure that public services and facilities affected by a proposed land use or activity will be capable of accommodating increased service and facility loads caused by the land use or activity, to protect the natural environment and conserve natural resources and energy, to insure compatibility with adjacent uses of land, and to promote the use of land in a socially and economically desirable manner. Conditions imposed shall meet all of the following requirements:

(a) Be designed to protect natural resources, the health, safety, and welfare, as well as the social and economic well-being, of those who will use the land use or activity under consideration, residents and landowners immediately adjacent to the proposed land use or activity, and the community as a whole.

(b) Be related to the valid exercise of the police power and purposes which are affected by the proposed use or activity.

(c) Be necessary to meet the intent and purpose of the zoning requirements, be related to the standards established in the zoning ordinance for the land use or activity under consideration, and be necessary to insure compliance with those standards.

(5) The conditions imposed with respect to the approval of a land use or activity shall be recorded in the record of the approval action and remain unchanged except upon the mutual consent of the approving authority and the landowner. The approving authority shall maintain a record of conditions which are changed.

History: 2006, Act 110, Eff. July 1, 2006.

125.3505 Performance guarantee.

Sec. 505. (1) To ensure compliance with a zoning ordinance and any conditions imposed under a zoning ordinance, a local unit of government may require that a cash deposit, certified check, irrevocable letter of credit, or surety bond acceptable to the local unit of government covering the estimated cost of improvements be deposited with the clerk of the legislative body to insure faithful completion of the improvements. The performance guarantee shall be deposited at the time of the issuance of the permit authorizing the activity or project. The local unit of government may not require the deposit of the performance guarantee until it is prepared to issue the permit. The local unit of government shall establish procedures by which a rebate of any cash deposits in reasonable proportion to the ratio of work completed on the required improvements shall be made as work progresses.

(2) This section shall not be applicable to improvements for which a cash deposit, certified check, irrevocable bank letter of credit, or surety bond has been deposited under the land division act, 1967 PA 288,

MCL 560.101 to 560.293.

History: 2006, Act 110, Eff. July 1, 2006.

125.3506 Open space preservation.

Sec. 506. (1) Subject to subsection (4) and section 402, a qualified local unit of government shall provide in its zoning ordinance that land zoned for residential development may be developed, at the option of the landowner, with the same number of dwelling units on a smaller portion of the land than specified in the zoning ordinance, but not more than 50% for a county or township or 80% for a city or village, that could otherwise be developed, as determined by the local unit of government under existing ordinances, laws, and rules on the entire land area, if all of the following apply:

(a) The land is zoned at a density equivalent to 2 or fewer dwelling units per acre or, if the land is served by a public sewer system, 3 or fewer dwelling units per acre.

(b) A percentage of the land area specified in the zoning ordinance, 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 zoning ordinance.

(c) The development does not depend upon the extension of a public sewer or public water supply system, unless development of the land without the exercise of the option provided by this subsection would also depend upon the extension.

(d) The option provided under this subsection has not previously been exercised with respect to that land.

(2) After a landowner exercises the option provided under subsection (1), the land may be rezoned accordingly.

(3) The development of land under subsection (1) is subject to other applicable ordinances, laws, and rules, including rules relating to suitability of groundwater for on-site water supply for land not served by public water and rules relating to suitability of soils for on-site sewage disposal for land not served by public sewers.

(4) Subsection (1) does not apply to a qualified local unit of government if both of the following apply:

(a) On or before October 1, 2001, the local unit of government had in effect a zoning ordinance provision providing for both of the following:

(*i*) Land zoned for residential development may be developed, at the option of the landowner, with the same number of dwelling units on a smaller portion of the land that, as determined by the local unit of government, could otherwise be developed under existing ordinances, laws, and rules on the entire land area.

(*ii*) If the landowner exercises the option provided by subparagraph (*i*), the portion of the land not developed 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.

(b) On or before December 15, 2001, a landowner exercised the option provided under the zoning ordinance provision referred to in subdivision (a) with at least 50% of the land area for a county or township or 20% of the land area for a city or village, remaining perpetually in an undeveloped state.

(5) The zoning ordinance provisions required by subsection (1) shall be cited as the "open space preservation" provisions of the zoning ordinance.

(6) As used in this section, "qualified local unit of government" means a county, township, city, or village that meets all of the following requirements:

(a) Has adopted a zoning ordinance.

(b) Has a population of 1,800 or more.

(c) Has land that is not developed and that is zoned for residential development at a density described in subsection (1)(a).

History: 2006, Act 110, Eff. July 1, 2006.

125.3507 Purchase of development rights program; adoption of ordinance; limitations; agreements with other local governments.

Sec. 507. (1) As used in this section and sections 508 and 509, "PDR program" means a purchase of development rights program.

(2) The legislative body may adopt a development rights ordinance limited to the establishment, financing, and administration of a PDR program, as provided under this section and sections 508 and 509. The PDR program may be used only to protect agricultural land and other eligible land. This section and sections 508 and 509 do not expand the condemnation authority of a local unit of government as otherwise provided for in this act.

(3) A PDR program shall not acquire development rights by condemnation. This section and sections 508 and 509 do not limit any authority that may otherwise be provided by law for a local unit of government to

protect natural resources, preserve open space, provide for historic preservation, or accomplish similar purposes.

(4) A legislative body shall not establish, finance, or administer a PDR program unless the legislative body adopts a development rights ordinance. If the local unit of government has a zoning ordinance, the development rights ordinance may be adopted as part of the zoning ordinance under the procedures for a zoning ordinance under this act. A local unit of government may adopt a development rights ordinance in the same manner as required for a zoning ordinance.

(5) A legislative body may promote and enter into agreements with other local units of government for the purchase of development rights, including cross-jurisdictional purchases, subject to applicable development rights ordinances.

History: 2006, Act 110, Eff. July 1, 2006.

125.3508 PDR program; purchase of development rights by local unit of government; conveyance; notice; requirements for certain purchases.

Sec. 508. (1) A development rights ordinance shall provide for a PDR program. Under a PDR program, the local unit of government purchases development rights, but only from a willing landowner. A development rights ordinance providing for a PDR program shall specify all of the following:

(a) The public benefits that the local unit of government may seek through the purchase of development rights.

(b) The procedure by which the local unit of government or a landowner may by application initiate purchase of development rights.

(c) The development rights authorized to be purchased subject to a determination under standards and procedures required by subdivision (d).

(d) The standards and procedures to be followed by the legislative body for approving, modifying, or rejecting an application to purchase development rights, including the determination of all the following:

(*i*) Whether to purchase development rights.

(*ii*) Which development rights to purchase.

(*iii*) The intensity of development permitted after the purchase on the land from which the development rights are purchased.

(*iv*) The price at which development rights will be purchased and the method of payment.

(*v*) The procedure for ensuring that the purchase or sale of development rights is legally fixed so as to run with the land.

(e) The circumstances under which an owner of land from which development rights have been purchased under a PDR program may repurchase those development rights and how the proceeds of the purchase are to be used by the local unit of government.

(2) If the local unit of government has a zoning ordinance, the purchase of development rights shall be consistent with the plan referred to in section 203 upon which the zoning ordinance is based.

(3) Development rights acquired under a PDR program may be conveyed only as provided under subsection (1)(e).

(4) A county shall notify each township, city, or village, and a township shall notify each village, in which is located land from which development rights are proposed to be purchased of the receipt of an application for the purchase of development rights and shall notify each township, city, or village of the disposition of that application.

(5) A county shall not purchase development rights under a development rights ordinance from land subject to a township, city, or village zoning ordinance unless all of the following requirements are met:

(a) The development rights ordinance provisions for the PDR program are consistent with the plan upon which the township, city, or village zoning is based.

(b) The legislative body of the township, city, or village adopts a resolution authorizing the PDR program to apply in the township, city, or village.

(c) As part of the application procedure for the specific proposed purchase of development rights, the township, city, or village provides the county with written approval of the purchase.

History: 2006, Act 110, Eff. July 1, 2006.

125.3509 PDR program; financing sources; bonds or notes; special assessments.

Sec. 509. (1) A PDR program may be financed through 1 or more of the following sources:

(a) General appropriations by the local unit of government.

(b) Proceeds from the sale of development rights by the local unit of government subject to section 508(3).

(c) Grants.

(d) Donations.

(e) Bonds or notes issued under subsections (2) to (5).

(f) General fund revenue.

(g) Special assessments under subsection (6).

(h) Other sources approved by the legislative body and permitted by law.

(2) The legislative body may borrow money and issue bonds or notes under the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821, subject to the general debt limit applicable to the local unit of government. The bonds or notes may be revenue bonds or notes, general obligation limited tax bonds or notes, or, subject to section 6 of article IX of the state constitution of 1963, general obligation unlimited tax bonds or notes.

(3) The legislative body may secure bonds or notes issued under this section by mortgage, assignment, or pledge of property, including, but not limited to, anticipated tax collections, revenue sharing payments, or special assessment revenues. A pledge made by the legislative body is valid and binding from the time the pledge is made. The pledge immediately shall be subject to the lien of the pledge without a filing or further act. The lien of the pledge shall be valid and binding as against parties having claims in tort, contract, or otherwise against the local unit of government, irrespective of whether the parties have notice of the lien. Filing of the resolution, the trust agreement, or another instrument by which a pledge is created is not required.

(4) Bonds or notes issued under this section are exempt from all taxation in this state except inheritance and transfer taxes, and the interest on the bonds or notes is exempt from all taxation in this state.

(5) The bonds and notes issued under this section may be invested in by the state treasurer and all other public officers, state agencies, and political subdivisions, insurance companies, financial institutions, investment companies, and fiduciaries and trustees and may be deposited with and received by the state treasurer and all other public officers and the agencies and political subdivisions of this state for all purposes for which the deposit of bonds or notes is authorized. The authority granted by this section is in addition to all other authority granted by law.

(6) A development rights ordinance may authorize the legislative body to finance a PDR program by special assessments. In addition to meeting the requirements of section 508, the development rights ordinance shall include in the procedure to approve and establish a special assessment district both of the following:

(a) The requirement that there be filed with the legislative body a petition containing all of the following:

(*i*) A description of the development rights to be purchased, including a legal description of the land from which the purchase is to be made.

(*ii*) A description of the proposed special assessment district.

(*iii*) The signatures of the owners of at least 66% of the land area in the proposed special assessment district.

(*iv*) The amount and duration of the proposed special assessments.

(b) The requirement that the legislative body specify how the proposed purchase of development rights will specially benefit the land in the proposed special assessment district.

History: 2006, Act 110, Eff. July 1, 2006.

125.3513 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.

Sec. 513. (1) A biofuel production facility with an annual production capacity of not more than 100,000 gallons of biofuel is a permitted use of property and is not subject to special land use approval if all of the following requirements are met:

(a) The biofuel production facility is located on a farm.

(b) The biofuel production facility is located not less than 100 feet from the boundary of any contiguous property under different ownership than the property on which the biofuel production facility is located and meets all applicable setback requirements of the zoning ordinance.

(c) On an annual basis, not less than 75% of the feedstock for the biofuel production facility is produced on the farm where the biofuel production facility is located, and not less than 75% of the biofuel or another product or by-product produced by the biofuel production facility is used on that farm.

(2) Subject to subsections (6) and (7), each of the following is a permitted use of property if it receives special land use approval under subsections (3) to (5):

(a) A biofuel production facility with an annual production capacity of not more than 100,000 gallons of biofuel that meets the requirements of subsection (1)(a) and (b) but that does not meet the requirements of subsection (1)(c).

(b) A biofuel production facility with an annual production capacity of more than 100,000 gallons but not more than 500,000 gallons of biofuel that meets the requirements of subsection (1)(a) and (b).

(3) An application for special land use approval for a biofuel production facility described in subsection (2) shall include all of the following:

(a) A site plan as required under section 501, including a map of the property and existing and proposed buildings and other facilities.

(b) A description of the process to be used to produce biofuel.

(c) The number of gallons of biofuel anticipated to be produced annually.

(d) An emergency access and fire protection plan that has been reviewed and approved by the appropriate responding police and fire departments.

(e) For an ethanol production facility that will produce more than 10,000 proof gallons annually, completed United States department of the treasury, alcohol and tobacco tax and trade bureau, forms 5000.29 (environmental information) and 5000.30 (supplemental information on water quality considerations under 33 USC 1341(a)), or successor forms, required to implement regulations under the national environmental policy act of 1969, 42 USC 4321 to 4347, and the federal water pollution control act, 33 USC 1251 to 1387.

(f) Information that demonstrates that the biofuel production facility will comply with the requirements of subsections (2) and (5).

(g) Any additional information requested by the body or official responsible for granting special land use approval and relevant to compliance with a zoning ordinance provision described in section 502(1) or 504.

(4) A local unit of government shall hold a hearing on an application for special land use approval under subsection (2) not more than 60 days after the application is filed. For the purposes of this section, the notice required under section 502(2) shall provide notice of the hearing, rather than notice of a right to request a hearing.

(5) Special land use approval of a biofuel production facility described in subsection (2) shall be made expressly conditional on the facility's meeting all of the following requirements before the facility begins operation and no additional requirements:

(a) Buildings, facilities, and equipment used in the production or storage of biofuel comply with local, state, and federal laws.

(b) The owner or operator of the biofuel production facility provides the local unit of government with proof that all necessary approvals have been obtained from the department of environmental quality and other state and federal agencies that are involved in permitting any of the following aspects of biofuel production:

(*i*) Air pollution emissions.

(*ii*) Transportation of biofuel or additional products resulting from biofuel production.

(*iii*) Use or reuse of additional products resulting from biofuel production.

(*iv*) Storage of raw materials, fuel, or additional products used in, or resulting from, biofuel production.

(c) The biofuel production facility includes sufficient storage for both of the following:

(*i*) Raw materials and fuel.

(*ii*) Additional products resulting from biofuel production or the capacity to dispose of additional products through land application, livestock consumption, sale, or other legal use.

(6) Subsections (2) to (5) do not apply to a biofuel production facility if the zoning ordinance provides different criteria for special land use approval of a biofuel production facility located on a farm. An amendment to a zoning ordinance adopted only to provide such criteria is not subject to a protest petition under section 403.

(7) A local unit of government may authorize a biofuel production facility described in subsection (2) as a permitted use of property not subject to a special land use approval.

(8) This section does not affect the authority of a local unit of government to prohibit or authorize biofuel production facilities that are not located on farms.

(9) As used in this section:

(a) "Biofuel" means any renewable fuel product, whether solid, liquid, or gas, that is derived from recently living organisms or their metabolic by-products and meets applicable quality standards, including, but not limited to, ethanol and biodiesel. Biofuel does not include methane or any other fuel product from an anaerobic digester.

(b) "Ethanol" means a substance that meets the ASTM international standard in effect on the effective date of this section as the D-4806 specification for denatured fuel grade ethanol for blending with gasoline.

(c) "Farm" means that term as defined in section 2 of the Michigan right to farm act, 1981 PA 93, MCL 286.472.

(d) "Proof gallon" means that term as defined in 27 CFR 19.907.

History: Add. 2011, Act 97, Imd. Eff. July 19, 2011.

125.3514 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.

Sec. 514. (1) Wireless communications equipment is a permitted use of property and is not subject to special land use approval or any other approval under this act if all of the following requirements are met:

(a) The wireless communications equipment will be collocated on an existing wireless communications support structure or in an existing equipment compound.

(b) The existing wireless communications support structure or existing equipment compound is in compliance with the local unit of government's zoning ordinance or was approved by the appropriate zoning body or official for the local unit of government.

(c) The proposed collocation will not do any of the following:

(*i*) Increase the overall height of the wireless communications support structure by more than 20 feet or 10% of its original height, whichever is greater.

(*ii*) Increase the width of the wireless communications support structure by more than the minimum necessary to permit collocation.

(*iii*) Increase the area of the existing equipment compound to greater than 2,500 square feet.

(d) The proposed collocation complies with the terms and conditions of any previous final approval of the wireless communications support structure or equipment compound by the appropriate zoning body or official of the local unit of government.

(2) Wireless communications equipment that meets the requirements of subsection (1)(a) and (b) but does not meet the requirements of subsection (1)(c) or (d) is a permitted use of property if it receives special land use approval under subsections (3) to (6).

(3) An application for special land use approval of wireless communications equipment described in subsection (2) shall include all of the following:

(a) A site plan as required under section 501, including a map of the property and existing and proposed buildings and other facilities.

(b) Any additional relevant information that is specifically required by a zoning ordinance provision described in section 502(1) or 504.

(4) After an application for a special land use approval is filed with the body or official responsible for approving special land uses, the body or official shall determine whether the application is administratively complete. Unless the body or official proceeds as provided under subsection (5), the application shall be considered to be administratively complete when the body or official makes that determination or 14 business days after the body or official receives the application, whichever is first.

(5) If, before the expiration of the 14-day period under subsection (4), the body or official responsible for approving special land uses notifies the applicant that the application is not administratively complete, specifying the information necessary to make the application administratively complete, or notifies the applicant that a fee required to accompany the application has not been paid, specifying the amount due, the running of the 14-day period under subsection (4) is tolled until the applicant submits to the body or official the specified information or fee amount due. The notice shall be given in writing or by electronic notification. A fee required to accompany any application shall not exceed the local unit of government's actual, reasonable costs to review and process the application or $1,000.00, whichever is less.

(6) The body or official responsible for approving special land uses shall approve or deny the application not more than 60 days after the application is considered to be administratively complete. If the body or official fails to timely approve or deny the application, the application shall be considered approved and the body or official shall be considered to have made any determination required for approval.

(7) Special land use approval of wireless communications equipment described in subsection (2) may be made expressly conditional only on the wireless communications equipment's meeting the requirements of other local ordinances and of federal and state laws before the wireless communications equipment begins operation.

(8) If a local unit of government requires special land use approval for wireless communications equipment that does not meet the requirements of subsection (1)(a) or for a wireless communications support structure, subsections (4) to (6) apply to the special land use approval process, except that the period for approval or denial under subsection (6) is 90 days.

(9) A local unit of government may authorize wireless communications equipment as a permitted use of property not subject to a special land use approval.

(10) This section does not apply to an activity or use that is regulated by the small cell wireless

communications facilities deployment act.

(11) As used in this section:

(a) "Colocate" means to place or install wireless communications equipment on an existing wireless communications support structure or in an existing equipment compound. "Collocation" has a corresponding meaning.

(b) "Equipment compound" means an area surrounding or adjacent to the base of a wireless communications support structure and within which wireless communications equipment is located.

(c) "Wireless communications equipment" means the set of equipment and network components used in the provision of wireless communications services, including, but not limited to, antennas, transmitters, receivers, base stations, equipment shelters, cabinets, emergency generators, power supply cables, and coaxial and fiber optic cables, but excluding wireless communications support structures.

(d) "Wireless communications support structure" means a structure that is designed to support, or is capable of supporting, wireless communications equipment, including a monopole, self-supporting lattice tower, guyed tower, water tower, utility pole, or building.

History: Add. 2012, Act 143, Imd. Eff. May 24, 2012;—Am. 2018, Act 366, Eff. Mar. 12, 2019.

ARTICLE VI
ZONING BOARD OF APPEALS

125.3601 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.

Sec. 601. (1) A zoning ordinance shall create a zoning board of appeals. A zoning board of appeals in existence on June 30, 2006 may continue to act as the zoning board of appeals subject to this act. Subject to subsection (2), members of a zoning board of appeals shall be appointed by majority vote of the members of the legislative body serving.

(2) The legislative body of a city or village may act as a zoning board of appeals and may establish rules to govern its procedure as a zoning board of appeals.

(3) A zoning board of appeals shall be composed of not fewer than 5 members if the local unit of government has a population of 5,000 or more or not fewer than 3 members if the local unit of government has a population of less than 5,000. The number of members of the zoning board of appeals shall be specified in the zoning ordinance.

(4) In a county or township, 1 of the regular members of the zoning board of appeals shall be a member of the zoning commission, or of the planning commission if the planning commission is functioning as the zoning commission. In a city or village, 1 of the regular members of the zoning board of appeals may be a member of the zoning commission, or of the planning commission if the planning commission is functioning as the zoning commission, unless the legislative body acts as the zoning board of appeals under subsection (2). A decision made by a city or village zoning board of appeals before February 29, 2008 is not invalidated by the failure of the zoning board of appeals to include a member of the city or village zoning commission or planning commission, as was required by this subsection before that date.

(5) The remaining regular members of a zoning board of appeals, and any alternate members under subsection (7), shall be selected from the electors of the local unit of government residing within the zoning jurisdiction of that local unit of government or, in the case of a county, residing within the county but outside of any city or village. The members selected shall be representative of the population distribution and of the various interests present in the local unit of government.

(6) Subject to subsection (2), 1 regular or alternate member of a zoning board of appeals may be a member of the legislative body. Such a member shall not serve as chairperson of the zoning board of appeals. An employee or contractor of the legislative body may not serve as a member of the zoning board of appeals.

(7) The legislative body may appoint to the zoning board of appeals not more than 2 alternate members for the same term as regular members. An alternate member may be called as specified in the zoning ordinance to serve as a member of the zoning board of appeals in the absence of a regular member if the regular member will be unable to attend 1 or more meetings. An alternate member may also be called to serve as a member for the purpose of reaching a decision on a case in which the member has abstained for reasons of conflict of interest. The alternate member appointed shall serve in the case until a final decision is made. An alternate member serving on the zoning board of appeals has the same voting rights as a regular member.

(8) A member of the zoning board of appeals may be paid a reasonable per diem and reimbursed for expenses actually incurred in the discharge of his or her duties.

(9) A member of the zoning board of appeals may be removed by the legislative body for misfeasance,

malfeasance, or nonfeasance in office upon written charges and after a public hearing. A member shall disqualify himself or herself from a vote in which the member has a conflict of interest. Failure of a member to disqualify himself or herself from a vote in which the member has a conflict of interest constitutes malfeasance in office.

(10) The terms of office for an appointed member of the zoning board of appeals shall be 3 years, except for a member serving because of his or her membership on the zoning commission or legislative body, whose term shall be limited to the time he or she is a member of that body. When members are first appointed, appointments may be for less than 3 years to provide for staggered terms. A successor shall be appointed not more than 1 month after the term of the preceding member has expired.

(11) A vacancy on the zoning board of appeals shall be filled for the remainder of the unexpired term in the same manner as the original appointment.

(12) A zoning board of appeals shall not conduct business unless a majority of the regular members of the zoning board of appeals are present.

(13) A member of the zoning board of appeals who is also a member of the zoning commission, the planning commission, or the legislative body shall not participate in a public hearing on or vote on the same matter that the member voted on as a member of the zoning commission, the planning commission, or the legislative body. However, the member may consider and vote on other unrelated matters involving the same property.

History: 2006, Act 110, Eff. July 1, 2006;—Am. 2008, Act 12, Imd. Eff. Feb. 29, 2008;—Am. 2010, Act 330, Imd. Eff. Dec. 21, 2010.

125.3602 Meetings; call of the chairperson; oaths; attendance of witnesses; record of proceedings.

Sec. 602. (1) Meetings of the zoning board of appeals shall be held at the call of the chairperson and at other times as the zoning board of appeals in its rules of procedure may specify. The chairperson or, in his or her absence, the acting chairperson may administer oaths and compel the attendance of witnesses.

(2) The zoning board of appeals shall maintain a record of its proceedings which shall be filed in the office of the clerk of the legislative body.

History: 2006, Act 110, Eff. July 1, 2006.

125.3603 Zoning board of appeals; powers; concurring vote of majority of members.

Sec. 603. (1) The zoning board of appeals shall hear and decide questions that arise in the administration of the zoning ordinance, including the interpretation of the zoning maps, and may adopt rules to govern its procedures sitting as a zoning board of appeals. The zoning board of appeals shall also hear and decide on matters referred to the zoning board of appeals or upon which the zoning board of appeals is required to pass under a zoning ordinance adopted under this act. It shall hear and decide appeals from and review any administrative order, requirement, decision, or determination made by an administrative official or body charged with enforcement of a zoning ordinance adopted under this act. For special land use and planned unit development decisions, an appeal may be taken to the zoning board of appeals only if provided for in the zoning ordinance.

(2) The concurring vote of a majority of the members of the zoning board of appeals is necessary to reverse an order, requirement, decision, or determination of the administrative official or body, to decide in favor of the applicant on a matter upon which the zoning board of appeals is required to pass under the zoning ordinance, or to grant a variance in the zoning ordinance.

History: 2006, Act 110, Eff. July 1, 2006.

125.3604 Zoning board of appeals; procedures.

Sec. 604. (1) An appeal to the zoning board of appeals may be taken by a person aggrieved or by an officer, department, board, or bureau of this state or the local unit of government. In addition, a variance in the zoning ordinance may be applied for and granted under section 4 of the uniform condemnation procedures act, 1980 PA 87, MCL 213.54, and as provided under this act. The zoning board of appeals shall state the grounds of any determination made by the board.

(2) An appeal under this section shall be taken within such time as prescribed by the zoning board of appeals by general rule, by filing with the body or officer from whom the appeal is taken and with the zoning board of appeals a notice of appeal specifying the grounds for the appeal. The body or officer from whom the appeal is taken shall immediately transmit to the zoning board of appeals all of the papers constituting the record upon which the action appealed from was taken.

(3) An appeal to the zoning board of appeals stays all proceedings in furtherance of the action appealed.

However, if the body or officer from whom the appeal is taken certifies to the zoning board of appeals after the notice of appeal is filed that, by reason of facts stated in the certificate, a stay would in the opinion of the body or officer cause imminent peril to life or property, proceedings may be stayed only by a restraining order issued by the zoning board of appeals or a circuit court.

(4) Following receipt of a written request for a variance, the zoning board of appeals shall fix a reasonable time for the hearing of the request and give notice as provided in section 103.

(5) If the zoning board of appeals receives a written request seeking an interpretation of the zoning ordinance or an appeal of an administrative decision, the zoning board of appeals shall conduct a public hearing on the request. Notice shall be given as required under section 103. However, if the request does not involve a specific parcel of property, notice need only be published as provided in section 103(1) and given to the person making the request as provided in section 103(3).

(6) At a hearing under subsection (5), a party may appear personally or by agent or attorney. The zoning board of appeals 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 as provided in subsection (8) or unnecessary hardship for use variances as provided in subsection (9) in the way of carrying out the strict letter of the zoning ordinance, the zoning board of appeals may grant a variance in accordance with this section, so that the spirit of the zoning ordinance is observed, public safety secured, and substantial justice done. The ordinance shall establish procedures for the review and standards for approval of all types of variances. The zoning board of appeals may impose conditions as otherwise allowed under this act.

(8) The zoning board of appeals of all local units of government shall have the authority to grant nonuse variances relating to the construction, structural changes, or alteration of buildings or structures related to dimensional requirements of the zoning ordinance or to any other nonuse-related standard in the ordinance.

(9) The authority to grant variances from uses of land is limited to the following:

(a) Cities and villages.

(b) Townships and counties that as of February 15, 2006 had an ordinance that uses the phrase "use variance" or "variances from uses of land" to expressly authorize the granting of use variances by the zoning board of appeals.

(c) Townships and counties that granted a use variance before February 15, 2006.

(10) The authority granted under subsection (9) is subject to the zoning ordinance of the local unit of government otherwise being in compliance with subsection (7) and having an ordinance provision that requires a vote of 2/3 of the members of the zoning board of appeals to approve a use variance.

(11) The authority to grant use variances under subsection (9) is permissive, and this section does not require a local unit of government to adopt ordinance provisions to allow for the granting of use variances.

History: 2006, Act 110, Eff. July 1, 2006;—Am. 2008, Act 12, Imd. Eff. Feb. 29, 2008.

125.3605 Decision as final; appeal to circuit court.

Sec. 605. The decision of the zoning board of appeals shall be final. A party aggrieved by the decision may appeal to the circuit court for the county in which the property is located as provided under section 606.

History: 2006, Act 110, Eff. July 1, 2006.

125.3606 Circuit court; review; duties.

Sec. 606. (1) Any party aggrieved by a decision of the zoning board of appeals may appeal to the circuit court for the county in which the property is located. The circuit court shall review the record and decision to ensure that the decision meets all of the following requirements:

(a) Complies with the constitution and laws of the state.

(b) Is based upon proper procedure.

(c) Is supported by competent, material, and substantial evidence on the record.

(d) Represents the reasonable exercise of discretion granted by law to the zoning board of appeals.

(2) If the court finds the record inadequate to make the review required by this section or finds that additional material evidence exists that with good reason was not presented, the court shall order further proceedings on conditions that the court considers proper. The zoning board of appeals may modify its findings and decision as a result of the new proceedings or may affirm the original decision. The supplementary record and decision shall be filed with the court. The court may affirm, reverse, or modify the decision.

(3) An appeal from a decision of a zoning board of appeals shall be filed within whichever of the following deadlines comes first:

(a) Thirty days after the zoning board of appeals issues its decision in writing signed by the chairperson, if

there is a chairperson, or signed by the members of the zoning board of appeals, if there is no chairperson.

(b) Twenty-one days after the zoning board of appeals approves the minutes of its decision.

(4) The court may affirm, reverse, or modify the decision of the zoning board of appeals. The court may make other orders as justice requires.

History: 2006, Act 110, Eff. July 1, 2006;—Am. 2008, Act 12, Imd. Eff. Feb. 29, 2008;—Am. 2010, Act 330, Imd. Eff. Dec. 21, 2010.

125.3607 Party aggrieved by order, determination, or decision; circuit court review; proper party.

Sec. 607. (1) Any party aggrieved by any order, determination, or decision of any officer, agency, board, commission, zoning board of appeals, or legislative body of any local unit of government made under section 208 may obtain a review in the circuit court for the county in which the property is located. The review shall be in accordance with section 606.

(2) Any person required to be given notice under section 604(4) of the appeal of any order, determination, or decision made under section 208 shall be a proper party to any action for review under this section.

History: 2006, Act 110, Eff. July 1, 2006.

ARTICLE VII
STATUTORY COMPLIANCE AND REPEALER

125.3701 Compliance with open meetings act; availability of writings to public.

Sec. 701. (1) All meetings subject to this act shall be conducted in compliance with the open meetings act, 1976 PA 267, MCL 15.261 to 15.275.

(2) A writing prepared, owned, used, in the possession of, or retained as required by this act shall be made available to the public in compliance with the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

History: 2006, Act 110, Eff. July 1, 2006.

125.3702 Repeal of MCL 125.581 to 125.600, 125.201 to 125.240, and 125.271 to 125.310; construction of section.

Sec. 702. (1) The following acts and parts of acts are repealed:

(a) The city and village zoning act, 1921 PA 207, MCL 125.581 to 125.600.

(b) The county zoning act, 1943 PA 183, MCL 125.201 to 125.240.

(c) The township zoning act, 1943 PA 184, MCL 125.271 to 125.310.

(2) This section does not alter, limit, void, affect, or abate any pending litigation, administrative proceeding, or appeal that existed on June 30, 2006 or any ordinance, order, permit, or decision that was based on the acts repealed under subsection (1). The zoning ordinance need not be readopted but is subject to the requirements of this act, including, but not limited to, the amendment procedures set forth in this act.

History: 2006, Act 110, Eff. July 1, 2006;—Am. 2008, Act 12, Imd. Eff. Feb. 29, 2008.

Print

Mason, MI Code of Ordinances

Sec. 1-2. Definitions.

The following definitions shall apply to this Code and to all ordinances and resolutions unless the context requires otherwise. When provisions conflict, the specific shall prevail over the general. All provisions shall be liberally construed so that the intent of the council may be effectuated. Words and phrases shall be construed according to the common and approved usage of the language, but technical words, technical phrases and words and phrases that have acquired peculiar and appropriate meanings in law shall be construed according to such meanings.

Abandoned vehicle means, a vehicle which has remained on private property for a period of 48 continuous hours without the consent of the owner or occupant of the property, or a vehicle which has remained on public or private property for a period of 48 continuous hours after a police agency or other governmental agency has affixed a written notice to the vehicle.

Accessory structure means a structure located on the same lot as the principal structure, the use of which is customarily incidental or secondary to the principal structure or use.

Accessory use means a use of land or of a structure or portion thereof which is customarily and naturally incidental to, subordinate to, and devoted exclusively to the principal use of the land or building and located on the same lot with the principal use.

Aggregate means an inert material used as a component of concrete, mortar, plasters, and bituminous pavements. Sand, gravel or crushed stone are the most common aggregates.

Agricultural land means substantially undeveloped land devoted to the production of plants and animals useful to humans including, but not limited to, forage and sod crops, grains, feed crops, field crops, dairy products, poultry and poultry products, livestock, herbs, flowers, seeds, grasses, nursery stock, fruits, vegetables, Christmas trees, and other similar uses and activities.

Agricultural land use is characterized by the act or business of cultivating or using agricultural land and soil for the production of animals, crops and plants useful to animals or humans, and includes purposes related to agriculture, farming, dairying, pasturage, nursery, horticulture, floriculture, viticulture, aquaculture, animal and poultry husbandry, and other similar uses and activities producing food, seed, fiber or fur. See "farm" and "prime agricultural land".

Airport approach plan and *airport layout plan* mean a plan, or an amendment to a plan, filed with the Mason planning commission under section 151 of the Aeronautics Code of the state of Michigan, 1945 PA 327 (MCL 259.151).

Alcoholic liquor means alcoholic liquor as defined by the Michigan Liquor Control Code of 1998.

Alley means a public or private right-of-way shown on a plat which provides secondary access to a lot, block or parcel of land.

State Law References: Similar provisions, MCL 560.102(2).

Alteration means any modification, remodeling, change or rearrangement in a structural or supporting member such as footings, bearing walls, columns, or girders, as well as any change in the doors, windows, roof or exterior walls which affect the means of egress which is undertaken without adding to the floor area, height, or physical size of the building or structure.

Alternative tower structure means any manmade trees, clock towers, bell steeples, light poles and similar alternative-design mounting structures that camouflage or conceal the presence of antennas or towers.

Ambient noise means background noise or noise that cannot be identified as coming from any particular source.

Animal clinic means a building where animal patients, who may or may not be lodged overnight, are admitted for examination and treatment by a veterinarian or similar professionals.

Animal unit means a number of animals based upon animal type under tables published by the Michigan Commission of Agriculture which are generally calculated as 1,000 pounds live weight equals one animal unit.

Antenna means any exterior transmitting or receiving device mounted on a tower, building or structure and used in communications that radiate or capture electromagnetic waves, digital signals, analog signals, radio frequencies (excluding radar signals), wireless telecommunications signals or other communication signals.

Apartment means a room or group of rooms that is designed to function as a single, complete dwelling unit and is located in a multiple-family dwelling or a multiple use building.

Appraised value means the value of property as determined by an individual qualified to appraise that type of property.

Aquifer means subsurface rock or other materials capable of holding a significant amount of water in their crevices. Certain types of material such as course sands, gravel and limestone, are more likely to produce aquifers.

Area of special flood hazard means the land in the floodplain within the city subject to a one percent or greater chance of flooding in any given year.

Automobile repair garage means a premises where the following services may be carried out in a completely enclosed building: General repairs, engine rebuilding, collision repair, painting, and undercoating of vehicles.

Automobile service station means structures and premises used or designed to be used for the retail sale of fuels, lubricants, and other operating commodities for motor vehicles, including the customary space and facilities for the installation of such commodities; and including space for minor vehicle repairs or service such as polishing, washing, cleaning, and greasing, but not including bumping, painting, or refinishing.

Base flood means the flood having a one percent chance of being equaled or exceeded in any given year, often referred to as a 100-year flood.

Base flood level means the highest elevation of a flood having a one percent chance of being equaled or exceeded in any given year. Commonly referred to as the 100-year flood level. See "floodplain".

Basement means the portion of a building which is partly below and partly above grade where greater than one-half of the height of that portion is below grade. A basement shall not be counted as a story.

Bathroom is a room containing plumbing fixtures including a toilet, bathtub or shower, or any other combination thereof.

Bed and breakfast means an owner-occupied residential structure that meets the provisions of section 94-192(7) of this chapter.

Bedroom is any room or space used or intended to be used for sleeping purposes.

Berm means an earthen mound designed to provide visual interest, screen undesirable views, and/or decrease noise.

Bicycle facilities means a public way designated for the use of cyclists.

Bicycle way means a bicycle facility parallel and adjacent to but separate from the roadway.

Blighted structure means, without limitation, any dwelling, garage, or outbuilding, or any factory, shop, store, warehouse, or any other structure or part of a structure which, because of fire, wind, or other natural disaster, or physical deterioration, is no longer habitable as a dwelling, nor useful for the purpose for which it may have been intended.

Block means a piece of or parcel of land entirely surrounded by public highways, streets, streams, railroads, rights-of-way, a park, etc., or a combination thereof.

Bond means a form of insurance required of an individual or firm to secure the performance of an obligation. (See "performance guarantee").

Buffer means a strip of land or space, including a specified type and amount of planting or structures intended to protect or screen one type of land use from another, or minimize or eliminate off-site ecological degradation.

Buildable acre means an acre of land remaining after excluding land classified as a wetland or regulated water body.

Building means a combination of materials, whether portable or fixed, forming a structure affording a facility or shelter for use or occupancy by persons, animals or property. The term does not include a building incidental to the use for agricultural purposes of the land on which the building is located if it is not used in the business of retail trade. The term shall be construed as though followed by the words "or part or parts of the building and all equipment in the building" unless the context clearly requires a different meaning.

Building area means the area included within surrounding exterior walls (including fire walls) exclusive of vents, shafts and courts. Areas of the building not provided with surrounding exterior walls shall be included in the building area if underneath the vertical projection of the roof or floor above.

Building envelope means the area of a condominium unit within which the principal building or structure may be constructed, together with any accessory structures, as described in the master deed for the site condominium project (See figure 100-104 in ch. 100).

Building line means a line established on a parcel parallel to an adjacent public right-of-way or adjacent property line for the purpose of prohibiting construction of a structure between such line and the right-of-way or property lines. Building line is commonly referred to as the setback line.

Building materials means lumber, bricks, concrete or cinder blocks, plumbing materials, electric wiring or equipment, heating ducts or equipment, shingles, mortar, concrete, or cement, nails, screws or any other materials used in constructing any structure.

Business districts means, the C-1 and C-2 zoning districts.

Business sign means a sign which directs attention to a business or profession conducted or to a commodity, product, service or entertainment sold, manufactured or offered upon the premises where such sign is located.

Caliper means a measure of the size of vegetation defined as the average diameter of the main trunk measured at a point five feet from the ground at the base of the vegetation.

Call box stand means a place alongside a street, or elsewhere where the police chief has authorized a holder of a taxicab certificate of public convenience and necessity to install a telephone or call box for the taking of calls and the dispatching of taxicabs.

Camper means a vehicular portable structure which is mounted or built upon a chassis, is less than 35 feet in length and is of such a width and weight as not to require special highway movement permits when moved or drawn by a vehicle.

Campground is as defined in Public Health Code (MCL 331.12501 et seq.).

Carport means a partially open structure intended to shelter one or more vehicles. Such structures shall comply with all yard requirements applicable to a private garage.

Casino means a facility licensed and operating under the Michigan Gaming Control and Revenue Act, initiated law of 1996, MCL 432.201 as defined by Section 2(g) of the Act, MCL 432.202(g).

Cellar. See "basement".

Change in use means a use of a building, structure or parcel of land, or portion thereof which is different from the previous use as classified in this chapter or in the building code.

Charter means the Charter of the City of Mason, Michigan.

Church use. See "religious institution".

City means the City of Mason, Michigan.

Clear vision area means the unobstructed view across a corner space which is created by the intersection of two vehicular ways that allows a motorist to see on-coming traffic or pedestrians (See figure 100-103 in ch. 100). This vision area shall be clear of any opaque obstructions within a specified distance along or from the right-of-way line(s) of all streets and drives.

Cluster development means a development where structures are arranged in closely related groups, typically of the same type or character of design thus creating greater densities in certain areas of a site while preserving the natural features in other areas on the same site.

Code means the Mason City Code, as designated in section 1-1.

Cold storage means the keeping of farm produce or goods under climate controlled conditions.

Collocation means the shared use by more than one licensed carrier of a single tower or other useable antenna support structure.

Commercial garage. See "automobile repair garage".

Commercial recreation facility means a recreational facility including campgrounds, athletic fields, golf courses, race tracks, or other spectator/participatory facilities that charge a fee for use.

Commercial use means an activity carried out for financial gain including retail sales, repair service, salvage operations, business offices, food service, entertainment and brokerages.

Commercial vehicle means any motor vehicle registered as a commercial vehicle under the Michigan Vehicle Code (MCL 257.1 et seq.) or which is used for the transportation of passengers for hire, or constructed or used for transportation of goods, wares, or merchandise, and/or all motor vehicles designed and used for drawing other vehicles and not so constructed as to carry any load thereon either independently or any part of the weight of a vehicle or loads so drawn.

Common land means a parcel or parcels of land together with the improvements thereon, the use, maintenance and enjoyment of which are intended to be shared by the owners and occupants of the individual building units in a particular development.

Common open space means a parcel or parcels of land or an area of water or combination of land and water dedicated for the use or enjoyment of the residents in a particular development or of the general public. Common open space does not include any proposed street right-of-way, open parking areas, or commercial areas. Common open space may contain accessory structures and improvements necessary or desirable for religious, educational, non-commercial, recreational, or cultural uses.

Community commercial center means a shopping center containing more than one use relating to wholesale and/or retail services and utilizing shared vehicular ingress and egress and on-site parking.

Compensation means any money, property, thing of value or benefit received by any person in return for services rendered.

Concessionaire means any person, whether a resident of the city or not, who receives a license under the provisions of this article to sell or offer for sale goods, services or merchandise from a temporary or portable structure or fixture at a specified location within a business district.

Condominium means an estate in real property consisting of an undivided interest in common with other purchasers in a portion of a parcel of real property, together with a separate interest in space in a building. A condominium may include, in addition, a separate interest in other portions of such real property.

Condominium Act as defined in Public Act No. 59 of 1978 (MCL 559.101 et seq.).

Condominium documents means the master deed, recorded pursuant to the Condominium Act, and any other instrument referred to in the master deed or bylaws which affects the rights and obligations of a co-owner of the condominium.

Condominium lot means the condominium unit and the limited common area reserved for the exclusive use of the co-owner of an adjacent condominium unit together in a site condominium development. A condominium lot is considered the functional equivalent of a standard subdivision lot and the boundaries thereof shall be the functional equivalent of the boundaries of a platted lot.

Condominium project means a project developed under the Michigan Condominium Act (MCL 559.101 et seq.) consisting of more than one condominium unit which is not subject to the provisions of the Land Division Act (MCL 560.101 et seq.).

Condominium structure means the principal building or structure intended for or constructed upon a lot or development site together with any attached accessory structures; e.g., in a residential development, the condominium structure would refer to the house and any attached garage. A condominium structure can also be a building envelope.

Condominium subdivision plan means the drawings and information prepared in accordance with Section 66 of the Condominium Act (MCL 559.166) and filed with the register of deeds as an exhibit to the condominium master deed.

Condominium unit means an area of land or volume of space separately described in a condominium master deed and intended for separate ownership or use.

Conflict of interest means either a personal interest or a duty or loyalty to a third party that competes with or is adverse to the duty of a city official or city employee to the public interest in the exercise of official duties or official actions.

Congregate housing means a structure containing two or more rooming units limited in occupancy and occupied by persons 60 years and older, their spouses, or surviving spouses, except for rooms or units occupied by resident staff personnel, providing indoor, conveniently located, shared food preparation service and major dining areas, and common recreation, social, and service facilities for the exclusive use of all residents.

Construction contractors establishment means a parcel of land, building, or structure, or a portion thereof used to store trucks, excavating equipment, supplies, tools, or materials utilized by a construction contractor, subcontractor, or builder.

Contiguous parcels means, as used in this chapter shall mean two or more parcels of property which have one or more common property lines.

Contractible condominium means a condominium project from which any portion of the submitted land or building may be withdrawn in accordance with this chapter and the Condominium Act MCL 559.101 et seq.).

Convalescent home means a residential nursing facility other than a hospital, that is designed to provide a range of personal and medical care services to aged, chronically ill or disabled individuals and which is licensed by the State of Michigan.

Convenience retail means establishments which sell primarily goods which are edible or disposable in small quantities directly to the consumer.

Conversion condominium means a condominium project containing units, some or all of which were occupied before filing of a notice of taking reservations under Section 71 of the Condominium Act (MCL 559.171), as defined by Subsection 5(2) of the Condominium Act (MCL 559.105(2)).

Corner lot means a lot that is situated at the junction of at least two streets at which the angle of interception is no greater than 135 degrees and defined as having one front yard, one rear yard and two side yards.

Council and *city council* mean the Council of the City of Mason, Michigan.

County means Ingham County, Michigan.

Cul-de-sac means a minor street of short length having one end open to traffic and being permanently terminated at the other end by a vehicular turn around.

Customary agricultural operation means an agricultural land use, condition or activity which occurs on land in connection with the commercial production of farm products and includes but is not limited to noise, odors, dust, fumes, operation of machinery and irrigation pumps, ground and aerial seeding and spraying, application of chemical fertilizers, insecticides and herbicides, and employment of labor when such conditions or activities are conducted in accordance with generally accepted agricultural and management practices. (See "farm").

Cyclist means a person who is not afoot and is driving or is in actual physical control of a bicycle.

Dangerous building means any building, dwelling, structure, or dwelling unit that has one or more of the following defects or is in one or more of the following conditions:

(1) A door, aisle, passageway, stairway, or other means of exit does not conform to the applicable fire code of the city, or is not so arranged as to provide safe and adequate means of exit in case of fire or panic for all persons housed or assembled therein who would be required to or might use such door, aisle, passageway, stairway, or other means of exit.

(2) A portion of the building or structure is damaged by fire, wind, flood, or other cause so that the structural strength or stability of the building or structure is appreciably less than it was before the catastrophe and does not meet the minimum requirements of this article or the applicable building code of the city.

(3) A part of the building or structure is likely to fall, become detached or dislodged, or collapse and injure persons or damage property.

(4) A portion of the building or structure has settled to such an extent that walls or other structural portions of the building or structure have materially less resistance to wind than is required in the case of new construction by this article or the applicable building code of the city.

(5) The building or structure, or a part of the building or structure, because of dilapidation, deterioration, decay, faulty construction, or the removal or movement of some portion of the ground necessary for the support, or for other reason, is likely to partially or completely collapse, or some portion of the foundation or underpinning of the building or structure is likely to fall or give way.

(6) The building, structure, or a part of the building or structure is manifestly unsafe for the purpose for which it is used.

(7) The building or structure is damaged by fire, wind, or flood, or is dilapidated or deteriorated and becomes an attractive nuisance to children who might play in the building or structure to their danger, or becomes a harbor for vagrants, criminals, or immoral persons, or enables persons to resort to the building or structure for committing a nuisance or an unlawful or immoral act.

(8) A building or structure used or intended to be used for dwelling purposes, including the adjoining grounds, because of dilapidation, decay, damage, faulty construction or arrangement, or otherwise, is unsanitary or unfit for human habitation, is in a condition that the health officer determines is likely to cause sickness or disease, or is likely to injure the health, safety, or general welfare of people living in the dwelling.

(9) A building or structure is vacant, dilapidated, and open at door or window, leaving the interior of the building exposed to the elements or accessible to entrance by trespassers.

(10) A building or structure remains unoccupied for a period of 180 consecutive days or longer, and is not listed as being available for sale, lease, or rent with a real estate broker licensed under Article 25 of the Occupational Code, MCL 339.2501 et seq. For purposes of this subdivision, "building or structure" includes, but is not limited to, a commercial building or structure. This subdivision does not apply to either of the following:

a. A building or structure as to which the owner or agent does both of the following:

1. Notifies the police department that the building or structure will remain unoccupied for a period of 180 consecutive days. The notice shall be given to the police department by the owner or agent not more than 30 days after the building or structure becomes unoccupied.

2. Maintains the exterior of the building or structure and adjoining grounds in accordance with this article and the applicable building code of the city.

b. A secondary dwelling of the owner that is regularly unoccupied for a period of 180 days or longer each year, if the owner notifies the police department that the dwelling will remain unoccupied for a period of 180 consecutive days or more each year. An owner who has given the notice prescribed by this subsection shall notify the police department not more than 30 days after the dwelling no longer qualifies for this exception. As used in this subsection, "secondary dwelling" means a dwelling such as a vacation home, hunting cabin, or summer home, that is occupied by the owner or a member of the owner's family during part of a year.

(11) Is in such a condition as to constitute a nuisance.

(12) Is otherwise a "dangerous building" as described and defined in Section 139 of the Housing Law of Michigan (MCL 125.539).

Day care facility means a state licensed facility receiving more than six preschool or school age children for group care for periods of less than 24 hours per day, and where the parents or guardians are not immediately available to the child. It includes a facility which provides care for not less than two consecutive weeks, regardless of the number of hours of care per day. A child/day care facility is regulated by Public Act No. 116 of 1973 (MCL 722.111 et seq.).

Density means the number of dwelling units situated on or to be developed per acre of land. Refer to "gross density" and "net density".

Development means any manmade change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations located within the area of special flood hazard.

Development site means a parcel meeting the requirements of Sections 108 and 109 of the Land Division Act (MCL 560.108, 560.109) and chapter 74, article III of this Code; a platted lot meeting the requirements of the Land Division Act (MCL 560.101 et seq.) and chapter 74, article II of this Code; or a condominium

lot on which exists, or which is intended for, building development. Development site shall not include the following:

(1) Agricultural use involving the production of plants and animals useful to humans, including forages and sod crops; grains, feed crops, and field crops; dairy and dairy products; poultry and poultry products; livestock, including breeding and grazing of cattle, swine, and similar animals; berries; herbs; flowers; seeds; grasses; nursery stock; fruits; vegetables; Christmas trees; and other similar uses and activities.

(2) Forestry use involving the planting, management, or harvesting of timber.

District/zoning district means the zoning districts described in chapter 94 of this Code.

Disturbed land means a parcel of land which is graded, filled, excavated, mined, or stripped of its natural vegetative cover or grass for a purpose other than agriculture land use.

Divided or *division* means the partitioning or splitting of a parcel or tract of land by the proprietor or by his heirs, executors, administrators, legal representatives, successors or assigns for the purpose of sale or lease of more than one year, or of building development, that results in one or more parcels of less than 40 acres or the equivalent, and satisfies the requirements of Sections 108 and 109 of the Land Division Act (MCL 560.108, 560.109).

State Law References: Similar provisions, MCL 560.102(d).

Drive-in facility means commercial enterprises that permit the consumer to transact business, receive a service, or be entertained while remaining in a motor vehicle.

Drive-thru facility. See "drive-in facility".

Driveway means a path of travel connected to a public or private street over which a vehicle may be driven to access one or more parcels of land.

Dump means a disposal site on which solid wastes are placed and left and which is not licensed under Part 115 of Public Act No. 451 of 1994 (MCL 325.11501 et seq.) as a solid waste disposal site.

Duplex. See "two-family dwelling".

Dwelling unit means a single unit providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking, utilities, and sanitation.

Easement means a grant by the owner of the use of a strip of land by the public, or persons, for specific uses or purposes, and shall be designated as public or private depending on the nature of the user and in conformance with the Land DivisionAct (MCL 560.101 et seq.).

Equestrian center means an enclosed or unenclosed facility which provides public instruction, training or practice in the equestrian arts, including public exhibitions or competition in such skills.

Excavation means the removal or recovery of exposed or submerged soil, rock, sand, gravel, peat, muck, marrow, shale, limestone, clay, or other mineral or organic substances except vegetation, from water or land, whether exposed or submerged.

Exempt split or *exempt division* means the partitioning or splitting of a parcel or tract of land by the proprietor or by his heirs, executors, administrators, legal representatives, successors or assigns that does not result in one or more parcels of less than 40 acres or the equivalent provided all resulting parcels are accessible for vehicular travel and utilities from existing public roads through existing adequate roads or easements, or through areas owned by the owner of the parcel that can provide such access.

State Law References: Similar provisions, MCL 560.102(e).

Expandable condominium means a condominium project to which additional land may be added in accordance with this chapter and the State Condominium Act (MCL 559.101 et seq.).

Explosive means a chemical compound or mechanical mixture commonly used, or intended, for the purpose of producing an explosion, that contains any oxidizing and combustible units, or other ingredients, in such proportions, quantities, or packing, that an ignition by fire, by friction, by concussion, by percussion or by detonation of any part of the compound or mixture may cause such a sudden generation of highly heated gases that the resultant gaseous pressures are capable of producing destructive effects on contiguous objects or destroying life and limb.

Exterior property is the open space on the premises and on adjoining property under the control of owners or operators of such premises.

Extermination means the control and elimination of insects, rats or other pests by eliminating their harborage places; by removing or making inaccessible materials that serve as their food; by poison spraying, fumigating, trapping or by any other approved pest elimination methods.

FAA means the Federal Aviation Administration.

FCC means the Federal Communications Commission.

Family means one or more persons living together in a dwelling unit as a single domestic housekeeping unit. Where there are more than two persons living in a dwelling unit, a family shall be comprised of individuals in accordance with one of the following standards. Anyone seeking the rights and privileges afforded a member of a family by this chapter shall have the burden of proof by clear and convincing evidence of compliance with this definition.

(1) A domestic family comprised of persons related by blood, marriage or adoption with the addition of not more than one unrelated person.

(2) The functional equivalent of a domestic family comprised of persons living together whose relationship is of a regular and permanent nature and has a distinct domestic character, or a demonstrable and recognizable bond, where each person is responsible for the basic material needs of the others and all persons are living and cooking as a single housekeeping unit. The functional equivalent of a domestic family shall not include any society, club, fraternity, sorority, association, lodge, combine, federation, group, coterie or organization, nor include a group of persons whose association is temporary or seasonal in character or nature or for the limited duration of their education, nor a group whose sharing of a house is not to function as a domestic family, but merely for convenience and economics.

Farm means a parcel of land containing at least ten acres which is utilized for an agricultural land use, including necessary farm structures and equipment, but not including the raising of fur bearing animals, livery or boarding stables and dog kennels.

Fee simple title refers to the broadest, most extensive and unconditional estate in land that can be enjoyed. A fee simple estate is unlimited as to duration, disposition and descendibility, subject to the sovereign power of eminent domain, and may be conveyed by its owner either during his life or upon his death.

Feedlot means a premises used to feed livestock in preparation for market and slaughter.

Fence means any wall (except a retaining wall or lawful sign), screen, partition or similar structure that encloses land, divides land into distinct portions, separates contiguous properties, prevents intrusion from without or straying from within, obstructs the passage of light or air into adjacent land, or obstructs the view of property.

Filing date means the date upon which any properly completed application pursuant to this chapter is submitted and the required filing fee is paid.

Filling means the depositing or dumping of any matter, except common household gardening or general yard maintenance refuse, into or onto the ground.

Financial benefit means a financial benefit which accrues to a greater extent than any benefit which could reasonably be expected to accrue from the proposed action to the general public or to the general business,

occupation or profession taken as agroup.

Fireworks means any composition or device, except for a starting pistol, a flare gun, or a flare, designed for the purpose of producing a visible or audible effect by combustion, deflagration, or detonation. Fireworks consist of consumer fireworks, low-impact fireworks, articles pyrotechnic, display fireworks, and special effects as defined by Public Act 256 of 2011.

(1) *Consumer fireworks* means fireworks devices that are designed to produce visible effects by combustion, that are required to comply with the construction, chemical composition, and labeling regulations promulgated by the United States consumer product safety commission under 16 CFR parts 1500 and 1507, and that are listed in APA standard 87-1 3.1.2, 3.1.3 or 3.5. Consumer fireworks does not include low-impact fireworks.

(2) *Articles pyrotechnic* means pyrotechnic devices for professional use that are similar to consumer fireworks in chemical composition and construction but not intended for consumer use, that meet the weight limits for consumer fireworks but are not labeled as such, and that are classified as UN0431 or UN0432 under 24 CFR 172.101.

(3) *Display fireworks* means large fireworks devices that are explosive materials intended for use in fireworks displays and designated to produce visible or audible effects by combustion, deflagration, or detonation, as provided in 27 CFR 555.11, 49 CFR 172, and APA standard 87-1, 4.1.

(4) *Special effects* means a combination of chemical elements or chemical components capable of burning independently of the oxygen of the atmosphere and designed and intended to produce an audible, visual, mechanical, or thermal effect as an integral part of a motion picture, radio, television, theatrical, or opera production or live entertainment.

State Law References: Similar provisions, MCL 750.243a(1).

Flood or *flooding* means a rise in the water level of a water body, or the rapid accumulation of water from runoff or other sources, so that land that is normally dry is temporarily inundated by water. For the purpose of the National Flood Insurance Program, flooding is also defined to include mud slides connected with accumulation of water, and land subsidence along water bodies.

Flood insurance rate map (FIRM) means the official map on which the Federal Insurance Administration has delineated both the areas of special flood hazards and the risk premium zones applicable to the city.

Flood insurance study means the official report provided in which the Federal Insurance Administration has provided flood profiles, as well as the flood boundary floodway map and the water surface elevation of the base flood.

Floodplain means that area of land adjoining a channel of a river, stream, watercourse, lake, or similar body of water which will be inundated by a flood which can reasonably be expected for the region.

Floodproofing means any combinations of structural and nonstructural additions, changes or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

Floodway means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot.

Floor area ratio means the ratio between the total amount of floor area of all floors permitted to be constructed on a development site and the area of the site.

Foster care facility means the provision of supervision, personal care and protection, in addition to room and board, for 24 hours a day and five or more days per week for two or more consecutive weeks, with or without compensation.

Forty acres or the equivalent means either 40 acres, a quarter-quarter section containing not less than 30 acres, or a government lot containing not less than 30 acres.

State Law References: Similar provisions, MCL 560.102(l).

Front yard means an open, unoccupied space extending the full width of the lot between the front lot line and the nearest line of the principal building on the lot (See figure 100-101 in ch. 100). The depth of the front yard shall be measured at right angles to the property line in the case of a straight property line and radial to the property line in the case of a curved property line. On a corner lot, the front yard shall be the yard fronting on a street with the largest setback.

Garage means an accessory building used for parking or storage of vehicles in connection with the permitted use of the principal building.

Garage sale means the public sale of any new or used tangible personal property which is conducted at a private residence in a residentially zoned district and which is advertised by any means, and shall include by example and not by way of limitation all sales entitled "garage sale," "yard sale," "lawn sale," "attic sale" or "rummage sale," when conducted on a private residence, and shall exclude auctions that are presided over by a licensed auctioneer.

Garbage is the animal or vegetable waste resulting from the handling, preparation, cooking and consumption of food.

Guard is a building component or a system of building components located at or near the open sides of elevated walking surfaces that minimizes the possibility of a fall from the walking surface to a lower level.

General common elements means the land area other than the limited common element of the site condominium development that are held in common by all co-owners and used for parks, streets, open space, or other common activities. (See figure 100-104 in ch. 100).

General retail means stores which sell dry goods, package foods, hardware, appliances, computers, jewelry and other similar merchandise and services directly to the public.

Generally accepted agricultural and management practices means practices adopted by the Michigan Commission of Agriculture pursuant to the Michigan Right to Farm Act (MCL 286.471 et seq.).

Gift means any thing of value, money, loan of money, goods, or services given without due consideration. "Gift" does not include:

(1) Information-gathering trips paid for by a person or entity seeking approval of a proposal from a decision-making body of the city, provided that the decision-making body, prior to the trip, makes all of the following determinations: (a) the information will be useful and material; (b) the trip will improve and not unduly influence the decisional process; and (c) the decision-making body designates the official(s) who will participate.

(2) Small items of a nominal value and any reportable campaign contributions pursuant to state law.

Government building. See "public building".

Grade means a reference plane representing the average of finished ground level adjoining the building at all exterior walls.

Grading means any stripping, excavating, filling, stockpiling, or any combination of such activities, and shall include the land in its excavated or filled condition.

Gross acre means an acre of land inclusive of all amenities and features.

Gross density means a figure which equals the total number of dwelling units on a development site divided by the total number of acres included in the development site.

Gross floor area means the area within the perimeter of the outside walls of the building under consideration, without deduction for hallways, stairs, elevator shafts, closets, thickness of walls, columns, or other features.

Ground cover means grasses or other plant growth or plant material sufficient to prevent soil erosion.

G.V.W.R. means gross vehicle weight rating, a measure of vehicle weight.

Habitable floor area means any floor area usable for living purposes, which includes working, sleeping, eating, cooking or recreation, or a combination of such activities. A floor area used only for storage purposes is not a habitable floor.

Hazardous material means any material, waste, or a combination of waste and material, including solid, liquid, semi-solid or contained gaseous material, which, because of its quantity, quality, concentration or other physical, chemical or general characteristics pose a substantial present or potential hazard to human health or the environment if improperly treated, stored, transported, disposed of or otherwise managed.

Hazardous substance/waste, as defined by Section 101(14) of the United States Comprehensive Environmental Response Compensation and Liability Act (CERCLA), means:

(1) Any substance designated pursuant to Section 311(B)(2)(A) of the federal Water Pollution Control Act;

(2) Any element, compound, mixture, solution or substance designated pursuant to Section 102 of CERCLA;

(3) Any hazardous waste having characteristics identified under or listed pursuant to Section 3001 of the Solid Waste Disposal Act (not including waste regulation suspended by acts of Congress);

(4) Any toxic pollutant listed under Section 307(a) of the federal Water Pollution Control Act;

(5) Any hazardous air pollutant listed under Section 102 of the Clean Air Act; and

(6) Any hazardous chemical substance or mixture with respect to which the administrator has taken action pursuant to Section 7 of the Toxic Substance Control Act.

Height means the vertical distance measured from the average finished ground level at the front of the structure to the highest point of the structure.

Home occupation means an accessory use of a dwelling unit by the residents thereof for gainful employment on a reoccurring basis involving the manufacture, sale, or provision of goods, materials, or services.

Hotel means a building containing six or more individual guest rooms or suites, intended to be rented or hired out for sleeping purposes by transient guests.

Household pet means a animal that is customarily kept for personal use or enjoyment and is not restricted by other local, state, or federal regulations. Household pets shall include but not be limited to domestic dogs, domestic cats, domestic tropical birds, and rodents.

Housekeeping unit is a room or group of rooms forming a single habitable space equipped and intended to be used for living, sleeping, cooking and eating which does not contain, within such a unit, a toiler; lavatory and bathtub or shower.

Immediate family means a spouse, child, parent, sister or brother, and parent-in-law, sister-in-law or brother-in-law wherever residing, or any relative sharing the same household. All relationships shall include individuals in a step or adoptive relationship.

Imminent danger means, a condition which could cause serious or life-threatening injury or death at any time.

Improvements means those features and actions associated with a project that are considered necessary by the body or official granting zoning approval to protect natural resources or the health, safety, and welfare of the residents of the city and future users or inhabitants of the proposed project or project area, including roadways, lighting, utilities, sidewalks, screening, and drainage. Improvements do not include the entire project that is the subject of zoning approval.

Incite a riot means but is not limited to urging or instigating other persons to riot; but the term shall not be deemed to mean the mere oral or written advocacy of ideas or expression of belief not involving advocacy of any act of violence or assertion of the rightness of or the right to commit any such act.

Industrial park means the development of a parcel in a unified manner in which multiple lots or similar building sites are created to accommodate separate industrial facilities, all of which are accessed by a road or drive constructed as an integral part of the development, and which include open spaces and landscape features to enhance the visual setting of the development.

Industrial use means a structure, building, or parcel of land, or portion thereof, utilized or inherently designed to be utilized for the purpose of production, manufacturing, processing, cleaning, testing, rebuilding, assembly, distribution, finishing, construction or printing of goods or products and related research and development facilities.

Infestation is the presence, within or contiguous to, a styructure or premises of insects, rats, vermin or other pests.

Inoperable motor vehicle means a motor vehicle, as defined in the Michigan Vehicle Code, (MCL 257.1 et seq.) which by reason of dismantling, disrepair, accident, or other cause is incapable of being propelled under its own power, or is in such an unsafe condition as to endanger a person in violation of Section 683 of the Michigan Vehicle Code (MCL 257.683), and which condition exists and continues for a period of seven days or which has no current State of Michigan license or registration properly attached in the manner required by law.

Intensity of land use means the amount of activity associated with a specific land use based upon the following criteria:

(1) Amount of vehicular traffic generated (including parking);

(2) Amount of pedestrian traffic generated;

(3) Noise, odor and air pollution generated;

(4) Potential for litter;

(5) Type and quantity of materials stored in connection with the operation;

(6) Total residential units and density, where applicable; and

(7) Total coverage and height of structures on the parcel.

Junk means dry solid waste material resulting from housekeeping, construction, mercantile and manufacturing enterprises and other solid waste producing enterprise, including scrap metals, wood, rubber, paper, plastics, cloth, abandoned, wrecked, unlicensed or inoperable motor vehicles, rags, bottles, tin cans, and comparable items. Junk shall include unlicensed and inoperable travel trailers and campers, as well as include unused furniture and appliances.

Junk automobiles means, without limitation, any motor vehicle which is not licensed for use upon the highways of the State of Michigan for a period in excess of 20 days, and shall also include, whether licensed or not, any motor vehicle which is inoperative for any reason for a period in excess of ten days, provided that there is excepted from this definition unlicensed, but operative, vehicles which are kept as the stock in trade of a regularly licensed and established new or used automobile dealer.

Junk yard means any land, enclosure, or building with a minimum of 200 square feet in area used for the abandonment, disposal, storage, keeping, collecting, processing, or baling of paper, rags, scrap metals, wood, rubber, plastics, other scrap or discarded materials, or for abandonment, demolition, dismantling, storage or salvaging of automobiles, trailers, other vehicles, machinery, or parts thereof.

Kennel means any lot or premises used for the commercial sale, boarding, or treatment of dogs, cats or other domestic animals and which has a license from the Ingham County Animal Control Office.

Landscaping means an arrangement of elements which may include plant materials such as trees, shrubs, ground covers, perennial and annual plants; landscape materials such as rocks, water features, fences, screens, walls, pedestrian walks, paving products, and site lighting; and site furnishings and ornamental objects such as statuary, sculpture, benches, drinking fountains, trash receptacles, and planters for aesthetic and functional purposes.

Let for occupancy or *let* is to permit, provide or offer possession or occupancy of a dwelling, dwelling unit, rooming unit, building, premise or structure by a person who is or is not the legal owner of record thereof, pursuant to a written or unwritten lease, agreement or license, or pursuant to a recorded or unrecorded agreement or contract for the sale of land.

Limited common elements means a portion of the general common element reserved in the master deed for the exclusive use of less than all of the co-owners. (See figure 100-104 in ch. 100).

Livestock feeding operation means a premises used to feed livestock in preparation for market.

Livestock production facility means a facility where farm animals as defined in the Michigan Right to Farm Act, Public Act No. 93 of 1981; MCL 286.471, are confined with the capacity of 50 animal units or greater and the associated manure storage facilities.

Loading space means an off-street space on the same lot with a building, or group of buildings for the temporary parking of a commercial vehicle while loading or unloading merchandise or materials.

Lot. See "development site".

Lot area means the area of land within the boundary of a lot excluding any part within a regulated waterway.

Lot coverage means the part of a lot, expressed as a percentage, occupied by buildings or structures, including accessory buildings or structures, but excluding drives and uncovered surface parking areas.

Lot depth shall be measured on a straight line which connects the mid-point of the front lot line with the lot line mid-point which is located farthest from the mid-point of the front lot line. (See figure 100-102 in chapter 100).

Lot frontage shall be measured along the front property line from the intersection point with one side lot line to the intersection point with the opposite side lot line (see figure 100-102 in chapter 100). If the front property line is a curved line the frontage shall be thelineal distance along this curved line.

Lot of record means a lot which is part of a subdivision and is shown on a map thereof which has been recorded in the office of the county register of deeds.

Lot width. Lot width shall be measured as follows. (See figure 100-102 in ch. 100):

(1) *Lot width with parallel side lot lines.* Lot width shall be measured on a straight line which is perpendicular to the side lot lines.

(2) *Lot width with non-parallel side lot line.* The width shall be measured on a straight line, which shall be a measuring line, which is parallel to a straight line which connects the side lot lines where they intersect the front property line. The measuring line shall be located the distance of the minimum front yard setback from the front property line. The lot width shall be measured on a straight line between the intersection

points of the measuring line with the side lot lines. If the measuring line is located behind the rear line of the required front yard, the measuring line shall be the front building line.

Marquee sign means a sign which identifies the business and/or owner and which is attached to a legally established marquee, canopy or awning projecting from and supported by the building. If suspended, it shall not exceed a depth of 12 inches nor be less than eight feet above sidewalk level.

Master deed means the recorded document establishing a condominium project, as required by the Condominium Act (MCL 559.10 et seq.).

Medical clinic means a building where human patients, who are not lodged overnight, are admitted for examination and treatment by physicians, dentists, or other health care professionals.

Mini-warehouse means a building or portion thereof designed or used exclusively for storing personal property of an individual or family when such is not located on the lot with their residence.

Mobile home means a structure transportable in one or more sections, which is built on a chassis and designed to be used as a dwelling with or without permanent foundation, when connected to the required utilities and includes the plumbing, heating, air conditioning, and electrical systems contained in the structure. A mobile home does not include a motor home.

Mobile home park means any lot, parcel or tract of land under the control or management of any person upon which is located or which is designed for occupancy by three or more mobile homes on a continual non-recreational basis and including any accessory buildings, structures or enclosures comprising facilities used by the park residents. Such parks shall comply with the provisions of this chapter and Public Act No. 496 of 1987 (MCL 125.2301 et seq.).

Modular housing unit means an assembly of materials or products intended to comprise all or part of a residential building or structure, that is assembled at other than the final location of the unit of the building or structure by a repetitive process under circumstances intended to insure uniformity of quality and material content. The roof pitch ratio shall be a minimum of four foot vertical rise to 12 foot horizontal run.

Month means a calendar month.

Motel. See "hotel".

Motor home means a motorized vehicle designed to be utilized as a temporary living quarter for recreation, camping or travel purposes having self-contained kitchen or bathroom facilities or both.

Mounted wireless communication facility means any antenna, base mount, and associated transmission cables which are permanently affixed to the roof, wall, or structural support of any principal building or other structure on a site.

Multiple-family dwelling means a building containing three or more dwelling units which complies with the building code and this chapter.

Multiple-family housing. See "multiple-family dwelling".

Municipal civil infraction action means a civil action in which the defendant is alleged to be responsible for a municipal civil infraction.

Municipal civil infraction citation means a written complaint or notice prepared by an authorized city official, directing a person to appear in court regarding the occurrence or existence of a municipal civil infraction violation by the person cited.

Municipal civil infraction violation notice means a written notice prepared by an authorized city official, directing a person to appear at the city Municipal Ordinance Violations Bureau and to pay the fine and costs, if any, prescribed for the violation by the schedule of civil fines adopted by the city, as authorized under sections 8396 and 8707(6) of the 1961 PA 236 [MCL 600.8396, 600.8707(6)].

Net acre means an acre of land remaining after excluding land used as a public or private street, or land classified as a wetland, regulated water body, or floodway.

Net density means a figure which equals the total number of dwelling units on a development site divided by the total number of net acres included in the development site.

Nonconforming lot means a lot lawfully existing on June 10, 2001 that does not conform to the dimensional requirements of chapter 94 of this code, including lot area or lot width. Refer to section 94-322 of this code.

Nonconforming sign means a sign lawfully existing on October 15, 2007 that does not conform to the provision of chapter 58. Refer to section 58-131 of this code.

Nonconforming use means a use of land lawfully existing on June 10, 2001 that does not conform to the provisions of chapter 94 of this code. Refer to section 94-323 of this code.

Noxious weeds means Canada thistle (Circium arvense), dodders (any species of Cuscuta), mustards (charlock, black mustard and Indian mustard, species of Brassica or Sinapis), wild carrot (Daucus carota), bindweed (Convolvulus arvensis), perennial sowthistle (Sonchus arvensis), hoary alyssum (Berteroa incana), quackgrass (Syropyron repens), crab-grass (Digitaria sanguinalis), poison ivy (Rhus toxicodendron), poison sumac (Rhus vernix), or other plant or grass which, in fact constitutes a nuisance or a fire hazard.

Nuisance means an activity consisting of an unreasonable, unwarranted, or unlawful use of property by a person that causes injury or damage to or obstructs the right of another or the public in general.

Nursing home. See "convalescent home".

Occupancy means, the purpose for which a building or portion thereof is utilized or occupied.

Occupancy permit means a document issued by the building official certifying that all facets of a development have complied with this chapter and the building code and that the land, building, or structures may lawfully be occupied for the purpose designated.

Occupant is any individual living or sleeping in a building, or having possession of a space within a building.

Off-premises sign means a sign not exceeding 300 square feet in area and which contains a message unrelated to a business or profession conducted or to a commodity, activity, service or entertainment carried on, sold or offered upon the premises where such sign is located.

Official duties or *official actions* are decisions, recommendations, approvals, disapprovals or other actions which involve the use of discretionary authority or the performance of ministerial duties required by law.

Official zoning map means the city map that is an integral part of this chapter illustrating the location of the various zoning use districts described in this chapter.

On-premises sign means a sign not exceeding 80 square feet in surface area, relating in its subject matter to the premises on which it is located, or its products, accommodations, services or activities on the premises.

Open space means the ground area and space above a lot which is open, unoccupied, and unobstructed by any structure or any part thereof.

Open-space ratio means the ratio between open space on a development site and the total site area.

Open stand means a public place alongside the curb of a street or elsewhere in the city which has been designated by the police chief as reserved exclusively for the use of taxicabs.

Openable area is that part of a window, skylight or door which is available for unobstructed ventilation and which opens directly to the outdoors.

Operator is any person who has charge, care or control of a structure or premises which is let or offered for occupancy.

Outlot, when included within the boundary of a recorded plat, means a lot set aside for purposes other than a building site, park, or other land dedicated to public use or reserved for private use.

State Law References: Similar provisions, MCL 560.102(n).

Owner as applied to property, is any person, agent, operator, firm or corporation having a legal or equitable interest in the property; or recorded in the official records of the state, county or municipality as holding title to the property; or otherwise having control of the property, including the guardian or conservator of the estate of any such person, and the personal representative of the estate of such person and includes any part owner, joint owner, tenant in common, tenant in partner ship, joint tenant or tenant by the entirety of the whole or part of such property. With respect to special assessments, however, the owner shall be considered to be the person appearing on the assessment roll for the purpose of giving notice and billing.

Parade means any parade, march, ceremony, show, exhibition, pageant or procession of any kind, or any similar display, in or upon any street, park or other public place in the city.

Parcel means a continuous area or acreage of land which can be described as provided for in the Michigan Land Division Act, 1967 PA 288, MCL 560.102, *et seq.* and article 3 of chapter 74 of this code.

Park means a parcel of land, building, or structures used for active or passive recreational purposes including playgrounds, sport fields, game courts, trails, picnicking areas and leisure time activities.

Park trees means trees, shrubs, bushes and all other woody vegetation in public parks having individual names, and all areas owned by the city, or to which the public has free access as a park.

Parking lot means an off-street, surface facility providing vehicular parking spaces for more than five vehicles along with adequate drives and aisles for maneuvering so as to provide for entrance and exit access.

Parking space means a clearly delineated land area exclusive of driveways and aisles, so prepared as to be usable for the parking of a motor vehicle, and so located as to be readily accessible to a public street or alley. A parking space may be located in a parking lot or a parking structure.

Peddler means any person, whether a resident of the city or not, or any firm, partnership, corporation, whether organized for profit or not, or other business entity, who travels by foot, wagon, cart, motor vehicle, or other conveyance, from place to place, and sells or offers for sale goods or services from a motor vehicle, wagon, trailer, railroad car, or other vehicle or conveyance, or from a cart, stand, booth, display case, or other temporary portable structure or fixture. The word "peddler" shall include "hawker" and "huckster" and shall include route salespersons selling randomly to customers along a fixed route, but not route salespersons supplying only prior customer orders.

Performance guarantee means a bond posted by a contractor or subcontractor that contains the financial guarantee of a surety that a specific project will be completed within the time and to the standards or specifications that have been agreed upon.

Performance standard means the general criteria to ensure that a particular structure, land use, or development will be able to meet certain minimum standards or will not exceed set limits for impact on the surrounding property or the surrounding areas.

Person means any individual, partnership, corporation, association, club, joint venture, estate, trust, limited liability company, governmental unit, and any other group or combination acting as a unit, and the individuals constituting such group or unit.

Personal property means any property other than real property.

Personal services means uses which include accountants, dentists, physicians, barbers, beauticians, attorneys and similar services.

Plat means a map or charge of a subdivision of land.

(1) *Preliminary plat* means a map showing the salient features of a proposed subdivision submitted to an approving agency for the purpose of preliminary consideration.

(2) *Final plat* means a map of all or part of a subdivision prepared and certified as to its accuracy by a registered professional civil engineer or registered land surveyor. The final plat map shall meet the requirements of the Land Division Act (MCL 560.101 et seq.) and be acceptable for recording in accordance with that or succeeding acts.

(3) *Replat* means the process of changing, or the map or plat which changes, the boundaries of a recorded subdivision plat. The legal dividing of an outlot within a recorded subdivision plat without changing the exterior boundaries of the outlot is not a replat.

Pollution incident prevention plan (PIPP) means a written procedure provided by an owner or his agent which will be followed to prevent a potentially polluting incident from resulting in soil or groundwater contamination.

Portable sign means a sign which by its description or nature may be or is intended to be moved from one location to another.

Preexisting towers and *preexisting antennas* mean any tower or antenna for which a building permit or special use permit has been properly issued prior to June 10, 2001.

Pre-manufactured housing unit. See "modular housing unit".

Premises is any building, lot, parcel of land, or portion of land whether improved or unimproved including adjacent public and private sidewalks and parking strips.

Prime agricultural land means land most efficiently suited to the production of forage, fiber, feed crops, and field crops. This land, due to inherent natural characteristics such as level topography, good drainage, adequate moisture supply, favorable soil depth and favorable soil texture, consistently produces the most feed, food and fiber with the least fertilizer, labor and energy requirements.

Principal structure means the main structure to which the premises is devoted.

Principal use means the main use to which a premises is devoted and the principal purpose for which the premises serves or is intended to serve.

Private street means a privately owned and maintained street or road constructed to municipal standards.

Prohibited use means a use which is not permitted within a particular zoning district.

Proof of equitable title means a recorded land contract agreement or recorded deed conveying to the purchaser interest in real estate and/or any assignments of the purchaser's interest therein.

Property. The term "property" means real and personal property.

Proprietor means a person, who may hold any ownership interest in land whether recorded or not.

Public assembly building means a structure, building or space, or a portion thereof used by the general public to view, hear or otherwise interact for the purposes of civic, social or religious functions, recreation, food or drink consumption or awaiting transportation.

Public building means buildings which house public safety and municipal services but do not serve as a residential facility.

Public event facility means a privately or publicly owned or operated facility that is used periodically for the holding of indoor or outdoor special events in which the public may participate or otherwise observe.

Public open space means land dedicated or reserved for public use. It includes parks, parkways, recreation areas, school sites, community or public building sites, and other public spaces.

Public place means any place to which the general public has access and a right to resort for business, entertainment or other lawful purpose, but does not necessarily mean a place devoted solely to the uses of the public. It shall also include the front or immediate area of any store, shop, restaurant, tavern or other place of business, and also public grounds, areas or parks.

Public utility means any person or municipal authority providing such public utilities as gas, electricity, water, steam, telephone, sewer, transportation, and other services of a similar nature.

State Law References: Similar provisions, MCL 560.102(s).

Public way means any surface thoroughfare designed, constructed and maintained for passage to or from a place or between two points open as of right to the public and intended for travel by vehicle, on foot or in a manner limited by statute.

Racetrack means a facility licensed and operating under a track license issued pursuant to the Michigan Horse Racing Law of 1995, MCL 430.301 et seq.

Racing theatre means an enclosed facility licensed by the State of Michigan where patrons may view off-track telecasting of horse races and engage in off-track wagering on results of the telecast horse races.

Rear lot line is generally considered to be the line that is opposite from the front lot line and also farthest in distance from the front lot line.

Rear yard means an open, unoccupied space extending the full width of the lot between the rear line of the lot and the rear line of the principal building on the lot. (See figure 100-101 in ch. 100). The depth of the rear yard shall be measured at right angles to the rear property line.

Refuse means the following:

(1) All kitchen waste, including cans, bottles, household food, accumulations of animal food and vegetable matter attendant to the preparation, use, cooking and serving of food.

(2) General household trash and refuse, including ashes, empty cartons, crates, boxes, wrapping materials, newspapers and magazines, when neatly bound in conveniently sized bundles, cloth material, discarded toys, discarded clothing and similar materials.

Refuse storage space means any exterior space designated by a site plan for containers, structures, or other receptacles intended for temporary storage of solid waste refuse or trash materials.

Rehabilitation means the upgrading of an existing building or part thereof, which is in a dilapidated or substandard condition.

Religious institution means churches, synagogues, mosques, church schools, church residences, and church owned land used for related church functions as defined by the U.S. Tax Code.

Resident means one who has resided on a permanent basis in the city in excess of 60 days.

Residential care facility means a government or non-government establishment having as its principal function foster care for more than six persons. Residential care facility includes homeless persons, parolees, ex-offenders, aged, emotionally disturbed, developmentally disabled or physically handicapped persons who require supervision on an on-going basis but do not require continuous nursing care. A residential care facility does not include a nursing home, hospital, or facility for the developmentally disabled licensed by the state.

Resolution. The term "resolution" means a resolution adopted by the city council.

Restaurant means an establishment where food and/or beverages are cooked or prepared and offered for sale and consumed on the premises whether or not entertainment is offered, and includes establishments commonly known as bars, grills, cafes, taverns and nightclubs permitting consumption of food on the premises.

Restoration means the reconstruction or replication of an existing building's original architectural features.

Right-of-way means land reserved, used or to be used for a street, alley, walkway or other public purpose.

Riot means a public disturbance involving:

(1) An act of violence by one or more persons part of an assemblage of three or more persons, which act shall constitute a clear and present danger of or shall result in damage or injury to the property of any other person or to the person of any other individual; or

(2) A threat or the commission of an act of violence by one or more persons part of an assemblage of three or more persons having, individually or collectively, the ability of immediate execution of such threat, where the performance of the threatened act of violence would constitute a clear and present danger of or would result in damage or injury to the property of any other person or to the person of any other individual.

Roadside stand means a structure for the display and sale of agricultural/garden products, with no space for customers within the structure itself.

Room means an area of a dwelling unit used for living purposes, not including bathrooms, closets, kitchens, basements, cellars, or attics.

Rooming house means an owner occupied single-family dwelling, or a dwelling unit occupied by the owner in a two-family dwelling, occupied in such a manner that a room or certain rooms, in excess of those used and occupied as a home by the owner, are leased or rented as a rooming unit. In the case of single and two-family dwellings the number of such bedrooms leased or rented to roomers shall not exceed three, unless such dwellings are made to comply in all respects with the provisions of this code relating to multiple family dwellings.

Rooming unit means a single room within a rooming house that is leased or rented to adult persons not related to the owner by blood, marriage, or adoption without any attempt to provide cooking or kitchen accommodations within the rooming unit.

Rubbish means waste from construction or remodeling, concrete, rocks, sod, earth, automobile or truck parts, tires, manufacturing or trade waste accumulated by residential, commercial, individual or institutional uses and includes all other waste products not defined in this section.

Salvage yard. See "junk yard".

Satellite dish antenna means a device incorporating a reflective surface that is solid, open mesh, or bar configured and is in the shape of a shallow dish, cone, horn, or cornucopia. The antenna is intended to receive signals from orbiting satellites and other sources.

Screen means a fence, landscaping, berm, or combination thereof that obscures the view from one site to another.

Secondhand store means a building or portion thereof in which previously owned goods are sold.

Setback means the minimum horizontal distance between a road right-of-way line, an easement line, or an adjacent property line and a building or structure. In a condominium development, the minimum horizontal distance between a boundary line of the condominium lot and a building or structure.

Setback line. See "building line".

Side yard means an open, unoccupied space on the same lot with the principal building, between the side line of the principal building and the adjacent side line of the lot and extending from the rear line of the front yard to the front line of the rear yard. (See figure 100-101 in ch. 100). The width of the side yard shall be measured at right angles to the side property line.

Sidewalk means that portion of the street between the curb, or the lateral line of the roadway, and the adjacent property line, intended for the use of pedestrians.

Sign means a name, identification, description, display or illustration which is affixed to, or painted, or represented directly or indirectly upon a building, structure or piece of land, and which directs attention to an object, product, place, activity, person, institution, organization, or business and which is visible from any public street, right-of-way, sidewalk, alley, park or other public property.

Sign area means the area of the smallest square, rectangle or circle which encompasses the face of a sign, including the copy, insignia, background and borders. The structural supports of a sign are to be excluded in determining the surface area except where such supports are designed to form an integral part of the display. Where a sign has more than one face, the area shall be computed by encompassing the maximum single surface which is visible from any ground position.

Sign, banner means a sign made of fabric or any non-rigid material and generally with no enclosing framework, mounted at one or more edges to a pole, building, fence, wall or other structure.

Sign, exempted means a sign which is not required to obtain a sign permit, but must comply with all other provisions of chapter 58 of this code.

Sign, freestanding means any sign supported by uprights, braces, or a base placed and anchored into the ground and not attached to any building or other structure.

Sign, marquee means a sign which identifies the business and/or owner and which is attached to the fascia or underside of a legally established marquee, canopy or awning projecting from and supported by the building.

Sign, off-premise means a sign which contains a message unrelated to a business or profession conducted or to a commodity, activity, service or entertainment carried on, sold or offered upon the premises where such sign is located.

Sign, on-premise means a sign, relating in its subject matter to the premises on which it is located, or its products, accommodations, services or activities on the premises.

Sign, portable means a temporary sign which by its description or nature may be or is intended to be moved from one location to another.

Sign, projecting means a sign affixed at an angle or perpendicularly to a wall surface of any building or hung or suspended in such a manner as to be read from an angle or parallel to the wall surface on which it is mounted.

Sign, reader board means a portion of a sign on which copy is changed periodically either manually or electronically.

Sign, real estate means a temporary sign pertaining to the sale, rent, or lease of the premises, or portion of the premises, on which the sign is located.

Sign, roof means a sign which is located above, or projects above, the lowest point of the eaves, the roof line on a gable end wall, or parapet wall of any building, marquee, canopy or portico, or which is painted on or fastened to a roof, or onto any architectural feature intended to look like a roof.

Sign, suspended means a sign suspended from the underside of a horizontal plane surface and supported by such surface, usually a canopy, awning, portico, or marquee.

Sign, temporary means a display, information sign, banner, or other advertising device constructed of cloth, canvas, fabric, wood, or other temporary material with or without a structural frame and intended for a limited period of display; such signs may be supported by a mobile chassis other than a motor vehicle.

Sign, wall means any sign attached directly to a wall, or painted lettering on a wall or canopy parallel to a wall with the exposed face of the sign in a plane parallel to the wall and projecting not more than 18 inches from the wall surface to which it is affixed.

Sign, window means any sign, picture, symbol, or combination thereof, designed to communicate information about an activity, business, commodity, event, sale, or service, that is placed inside a window or upon the window panes or glass and is visible from the exterior of the window. Merchandise that is included in a window display shall not be considered as part of the area of a window sign. Flyers advertising charitable events or other similar announcements shall not constitute a window sign.

Significant vegetation means vegetation with a caliper of six inches or greater. (See "caliper").

Single-family dwelling means a detached building including a mobile home, containing one dwelling unit which complies with the building code and this chapter.

Site condominium means a development under the Michigan Condominium Act (MCL 559.10 et seq.) for uses permitted in the zoning district in which it is located, in which each co-owner owns in common with the other owners a specific amount of land space for common use, and in which each co-owner owns exclusive rights to an area of land space within which a structure or structures may be constructed, herein defined as a condominium unit, as described in the master deed.

Site condominium subdivision project. See "condominium project".

Site plan means and includes those documents and drawings required by article 7 of chapter 94 of the Mason City Code to ensure that a proposed land use or activity is in compliance with the Code of Ordinances of the City of Mason and state and federal statutes.

Skateboard means a device consisting of a short oblong board with wheels at each end intended to be ridden on a hard surface such as a floor or sidewalk.

Solicitor means any person, or any firm, partnership, profit or nonprofit corporation, or other business entity who travels by foot, motor vehicle, or other conveyance from place to place seeking to obtain orders for the purchase of goods, services or subscriptions for future delivery or performance, or who, without traveling from place to place, solicits from a motor vehicle or other conveyance or from a stand, cart, booth, or other temporary or portable structure or fixture, but not wholesalers or jobbers supplying only retail establishments.

Solid waste includes garbage, rubbish, paper, cardboard, metal, yard clippings, wood, glass, bedding, crockery, demolished building materials, ashes, incinerator ash, incinerator residue, street cleanings, municipal and industrial sludge, solid commercial and solid industrial waste, animal waste, but does not include human body waste, organic waste generated in the production of livestock and poultry, liquid or other waste regulated by statute, ferrous products, and slag or slag products.

Special use means a use that, owing to some special characteristics attendant to the operation of said use, such as potential danger, noise, smoke or traffic, is only permitted in a district subject to review and approval by the planning commission, and subject to special or conditional requirements in addition to the general requirements for the district in which the special use may be located.

Special use permit means a permit issued by the planning commission authorizing the operation of a special use as allowed under the regulations for special uses authorized by permit in the zoning district.

Stable means a building or facility with a capacity for housing more than four horses.

Stable, riding means a stable which provides recreational or instructional horseback riding or other equestrian skills to the public, including a riding academy.

State. The term "state" means the State of Michigan.

State-licensed residential facility means a structure constructed for residential purposes that is licensed by the state under the Adult Foster Care Licensing Act, 1979 PA 218 (MCL 400.7012 to 400.7137) or under 1973 PA 116 (MCL 722.111 to 722.128) and which provides residential services for six or fewer persons under 24-hour supervision or care.

Story means that portion of a building included between the surface of any floor and the surface of the adjacent floor above, or if there is no floor above, then the space between the floor and the ceiling above.

Street means a right-of-way dedicated to public use which provides vehicular access to adjacent properties, whether designated as a street, highway, thoroughfare, parkway, road, avenue, lane, or however otherwise designated, comprising all the land between right-of-way lines, whether improved or unimproved, and may include pavement, curbs, gutters, shoulders, sidewalks, parking areas, lawn areas, and other areas within the right-of-way lines.

(1) *Minor street* means a street supplementary to a secondary street or collector street intended to serve the local needs of the neighborhood and of limited continuity used primarily as access to abutting residential properties.

(2) *Cul-de-sac* means a minor street of short length having one end open to traffic and being permanently terminated at the other end by a vehicular turnaround.

(3) *Secondary or collector street* means a street intended to serve as a major means of access from minor streets to major thoroughfares with considerable continuity within the framework of the master street plan.

(4) *Major thoroughfare* means an arterial street of great continuity which is intended to serve as a large-volume trafficway for both the immediate municipal area and the region beyond, and be designated as a major thoroughfare on the master street plan.

(5) *Half street* means a street having lesser than the required right-of-way width for a street of full width as required by this article.

(6) *Marginal-access street* means a minor street parallel and adjacent to a major thoroughfare and which provides access to abutting properties and protection from through traffic.

Street clock/temperature sign means a sign which displays the current time or outdoor temperature or both and which is not larger than 16 square feet in surface area and projects no more than eight feet from the face of the building and is no less than eight feet above sidewalk level.

Street trees means trees, shrubs, bushes and all other woody vegetation on land lying between property lines on either side of all streets, avenues or ways within the city.

Structure means anything constructed or erected the use of which requires location on the ground or attachment to something having location on the ground. A structure does not include a surface parking area, driveway, steps, patio or deck constructed at grade.

Subdivide or *subdivision* means the partitioning or splitting of a parcel or tract of land by the proprietor of the tract or by his heirs, executors, administrators, legal representatives, successors or assigns for the purpose of sale, or lease of more than one year, or of building development that results in one or more parcels of less than 40 acres or the equivalent, and that is not exempted from the platting requirements by Section 108 and 109 of the Land Division Act (MCL 560.108, 560.109). "Subdivide" or "subdivision" does not include a property transfer between two or more adjacent parcels if the property taken from one parcel is added to an adjacent parcel; and any resulting parcel shall not be considered a building site unless the parcel conforms to the requirements of the Land Division Act (MCL 560.101 et seq.) or the requirements of ordinance.

Subdivider means an individual, firm, association, syndicate, copartnership, corporation, trust or any other legal entity commencing proceedings under chapter 74, article II of this Code, to effect a subdivision of

land for himself or for another.

Swimming pool means a structure or container located either above or below grade designed to hold water to a depth of greater than 24 inches intended for swimming or bathing. A swimming pool shall be considered as an accessory structure.

Taxicab means a motor vehicle regularly engaged in the business of carrying passengers for hire, having a seating capacity of less than ten passengers and not operated on a fixed route.

Taximeter means a meter instrument or device attached to a taxicab which measures mechanically the distance driven and the waiting time upon which the fare is based.

Tenant is a person, corporation, partnership or group, whether or not the legal owner of record, occupying a building or portion thereof as a unit.

Thread of a stream means the average centerline of the channel of a stream with the main current flow.

Topographical map means a map showing existing characteristics with contour lines at sufficient intervals to permit determination of proposed grades and drainage.

State Law References: Similar provisions, MCL 560.102(dd).

Tower means any structure that is designed and constructed primarily for the purpose of supporting one or more antennas for telephone, radio, and similar communication purposes, including self-supporting guyed towers or monopole towers. The term includes radio and television transmission towers, microwave towers, common-carrier towers, cellular telephone towers, alternative tower structures, and the like. The term includes the structure and any support thereto.

Tract means two or more parcels that share a common property line and are under the same ownership.

State Law References: Similar provisions, MCL 560.102(h).

Transient merchant means any natural person, or any firm, partnership, profit or nonprofit corporation, or any other business entity engaged in the retail sale or delivery of goods or services from any lot, premises, building, room or structure on a temporary basis where such person does not have a permanent business location within the city which is subject to the city's real or personal property taxes for the current year.

Trash and *rubbish* means any and all forms of debris not herein otherwise classified.

Trash storage space. See "refuse storage space".

Travel trailer. See "camper".

Two-family dwelling means a building containing two dwelling units which complies with the building code and this chapter.

Usable floor area (UFA) means the area used for or intended to be used for the display or sale of merchandise or services, or for use to serve patrons, clients, customers, or occupants. Such floor area which is used or intended to be used for hallways, stairways, elevator shafts, closets, columns, thickness of walls, utility or sanitary facilities shall be excluded from the computation of usable floor area. For office, merchandising, or service uses, those areas used for storage or processing merchandise or where customers, patients, clients and the general public are denied access shall be excluded from the computation of usable floor area. Measurement of usable floor area shall be the sum of the horizontal areas of each story of a structure measured from the internal faces of the exterior walls.

Usable path for bicycles means a bicycle way designated for the exclusive use of cyclists.

Variance means a modification of the area or dimensional regulations of chapter 94 granted in specific cases in accordance with article XI of chapter 94.

Ventilation is the natural or mechanical process of supplying conditions or unconditioned air to, or removing such air from, any space.

Warehouse means a building or portion thereof, other than a mini-warehouse, used for storage of goods, merchandise or other property. This shall not include a storage area in connection with a purely retail business when located on the same property.

Watercourse means any natural or artificial stream, ditch, river, creek, channel, canal, conduit, culvert, drain, waterway, gully or ravine in which water flows in a definite direction, either continuously or intermittently, and which has a definite bed channel or banks.

Week means seven consecutive days.

Wetland means an area that is inundated or saturated by surface water or ground water at a frequency and duration sufficient to support, and that under normal circumstances does support, aquatic life or a prevalence of vegetation typically adapted for life in saturated soil conditions.

Workmanlike means, executed in a skilled manner; e.g. generally plumb, level, square, in line, undamaged and without marring adjacent work.

Yard is an open space on the same lot with a structure.

Year means 12 consecutive months.

Zoning means the dividing of the city into use districts of a number, type and shape considered best suited to the city.

Zoning act means 2006 PA 110, as amended, being the Michigan Zoning Enabling Act (MCL 125.3101, et seq.)

(Ord. No. 72, § 1, 6-5-1967; Ord. No. 73, § 5, 3-4-1968; Ord. No. 80, § 3, 7-6-1970; Ord. No. 87, § 2, 3-4-1974; Ord. No. 88, § 2, 3-18-1974; Ord. No. 97, § 1, 2-7-1977; Ord. No. 100, § 1, 10-3-1977; Ord. No. 101, § 9, 11-21-1977; Ord. No. 103, § 1, 6-19-1978; Ord. No. 72-A-82, § 1, 4-9-1982; Ord. No. 123, § 1, 12-17-1990; Ord. No. 51-A-96, § 2, 2-5-1996; Ord. No. 135, § 2(2.3), 5-21-2001; Ord. No. 145, 9-7-2004; Ord. No. 147, 6-6-2005; Ord. No. 148, 3-20-2006; Ord. No. 152, 5-1-2006 ; Ord. No. 156, 9-5-2006; Ord. No. 157, 11-6-2006; Ord. No. 158, 2-5-2007; Ord. No. 154, 5-7-2007; Ord. No. 159, 9-17-2007; Ord. No. 190, 7-2-2012)

State Law References: Definitions and rules of construction applicable to state statutes, MCL 8.3 et seq.

Print

Mason, MI Code of Ordinances

ARTICLE XI. ZONING BOARD OF APPEALS

Sec. 94-361. Creation and membership.

The zoning board of appeals is hereby established in accordance with Public Act No. 207 of 1921 (MCL 125.581 et seq.). In the performance of assigned duties and the exercise of assigned powers, the zoning board of appeals shall function such that the objectives of this chapter may be equitably achieved.

(1) *Members*. The zoning board of appeals shall consist of seven members each appointed by the city council for a term of three years, except that the term of a member serving because of their being a member of the city council shall be limited to the time they are a member of the council. One regular or alternate member may be a member of the city council but shall not serve as chairperson of the zoning board of appeals. The remaining members shall be selected from the electors of the city. The members selected shall be representative of the population distribution and of the various interests present in the city.

(2) *Alternate members.* The city council may appoint not more than two alternate members for the zoning board of appeals each appointed for a term of three years. An alternate member shall be called on a rotating basis to sit as a regular member of the zoning board of appeals in the absence of a regular member. An alternate member may also be called to serve in the place of a regular member for the purpose of reaching a decision on a particular case in which the regular member has abstained for reasons of conflict of interest. Once having been called to serve, an alternate member shall serve as a regular member in the consideration of that particular case until a final decision has been made.

(3) *Removal*. A member of the zoning board of appeals may be removed by the city council for misfeasance, malfeasance, or nonfeasance in office upon written charges and after public hearing. A member shall disqualify himself or herself from a vote in which the member has a conflict of interest. Failure of a member to disqualify himself or herself from a vote in which the member has a conflict of interest constitutes malfeasance in office.

(4) *Participation by dual members.* A member of the zoning board of appeals who is also a member of the planning commission or the city council shall not participate in a public hearing on or vote on the same matter that such member voted on as a member of the planning commission or city council. However, such member may consider and vote on other unrelated matters involving the same property.

(Ord. No. 152, 5-1-2006; Ord. No. 157, 11-6-2006; Ord No. 176, 5-4-2009)

Sec. 94-362. Organization and procedure.

(a) *Meetings*. Four members of the zoning board of appeals shall comprise a quorum for the purpose of conducting a meeting. Meetings shall be held at the call of the chairman or the zoning official in writing delivered to the addresses of each member of the board. All meetings shall be open to the public. The city administrator or a designee shall act as secretary of the board.

(b) *Records*. Minutes of all meetings shall be recorded and made available in accordance with the Michigan Open Meetings Act (MCL 15.261 et seq.) and shall contain the grounds of every determination made by the zoning board of appeals including all evidence and data considered, all findings of fact and conclusions drawn, the votes of the members and the final disposition of each case. Such minutes shall be

filed in the office of the city clerk and shall be available to the public. The record of proceedings for the zoning board of appeals shall contain the following information when applicable:

(1) The application for an appeal, variance, or interpretation.

(2) Any reports, plans, surveys or photos.

(3) Notice of public hearing delivered to affected parties and published in a newspaper.

(4) Affidavit of publication of notice of public hearing.

(5) Letter from the zoning official granting or denying the application or referring it to the zoning board of appeals and all other relevant records related to the case.

(6) Record of testimony heard and evidence presented.

(7) A copy of the zoning articles and sections in question.

(8) Briefs, correspondence or other communications made to the zoning board of appeals.

(9) Statement of facts found by the zoning board of appeals, of its own knowledge, regarding the request including any information gained from personal inspection.

(10) Decision of the zoning board of appeals as specifically related to the findings of fact.

(11) A copy of any other correspondence to the appellant regarding the request.

(c) *Counsel*. The city attorney shall provide legal counsel to the zoning board of appeals when requested. Special legal counsel may be retained for the zoning board of appeals for any purpose deemed necessary provided that such appointment or retainer shall be approved in advance by the city council.

(d) *Decisions*. The zoning board of appeals shall return a decision on a case within a reasonable time after the hearing on an application or appeal unless a reasonable extension of time is deemed necessary by a majority of the members present. Any decision of the zoning board of appeals shall not become final until the expiration of five days from the date of the decision unless the zoning board of appeals shall find the immediate effect of the decision is necessary for the preservation of property or personal rights and shall so certify on the record.

(e) *Deferment by applicant*. When considering an appeal pursuant to subsection 94-363(a), or a variance pursuant to subsection 94-363(b), the zoning board of appeals shall defer all proceedings upon the request of the applicant when less than six members of the zoning board of appeals are present for consideration of and voting on said appeal or variance. The right of deferment shall be considered waived by the applicant if deferment is not requested immediately upon the opening of the hearing on the matter. When deferment is requested as required, the zoning board of appeals shall, at that time, determine the date of a future regular or special meeting for the continuation of the hearing and consideration of the matter. Notice previously given for the original hearing date shall constitute notice of the future hearing date with no further notice required.

(Ord. No. 152, 5-1-2006)

Sec. 94-363. Duties and powers.

(a) *Appeals*. Upon direct application, the zoning board of appeals shall hear and decide appeals from and review any order, requirement, decision, or determination made by the zoning official in accordance with section 94-364 of this chapter.

(b) *Variances*. Upon direct application, the zoning board of appeals shall have original jurisdiction to grant a variance from such dimensional requirements as lot area and width regulations, building height and bulk

regulations, yard width and depth regulations, and off-street parking and loading space requirements. A variance shall be granted only in accordance with section 94-365 of this chapter.

(c) *Interpretation*. The zoning board of appeals shall have the power to:

(1) Interpret the provisions of this chapter so as to carry out the intent and purpose of this chapter.

(2) Determine the precise location of the boundary lines between zoning districts.

(Ord. No. 152, 5-1-2006)

Sec. 94-364. Appeals.

(a) *Letter of appeal*. Except as otherwise provided by rule of the board of appeals, a letter of appeal shall be filed with the zoning official within ten days after the action causing the complaint. The appeal shall state the order or interpretation appealed from, specify the grounds for the appeal and specify the basis for standing to appeal.

(1) *Standing to appeal*. An appeal may be taken by a person aggrieved or by an officer, department, board, or bureau of the city.

(2) *Record of action*. Upon receipt of a letter of appeal, the zoning official shall immediately transmit to the secretary of the zoning board of appeals the letter of appeal and all documents constituting the record of the action upon which the appeal is based.

(3) *Fee*. A fee as established by resolution of the city council shall be paid before an appeal shall be considered filed.

(4) *Acceptance*. The secretary of the zoning board of appeals shall determine, pursuant to this chapter, if a letter of appeal is accepted as being filed in proper form, including the required data and fee. If the letter of appeal is not accepted as being in proper form, the letter of appeal and fee shall be returned by first class mail or hand delivery to the appellant within seven days of filing with the zoning official along with a written explanation of the insufficiency of the letter of appeal.

(b) *Public hearing*.

(1) When a letter of appeal has been accepted by the secretary of the zoning board of appeals, a public hearing shall be scheduled at the next regularly scheduled meeting or, at the discretion of the secretary, at a special meeting of the zoning board of appeals. Unless otherwise provided by rule of the board of appeals, the scheduled date of the hearing shall be no more than 45 days from acceptance of the appeal.

(2) Notice of the hearing shall be given pursuant to section 94-101 of this chapter.

(c) *Action on appeal*. The zoning board of appeals may affirm, reverse wholly or partly, or modify the order, requirement, decision, or determination appealed. When action is taken to modify said order or interpretation, the board shall, to that end, have all of the powers of the zoning official.

(d) *Majority vote*. The concurring vote of a majority of the members appointed to and serving on the zoning board of appeals shall be necessary to reverse any order, decision, or determination of the zoning official.

(e) *Stay of proceedings*. An appeal accepted pursuant to subsection 94-364(a) stays all proceedings relative to the order, requirement, decision, or determination appealed unless the zoning official certifies to the zoning board of appeals that a stay would cause imminent peril to life or property. Said certificate of imminent peril shall state by reasons of fact why proceedings shall not be stayed. Upon certification by the zoning official, proceedings shall not be stayed except by a restraining order issued by the board or by the circuit court.

(Ord. No. 152, 5-1-2006)

Sec. 94-365. Variances.

(a) *Variance application and fee*. An application for variance shall be filed with the zoning official along with a fee as established by resolution of the city council. The zoning official shall immediately forward the application for variance to the secretary of the zoning board of appeals. The secretary of the zoning board of appeals shall determine, pursuant to this chapter, if the application is accepted as being filed in proper form, including the required data and fee. If the application is not accepted as being in proper form, the application and fee shall be returned to the appellant within seven days of filing with the zoning official along with a written explanation of the insufficiency of the letter of appeal.

(b) *Public hearing*.

(1) When an application for variance has been accepted by the secretary of the zoning board of appeals, a public hearing shall be scheduled at the next regularly scheduled meeting or, at the discretion of the secretary, at a special meeting of the zoning board of appeals. The scheduled date of the hearing shall be no more than 45 days from acceptance of the application for variance.

(2) Notice of the hearing shall be given pursuant to section 94-101 of this chapter.

(c) *Basic conditions*. A variance may be granted only when the variance application and other factual evidence demonstrate all of the following:

(1) The variance must be granted in order to avoid practical difficulties not created by the applicant that would result from strict application of the letter of this chapter.

(2) A variance will not permit the establishment within a zoning district of any use not permitted within the district.

(3) A variance will not cause a substantial adverse effect to property or improvements in the zoning district and the immediately surrounding neighborhood.

(4) A variance will not be contrary to the public interest and will insure that the spirit and intent of this chapter will be observed, public safety secured, and substantial justice done.

(5) There is no lesser variance than that applied for which would give substantial relief to the applicant.

(d) *Additional conditions*.

(1) The zoning board of appeals may specify reasonable conditions on the approval of a variance which will substantially secure the objectives of the regulations to which the variance applies, be related to the standards established in the chapter for the land use or activity under consideration, and be necessary to ensure compliance with those standards. The conditions may include those necessary to ensure the public services and facilities affected by a proposed land use or activity will be capable of accommodating increased service and facility loads caused by user activity, to protect the natural environment and conserve natural resources and energy, to ensure compatibility with adjacent uses of land, and to promote the use of land in a socially and economically desirable manner. The breach of any condition shall invalidate the variance.

(2) A variance granted shall be the minimum necessary to relieve the practical difficulty.

(3) The zoning board of appeals may require that a performance guarantee be provided as a condition of approval in granting any variance as allowed in this article. The performance guarantee shall be provided in accordance with section 94-100 of this chapter.

(e) *Majority vote*. The concurring vote of a majority of the members appointed to and serving on the zoning board of appeals shall be necessary to grant a variance.

(Ord. No. 152, 5-1-2006)

Secs. 94-366—94-390. Reserved.

City of Mason

VARIANCE STANDARDS QUESTIONNAIRE

Practical Difficulty – Statement of Justification

Variances may be granted from any standard requirement of the zoning ordinance such as deviation from setbacks, parking, landscaping, density, height, or bulk regulations. A variance requires you to prove practical difficulty. The standards the Zoning Board of Appeals will use in determining whether a practical difficulty exists require you to provide responses to the following questions. Additional information may be attached.

The following five conclusions are based on the standards for granting a variance found in Section 94-365(c) of the City of Mason Zoning Ordinance. A copy of that section and any other relevant sections are available at the Mason City Hall, Zoning and Development Department or on the City's website at www.mason.mi.us .

IMPORTANT: In every instance, each of the five standards in the zoning ordinance MUST be satisfied in order for the Zoning board of Appeals to grant a variance. The applicant bears the burden of proof that a "practical difficulty" exists by presenting sufficient factual evidence to support findings of fact that allow the Board to reasonably reach each of the required conclusions. Thus it is in your best interest to answer each of the five conclusions in this Statement of Justification clearly and completely, with as much detail as necessary to support your case for "practical difficulty" which must be proven in order for the Board to grant a variance. If more space is needed, attach additional pages as necessary as well as any other documents or materials that provide supporting factual evidence.

What is a Practical Difficulty?

Practical difficulty is a legal term. The Board concludes a valid case has been made for the existence of a practical difficulty when it finds:

- That a unique circumstance or condition relative to your land (such as narrowness, topography, irregularly shaped lot, other natural features that inhibit the lawful location of structures) prevents you from enjoying the reasonable use of your property as others in the same zoning district are generally able to do.
- That the requested variance:
    - Will not be significantly harmful to your neighbors or the community as a whole.
    - Is consistent with the intent of the Code.
    - Was not made necessary by prior action of the applicant.
    - Is not based solely on a financial return.

1. The variance must be granted in order to avoid practical difficulties not created by the applicant that would result from strict application of the letter of this chapter.

_____
_____
_____
_____

2. A variance will not permit the establishment within a zoning district of any use not permitted within the district.

_____
_____
_____
_____

3. A variance will not cause a substantial adverse effect to property or improvements in the zoning district and the immediately surrounding neighborhood.

_____
_____
_____
_____

4. A variance will not be contrary to the public interest and will insure that the spirit and intent of this chapter will be observed, public safety secured, and substantial justice done.

_____
_____
_____
_____

5. There is no lesser variance than that applied for which would give substantial relief to the applicant.

_____
_____
_____
_____

City Manager's Report: December 17, 2020

COVID-19 UPDATES

- City Hall will be closed to the public until at least January 11, 2021 to limit exposure to staff. The Customer Service line is answered Monday - Friday, 8:00 a.m. to 5:00 p.m.
- Please see the Continuity of Operations document, as of December 7, 2020, available: here.
- Please see the COVID-19 Preparedness and Response Plan, as of December 9, 2020 available: here.
- Vaccine Deployment: We are working closely with partners at the Ingham County Health Department regarding vaccine deployment for eligible employees. It is likely we will begin vaccinating first responders in January. The City's current position is that vaccination will be voluntary. These vaccinations will be staggered to allow for recovery time for those with reactions.
- Virtual Public Meetings:
    - At the July 6, 2020 meeting, City Council agreed to meet electronically as long as legally permitted or until Council determines otherwise.
    - Effective December 31, 2020, the current legislation restricts the ability to meet virtually unless there is a declared State of Emergency. Currently, the City falls under the Emergency Order declared by Ingham County that expires on January 31, 2021. This allows the City to meet virtually until that time with no additional action.
    - As the date of this report, it is likely that legislation will be passed to allow the continuing of meeting virtually for no reason until the end of March. As long as certain gathering restrictions are in place, the City's public meetings will be required to meet virtually. If gathering restrictions are lifted prior to March 31, the Council would need to make a motion to direct staff to meet in person. Otherwise, if the legislation passes, the City would only be able to meet virtually until March 31, 2021.

ACTIVE PROJECTS STATUS UPDATES (PROJECTS NOT COORDINATED BY THE CITY)

Project Name	Status
BUILDING PERMITS – COMMERCIAL PROJECTS UNDER CITY REVIEW	
118 W. Oak St. – Arcade/Nail Salon **PENDING**	Two permits pending. 1. Change of Occupancy permit has been filed for Nail Tech in small office space. 2. Change of Occupancy permit has been filed to proceed with opening of the Arcade on the first floor only.
205 S. Cedar - DSN **PENDING**	Two building permits pending for this address. Both filed after code enforcement violations were noted. 1. Sign permit. 2. Installing door on front of building.
624 S. Cedar – EXIT Realty **PENDING**	Building permits pending to install illuminated sign on building and for a change in occupancy (former daycare to office).
790 E. Columbia **PENDING**	Building permit is pending for interior renovations.
124-136 W. Ash St. **ACTIVE**	Building permit active for 2nd story interior renovations and replacement of all 2nd story windows.
202 N. Mason St. – Doberman Technologies **ACTIVE**	Building permit is active for demolition of 3 residential structures. A temporary fence will be installed to prevent anyone from using the space.
204 N. Cedar – Westside Deli **ACTIVE**	Building permit is active for tear off and re-roof of building.
230 S. Cedar – Outpost **ACTIVE**	Building permit is active for change of occupancy of commercial space from laundromat to tack shop.
230 Temple St. – Sparrow **ACTIVE**	Building permit is active for tear off and re-roof of building.
600 Buhl – Ingham Animal Control **ACTIVE**	Building permit is active to construct a 14' x 24' pre-fabricated mini-barn.

700 Buhl – Ingham County Justice Complex **ACTIVE**	Second Permit is active for demolition of part of the building. Building permit is active for interior remodeling of existing storage facility to accommodate relocation of vehicle maintenance function. Part of a phased construction project for the new Ingham County Justice Complex.
1154 S. Jefferson – (former Hart Well Drilling) **ACTIVE**	Building permit is active for demolition of building, removal of debris, and restoration of disturbed areas.
1155 Temple St. – Paul Davis Restoration **ACTIVE**	Building permit is active for the construction of a new 22,500 square foot building that will be used as warehouse and office space.
525 N. Cedar- Timeless Treasures **TEMPORARY OCCUPANCY PERMIT**	Remaining work includes the installation of landscaping, repairs to parking lot lighting, and a site plan revision if they intend to include the outdoor flea market.
549 W. Ash- Dog Groomer **TEMPORARY OCCUPANCY PERMIT**	Staff is working with owner on a revised parking plan to address safety requirements and pre-existing, non-conforming layout. *Parking updates have been delayed until spring.*
301 Bush – Ingham County **COMPLETED**	Final inspection was approved for tear off and re-roof of building.
700 Buhl – Ingham 911 **COMPLETED**	Final inspection was approved for installation of antennas, microwave dishes and associated mounts on existing tower. Install unmanned equipment shelter.
1133 S. Cedar – MSU Federal CU **COMPLETED**	Final inspection was approved for interior renovations.
BUILDING PERMITS – DANGEROUS BUILDINGS/FIRE RESTORATION	
S. Jefferson – Private Residence **PENDING**	Building permit is pending after accident.
665 Hull Rd. – Cleanlites Recycling **PENDING**	Building permit is pending after fire; a second fire occurred on December 15, 202O that caused significant damage to the facility. Owner has not determined how they will move forward at this point.
Private Residence – Park St. **PENDING**	Building permit is pending after fire.
111 Mason St. – Mason Depot **ACTIVE**	Building permit is active for reconstruction after fire.
ZONING	
840 E. Columbia St. – Masonic Lodge **PENDING**	Administrative Site Plan Application is being reviewed for changes to the parking lot for one-way traffic, and the addition of a new driveway to accommodate drop-off at the entrance to building where a new elevator is to be installed.

OPERATIONS

- On December 9, 2020, "Tamarack" was officially adopted as a Police K9 from the Ingham County Animal Control and Shelter. Director Heidi Williams was instrumental in facilitating the opportunity for the City. The K-9 Handler selection process will begin after the first of the year. Until that selection is complete, Tamarack is being boarded at a facility recommended by Mid- Michigan Police K9. Tamarack and a student handler will be enrolled in a Police K9 School in Spring 2021. The City of Mason is very appreciative for all the support from the Mason Community and welcomes to Tamarack to our team!
- City Hall operations will be closed between Christmas and New Year's, as in previous years to allow our employees to spend time with their families. This continues to be one of our most appreciated benefits and after this stressful year, it is even more deserved. Essential operations will continue and members of our leadership team will be available to respond to any urgent issues.
- No Senior Without Christmas – On December 9, 2020, our police and fire teams delivered (29) packages to seniors in Mason as part of the Annual "No Senior without Christmas". This is an event put on by TRIAD, a partnership between law enforcement, fire agencies, senior citizens and community members.

Staffing Updates:

- Internal Open Position – Part-time Permit Administration Specialist (Community Development) position was posted internally and closed Wednesday, December 16, 2020.
- Open Position – Seasonal Crossing Guard position posted and is open until filled.

LARGE CITY PROJECTS

FY 2019-2020			
Project	**Project Name/Description**	**Status**	**Completed**
UTILITIES: SANITARY SEWER, STORM WATER, AND WATER DISTRIBUTION (U)			
2017-U11	Turbine Aeration Blower at POTW	Estimated time of arrival of April 2021.	

FY 2020-2021			
Project	**Project Name/Description**	**Status**	**Completed**
STREETS, SIDEWALKS, SIGNALS(S)			
2017-S17	Center Street-Walnut St to N. Bush St	Completed	October
2017-S18	Brookdale St- W. South St to Willow St	Completed	August
2017-S19 **2020-U2**	Cherry- McRoberts St to Henderson St	Completed	October
2017-S21	Eaton Drive- All	Completed	June
2017-S22	W. Elm St- McRoberts St to Lansing St	Completed	October
2019-S9a	E. Maple– S. Jefferson to S. Barnes	Completed	June
2019-S9b	Signal at E. Maple & S. Jefferson	Delayed traffic study due to COVID-19.	
2019-S5a	Henderson Street– Entire length	Completed	October
2019-S5b	Alley- W. Columbia to W. Sycamore	Completed	October
2018-S1	Temple Street Pedestrian Crossing	Confirming with MPS, still priority project.	
UTILITIES: SANITARY SEWER, STORM WATER, AND WATER DISTRIBUTION (U)			
2017-U8	Replace PLCs on 3 Wells	Anticipated start date Spring of 2021	
2017-U23	Well No. 6 Rebuild	Anticipated start date Spring of 2021	
2017-U25	Gutters for Water Treatment Plant	Approved; expected to begin January 2021	
2018-U32	South Water Tower Repair	Staff reviewing report from Dixon Engineering	
2019-U1	Wastewater Treatment Plant - Design	Staff is drafting Request for Proposal for work.	
2019-U4	Study - Wastewater Solids System	Staff is drafting Request for Proposal for work.	
PARKS/ CEMETERY/ FORESTRY/ NONMOTORIZED (P)			
2017-P8	Laylin Park - Phase II	Anticipated start date Spring of 2021	
2020-P2	Columbia St Bridge Ped. Crossing Design	Anticipated Spring of 2021	
2020-P5	Jefferson St – RR Pedestrian Crossing	Feb Construction Meeting; start Spring 2021	
2020-P6	Lee Austin Park- Plan/Design	Staff is drafting Request for Proposal for work.	
2020-P7	Non- Motorized Prog: NE Quadrant	Completed	October
2020-P8	Rayner Park- Master Park Plan	Staff is drafting Request for Proposal for work.	
MOTOR VEHICLE POOL (MVP)			
2017-MVP15	Vehicle No. 16 Replacement	Anticipated purchase Spring of 2021	
2017-MVP16	Mower No. 77 Replacement	Anticipated purchase Spring of 2021	
2017-MVP17	Vehicle No. 85 Replacement	Vehicle ordered; expected Spring 2021	
2017-MVP20	Vehicle No. 18 Replacement	Anticipated purchase Spring of 2021	
2017-MVP21	Mower No. 66 Replacement	Anticipated purchase Spring of 2021	
2017-MVP29	Mower No. 69 Replacement	Anticipated purchase Spring of 2021	
2018-MVP1	Vehicle No. 22 Replacement	Anticipated purchase Spring of 2021	
BUILDING, PROPERTY, EQUIPMENT (B)			
2017-B12	IT New Servers	Anticipated start date Spring of 2021	
2017-B17	Fire SCBA units	Anticipated purchase Spring of 2021	
2018-B14	Fire Rehab 815 Replacement	Anticipated purchase Spring of 2021	

2018-B22	Police Body Worn Cameras	Approved; Order has been placed	
2018-B23	Masterplan/Zoning Update	Staff is drafting Request for Proposal for work	
2019-B16b	Election Tabulator Machines	Completed	October
2019-B2a	City Hall - Phase I Design and Security	Security approved. Design is still pending.	
2020-B4a	DPW- Design	Staff is working on refining design.	