

Owosso

Planning Commission



Regular Meeting
7:00pm, Monday, May 23, 2016
Owosso City Council Chambers



MEMORANDUM

301 W. MAIN ▪ OWOSSO, MICHIGAN 48867-2958 ▪ WWW.CI.OWOSSO.MI.US

DATE: June 22, 2016

TO: Chairman Wascher and the Owosso Planning Commission

FROM: Susan Montenegro, asst. city manager/director of community development

RE: Regular Planning Commission Meeting: June 27, 2016

The planning commission shall convene at 7:00pm on Monday, June 27, 2016 in the city council chambers of city hall.

The June meeting is upon us. We will discuss the sign ordinance, which will include understanding content based vs. content neutral. In the packet you will find the sign ordinance from the city of Fenton. Fenton went through their ordinance several years ago and brought their sign ordinance into compliance with new legislation regarding content based vs. content neutral, Owosso must do the same. I like the layout of their ordinance and the fact that it does not contain a lot of charts. Additionally, you will find a copy of the handout from the seminar I attended at ROWE Engineering in Flint on signs and other items. They cover a lot of the requirements on content neutral sign ordinances.

Also in the packet is a section taken from the Owosso Code of Ordinances pertaining to the role and responsibility of planning commission as well as the Planning Enabling Act for your reference.

Please **RSVP for the meeting**. Feel free to contact me at 989.725.0544 if you have questions.

Sue

AGENDA
Owosso Planning Commission
Regular Meeting
Monday, June 27, 2016 at 7:00 p.m.
Council Chambers – Owosso City Hall
Owosso, MI 48867

CALL MEETING TO ORDER:

PLEDGE OF ALLEGIANCE:

ROLL CALL:

APPROVAL OF AGENDA: June 27, 2016

APPROVAL OF MINUTES: May 23, 2016

COMMUNICATIONS:

1. Staff memorandum.
2. PC minutes from May 23, 2016.
3. Sign ordinance from Fenton.
4. Role and responsibility of planning commission – Owosso ordinance.
5. Michigan Planning Enabling Act 33 of 2008.

COMMISSIONER/PUBLIC COMMENTS:

PUBLIC HEARINGS:

1. None.

SITE PLAN REVIEW:

1. None.

BUSINESS ITEMS:

1. None.

ITEMS OF DISCUSSION:

1. Sign ordinance updating.
2. Role and responsibility of planning commission according to Owosso Ordinance and Michigan Planning Enabling Act 33 of 2008.

COMMISSIONER/PUBLIC COMMENTS:

ADJOURNMENT: **Next meeting will be Monday, July 25, 2016**

Commissioners, please call Sue at 725-0544 if you will be unable to attend the meeting on Monday, June 27, 2016.

[The City of Owosso will provide necessary reasonable auxiliary aids and services, such as signers for the hearing impaired and audiotapes of printed materials being considered at the meeting, to individuals with disabilities at the meeting/hearing upon seventy-two (72) hours notice to the City of Owosso. Individuals with disabilities requiring auxiliary aids or services should contact the City of Owosso by writing or calling the following: Amy Kirkland, City Clerk, 301 W. Main St, Owosso, MI 48867 (989) 725-0500]. The City of Owosso website is: www.ci.owosso.mi.us

Affirmative Resolutions
Owosso Planning Commission
Regular Meeting
Monday, June 27, 2016 at 7:00 p.m.
Council Chambers – Owosso City Hall
Owosso, MI 48867

Resolution 160627-01

Motion: _____

Support: _____

The Owosso Planning Commission hereby approves the agenda of June 27, 2016 as presented.

Ayes: _____

Nays: _____

Approved: ____

Denied: ____

Resolution 160627-02

Motion: _____

Support: _____

The Owosso Planning Commission hereby approves the minutes of May 23, 2016 as presented.

Ayes: _____

Nays: _____

Approved: ____

Denied: ____

Resolution 160627-03

Motion: _____

Support: _____

The Owosso Planning Commission hereby adjourns the June 27, 2016 meeting, effective at _____pm.

Ayes: _____

Nays: _____

Approved: ____

Denied: ____

**MINUTES
REGULAR MEETING OF THE OWOSSO PLANNING COMMISSION
COUNCIL CHAMBERS, CITY HALL
MONDAY, MAY 23, 2016 – 7:00 P.M.**

- CALL TO ORDER:** Chairperson Bill Wascher called the meeting to order at 7:00 p.m.
- PLEDGE OF ALLEGIANCE:** Was recited.
- ROLL CALL:** Roll call was taken by Recording Secretary Roxane Cramer.
- MEMBERS PRESENT:** Chairman Bill Wascher, Commissioners Tom Taylor, Janae Fear, Frank Livingston, Michael O'Leary (7:12 p.m.) and Garfield Warren.
- MEMBERS ABSENT:** Vice-Chair Craig Weaver, Commissioners Michelle Collison and Brent Smith.
- OTHERS PRESENT:** Several persons against rezoning of the South Park Street parcel; Neil Frank, Wolgast; Eric Spitler, OHM Advisors; David Duryea, O.D.; Tyler Lepannen, Housing Program Manager, Don Crawford, City Manager.

APPROVAL OF AGENDA:

**MOTION BY COMMISSIONER LIVINGSTON, SUPPORTED BY COMMISSIONER TAYLOR, TO APPROVE THE AGENDA FOR MAY 23, 2016.
YEAS ALL. MOTION CARRIED.**

APPROVAL OF MINUTES:

**MOTION BY COMMISSIONER LIVINGSTON, SUPPORTED BY COMMISSIONER TAYLOR TO APPROVE THE MINUTES OF APRIL 25, 2016 WITH THE FOLLOWING CHANGE: REMOVE COMMISSIONER LIVINGSTON'S NAME FROM MEMBERS PRESENT.
YEAS ALL. MOTION CARRIED.**

COMMUNICATIONS:

1. Staff memorandum.
2. PC minutes from April 25, 2016.
3. Rezoning application packet – 1007 S. Washington.
4. Site Plan application packet for 123 S. Shiawassee
5. Sign ordinances from: Owosso, Grand Haven, Greenville, Holland and Traverse City.

COMMISSIONER/PUBLIC COMMENTS

None.

PUBLIC HEARINGS:

1. **Rezoning of S. Park Street, Parcel 050-652-011-006-00 from R-1 to B-4**

Mr. Lepannen presented Chairman Wascher with a letter from Bob Moberg. Chairman Wascher stated the resident was against the rezoning.

Bob Moberg, property owner on South Saginaw Street, stated that he was the one that sent the letter. He feels that this should not be rezoned. It is a residential area and should remain that. He doesn't believe this is in the best interest of the community or the neighborhood. He believes there isn't any

area for a pole building of any size on the property. He believes it would hurt the value of the homes in that neighborhood.

Jack Desantis, resident at 971 South Park Street, stated it is a nice quiet neighborhood. He also expressed concern that his taxes would be raised due to the change. He said he is still against it. He believes it would cause more traffic on South Park Street.

Mr. Lepannen explained to the commission if they approve the rezoning and Sheridan wanted to build a pole building he would have to come before the commission for a site plan review and at that time they could also address a traffic plan.

Joseph Smith, former property owner of 942 South Saginaw Street said that while he had quit claimed his property to his son he was against the rezoning.

Keith Smith, 942 South Saginaw, stated he was against the rezoning.

MOTION BY COMMISSIONER LIVINGSTON, SUPPORTED BY COMMISSIONER WARREN THAT THE OWOSSO PLANNING COMMISSION HEREBY DENIES THE REZONING OF THE PROPERTY LOCATED ON SOUTH PARK STREET, PARCEL NUMBER 050-652-011-006-00 FROM R-1 TO B-4.

Roll Call Vote.

AYES: Commissioners Taylor, Fear, O'Leary, Livingston, Warren and Chairman Wascher.

NAYS: None.

ABSENT: Vice-Chair Weaver, Commissioners Collison and Smith.

SITE PLAN REVIEW:

1. 123 South Shiawassee – Advanced Eye Care.

Neal Frank with Wolgast, located at 1494 North Graham, Freeland, Michigan, presented the plan for his client. Dr. David Duryea wants to demolish the current building on the site and build a 4,325 square feet single story space. The building will be used as an office for Advanced Eye Care. The building will include a partial basement. The current building will remain during the building of new one.

Chairperson Wascher expressed his disappointment that the plans indicated the sidewalk that they will be replacing on Clinton Street will only be 3 ½ feet wide. He feels sidewalks should be at least 4 or 5 feet wide that are replaced in the City.

MOTION BY COMMISSIONER O'LEARY, SUPPORTED BY COMMISSIONER TAYLOR THAT THE OWOSSO PLANNING COMMISSION HEREBY APPROVES THE APPLICATION FOR SITE PLAN REVIEW FOR ADVANCED EYE CARE, 123 S.SHIAWASSEE STREET PARCEL # 050-700-001-014-00 AS PROPOSED IN PLANS DATED APRIL 2016.

AYES: Commissioners Livingston, Warren, Taylor, Fear, O'Leary, and Chairman Wascher.

NAYS: None.

ABSENT: Vice-Chair Weaver, Commissioners Collison and Smith.

BUSINESS ITEMS:

None.

ITEMS OF DISCUSSION:

1. **Sign Ordinance Update.**

Mr. Lepannen indicated he has been working on an update for the ordinance. Discussion was tabled until the June 2016 meeting.

COMMISSIONER/PUBLIC COMMENTS:

The commissioners had a discussion about the width of sidewalks in the city.

Commissioners also discussed the denial of the rezoning of the South Park Street.

ADJOURNMENT:

**MOTION BY COMMISSIONER LIVINGSTON, SUPPORTED BY COMMISSIONER TAYLOR TO
ADJOURN AT 8:01 P.M. UNTIL THE NEXT MEETING ON JUNE 27, 2016.
YEAS ALL, MOTION CARRIED.**

Janae Fear, Secretary

rc

ARTICLE XXII. - SIGNS⁴¹

Editor's note—Ord. No. 689, adopted Feb. 9, 2015, repealed the former Art. XXII, §§ 36-22.01—36-22.09, and enacted a new Art. XXII as set out herein. The former Art. XXII pertained to similar subject matter and derived from Ord. No. 640, adopted Feb. 26, 2007.

Sec. 36-22.01. - Purpose.

The purpose of this article is to regulate signs and to minimize outdoor advertising within the city so as to protect public safety, health and welfare; minimize abundance and size of signs to reduce visual clutter, motorist distraction, and loss of sight distance; promote public convenience; preserve property values; support and complement land use objectives as set forth in the City of Fenton Master Plan and this article; and enhance the aesthetic appearance and quality of life within the city. The standards contained herein are intended to be content neutral.

These objectives are accomplished by establishing the minimum amount of regulations necessary concerning the size, placement, construction, illumination, and other aspects of signs in the city so as to:

- a. Recognize that the proliferation of signs is unduly distracting to motorists and nonmotorized travelers, reduces the effectiveness of signs directing and warning the public, causes confusion, reduces desired uniform traffic flow, and creates potential for accidents.
- b. Prevent signs that are potentially dangerous to the public due to structural deficiencies or disrepair.
- c. Reduce visual pollution and physical obstructions caused by a proliferation of signs which would diminish the city's image, property values and quality of life.
- d. Recognize that the principal intent of commercial signs, to meet the purpose of these standards and serve the public interest, should be for identification of an establishment on the premises, and not for advertising special events, brand names, or off-premises activities; alternative channels of advertising communication and media are available for advertising which do not create visual blight and compromise traffic safety.
- e. Enable the public to locate goods, services and facilities without excessive difficulty and confusion by restricting the number and placement of signs.
- f. Prevent placement of signs which will conceal or obscure signs of adjacent uses.
- g. Protect the public right to receive messages, especially noncommercial messages such as religious, political, economic, social, philosophical and other types of information protected by the First Amendment of the U.S. Constitution.
- h. The regulations and standards of this article are considered the minimum necessary to achieve a substantial government interest for public safety, aesthetics, protection of property values, and are intended to be content neutral.
- i. Prevent off-premises signs from conflicting with other allowed land uses.
- j. Maintain and improve the image of the city by encouraging signs of consistent size which are compatible with and complementary to related buildings and uses, and harmonious with their surroundings.
- k. Prohibit portable commercial signs in recognition of their significant negative impact on traffic safety and aesthetics.
- l. Preserve and enhance the image of the city's CBD.

(Ord. No. 689, 2-9-15)

Sec. 36-22.02. - Sign definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this article, except where the context clearly indicates a different meaning.

Accessory sign: A sign which pertains to the use of the premises on which it is located.

Animated sign: A sign which uses lights, moving parts, or other means to depict action, create an image of a living creature or person, or create a special effect or scene.

Awning or canopy sign: A nonrigid fabric marquee or awning-type structure which is attached to the building by supporting framework, which includes a business identification message, symbol and/or logo. See "wall sign."

Banner: A fabric, plastic or other sign made of nonrigid material without enclosing structural framework.

Billboard: A sign separate from a premises erected for the purpose of advertising a product, event, person, or subject not related to the premises on which the sign is located. Permitted off-premises directional signs shall not be considered billboards for the purpose of this article.

Business center: A grouping of two or more business establishments on one or more parcels of property which may share parking and access and are linked architecturally or otherwise present the appearance of a unified grouping of businesses. A business center shall be considered one use for the purposes of determining the maximum number of ground signs. An automobile or vehicle dealership shall be considered a business center regardless of the number or type of models or makes available, however, used vehicle sales shall be considered a separate use in determining the maximum number of signs, provided that the used vehicle sales section of the lot includes at least 25 percent of the available sales area.

Changeable message sign: A sign on which the message is changed mechanically, electronically or manually, including time/temperature signs; also called menu board, reader board or bulletin board.

Community special event sign: Signs and banners, including decorations and displays celebrating a traditionally-accepted patriotic or religious holiday, or special municipal, school or other non-profit activities.

Construction sign: A temporary sign identifying the name(s) of project owners, contractors, developers, realtors representing developers, architects, designers, engineers, landscape architects, and financiers of a project being constructed or improved; and not including any advertising of any product or announcement of availability of leasing space.

Directional sign: A sign which assists motorists in determining or confirming a correct route such as, enter, exit and parking signs. Business identification or logo on such a sign is considered and calculated as part of the allowable square footage for a ground sign.

Festoon: A string of ribbons, tinsel, small flags, pinwheels or lights, typically strung overhead in loops.

Flashing sign: A sign which contains an intermittent or sequential flashing light source.

Freestanding sign: A sign which is erected upon or supported by the ground, including "pole or pylon signs" and "ground signs."

Gasoline price sign: A sign which is used to advertise the price of gasoline. In the event that the brand identification sign is attached to or is a part of the sign advertising price, that portion of the sign used for advertising price shall be considered the gasoline price sign.

Ground or monument sign: A three-dimensional, self supporting, base-mounted freestanding identification sign, consisting of two or more sides extending up from the base, and upon which a message, business, group of businesses or center name is affixed.

Illegal sign: A sign which does not meet the requirements of this article and does not have legal nonconforming status.

Incidental sign: A small sign, emblem, or decal informing the public of goods, facilities, or services available on the premises. Examples of incidental signs include credit card signs, signs indicating the hours of business, no smoking signs, signs used to designate bathrooms, and signs providing information on credit cards and business affiliations.

Integral sign: A memorial sign or commemorative tablet which contains names of buildings, dates of erection, and monumental citations.

Luminous tube: See "neon" and "outline tubing sign."

Mansard: A sloped roof or roof-like façade. Signs mounted on the face of a mansard roof shall be considered wall signs.

Marquee: A permanent roof-like structure or canopy, supported by and extending from the face of the building. A marquee sign is a sign attached to or supported by a marquee structure.

Menu board, reader board, or bulletin board: See "changeable message sign."

Moving sign: A sign in which the sign itself or any portion of the sign moves or revolves. A "rotating sign" is a type of moving sign. This definition does not include "changeable message signs."

Mural: A design or representation which is painted or drawn on the exterior surface of a structure and which does not advertise a business, product, service, or activity.

Nameplate: A nonelectric, on-premises identification sign giving only the name, address, and/or occupation of an occupant or group of occupants.

Neon sign: See "outline tubing sign."

Nonconforming sign: A sign that does not comply with the size, placement, construction or other standards or regulations of this article, but were lawfully established prior to its adoption. Signs for which the zoning board of appeals has granted a variance are exempt and shall not be defined as nonconforming.

Obsolete sign: A sign that advertises a product that is no longer made or that advertises a business that has closed.

Off-premises sign: A sign which identifies a use or advertises products and services not available on the site or parcel on which the sign is located; a sign which directs travelers or provides a message unrelated to the site on which the sign is located, e.g. billboards.

On-premises sign: A sign providing the address and name of owner of a parcel of land; a sign advertising a business, service or product sold or produced on the same site or parcel.

Outline tubing sign: A sign consisting of glass tubing, filled with a gas such as neon, which glows when electric current is sent through it. See "neon" and "luminous tube".

Parapet: The extension of a false front or wall above a roof line. Signs mounted on the face of a parapet shall be considered wall signs.

Permanent sign: A sign designed to be installed permanently in the ground a minimum of 42 inches deep by use of a steel post, wood post or other appropriate materials.

Political sign: A temporary sign used in connection with local, state, or national elections or referendums.

Portable sign: A sign designed to be moved from place to place, whether or not it is permanently attached to the ground or structure. This includes hot-air and gas-filled balloons, banners, pennants, streamers, festoons, ribbons, tinsel, pinwheels, nongovernment flags, and searchlights; but excludes political signs, real estate signs, construction signs, permanent changeable message signs, and regulatory/government signs.

Poster panel sign: A type of temporary sign that is used to draw attention to matters that are temporary in nature, such as price changes or sales. "A" frame or sandwich signs are types of poster panel signs.

Projecting sign: A sign, other than a wall sign, that is affixed to any building or wall and whose leading edge extends more than 12 inches beyond such building or wall.

Public sign: A sign erected in the public interest by or upon orders from a city, state, or federal public official. Examples of public signs include: legal notices, safety signs, traffic signs, memorial plaques, signs of historical interest, and similar signs.

Pylon or pole sign: A sign supported on the ground by a pole, braces, or monument, and not attached to any building or other structure.

Real estate development sign: A sign that is designed to promote the sale or rental of lots, homes, or building space in a real estate development (such as a subdivision or shopping center) which is under construction on the parcel on which the sign is located.

Real estate open house sign: Temporary signs which advertise and direct the public to an open house for a building which is available for sale or lease, with the event held on a specific day.

Real estate sign: An on-premises temporary sign advertising the property or structure's availability for sale or lease.

Regulatory sign: A sign installed by a public agency to direct traffic flow, regulate traffic operations and provide information in conformance with the Michigan Manual of Uniform Traffic Control Devices.

Residential entranceway sign: A sign which marks the entrance to a subdivision, apartment complex, condominium development, or other residential development.

Roof line: The top edge of a roof or building parapet, whichever is higher, excluding cupolas, pylons, chimneys, or similar minor projections.

Roof sign: Any sign that extends above the roofline or is erected over the surface of the roof.

Rotating sign: See "moving sign."

Sign: Any device, structure, fixture, figure, symbol, banner, pennant, flag, balloon, logo, or placard consisting of written copy, symbols, logos and/or graphics, designed for the purpose of bringing attention to, identifying or advertising an establishment, product, goods, services, or other message to the general public. Unless otherwise indicated, the definition of "sign" includes interior and exterior signs which are visible from any public street, sidewalk, alley, park, or public property, but not signs which are primarily visible to and directed at persons within the premises upon which the sign is located.

Temporary sign: A sign not constructed or intended for long-term use. Examples of temporary signs include signs which announce a coming attraction, a new building under construction, a community or civic project, or other special events that occur for a limited period of time such as a garage or estate sale.

Time and temperature sign: Signs which display the current time and/or temperature.

Vehicle sign: Signs affixed to a parked vehicle or truck trailer which is being used principally for advertising purposes, rather than for transportation purposes.

Wall sign: A sign attached parallel to and extending not more than 12 inches from the wall of a building. Painted signs, signs which consist of individual letters, cabinet signs, and signs mounted on the face of a mansard roof shall be considered wall signs. Permanent signs which are not affixed directly to a window or are positioned next to a window so that they are visible from the outside, shall also be considered wall signs.

Window sign: A sign located in or on a window which is intended to be viewed from the outside. Permanent window signs which are not affixed directly to a window or are positioned next to a window so that they are visible from the outside shall be considered wall signs.

Sec. 36-22.03. - Prohibited signs.

The following signs are prohibited in all districts:

- a. Signs which obstruct free access or egress from any building, including those that obstruct any fire escape, required exit way, window, or door opening or that prevent free access to the roof by firefighters.
- b. Moving signs and signs having moving members or parts, excluding barber poles, and electronic poles.
- c. Signs using high intensity or flashing lights, festoons, spinners or other animated devices.
- d. Exterior string lights used in connection with a commercial enterprise, other than holiday decorations which are strung no more than 60 days before the holiday and removed within ten days following the holiday for which they were erected.
- e. Signs which in any way simulate or could be confused with the lighting of emergency vehicles or traffic signals; there shall be no flashing, oscillating or intermittent, or red, yellow, or green illumination on any sign located in the same line of vision as a traffic control system, nor interference with vision clearance along any highway, street, or road or at any intersection of two or more streets.
- f. Signs which obstruct or impair the vision of motorists or nonmotorized travelers at any intersection, driveway, within a parking lot or loading area.
- g. Nonregulatory signs placed in any public right-of-way; attached to a utility pole; or affixed to a tree, street furniture, or waste receptacles.
- h. Off-premises signs erected for the purpose of advertising a product, event, person, or subject, unless otherwise provided for in this article or covered under the State Highway Act.
- i. Roof signs unless specifically permitted elsewhere in this article.
- j. Portable signs, as defined, not provided for in this article.
- k. Pylon or pole signs not provided for in this article.
- l. Any sign or sign structure which:
 1. Is structurally unsafe.
 2. Constitutes a hazard to safety or health by reason of inadequate maintenance, dilapidation, or abandonment.
 3. Is capable of causing electric shock to person who come in contact with it.
 4. Is not kept in good repair, such that it has broken parts, missing letters, or nonoperational lights.
- m. Any sign which makes use of the words "stop", "look", or "danger", or any other words, phrases, symbols, or characters, in such a manner as to interfere with, mislead, or confuse traffic.

Sec. 36-22.04. - General standards for permitted signs.

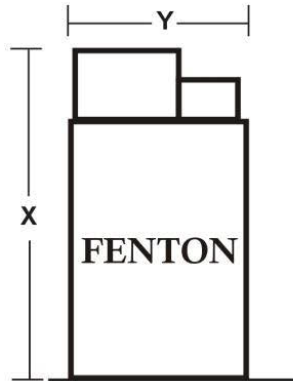
Signs which are permitted as accessory uses serving a commercial or informational purpose may be permitted subject to the requirements of this article; provided, that no such sign shall be erected or altered until approved by the building official/zoning administrator and until a sign permit has been issued pursuant to chapter 27 of the City of Fenton Code of Ordinances (Ordinance No. 433, as amended).

- a. Sign setbacks.
 - 1. All signs, unless otherwise provided for, shall be set back a minimum of ten feet from any public or private street right-of-way line or access drive in all districts. This distance shall be measured from the nearest edge of the sign, measured at a vertical line perpendicular to the ground to the right-of-way.
 - 2. Side yard setbacks for signs shall be the same as that required for the main structure or building, provided that all nonresidential signs shall be set back at least 100 feet from any residential district.
- b. Location. Sign location to assure adequate sight distance. In order to ensure adequate sight distance for motorists, bicyclists and pedestrians, a minimum clear vision area shall be maintained between a height of 24 inches and six feet within a triangular area measured 25 feet back from intersection of public right-of-way lines. Furthermore, signs shall not be permitted where they obstruct motorist vision of regulatory signs, traffic-control devices or street signs.
- c. Design and construction. Signs, as permitted in the various zoning districts, shall be designed to be compatible with the character of building materials and landscaping to promote an overall unified and aesthetic effect in accordance with the standards set forth herein. Signs shall not be constructed from materials that are remnants or manufactured for a different purpose. New box sign panels with a white or tan background must be blackened internally so only the letters show when illuminated.
- d. Illumination.
 - 1. Signs may be illuminated, but only by steady, stationary, shielded light sources directed solely at the sign or internal to it.
 - 2. Use of glaring undiffused lights, bare bulbs, or flames is prohibited.
 - 3. Lighting shall be shielded and/or pointed downward so as not to project onto adjoining properties or thoroughfares.
 - 4. Underground wiring shall be required for all illuminated signs not attached to a building.
- e. Maintenance and construction.
 - 1. Every sign shall be constructed and maintained in a manner consistent with the building code provisions and maintained in good structural condition at all times. All signs shall be kept neatly painted, stained, sealed or preserved including all metal, wood or other materials used for parts and supports.
 - 2. All signs erected, constructed, reconstructed, altered or moved shall be constructed in such a manner and of such materials so that they shall be able to withstand wind pressure of at least 20 pounds per square foot or 75 mph.
 - 3. All signs, including any cables, guy wires, or supports shall have a minimum clearance of four feet from any electric fixture, street light, or other public utility pole or standard.
- f. Measurement. Measurement of allowable sign area (see Figure 22.2 Guidelines for Measuring Sign Face Square Footage below).
 - 1. The allowable area for signs shall be measured by calculating the square footage of the sign face and any frame or base of other material or color forming an integral part of the display or used to differentiate it from the background against which it is placed as measured by enclosing the most protruding points or edges of a sign within a parallelogram or rectangle.
 - 2. When a sign has two or more faces, the area of all faces shall be included in calculating the area of the sign except that where two such faces are placed back to back, only larger face shall be considered, provided that both faces are part of the same structure, contain the same message and are separated by no more than two feet.

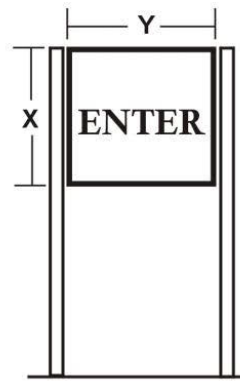
3. For purposes of calculating sign area allowed as a wall sign, the wall sign square footage shall be determined by measuring a parallelogram (box) which includes the portion of the canopy which contains a message, symbol and/or logo (examples are shown on the attached figures).
4. When a sign consists solely of lettering or other sign elements printed, painted or mounted on a wall of a building without any distinguishing border, panel or background, the calculation for sign area shall be measured by enclosing the most protruding edges of the sign elements within a parallelogram or rectangle.

(Ord. No. 689, 2-9-15)

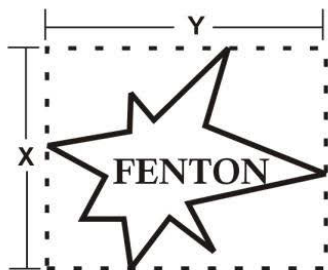
Figure 22.2 Guidelines for Measuring Sign Face Square Footage



GROUND SIGNS
Measurements taken from the
outermost points of the sign face



DIRECTIONAL SIGNS
Post are not included in the
measurement of a sign face



ALL SIGNS
Measurements taken from the
outermost points of the panel



WALL, CANOPY, or PROJECTING SIGNS
Measurements taken from the
outermost points of the copy

Sec. 36-22.05. - Specific sign standards.

The number, display area, and height of signs within the various zoning districts are provided in the sign dimensional standards and regulations table and its accompanying footnotes. Additional standards for specific types of signs are given below.

Sign Dimensional Standards and Regulations								
District	Wall, Canopy, or Projecting Sign (c)		Ground Sign (c)			Temporary Signs (d)		
	Number #	Max. Size	Number # (b)	Max. Size Per Sign Face	Max. Height	Max Size Per Sign	Total Area Per Parcel	Max. Height
RDR, LDR, LMR, MDR		10% of front façade for all uses other than single family homes, duplexes, and attached condominiums	1	24 square feet	6 feet	6 square feet	14 square feet	4 feet
MHR, HDR, MHD								
NBD	1 per business (a)	10% of front façade or 100 square feet, whichever is less (a)	1	72 square feet	6 feet	24 square feet	48 square feet	6 feet
GBD and PUD commercial uses								
OSD, OPD, and PUD office uses								
CBD								
IND								

Footnotes to the Sign Dimensional Standards and Regulations Table

- (a) One wall sign shall be allowed per business, in addition to any other allowed ground signs. Businesses located on a corner lot shall be allowed up to two wall signs, one for each front façade. The maximum wall sign area shall not exceed ten percent of the front façade of the building (any façade which faces a public or approved private street), per use or business establishment. However, for a commercial structure containing one use or business establishment, as determined by the planning commission, the size of the wall sign may be increased up to the maximum square footage as follows:

201 - 400 linear feet of building frontage facing a public street and having a public entrance	150 square feet
Greater than 400 linear feet of building frontage facing a public street and having a public entrance	200 square feet

- (b) Only one ground sign is permitted per use, including uses which occupy more than one parcel and business centers containing more than one business or use, with additional signs permitted according to the following table, however, no site shall have more than two ground signs, regardless of the number of street frontages or the amount of frontage. Single uses on a single parcel do not qualify for this consideration:

Frontage along 2 or more rights-of-way	1 sign up to the maximum sign face area shall be allowed along 2 frontages
300 feet of frontage along 1 right-of-way	1 ground sign along that frontage
Greater than 300 feet of frontage along 1 right-of-way	2 ground signs

- (c) Changeable message signs and gasoline price signs may be permitted as part of a monument sign in the NBD, GBD, and I Districts, and when associated with a commercial or office use within an OPD or OSD District in accordance with the following:
- (1) One changeable message sign or one gasoline price sign shall be permitted per premises, but not both.
 - (2) Message or gasoline price changes may occur electronically or manually.
 - (3) The area of a changeable message sign or gasoline price sign shall not exceed one-third the total area of the sign.
 - (4) Illumination shall be concentrated within the face of the sign to prevent glare upon adjoining properties and thoroughfares.
 - (5) Electronic messages or gasoline prices shall not flash, fade in or out, or scroll.
 - (6) Electronic messages or gasoline prices shall be displayed for at least one minute, and changes shall take less than one second.
 - (7) Any voids or burned out bulb in an electronic display shall be replaced.
 - (8) Electronic changeable message signs and gasoline price signs shall be at least 100 feet from any residential district or use, except as modified in subsection 10 below.
 - (9) Electronic changeable message signs and gasoline price signs shall use only one color of lighting or bulbs to prevent nuisances and distractions upon adjoining properties and thoroughfares.
 - (10) One gasoline price sign is permitted for an overhead gas pump canopy with an area not to exceed ten percent of the canopy façade and when this is the only changeable message sign on the property.
 - (11) One electronic message sign, meeting the above requirements, may be approved by the planning commission for institutional uses, meaning a use by public or quasi-public institution such as a religious organization, church, nonprofit organization, academic institution, library or hospital, located in a residential district when meeting the following requirements:
 - i. The institutional use is located on a minor arterial or collector road, as designated in the City of Fenton Master Plan;
 - ii. That the sign will not create a nuisance for residential properties in the immediate vicinity of the sign, as determined by the planning commission and subject to any conditions;
 - iii. The appropriate size of the sign shall be determined by the planning commission but shall be no greater than 50 square feet in area.

- (d) Temporary signs shall comply with the standards set forth in Section 36-22.06f.
- a. Directional signs. No more than one directional sign shall be permitted for each approved driveway, with a maximum sign area of four square feet per sign, and a maximum height of four feet. Any directional sign which includes a business name, symbol or logo shall be calculated as part of the allowable sign square footage, as specified in the sign dimensional standards and regulations table.
 - b. Billboards or off-premises advertising signs. Billboards shall comply with the provisions in article 14 special land uses.
 - c. Projecting and canopy signs. Projecting signs and canopy signs may be used as an alternative to wall signs listed in the sign dimensional standards and regulations table, provided that they meet the following standards.
 1. Any sign area on a canopy shall be included in calculations of maximum wall sign square footage.
 2. Projecting or canopy signs in the central business district shall be set back at least two feet from any street curblin, shall not extend more than six feet over the public right-of-way, and shall leave a minimum clearance of eight feet above the ground.
 3. Projecting or canopy signs, in the NBD, GBD, I, OPD and OSD districts shall have a minimum ground clearance of ten feet, shall be set back at least six feet from any adjacent public right-of-way, and shall not project over an alley or private access lane. A projecting sign shall not extend for more than two feet from the building to which it is attached.
 4. No wall, canopy or projecting sign shall extend above the roof or parapet of the structure to which it is attached by more than one foot.
 5. Wood posts or supporting arms shall not be used in conjunction with any projecting sign.
 6. Projecting signs shall not exceed sixteen square feet in area.
 7. Canopy signs shall not be internally illuminated.
 - d. Entranceway signs. One permanent sign per vehicular entrance identifying developments such as subdivisions, apartment complexes, condominium communities, senior housing complexes, manufactured housing communities, office and industrial parks and similar uses, provided that the sign is set back a minimum of 15 feet from any property line or public right-of-way is permitted.
 - e. Signs for temporary uses.
 1. Temporary signs include, but are not limited to the following:
 - a. For a single dwelling or building or vacant land: an on-site real estate sign, advertising the premises for sale, rent or lease.
 - b. An on-site sign advertising an on-going garage, estate or yard sale.
 - c. Noncommercial signs which contain noncommercial information or directional messages.
 - d. Political signs.
 - e. Holiday or other seasonal signs.
 - f. Construction signs for buildings under construction.
 2. All temporary signs must comply with the sign size and height standards as specified in the sign dimensional standards and regulations table.
 3. Location of temporary signs shall comply with the following:

- a. Temporary signs shall not be attached to any utility pole or be located within any public right-of-way.
 - b. Temporary signs shall not be located closer than 20 feet to the edge of the traveled portion of the roadway, nor shall they be located within any dedicated right-of-way.
 - c. Temporary signs shall not be erected in such a manner than they will or may reasonably be expected to interfere with, obstruct, confuse or mislead traffic.
 - d. Temporary signs cannot be placed or constructed so as to create a hazard of any kind.
 - e. Temporary signs may not be posted on private property without first obtaining the permission of the property owner.
 - f. Signs shall not be located within any clear vision triangle, as described in section 36-2.15.
4. Time limitations for temporary signs. Each temporary sign shall be removed within 60 days of placement. Furthermore, no sign may be erected on a single parcel for more than 60 calendar days out of every 120 calendar days.
- f. Portable A-frame signs. Portable A-frame or sandwich board signs are permitted in the NBD, CBD and GBD districts at the public building entrances to businesses subject to the following requirements:
- 1. One sign per customer entrance shall be permitted regardless of the number of tenants on the premises.
 - 2. The sign is permitted only during operating business hours and must be stored inside when the establishment is not open to the general public.
 - 3. Each sign shall not exceed an overall height of 42 inches and an overall width of 24 inches.
 - 4. No sign shall be located in such a manner as to interfere with vehicular or pedestrian traffic flow or visibility.
 - 5. All signs must be constructed or weather-proof, durable material and kept in good repair.
- g. Vehicle signs. Vehicle signs shall comply with the following:
- 1. Vehicle signs are prohibited, except for the owner of a motor vehicle who places a "for sale" or "for trade" sign on or within the vehicle provided:
 - 1) The vehicle is located only on the vehicle owner's residential property; and
 - 2) The owner of the vehicle displays a clearly visible sign on the vehicle indicating the owner's name and address; and
 - 3) Not more than one vehicle is displayed on the residential property.
 - 2. A displayed message containing a phone number in or on a parked motor vehicle that is or was visible constitutes a presumption that it is or was for the purpose of offering the vehicle for sale or trade.
 - 3. Proof that the vehicle described in the complaint was parked in violation of this section, together with proof that the defendant named in the complaint was at the time of the cited parking the registered owner of the vehicle constitutes a presumption that the registered owner is responsible for the violation.

(Ord. No. 689, 2-9-15)

Sec. 36-22.06. - Nonconforming signs.

Nonconforming signs are those signs that do not comply with the size, placement, construction or other standards or regulations of this chapter, but were lawfully established prior to its adoption. Signs for which the board of appeals has granted a variance are exempt and shall not be defined as nonconforming. It is the intent of this article to encourage eventual elimination of nonconforming signs in a timely manner. This objective is considered as much a subject of public health, safety and welfare as the prohibition of new signs in violation of this article. Therefore, the purpose of this article is to remove illegal nonconforming signs while avoiding any unreasonable invasion of established private property rights. A nonconforming sign may be continued and shall be maintained in good condition as described elsewhere in this article, however, the following alterations are regulated:

- a. A nonconforming sign shall not be structurally altered or repaired so as to prolong its useful life or so as to change its shape, size, type or design unless such change shall make the sign conforming.
- b. A nonconforming sign shall not be replaced by another nonconforming sign.
- c. A nonconforming sign shall not be reestablished after abandonment as defined in section 36-22.08.c., dangerous, unsafe, abandoned, and illegally erected signs.
- d. A nonconforming sign must not be reestablished after damage or destruction if the estimated expense of reconstruction exceeds 50 percent of the appraised replacement cost as determined by the building official/zoning administrator or if 50 percent or more of the face of the sign is damaged or destroyed.

(Ord. No. 689, 2-9-15)

Sec. 36-22.07. - Dangerous, unsafe, abandoned, and illegally erected signs.

- a. Dangerous signs. Any sign constituting an immediate hazard to health or safety shall be deemed a nuisance and may be immediately removed by the city and the cost thereof charged against the owner of the property on which it was installed.
- b. Unsafe signs. Any sign that becomes insecure, in danger of falling, or otherwise unsafe but not considered an immediate danger by the building official/zoning administrator to the health or safety of the public shall be removed or repaired according to the process outline in paragraph e. below.
- c. Abandoned signs. Any sign that advertises a business that has been discontinued for at least 90 days or that advertises a product or service that is not longer offered shall be deemed abandoned. Permanent signs applicable to a business temporarily suspended by a change in ownership or management shall not be deemed abandoned unless the structure remains vacant for at least six months. An abandoned sign shall be removed by the owner or lessee of the premises. If the owner or lessee fails to remove the sign, the building official/zoning administrator shall initiate the process noted in paragraph e. below.
- d. Illegally erected signs: The building official/zoning administrator shall order the removal of any sign erected illegally in violation of this article, according to the process outlined in paragraph e. below.
- e. Process for enforcing violations of section 36-22.08, dangerous, unsafe, abandoned, and illegally erected signs. For violations of section 36-22.08 b. through d., the building official/zoning administrator shall notify the owner of the property on which the sign is located. Verbal notices or those sent by first class mail shall be sufficient notice. Where a sign erected in violation of this article is considered dangerous or unsafe, the notice shall inform the owner to remove said sign(s) immediately and property owners of other illegal signs on private property shall be granted a reasonable period of time within which to remove the sign, as determined by the building official/zoning administrator. Should the property owner fail to remove the sign(s) within the time specified, or if a sign is erected within any right-of-way or public property, the building official/zoning administrator, or their designee, shall have the authority to remove the sign, and the property owner shall be liable for the cost thereof.

(Ord. No. 689, 2-9-15)

Sec. 36-22.08. - Changes to permitted signs.

No physical, structural or electrical changes can be made to existing permitted signs without first obtaining a new sign permit. Individual sign panels can be replaced on existing box signs but a permit must still be obtained.

(Ord. No. 689, 2-9-15)

Sec. 36-22.09. - Administration and appeals of sign ordinance standards.

- a. Generally. The regulations of this article shall be administered and enforced by building official/zoning administrator.
- b. Violations. It shall be unlawful for any person to erect, construct, enlarge, alter, repair, move, use or maintain any sign in the city, or cause or permit the same to be done, contrary to or in violation of any of the standards and regulations of this article. Any such violation, including the failure to remove a sign when directed under the authority of this article, shall constitute a misdemeanor punishable in accordance with section 1-8 of the Fenton Code of Ordinances.
- c. Permits, applications, fees, requirement for contractor's license and liability insurance. Application for a sign permit and details of requirements are contained in the City Code of Ordinances, chapter 27 (Ordinance No. 433) and are available from the building official/zoning administrator.

(Ord. No. 689, 2-9-15)

Emerging Issues

Presented
May 4, 2016



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Agenda

- Welcome
- Signs
- Wedding Barns
- Break
- Michigan's Right to Farm Act, P.A. 93
- Adaptive Re-Use
- Questions/Idea Exchange
- Some Recent Planning and Zoning Issues

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Signs



Reed v Gilbert

- o Facts:
 - Gilbert, Arizona (Town), has a comprehensive code
 - Code exempts 23 categories of signs from permits, including:
 - o "Ideological Signs," - "communicating a message or ideas" that do not fit in any other Sign Code category, may be up to 20 sq. ft. and have no placement or time restrictions.
 - o "Political Signs," - "designed to influence the outcome of an election," may be up to 32 sq. ft. and may only be displayed during an election season.
 - o "Temporary Directional Signs," - signs directing the public to a church or other "qualifying event," no more than four of the signs, limited to six sq. ft., may be on a single property at any time, and signs may be displayed no more than 12 hours before the "qualifying event" and 1 hour after.

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Signs

Reed v Gilbert

- o Facts:
 - Petitioners, Good News Community Church (Church) and its pastor, Clyde Reed, whose Sunday church services are held at various temporary locations in and near the Town, posted signs early each Saturday bearing the Church name and the time and location of the next service and did not remove the signs until around midday Sunday. The Church was cited for exceeding the time limits for displaying temporary directional signs and for failing to include an event date on the signs.



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Signs

Reed v Gilbert

- o Held:
 - The Sign Code's provisions are content-based regulations of speech that do not survive strict scrutiny
 - Because content-based laws target speech based on its communicative content, they are presumptively unconstitutional and may be justified only if the government proves that they are narrowly tailored to serve compelling state interests.

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Signs

Reed v Gilbert

- o The Sign Code is content based on its face. It defines the categories of temporary, political, and ideological signs on the basis of their messages and then subjects each category to different restrictions. The restrictions applied thus depend entirely on the sign's communicative content. Because the Code, on its face, is a content-based regulation of speech, there is no need to consider the government's justifications or purposes for enacting the Code to determine whether it is subject to strict scrutiny.



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Signs



Reed v Gilbert

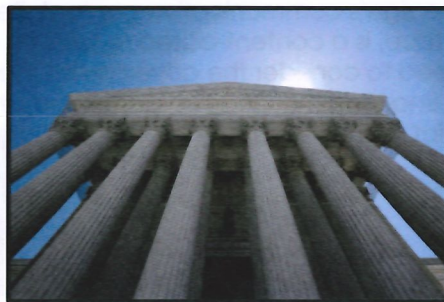
- o This decision will not prevent governments from enacting effective sign laws. The Town has ample content-neutral options available to resolve problems with safety and aesthetics, including regulating size, building materials, lighting, moving parts, and portability. And the Town may be able to forbid postings on public property, so long as it does so in an evenhanded, content-neutral manner.
- o An ordinance narrowly tailored to the challenges of protecting the safety of pedestrians, drivers, and passengers – e.g., warning signs marking hazards on private property or signs directing traffic—might also survive strict scrutiny.

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Signs

- Town of Gilbert lost because
 - o Their sign regulations were clearly not content neutral
 - o The court found no compelling government interest regulating the signs by content – They had non-content based alternatives



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Signs

- Content Neutral Ordinance
 - "Time, Place and Manner Restrictions"
 - Types of permissible regulations
 - Size
 - Building material
 - Lighting
 - Moving Parts
 - Portability
 - Postings on Public Property - If even handed and content neutral
 - On-premise vs Off-premise signs*
 - Time restrictions on signs for one-time event*



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Signs

- Content Neutral Ordinance
 - Some content based signs might survive scrutiny
 - Warning signs marking hazards on private property
 - Signs directing traffic
 - Street numbers



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Signs

- Questions
 - Is commercial speech still subject intermediate scrutiny test?
 - Requires significant government interest vs compelling government interest
 - Must be narrowly tailored to serve government interest
 - There are ample alternative channels for communication of information vs existence of a less restrictive alternative to accomplish the government's purpose
 - Are regulations regarding on-premise vs off-premise or time limits on temporary signs permitted (Alito concurrence)

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Signs

- Recommendations
 - International Sign Association
 - Interim – avoid content-neutral enforcement/permit review
 - Strive for content neutral regulations
 - Include a substitution clause
 - Include a severability clause
 - Minimize sign categories
 - Provide statement of purpose
 - Good definitions
 - Minimize exemptions
 - Simplify the regulator scheme



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Signs



- Recommendations
 - The Signage Foundation
 - Remove all references to the content of a sign other than the few examples directly related to public safety noted in Justice Thomas's opinion.
 - Rather than referring to "real estate" or "political" or "garage sale" signs, your code should treat these all as "yard" signs or "residential district" signs.
 - In business districts replace references to "Grand Opening" or "Special Sale" signs with "temporary business sign"
 - Cab still regulate their number, size, location, construction and amount of time they may be displayed (in the case of temporary signs)

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Signs

- Recommendations
 - The Signage Foundation
 - All the provisions in your code that refer to number, area, structure, location and lighting of permanent signs are content-neutral and unaffected by Reed. No content-based provisions should be retained unless public safety would be so threatened by removal of that the provision would survive strict scrutiny. Alternatives include:
 - by zoning districts
 - by "character" districts
 - By reference to street characteristics such as number of lanes or speed-limit.

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Signs

- Recommendations
 - The Signage Foundation
 - If your sign code does not have a severability clause and a substitution clause they should be added. by either zoning districts
 - Because has left several questions unanswered such as the treatment of the onsite/offsite and commercial/non-commercial distinctions, how we provide for the public's desire for more signage during election campaigns in a wholly content-neutral manner or what, if any, content-based regulations might survive strict scrutiny. Arguably the best course is to err on the side of allowing for less restrictive, rather than more restrictive, sign regulations until the courts provide more guidance on the above questions and others that are certain to be raised

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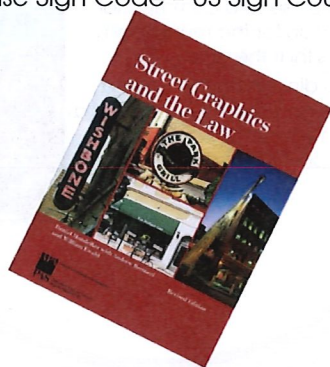
Signs

- Some approaches for content neutral sign regulations
 - Temporary signs such as real estate sign, campaign sign, special event signs, directional signs, others
 - Allow a fixed number of temporary signs (but how do you describe the time period?)
 - Permit additional signs during campaign season (need to address AG opinion regarding limitation on how long before an election as campaign sign can be erected)
 - Regulate permanent signs by zoning district, character, corridor, or similar characteristic

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Signs

- Some model ordinances
 - Street Graphics Model Ordinance in Street Graphic and the Law. Planning Advisory Service, Lead author Dan Mandelker
 - Model On-Premise Sign Code – US Sign Council



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Wedding Barns



Ok! Now.... Lets have a wedding here!

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Wedding Barns

- At a glance:
 - Is the use (public gathering) permitted within the district the barn is located in?
 - The barns are usually in areas zoned for Agriculture or Agri-Business type uses.
 - A location in or close to a commercial area ideal situation for the municipality but very rarely is that the case.
 - Some existing ordinances may have a use that can be comparable to that of a wedding barn, for example a winery or Cider Mill or Apple Orchard type seasonal use.



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Wedding Barns

- Plan for it:
 - What the ordinance should address:
 - Define the organized event. Many "wedding barns" are part of a larger definition. This could be an assembly type use of some sort comparable to a church or hall.
 - Include numbers of people that the regulation of the use will affect. For example: events serving more than 80 people; catering and needing of a liquor license for more than 50 participants; parking needs for more than 30 automobiles on the property or other pieces of property associated with the event.
 - The use of this type of non-agricultural use in an AG zoning district should require a Special Land Use as to look at each application on a case-by-case basis.



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Wedding Barns

- Really Plan for it:
 - What are the concerns?
 - Traffic: A traffic study may need to be required depending on the location of the entry and location of the property
 - Lighting: Is proper screening provided for on the property and is adequate lighting for safety being provided?
 - Noise: A reasonable noise decibel level should be maintained and can be related back to the municipality's noise ordinance (if one is available). Reasonable hours of operation can also be required.
 - Utilities: Water, electricity, and sanitary are important concerns that should be elaborated on by the applicant.
 - Dust control and parking: Does the ordinance allow for temporary parking and if so what measures are in place to protect the adjacent property owners and the property itself?



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Wedding Barns

- Relying on the review of other jurisdiction:
 - **Road Commission** – Is the road suitable to handle the amount of traffic proposed?
 - **County Health Department** – Is the site equipped or allowed expansion of septic and well?
 - **Drain Commissioner** – Will the compaction of soils or increase of impervious surface area affect runoff from the property?
 - **Fire Department** – Is there access to the site and proper accessibility to water sources (tanker trucks/fire hydrants) to assist in fighting fires?



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Wedding Barns

- Other Codes to consider:
 - **Michigan Building Code:** Do the proposed plans meet these requirements and has an architect and/or structural engineer approved the plans
 - **International Fire Code & National Fire Protection Association Code:** Have plans meet the requirements as set forth by these codes and has the local Building Official and Fire Chief approved the submitted plans?
 - **International Mechanical & Electrical Codes:** Have certified or licensed officials approved the submitted plans against these regulations



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BREAK

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The Michigan Right to Farm Act, P.A. 93 (RTFA)

This presentation is based on the MSU Extension Land Use Series publication:

Sample zoning for agriculture-like and urban agriculture



Available at
<http://lu.msue.msu.edu/pamphlet/ZAgr/PamphletAgrUrban.pdf>

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The Michigan Right to Farm Act, P.A. 93 (RTFA)

- What does the Right to Farm Act Preempt
 - Regulations already covered by the Right to Farm Act
 - Regulations addressed in the Generally Accepted Agricultural and Management Practices
 - Manure Management/Utilization
 - Site Selection
 - Care of Farm Animals
 - Nutrient Utilization
 - Irrigation Water Use
 - Pesticide Utilization and Pest Control
 - Cranberry Production
 - Farm Markets



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The Michigan Right to Farm Act, P.A. 93

- Is the land use a farm or agriculture as defined by the RTFA?
 - Is the land a farm operation? (MCL 286.472 (b))
 - Is the operation producing farm products (MCL 286.472 (c))
 - Is the operation commercial
 - Does the operation follow GAAMPs (applicable?)
- What local regulations are preempted?
 - Farmer's liability in a public or private lawsuit
 - Enforcement or investigation of complaints involving agriculture
 - Conversion from one agricultural use to another
 - Activities covered by GAAMPs

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The Michigan Right to Farm Act, P.A. 93

- GAAMPs – Delegate Authority Back to Local Community
 - Municipalities over 100,000 with zoning to allow urban agriculture
 - Category 4 sites for livestock operations as determined Site Selection and Odor Control for New and Expanding Livestock Facilities GAAMPs
 - Farm Markets as it relates to certain development characteristics
 - Beer Breweries, bonfires, camping, carnival rides, concerts, corn mazes, distilleries, fishing ponds, haunted barns/trails, mud runs, playscapes, siding stables and wineries/cideries as part of a Farm Market



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The Michigan Right to Farm Act, P.A. 93

- Municipalities over 100,000 with zoning to allow urban agriculture
 - In late 2011 the MDARD adopted amendments to all of their GAAMPs that that state
 - "This GAAMP does not apply in municipalities with a population of 100,000 or more in which a zoning ordinance has been enacted to allow for agriculture provided that the ordinance designates existing agricultural operations present prior to the ordinance's adoption as legal non-conforming uses as identified by the Right to Farm Act for purposes of scale and type of agricultural use"
 - This exception applies to Detroit, Grand Rapids, Warren, Sterling Heights, Lansing, Ann Arbor and Flint



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The Michigan Right to Farm Act, P.A. 93

- Category 4 sites for livestock operations as determined Site Selection and Odor Control for New and Expanding Livestock Facilities GAAMPs
 - "...locations that are primarily residential and do not allow agricultural uses by right are not acceptable under the Siting GAAMPs for livestock facilities or livestock production facilities regardless of the number of animal units"
- In addition Category 3 sites are not acceptable for new and expanding livestock production facilities over 50 animal units (Not addressed in MSUE report)
 - 6-13 non-farm residences within ¼ mile - new
 - 8-20 non-farm residences within ¼ mile - expanding



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The Michigan Right to Farm Act, P.A. 93

- Farm Markets physical characteristics delegated back to local control:
 - Use – property must be zoned to allow agricultural uses.
 - Buildings – Must comply with State Building Code and local setbacks
 - Parking – Surface may be vegetative, ground, pavement or other suitable surfaces but must comply with local regulations regarding parking and driveway requirements
 - Vehicle Access – Must have approval from state (MDOT), county (road commission) or local agency that regulates access
 - Signage – Must comply with all applicable federal, state or local sign regulations

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The Michigan Right to Farm Act, P.A. 93

- Farm Markets uses delegated back to local control:
 - Beer breweries
 - Bonfires
 - Camping
 - Carnival rides
 - Concerts
 - Corn mazes
 - Distilleries
 - Festivals
 - Fishing ponds
 - Haunted barns/trails
 - Mud runs
 - Playscapes
 - Riding stables
 - Wineries/Hard cider



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The Michigan Right to Farm Act, P.A. 93

- MSUE Model Ordinance
 - Defines
 - Agriculture - farm operation, producing a farm product as part of a commercial activity
 - Agriculture-like - does not met all three criteria, or where local control has been delegated under the RTFA or GAAMPs
 - Commercial - no lower limit per court decision
 - Farm Market - As defined in GAAMPs
 - Garden - Differentiated from agriculture or agriculture-like uses and community gardens, not regulated

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The Michigan Right to Farm Act, P.A. 93

- MSUE Model Ordinance
 - Uses
 - Agriculture - must comply with all zoning regulations except those covered by the RTFA or a GAAMP
 - Agriculture-like - does not met all three criteria, or where local control has been delegated under the RTFA or GAAMPs

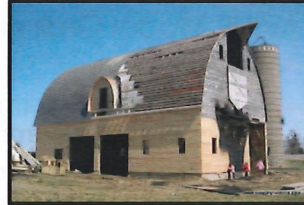


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The Michigan Right to Farm Act, P.A. 93

- MSUE Model Ordinance
 - Regulation
 - Setbacks
 - General regulations
 - Special land uses
 - Allowed as permitted or SLU
 - Soil testing (In urban areas)
 - Storage of manure and fertilizers
 - Chemical buffer
 - Encroachment of plants
 - Off-site impacts
 - Storage of tools, supplies and machinery
 - Motorized equipment - hours of operation
 - Screening of portable restrooms
 - Water protection
 - Compliant resolution (agriculture-like only)



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The Michigan Right to Farm Act, P.A. 93

- MSUE Model Ordinance
 - Specific Use Regulations
 - Crops
 - Community and Market Gardens
 - Bees
 - Farm Animals
 - Poultry
 - Small Farm Animals
 - Large Farm Animals
 - Aquaculture
 - Farm Market



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The Michigan Right to Farm Act, P.A. 93

- MSUE Model Ordinance
 - Other Provisions
 - Pre-existing Agricultural Operations
 - Exempt from zoning permits – Gardens, green houses, hoop houses?
 - Uses in Zoning Districts
 - Agriculture
 - Agriculture-like Crops
 - Agriculture-like Community and Market Gardens
 - Agriculture-like Bees
 - Agriculture-like Poultry
 - Agriculture-like Small Farm Animals
 - Agriculture-like Large Farm Animals
 - Agriculture-like Aquaculture
 - Agriculture-like Farm Market



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The Michigan Right to Farm Act, P.A. 93

Recent Court Case

- Williamstown Township v. Hudson, Michigan Court of Appeals – Right to Farm Act
 - The RTFA's protections constitute an affirmative defense. Thus "the party asserting RTFA protection bears the burden of proving" that:
 - (1) "the challenged condition or activity constitutes a 'farm' or 'farm operation'" and
 - (2) "the farm or farm operation conforms to the applicable GAAMPs."



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Adaptive Re-Use

As the economy in Michigan changes, municipalities are experiencing an increase in vacancy of institutional, commercial and industrial buildings. What should communities do to expand the potential uses available for these vacancies?

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Adaptive Re-Use

Issues

- What is adaptive reuse?
- What uses/districts?
- Flexibility/regulation
- Site size
- Is it a use variance?



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Adaptive Re-Use

What is adaptive reuse?

- Reuse of a site or building for a purpose different from what it was originally intended
- Common adaptive reuse in the past
 - Schools
 - State institutions
 - Brownfield industrial sites
 - Downtown commercial sites
- New challenges
 - Vacant strip malls and big box facilities
 - Vacant greenfield industrial sites



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Adaptive Re-Use

What uses/districts

- Zoning ordinance may not allow a proposed use in the district allowed
 - Rezone
 - Amend ordinance to allow specific use
 - Allow "adaptive reuse" as a use allowed
- Allow adaptive reuse only in certain districts
- Allow adaptive reuse in any district

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Adaptive Re-Use

Flexibility/regulation

- Allow based on specific standards related to compliance with the ordinance
 - Parking
 - Landscaping
 - Hours of operation
- Allow as a discretionary use with ability to modify ordinance requirements
 - Use is consistent with surrounding uses
- Address change in use

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Adaptive Re-Use

Site Size

- Individual building – Special Use Approval
- Large site (shopping center, large industrial facility, government facility) – Planned Unit Development
 - May require intergovernmental cooperation



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Adaptive Re-Use

Is It A Use Variance?

- Use Variance is approval by the Zoning Board of Appeals (ZBA) to permit a use that is not otherwise allowed in that district
 - Requires showing of unnecessary hardship and cannot be solely economic
 - Most township ZBA's cannot issue use variances; some city and township zoning ordinances prohibit them as well
- Adaptive Reuse is an authorized use provided proposal complies with ordinance requirements

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Idea Exchange / Questions

- Signs
- Wedding Barns
- Right to Farm issues
- Adaptive Reuse



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Some Recent Planning and Zoning Issues

- Current Bills
 - Dark Stores
 - Marihuana Provisioning Center
 - Historic Districts
 - Adult Foster Care Homes

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Drafting and Enforcing Sign Codes after *Reed v Town of Gilbert*

The U.S. Supreme Court's decision in *Reed v Town of Gilbert* on June 18, 2015 is, undoubtedly, the most definitive and far-reaching statement that the Court has ever made regarding day-to-day regulation of signs. While the sign code provisions challenged in *Reed* involved only the regulation of temporary non-commercial signs, the Court's 6-3 majority decision, authored by Justice Clarence Thomas, applies to the regulation of *all* signs: permanent signs as well as temporary signs, business signs as well as residential signs, and to both commercial and non-commercial signs. If you're wondering "what about onsite vs. offsite signs?" - more on that later.

The rules that Justice Thomas announced in *Reed* could not be more straight-forward. A sign regulation that "on its face" considers the message on a sign to determine how it will be regulated is content-based. Justice Thomas emphasized that if a sign regulation is content-based "on its face" it does not matter that government did not intend to restrict speech or to favor some category of speech for benign reasons. He wrote: "In other words, an innocuous justification cannot transform a facially content-based law into one that is content-neutral." Further, a sign regulation that is facially content-neutral, if justified by – or that has a purpose related to – the message on a sign, is also a content-based regulation. For example, a code provision that allowed more lawn signs between mid-August and mid-November would be facially content-neutral but might be challenged as being justified by or have a purpose related to allowing "election campaign" messages.

Whether content-based "on its face" or content-neutral but justified in relation to content, Justice Thomas specified that the regulation is presumed to be unconstitutional and will be invalidated unless government can prove that the regulation is narrowly tailored to serve a compelling governmental interest. This is known as the "strict scrutiny" test and few, if any, regulations survive strict scrutiny. This may be particularly true in regards to sign regulations given that a number of federal courts have previously ruled that aesthetics and traffic safety, the "normal" governmental interests supporting sign regulations, are not "compelling interests."

Every Sign Code Should Be Scrutinized

Justice Thomas's opinion calls into question almost every sign code in this country: few, if any, codes have no content-based provisions under the rules announced in *Reed*. For example, almost all codes contain content-based exemptions from permit requirements for house nameplates, real estate signs, political and/or election signs, garage sale signs, "holiday displays," etc. Almost all codes also categorize temporary signs by content, and then regulate them differently; for example, a "real estate" sign can be bigger and remain longer than a "garage sale" sign, or the code allows the display of more "election" signs than "ideological" or "personal" signs but the "election" signs must be removed "x" days after the election while the "personal" or "ideological" signs can remain indefinitely.

Many sign codes also have content-based provisions for permanent signs. Because the *Reed* rules consider "speaker-based" provisions to be content-based, differing treatment of signs for "Educational Uses" vs. "Institutional Uses" vs. "Religious Institutions" would be subject to strict scrutiny. The strict



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scrutiny test would also apply for differing treatment of signs for “gas stations” vs. “banks” vs. “movie theaters.”

Reed does not, however, cast doubt on the content-neutral “time, place, or manner” regulations that are the mainstay of almost all sign codes, provided they are not justified by or have a purpose related to the message on the sign. Justice Thomas acknowledged that point, noting that the code at issue in *Reed* “regulates many aspects of signs that have nothing to do with a sign’s message: size, building materials, lighting, moving parts and portability.” Justice Alito’s concurring opinion, joined by Justices Kennedy and Sotomayor, went further.

While disclaiming he was providing “anything like a comprehensive list,” Justice Alito noted “some rules that would not be content based.” These included rules regulating the size and location of signs, including distinguishing between building and free-standing signs; “distinguishing between lighted and unlighted signs;” “distinguishing between signs with fixed messages and electronic signs with messages that change;” distinguishing “between the placement of signs on private and public property” and “between the placement of signs on commercial and residential property;” and rules “restricting the total number of signs allowed per mile of roadway.”

But Justice Alito also approved of two rules that seem at odds with Justice Thomas’s “on its face” language. Alito claimed that rules “distinguishing between on-premises and off-premises signs” and rules “imposing time restrictions on signs advertising a one-time event” would be content-neutral. But rules regarding “signs advertising a one-time event” clearly are facially content-based, as Justice Kagan noted in her opinion concurring in the judgment, and the same claim could be made regarding the onsite/offsite distinction. Further, neither Justice Thomas nor Justice Alito discussed how courts should treat codes that distinguish between commercial and non-commercial signs, a point raised by Justice Breyer in his concurring opinion. Thus, it seems clear that the lower federal courts will soon face claims that codes that differentiate between commercial and non-commercial signs or that regulate on-site and off-site signs differently are content based and subject to strict scrutiny. Stay-tuned!

Keep in mind, however, that even content-neutral “time, place or manner” sign regulations are subject to intermediate judicial scrutiny rather than the deferential “rational basis” scrutiny applied to regulations that do not implicate constitutional rights such as freedom of expression or religion. Intermediate scrutiny requires that government demonstrate that a sign regulation is narrowly tailored to serve a substantial government interest and leave “ample alternative avenues of communication.” Because intermediate scrutiny requires only a “substantial,” rather than a “compelling,” government interest, courts are more likely to find that aesthetics and traffic safety meet that standard. That said, courts have struck down a number of content-neutral sign code provisions because the regulations were not “narrowly tailored” to achieve their claimed aesthetic or safety goals.

Cities Must Respond

So...what’s a city to do after *Reed*? Some cities are enacting moratoria on sign regulation while they try to figure that out. A court would likely view with disfavor a total moratorium on issuing *any* sign permits (or, worse yet, displaying any new signs) as an unconstitutional prior restraint on speech. In



contrast, a moratorium of short duration – certainly no more than 30 days – targeted at permits issued under code provisions that are questionable after *Reed* is far more likely to be upheld. Cities are also well-advised to suspend enforcement of code provisions – particularly regulation of temporary signs – that are questionable after *Reed*. Obviously, however, *all* sign code structural provisions directly related to public safety should continue to be enforced.

As we all know, drafting a fair and effective sign code that appropriately balances a community's interests in allowing both residents and businesses to use signs to meet their communication needs while achieving the community's interests in maintaining property values and achieving aesthetics and traffic safety goals is no easy task. Trying to do that during a short moratorium is even harder. But it is certainly not impossible.

Opportunities to Improve Your Sign Code Post-*Reed*

1. Remove from the sign code all references to the content of a sign other than the few examples directly related to public safety noted in Justice Thomas's opinion. Most of these content-based provisions likely will relate to temporary signs. Rather than referring to “real estate” or “political” or “garage sale” signs, your code should treat these all as “yard” signs or “residential district” signs. You then regulate their number, size, location, construction and amount of time they may be displayed, keeping in mind how your residents want to use such signs. You would use the same approach for temporary signs in business districts: replace references to “Grand Opening” or “Special Sale” signs with “temporary business sign” and regulate their number, size, location, construction and amount of time they may be displayed based on business needs for such signs.

2. All the provisions in your code that refer to number, area, structure, location and lighting of permanent signs are content-neutral and unaffected by *Reed*. If your code does have some content-based provisions for permanent signs, either by specifying content that must (or must not) be on a sign or because you distinguish among uses (e.g., “gas-station signs”), those provisions will be subject to strict scrutiny if challenged. None of these content-based provisions should be retained unless public safety would be so threatened by removal that the provision would survive strict scrutiny. Permanent signs should be regulated in a content-neutral manner with regulations distinguished not by type of use (because that would be “speaker-based”) but by either zoning districts or “character” districts or by reference to street characteristics such as number of lanes or speed-limit. The [International Sign Association](#) has a number of resources that can help your community revise your sign code based on the latest research, sign industry expertise, and sign-user perspectives.

3. If your sign code does not have a severability clause and a substitution clause they should be added. A severability clause provides that if any specific language or provision in the code is found to be unconstitutional, it is the intent of the city council that the rest of the code remain valid. For example: “If any part, section, subsection, paragraph, subparagraph, sentence, phrase, clause, term, or word in this code is declared invalid, such invalidity shall not affect the validity or enforceability of the remaining portions of the code.” A substitution clause allows a non-commercial message to be displayed on *any* sign. While *Reed* did not discuss the commercial/non-commercial distinction, prior U.S. Supreme Court cases established that commercial speech should not be favored over non-commercial speech. A



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substitution clause thus can safeguard you against liability that could result from mistakenly doing just that by prohibiting the display of a non-commercial message or citing it as a code violation. For example: "Signs containing noncommercial speech are permitted anywhere that advertising or business signs are permitted, subject to the same regulations applicable to such signs."

4. Understand that *Reed* has left several questions unanswered. As previously noted, treatment of the onsite/offsite and commercial/non-commercial distinctions remains uncertain. *Reed* also failed to provide an answer to how we provide for the public's desire for more signage during election campaigns in a wholly content-neutral manner. We also don't know what, if any, content-based regulations might survive strict scrutiny. In light of these uncertainties, arguably the best course for cities is to err on the side of allowing for less restrictive, rather than more restrictive, sign regulations until the courts provide more guidance on the above questions and others that are certain to be raised.

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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) "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.

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

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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; conditions; duties; 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 territory or of the county as a whole.

(b) For a township that on the effective date of this act 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 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.

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).

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, 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, 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).

History: 2008, Act 33, Eff. Sept. 1, 2008;—Am. 2010, Act 134, Imd. Eff. Aug. 2, 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 and railroad company owning or operating a public utility or railroad 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.

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 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 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 and railroad company owning or operating a public utility or railroad 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.

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.new 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.

**CITY OF OWOSSO
VARIOUS ORDINANCES
REGARDING PLANNING COMMISSION ROLE AND RESPONSIBILITIES**

Section 7.14. - City Planning.

- (a) The council shall provide for and maintain a City Planning Commission which shall possess all of the powers and perform the functions of planning commissions as set forth in Act No. 285, P.A., 1931 as amended or as provided for in its successor legislation. The membership and term of office of the planning commissioners shall be established by city ordinance and comply with Act No. 285, P.A. 1931, as amended or as provided for in its successor legislation.
- (b) The Commission may appoint a Planning Director, subject to the confirmation of the Council, who shall perform the duties prescribed by the established rules of the Commission.

(Amd. by electors 11-6-07)

Chapter 23 - PLANNING^[1]

Footnotes:

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Charter reference— City planning, § 7.14.

Cross reference— Administration, Ch. 2; community development, Ch. 11; flood protection, Ch. 14; mobile homes and recreational vehicles, Ch. 17; signs, Ch. 26; soil erosion and control, Ch. 27; streets, sidewalks and other public places, Ch. 29; subdivision regulations, Ch. 30; utilities and services, Ch. 34; waterways, Ch. 37; zoning, Ch. 28.

State Law reference— Authority to regulate land use, MCL 125.581 et seq., MSA 5.2931 et seq.; municipal planning, MCL 125.31 et seq., MSA 5.2991 et seq.

ARTICLE I. - IN GENERAL

Secs. 23-1—23-15. - Reserved.

ARTICLE II. - CITY PLANNING COMMISSION^[2]

Footnotes:

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Cross reference— Boards and commissions generally, § 2-216 et seq.; planning commission duties re zoning, § 38-526 et seq.

Sec. 23-16. - Continued.

The city planning commission heretofore created pursuant to Act No. 285 of the Public Acts of Michigan of 1931 (MCL 125.31 et seq., MSA 5.2991 et seq.), as amended, is hereby continued.

(Code 1977, § 5.201)

Sec. 23-17. - Membership, terms.

- (a) In accordance with Act 285 of the Public Acts of 1931, as amended, of the state, there is hereby established a planning commission consisting of nine (9) members. One (1) of whom shall be a member of the legislative body to be selected by resolution of the legislative body to serve as a member ex officio, and eight (8) of whom shall be appointed by the mayor as provided in this subsection. An appointment by the mayor shall be subject to approval of the legislative body by majority vote. An appointed member shall not hold another municipal office, except that one (1)

appointed member may be a member of the zoning board of appeals. The term of the ex officio member shall be determined by the legislative body and shall be stated in the resolution selecting the ex officio member, but the terms shall not exceed the member's term of office as a member of the legislative body. The term of each appointed member shall be three (3) years or until his or her successor takes office, except that the respective terms of two (2) of the members first appointed shall be for one (1) year and three (3) for two (2) years. After a public hearing, a member other than the member selected by the legislative body may be removed by the mayor for inefficiency, neglect of duty, or malfeasance in office. The legislative body may for like cause remove the member selected by the legislative body. All ex officio members appointed under this subsection shall have full voting rights.

- (b) There shall be no compensation for a member of the planning commission, except that reasonable expenses may be allowed in case of necessity with prior approval of the city council.
- (c) The rules, regulations, duties and authority of the planning commission, as outlined by Act 285 of the Public Acts of 1931, as amended or provided for in its successor legislation, of the state, shall apply in all cases.

(Code 1977, § 5.202; Ord. No. 693, § 1, 3-3-08)

Sec. 30-26. - Alleys.

- (a) Alleys shall be provided in commercial and industrial districts, except that the planning commission may waive this requirement where other definite and assured provision is made for service access, such as off-street parking, loading and unloading consistent with and adequate for the uses proposed. Alleys shall not be permitted in residential districts unless approved by the planning commission.
- (b) The minimum width of an alley shall be twenty (20) feet.
- (c) Alley intersections and sharp changes in alignments shall be avoided, but where necessary, corners shall be cut off sufficiently to permit safe vehicular movement.
- (d) Dead-end alleys shall be avoided where possible, but if unavoidable, shall be provided with adequate turnaround facilities at the dead end, as determined by the planning commission.

(Code 1977, § 5.248)

Sec. 38-390. - Site plan review.

When provisions of this chapter require submission of a site plan to the planning commission, it shall be submitted in accordance with the provisions of this section.

- (1) Submission for approval. A site plan shall be required for the following:
 - a. Any use or development for which the submission of a site plan is required by any provision of this chapter;
 - b. Any development, except single-family and two-family residential, for which off-street parking areas are provided as required in section 38-380, off-street parking requirements;
 - c. Any use in an RM-1, RM-2, OS-1, B-1, B-2, B-3, B-4, I-1, I-2, P-1 or PUD district;
 - d. Any use except single- or two-family residential which lies contiguous to a major thoroughfare or collector street;
 - e. All residentially related uses permitted in single-family districts such as, but not limited to, churches, schools, colleges, institutions, and public facilities;
 - f. Accessory buildings or building additions which require additional off-street parking.

- (2) Any person seeking site plan approval hereunder shall submit a site plan, application, and the applicable filing fee to the building department. The building department shall provide application forms and graphic standards for the site plan. Said site plan shall be prepared by a professional architect, engineer, landscape architect or land planner and must contain the following information:
 - a. A scale of not less than one (1) inch equals fifty (50) feet if the subject property is less than three (3) acres and one (1) inch equals one hundred (100) feet if three (3) acres or more;
 - b. Date, northpoint, scale, and area of the site in acres;
 - c. The dimensions of all lot and property lines, showing the relationship of the subject property to the abutting properties;
 - d. The location of all existing and proposed structures and utilities on the subject property and all existing structures within one hundred (100) feet to the subject property;
 - e. The location and layout of all existing and proposed drives and parking areas;
 - f. The location and right-of-way widths of all abutting streets and alleys;
 - g. The names and addresses of the architect, planner, designer, engineer, or person responsible for the preparation of the site plan.
- (3) Upon receipt of a complete site plan, application, and application fee the building department shall forward said documents to the community development department for distribution to appropriate city departments for comment. Staff comments shall be made with respect to compliance with the minimum technical requirements of city ordinances and the quality of the development consistent with the intent of the building codes, zoning codes and comprehensive plan. Upon receipt of all staff comment, the community development department shall review the site plan and make its recommendation to the planning commission which shall consider the application, site plan, all staff comments, and community development department recommendation at the next scheduled meeting.
- (4) Final approval of site plan. Every site plan submitted to the planning commission shall be in accordance with the requirements of this chapter. Three (3) copies of the site plan shall be submitted to the building department ten (10) days prior to the city planning commission's regular meeting. No site plan shall be approved until and unless a letter of assurance has been received from the building inspector, that the site plan has been reviewed by and is in conformance with all applicable standards of the building department, police department, fire department, engineering department, and city utility department. Further, no construction, reconstruction, demolition, or other site work may progress during the interim, and no building permit(s) shall be issued prior to the final approval of the site plan by the planning commission. Upon granting final approval of a site plan, the chairman of the planning commission shall sign all three (3) copies of the site plan, return one (1) copy to the petitioner, and deliver two (2) copies to the building inspector. The site plan submitted for final approval by the planning commission shall include:
 - a. The number, location, and layout of off-street parking spaces to include all access roads and the manner in which they are to be surfaced;
 - b. The provision of internal site drainage and necessary city utilities complete with existing and proposed elevations;
 - c. The proposed site landscaping complete with a planting plan to include all proposed walls, fences, and screening in compliance with the provisions of this chapter;
 - d. The elevation of the site in relation to the identified flood hazard area. All proposed construction, reconstruction, or demolition shall be in compliance with local, state, and federal ordinances, laws, or regulations with regard to flood hazard areas;

- e. A copy of the permit from the local enforcing agency on soil erosion and sedimentation control if the earth change activity involves more than one (1) acre or is within five hundred (500) feet of a lake or stream.
- (5) In the process of reviewing the site plan, the planning commission shall consider:
- a. The location and design of driveways providing vehicular ingress to and egress from the site, in relation to streets giving access to the site, and in relation to pedestrian traffic;
 - b. The traffic circulation features within the site and location of automobile parking areas; and may make such requirements with respect to any matters as will assure:
 - 1. Safety and convenience of both vehicular and pedestrian traffic both within the site and in relation to access streets;
 - 2. Satisfactory and harmonious relationships between the development on the site and the existing and prospective development of contiguous land and adjacent neighborhoods;
 - c. The planning commission may further require landscaping, fences, and walls in pursuance of these objectives and same shall be provided and maintained as a condition of the establishment and the continued maintenance of any use to which they are appurtenant;
 - d. In those instances wherein the planning commission finds that an excessive number of ingress and/or egress points may occur with relation to major or secondary thoroughfares, thereby diminishing the carrying capacity of the thoroughfares, the planning commission may recommend marginal access drives. For a narrow frontage, which will require a single outlet, the planning commission may recommend that money in escrow be placed with the city so as to provide for a marginal service drive equal in length to the frontage of the property involved. Occupancy permits shall not be issued until the improvement is physically provided, or moneys have been deposited with the clerk.
 - e. Whether the site is located within a designated historic overlay district, and whether the proposed action would have an adverse impact on the resources of the historic overlay district, as defined in subsection 38-32(b)(4). The planning commission may deny the proposed action if the action would have an unacceptable adverse impact on the historic resource or the historic overlay district itself. The planning commission may also require landscaping or other reasonable methods to minimize the adverse impact any proposed action may have on a historic resource or on the historic overlay district itself.
- (6) An approved PUD site plan shall be required before applicable permits may be issued for any form of construction or removal or disturbance of any natural feature for all planned unit developments.
- a. *Procedure for PUD site plan review.*
 - 1. The applicant for PUD site plan approval shall file with the community development director (hereinafter "director") all drawings and other materials required for site plans in this chapter, all drawings and other materials required in Section 38-395 for PUD zoning district approval, and the additional information listed below. A PUD site plan application shall not be considered filed until all drawings and other required materials have been submitted and may be rejected if the materials submitted are inadequate to make the foregoing determinations.
 - 2. If requested by the planning commission or city council, additional graphics, models, three-dimensional or electronic, or written materials shall be submitted to assist the city in visualizing and understanding the proposal. Additional detailed information, including but not limited to plans, elevations, building and site sections, or existing and proposed building materials, if submitted, shall become a part of the PUD site plan.
 - 3. The director will distribute these materials to the appropriate city departments and other reviewing agencies for review and comment regarding compliance with the PUD

zoning district supplemental regulations and conceptual PUD plan, and compliance with all applicable local, state, or federal laws, ordinances, standards and regulations and to determine the need for a development agreement as provided in this chapter. The director will notify the applicant of any questions raised by the city departments and other reviewing agencies and negotiate a development agreement with the applicant if it is determined that such an agreement is needed. The director shall submit a report and recommendation to the planning commission based on this review.

4. The planning commission, after holding a public hearing on the PUD site plan with notification as required by this chapter, shall transmit its recommendation based on the standards below, together with any recommended conditions of approval and all related reports and minutes to city council.
- b. *Standards for PUD site plan review.* City council, after holding a public hearing on the PUD site plan with notification as required by this chapter, and after receiving all related reports and minutes and a recommendation from the commission, shall approve, with conditions, or deny a PUD site plan. A PUD site plan shall be approved by city council only after it determines that:
1. The development would comply with the PUD zoning established pursuant to the requirements of section 38-395, and with all applicable local, state, or federal laws, ordinances, standards and regulations; and
 2. The development would limit the disturbance of natural features to the minimum necessary to allow a reasonable use of the land, applying criteria for reviewing a natural features statement of impact set forth in this chapter; and
 3. The development would not cause a public or private nuisance and would not have a detrimental effect on the public health, safety or welfare.
- c. *Development agreement.*
1. Upon obtaining approval of a site plan, the applicant and the city council may enter into a development agreement that describes the terms and conditions of the approval and the rights and obligations of each party. The city council may approve the development agreement immediately following approval of a site plan or it may be placed on a subsequent agenda of the city council. The applicant shall reimburse the city for all fees for city legal counsel and consultant participation in the development agreement.
 2. The approved development agreement shall be recorded with the county register of deeds.
 3. In the event the site plan requires a major amendment, the development agreement shall be amended to reflect the approved changes and recorded as provided in subsection (5)c.2. above.
- d. *Effect of PUD site plan approval.* For three (3) years from the date of approval of a PUD site plan, permits may be issued and the land developed consistent with the PUD site plan and the regulations, laws and ordinances in effect as the time of approval, unless new regulations, laws and ordinances have been made applicable to previously approved developments. After three (3) years from PUD site plan approval, no permits shall be issued unless the PUD site plan is reconsidered in the manner provided for new PUD site plans and is determined to meet the standards of the PUD zoning district or has been extended as provided under administrative amendments to approved PUD site plans.
- e. *PUD site plan amendments.* A minor change to an approved PUD site plan may be approved by the planning commission as provided in this chapter except that the proposed changes shall not alter the fundamental design, conceptual integrity, natural features shown to be preserved, any specific conditions of the PUD development program, the

conceptual PUD plan or the supplemental regulations. The following restrictions shall also apply:

1. Adjustment in approved phases of development shall not result in a change greater than ten percent of the total gross area in any phase, or ten percent of the number of approved lots, or ten percent of the approved maximum building square footage.
 2. For residential buildings the size may be reduced or increased by five percent, provided the overall density of units does not increase and the minimum square footage requirements are met.
 3. Gross floor area of non-residential buildings may be decreased or increased by up to five (5) percent or ten thousand (10,000) square feet whichever is smaller.
 4. Floor plans may be changed if consistent with the character of the use.
 5. Horizontal and/or vertical elevations may be altered by up to five (5) percent.
 6. Relocation of a building is permitted by up to ten (10) feet, if consistent with required setbacks and other standards.
 7. Designated "areas not to be disturbed" may be increased.
 8. Plantings approved in the final PUD site plan may be replaced by similar types of landscaping on a one-to-one or greater basis. Any trees to be preserved, which are lost during construction, may be replaced by at least two (2) trees of the same or similar species.
 9. Improvements or slight relocation of site access or circulation patterns are minor changes, such as inclusion of deceleration lanes, boulevards, curbing, and pedestrian or bicycle paths.
 10. Changes of building materials to another of higher quality can be made, with determined of quality a judgment of the building inspector.
 11. Slight modification of sign placement or reduction of size may be made.
 12. Internal rearrangement of a parking lot is possible if the change does not affect the number of parking spaces or alter access locations or design.
 13. Changes required by the city, county or state for safety reasons are a basis for a minor change.
- (7) It shall be understood that the petitioner agrees to install and/or construct all improvements in the approved site plan within twelve (12) months from the initiation of on-site construction, and to provide for their continued maintenance.
- (8) The planning commission may modify the foregoing requirements or waive them if it can be shown that no good purpose would be served in the preparation of a site plan.
- (9) The planning commission may require that a bond be posted by a developer(s) to assure that improvements connected with an approved site plan are made as proposed.

(Code 1977, § 5.90; Ord. No. 585, § 1, 6-21-99; Ord. No. 662, § 1, 10-18-04; Ord. No. 763, §§ 1—3, 4-6-15)

State Law reference— Site plan, MCL 125.584d.

ARTICLE XIX. - SPECIAL USE PERMITS

Sec. 38-451. - Intent and purpose.

- (a) Rather than permitting all of the many and varied land use activities within individual and limited zoning districts, it is the intent of this article to provide a set of procedures and standards for specific

uses of land or structures that will allow, on one hand, practical latitude for the investor or developer, but that will, at the same time, promote the intent and purpose of this chapter, and 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 uses. In order to provide controllable and reasonable flexibility, this article permits detailed review of certain specified types of land use activities which, because of their particular and unique characteristics, require special consideration in relation to the welfare of adjacent properties and to the community as a whole. Land and structure uses possessing these characteristics are designated special uses and may be authorized within certain zone districts by the issuance of a special use permit. By such a procedure, the planning commission and the council have the opportunity to impose conditions and safeguards upon each use which are deemed necessary for the protection of the public welfare.

- (b) The following sections, together with previous references in other articles of this chapter, designate specific uses that require a special use permit and, in addition, specify the procedures and standards which must be met before such a permit can be issued.

(Ord. No. 424, § 19A1.1, 6-18-84)

Sec. 38-452. - Permit procedures.

An application for a special use permit for any land or structure use permitted under this article shall be submitted and processed under the following procedures:

- (1) *Submission of application.* Any application shall be submitted through the building inspector on a special form for that purpose. Each application shall be accompanied by the payment of a fee as established by the council to cover costs of processing the application. No part of any fee shall be refundable.
- (2) *Data required.* Every application shall be accompanied by the following information and data:
 - a. The special form supplied by the building inspector, filled out in full by the applicant, including a statement of supporting evidence concerning the required findings specified in section 38-453.
 - b. Site plan, plot plan, or development plan according to the provisions of section 38-390.
- (3) *Planning commission review.* The application, along with all required data, shall be transmitted to the planning commission for review. After adequate review and study of the application, one (1) notice that a request for special land use approval has been received shall be published in a newspaper of general circulation in the city and shall be sent by mail or personal delivery to the owners of property for which approval is being considered, to all persons whom real property is assessed within three hundred (300) feet of the boundary of the property in question, and to the occupants of all structures within three hundred (300) feet, except that the notice shall be given not less than five (5) and not more than fifteen (15) days before the application will be considered. If the name of the occupant is not known, the term "occupant" may be used in making notification. Notification need not be given to more than one (1) occupant of a structure, except that if a structure contains more than one (1) dwelling unit or spatial area owned or leased by different individuals, partnerships, businesses or organizations, one (1) occupant of each unit or spatial area shall receive notice. In the case of a single structure containing more than four (4) dwelling units or other distinct spatial areas owned or leased by different individuals, partnerships, businesses, or organizations, 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. The notice shall:
 - a. Describe the nature of the special land use request;
 - b. Indicate the property which is the subject of the special land use request;
 - c. State when and where the special land use request will be considered;

- d. Indicate when and where written comments will be received concerning the request;
 - e. Indicate that a public hearing on the special land use request may be requested by a property owner of the occupant of a structure located with three hundred (300) feet of the boundary of the property being considered for a special use.
- (4) *Discretionary public hearing.* At the initiative of the planning commission, or upon the request of the applicant for special land use authorization, or a property owner or the occupant of a structure located within three hundred (300) feet of the boundary of the property being considered for a special land use, a public hearing with notification as required for a notice of a request for special land use approval as provided in this section shall be held before a decision on the special land use request which is based on discretionary grounds is made. If the applicant or the planning commission requests a public hearing, only notification of the public hearing need be made. A decision on a special land use request which is based on discretionary grounds shall not be made unless notification of the request for special land use approval, or notification of a public hearing on a special land use request is given as required. Such notice shall indicate the place, time and purpose of the hearing. Upon conclusion of the hearing procedures, the planning commission shall transmit a written recommendation within sixty (60) days to the council setting forth the reasons for the acceptance, denial or modification of the special use permit application.
- (5) *Council.* Upon receipt of the planning commission's recommendation, the council shall consider the special use permit application at its next regular meeting. The council shall approve or disapprove the recommendations of the planning commission; or if the council deems any changes, additions or departures are advisable to the proposed conditions of the proposed permit or it is felt additional study is necessary, it shall refer the same back to the planning commission for a report thereon within a time specified by the council. The council decision rendered on the special use permit application shall be accompanied with a clear explanation of the reason for the action taken. Any permit issued shall contain all the specified conditions under which the use is allowed. Only in the event of an appeal, shall a special use permit be issued by the city clerk. The special use permit shall become effective when the application has been approved by the council or the board of appeals in the event of an appeal.
- (6) *Permit expiration.* A special use permit issued under this section shall be valid for a period of one (1) year from the date of the issuance of the permit. If construction has been commenced and proceeded meaningfully toward completion by the end of this one-year period, the zoning administrator shall notify the applicant in writing of the expiration or the revocation of the permit. The planning commission shall review every special use permit and the associated land use prior to the expiration of the permit and shall recommend continuance or discontinuance of the permit based on whether the activities, structures and other site characteristics satisfactorily comply with the conditions stipulated in the special use permit. This determination of the planning commission shall be forwarded to the council with a recommended action. After the first year review the council may extend the permit for periods of longer than one (1) year.
- (7) *Permit revocation.* The council shall have the authority to revoke any special use permit after it has been proved that the holder of the permit has failed to comply with all of the applicable conditions specified in the permit. After a revocation notice has been given, the use for which the permit was granted must cease within sixty (60) days.
- (8) *Violation and penalties.* Failure to terminate the use for which the permit was granted within sixty (60) days is declared to be nuisance per se and a violation of this article. The violation shall be reported to the city attorney who is hereby authorized to and shall initiate procedures to eliminate such violations. For each and every day the violations continues beyond the aforementioned sixty (60) days, a separate offense shall be declared.
- (9) *Appeal.* Recourse by a person considering himself/herself aggrieved by a decision of the council in the granting or denial of a special use permit shall be to the county circuit court, as provided by law.

- (10) *Reapplication.* No application for a special use permit which has been denied wholly or in part by the council shall be resubmitted until the expiration of one (1) year or more from the date of such denial, except on the grounds of newly-discovered evidence or proof of changed conditions.
- (11) *Fees.* The council may from time to time prescribe and amend by resolution a reasonable schedule of fees to be charged to applicants for special use permits. At the time of application for a special use permit is filed, the fee shall be paid to the office of the building inspector, while the building inspector shall forthwith pay over to the city's chief fiscal office to the credit of the general revenue fund of the city.

(Ord. No. 424, § 19A1.2, 6-18-84)

Sec. 38-453. - Basis for determination.

Before making a recommendation on a special use permit application, the planning commission shall establish beyond a reasonable doubt that the following general standards, as well as the special standards outlined in each applicable section of this article, shall be satisfied:

- (1) *General standards.* The planning commission shall review each application for the purpose of determining that each proposed use meets the following standards and in addition, shall find adequate evidence that each use on its proposed location will:
- a. Be harmonious with and in accordance with the general principals and objectives of the mid-county land use plan and other approved planning documents of the city;
 - b. Be designed, constructed, operated and maintained so as to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity and that such a use will not change the essential character of the area in which it is proposed;
 - c. Not be hazardous or disturbing to existing or future uses in the same general vicinity and will be a substantial improvement to property in the immediate vicinity and to the community as a whole;
 - d. Be served adequately by essential public facilities and services, such as highways, streets, police, fire protection, drainage structures, refuse disposal, water and sewage facilities and schools;
 - e. Not involve uses, activities, processes, materials and equipment or conditions of operation that will be detrimental to any person, property, or general welfare by reason of excessive production of traffic, noise, smoke, fumes, glare or odors;
 - f. Be necessary to meet the intent and purpose of the zoning regulations; be related to the standards established in the ordinance for the land use or activity under consideration; and be necessary to insure compliance with these standards;
 - g. Be related to the valid exercise of police power and purposes which are affected by the proposed use or activity.
- (2) *Conditions and safeguards.* The planning commission may impose such additional conditions and safeguards deemed necessary for the general welfare, for the protection of individual property rights and for insuring that the intent and objectives of this article will be observed. 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 shall remain unchanged except upon the mutual consent of the council and the landowner. The city clerk shall maintain a record of changes granted in conditions. The breach of any condition, safeguard, or requirement shall automatically invalidate the permit granted.

- (3) *Performance guarantee.* In authorizing a special land use permit, the city planning commission may require that a cash deposit, certified check, irrevocable bank letter of credit, or surety bond be furnished by the developer to insure compliance with an approved site plan and the special land use permit requirements. Such guarantee shall be deposited with the city clerk at the time of the issuance of the special land use permit. In fixing the amount of such performance guarantee, the city planning commission shall limit it to reasonable improvements required to meet the standards of this article and to protect the 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 but not limited to roadways, lighting, utilities, sidewalks, screening and draining. The term "improvements" does not include the entire project which is the subject of zoning approval nor to improvements for which a performance guarantee has been deposited pursuant to Act No. 288 of the Public Acts of Michigan of 1967 (MCL 560.101 et seq., MSA 26.430(101) et seq.), as amended. The city planning commission and the project developer shall establish an agreeable procedure for the rebate of any cash deposits required under this section in reasonable proportion to the ratio of work completed on the required improvements as work progresses. The agreement shall be written as an element of the conditions surrounding the approval of the special land use permit.
- (4) *Specified requirements.* The general standards and requirements of this section are basic to all uses authorized by special use permit. The specific and detailed requirements set forth in the following sections relate to particular uses and are requirements which must be met by those uses in addition to the foregoing general standards and requirements where applicable.

(Ord. No. 424, § 19A1.3, 6-18-84)

Sec. 38-454. - Special uses that may be permitted.

The following uses may be permitted within the districts mentioned provided that there is an issuance of a special use permit and a compliance with the provisions of this article:

- (a) *Adult foster care small group home* in the R-1, R-2, RM-1 and RM-2 residential districts.
 - (1) *Authorization.* In recognition of the existence of several large homes in the city with no practical use as a single family setting, there may be particular homes and settings that would allow for an adult foster care small group home in a residential neighborhood that would be compatible and reasonably harmonious with residential uses. In addition to section 38-453 provisions, the following conditions and standards are to be reviewed and applied by the planning commission:
 - (2) *Site location principals:*
 - a. Any permitted institutional structure should preferably be located at the edge of a low density residential district abutting a public open space or high density residential district or commercial district.
 - b. If possible, institutional use homes should front on a major street.
 - c. Motor vehicle entrance and exit should be made on a major street to avoid the impact of traffic generated by the institutional use upon the residential area.
 - d. Site locations should be chosen which offer natural or manmade barriers that would lessen the effect of the intrusion of any institutional uses into an established residential area.
 - (3) *Site development requirements.*
 - a. Minimum floor area in the dwelling unit shall be three thousand (3,000) square feet for seven (7) adults receiving foster care and an additional one hundred fifty (150) square feet for every foster care adult thereafter.

- b. Minimum lot width of one hundred thirty-two (132) feet and minimum lot depth of one hundred thirty-two (132) feet. Yard, height and setback requirements should not be less than that specified for the district in which the proposed use would be located.
 - c. Not more than thirty (30) percent of the lot area may be covered by buildings.
 - d. All buildings should be harmonious in appearance with the surrounding residential area and shall be similar in design and appearance to any other buildings in the same site development.
 - e. All signs shall be in accordance with section 38-385.
 - f. A minimum of three (3) off-street parking spaces shall be provided for each foster care home caring for seven (7) adults and a half space for each additional foster care adult thereafter.
- (b) *Child or adult care centers* in the R-1, R-2, RM-1 and RM-2 residential districts:
- (1) *Site development requirements*: The following requirements for site development shall be complied with:
 - a. Minimum site size: Seven thousand two hundred (7,200) square feet with sixty (60) feet lot width. For each child not a member of the family in excess of seven (7) children at a time there shall be provided two hundred (200) square feet of lot area in addition to the base figure of seven thousand two hundred (7,200) square feet.
 - b. Yard requirements and lot coverage shall conform to the provisions of Article XVI, schedule of regulations, as they pertain to the R-1 district.
 - c. A proposed site shall front a major street as said streets are defined by the city engineer's act 51 street systems map.
 - d. Off-street parking: One (1) space for each teacher and other staff member and one (1) space for every five (5) children shall be provided. Parking shall conform to all other provisions of Article XVII, general provisions.
 - e. Signs: As provided in Article XVII, general provisions, for residential units.
 - f. Play areas: There shall be provided on the site a usable outdoor play area at the rate of seventy-five (75) square feet for each child not a member of the family, exclusive of required front yard and side yard, and of driveways and parking areas. The play area shall be no nearer than forty (40) feet to any adjacent residential structure. The outdoor play area shall be suitably fenced and screened to protect the children and to avoid any nuisance to adjoining properties.
 - g. Maximum size: Any facility that is to be operated for more than thirty (30) children shall be subject to the standards in section 38-53(2) for public and private schools.
 - h. Such facilities shall be duly licensed by the state department of social services.
- (c) *Conversion of one-family dwellings*: The conversion of one-family dwellings to two-family dwellings shall be permitted when all of the following conditions can be met:
- (1) *Need*: It can be demonstrated that larger houses in older residential areas of the city have been or can be converted from one-family to two-family residences in order to extend the economic life of these structures and allow the owners to justify the expenditures for repairs and modernization.
 - (2) *Lot size*: A conforming lot of eight thousand seven hundred (8,700) square feet is required.
 - (3) The minimum square footage of the structure shall be one thousand eight hundred (1,800) square feet.
 - (4) The primary unit shall remain the larger one and retain the predominant location in the structure. The accessory unit shall not exceed forty (40) percent the size of the primary unit.

- (5) Except for a first floor entrance, there shall be no exterior alterations of the structure.
 - (6) *Parking:* There shall be a minimum of three (3) parking spaces.
 - (7) Either one (1) of the two (2) dwelling units shall be occupied by the owner of the property.
 - (8) To assure a subordinate position of the accessory unit and to encourage flexibility in the event the structure can return to single-family use, there shall be only one (1) utility service meter for gas, electric, and water supply to the structure.
 - (9) The proposal meets the general guidelines for determination of a special use permit outlined in section 38-453.
- (d) *Private clubs, fraternal organizations, lodge halls, union halls:* Owing to the location of many R-1 district areas to more intensive land use districts, specifically commercial and industrial uses, and in recognition of large lot parcels in these locations, there may exist particular settings where these parcels could be developed into private clubs, fraternal organizations, or lodge/union halls. In addition to section 38-453 provisions, the following conditions and standards are to be reviewed and applied by the planning commission:
- (1) *Site location principals:*
 - a. Any proposed site should be at the edge of a low density residential district abutting commercial districts or uses.
 - (b) A proposed site should front a major street.
 - (2) *Site development requirements:*
 - a. Minimum lot size shall be forty thousand (4,000) square feet.
 - b. Lot coverage by structures shall not exceed thirty (30) percent.
 - c. All buildings shall be harmonious in appearance with the surrounding residential area.
 - d. To assure adequate setbacks, building height shall be governed by the specification for the churches in section 38-53(1).
 - e. See article XVII, general provisions for requirements governing off-street parking, signs, fencing, and other provisions.
- (e) *Loft apartments in older industrial buildings:* The development of an apartment or apartments in the upper stories of older industrial buildings, hereinafter entitled "loft apartments," may be permitted subject to the following specific standards and conditions:
- (1) *Need:* It can be demonstrated that the building is an architectural landmark at least fifty (50) years old and an example of a period of style or method of construction significant to the region. Also the building's upper floors are considered functionally obsolete for industrial purposes and would clearly benefit from the development of a loft apartment dwelling or group of dwellings, the benefit being the justification for continued investment and rehabilitation of a historically significant structure. The development of residential living units shall not impair existing, routine legal conforming operations of industrial activity onsite or existing and future uses on neighboring properties. The planning commission and city council shall place a critical emphasis on the evaluation of the short term and long term influence of mixing residential living with industrial district uses. A finding of potential interference or residential complaints or legal standing against industrial uses, such as hours of operation, activity in shipping areas, noise, and the like-referenced areas of conflict specified in the Uniform Building Code shall result in the denial of a special use permit for loft apartments.
 - (2) *Location:* The structure is located on the boundary of a residential district, said boundary including any residential districts on the opposite side of a street.
 - (3) *Square footage:* Each apartment shall contain at least one thousand (1,000) square feet of floor area, the purpose of said area being the control of lower residential densities in industrial areas

and the provision of adequate residential storage area within the unit. The apartment shall contain at least one hundred (100) square feet of floor space dedicated to storage. Each unit shall contain a functional laundry area with hookups for a washer and dryer.

- (4) *Parking*: Parking shall comply with section 38-380, off-street parking requirements, and shall be in addition to the loading zone and parking space requirements for the balance of the structure's zoning specifications for parking.
 - (5) *Open space*: Compliance with section 38-123 is required.
 - (6) *Floor area ratio*: The provisions of section 38-352(e) shall apply.
- (f) *Group day care home* in the R-1, R-2, RM-1 and RM-2 residential districts:
- (1) Minimum site size shall be seven thousand two hundred (7,200) square feet.
 - (2) There shall be one (1) off-street parking space for a caregiver not a member of the family.
 - (3) *Play areas*: There shall be provided on the site a usable outdoor play area of nine hundred (900) square feet, exclusive of required front yard and side yard, and of driveways and parking areas. The minimum setback for the play area shall be the greater of eight (8) feet from the property line of sixteen (16) feet from any adjacent residential structure. The planning commission may increase this setback up to forty (40) feet from property lines based on local conditions.
 - (4) The planning commission may introduce site improvement measures or restricted areas of operation to assure safety and lessening of nuisances as it may relate to the activities of pickup and dropoff of a proposed home's clients.
 - (5) Such facilities shall be duly licensed by the state department of social services.
- (g) *Conversion of school and church buildings to office use in the R-1, R-2, RM-1 and RM-2 residential districts*. For those structures with a previous use and with institutional design features for public or private schools and churches, an office use may be permitted when all of the following specific standards and conditions can be met:
- (1) The building does not have a demonstrated demand for uses permitted by right within the district. In order to encourage at the outset only those principal uses permitted by right in residential areas, demonstration of insufficient demand shall include a one-year period of public sale offering for which no reasonable offer was received.
 - (2) The zoning board of appeals, after public hearing, has determined that the structure and/or parcel is impractical for a conforming use within the residential district. An example of impracticality may include insufficient demand, insufficient parking for a church or school or a combination of architectural or structural limitations.
 - (3) The term "office use" shall be limited to mean the following occupations:
 - a. Executive, administrative, professional, accounting, writing, clerical, or stenographic.
 - b. Offices of doctors, dentists, osteopaths and similar or allied professions, but not including clinics.
 - c. Photographic studios, art galleries, art studios, interior decorating studios and nonprofit museums.
 - d. Uses similar to the above uses.
 - (4) Employee parking shall not be permitted on residential streets.
 - (5) Occupancy and redevelopment of a building shall be limited by the capacity of an onsite parking plan that conforms to section 38-380 and 38-381. Except for the preceding sentence and the sign standards in subsection (6), the office use shall comply with all of the standards within the respective residential district where the special use permit is considered.

- (6) One (1) wall sign not exceeding twenty-four (24) square feet for each public street frontage and in compliance with the other sign standards for the office service district shall be permitted. Smaller dimensions and other sign controls applied to residential districts in Chapter 26 of the Owosso City Code may be instituted by the special use permit when factors of preservation of neighborhood character are determined. These factors may include nonconforming setback of existing buildings, or the location within an historic district of the city.
- (h) *Conversion of ground floor commercial space to apartment dwellings in the B-4 district.* The development of apartment or apartments on the ground floor may be permitted subject to the following specific standards and conditions:
- (1) A special use permit under this category of use applies only to the lots of Westtown fronting Main Street and bordered by State Street, including the now closed portion of State Street north of Main Street, on the west side and Cedar Street on the east side.
 - (2) The apartment space may only occupy twenty-five (25) percent of the gross ground floor area of a structure and must be located at the rearmost portion of that structure.
 - (3) The apartment development must be designed to the extent that an eight-foot wide commercial use corridor from the rear entrance of the structure to the commercial section of the building is preserved.
 - (4) Each apartment must have at least one (1) parking space.
 - (5) In lieu of open space and setback requirements for apartment developments, a project must supply extra storage sufficient for bicycles or exercise equipment at a minimum dimension of twenty-five (25) square feet.
 - (6) The floor plan and relationship of apartment spaces to the surrounding commercial area shall be subject further to the review and approval of the site plan by the planning commission in accordance with section 38-390.
- (i) *Commercial recreation operations in upper stories of commercial buildings.* The development of commercial recreation operations in the upper stories of commercial buildings may be permitted subject to the following specific standards and conditions:
- (1) The building does not have any residential or office use at the time of application of special use permit.
 - (2) A determination is made that the use shall not substantially affect the daytime use of the public parking system designed and constructed to service the principal uses of the district.
 - (3) The special use is a subordinate use of the principal use of the building in terms of the space occupied by the special use.
 - (4) The special use business is owned or operated by the principal user of the building.
 - (5) The owner or operator of the special use shall assume responsibility to take whatever legally available measures that are necessary to deter loitering and gathering, during hours of operation of the special use, on the sidewalks that front the building containing the principal use and the adjoining buildings to the end of the city block or within one hundred (100) feet, whichever is the lesser.

(Ord. No. 424, § 19A2, 6-18-94; Ord. No. 444, § 1, 12-1-86; Ord. No. 445, § 1, 12-15-86; Ord. No. 446, § 1, 12-15-86; Ord. No. 476, § 1, 9-17-90; Ord. No. 477, § 1, (5), (6), 11-19-90; Ord. No. 483, § 1, 7-1-91; Ord. No. 512, § 1, 11-15-93; Ord. No. 533, § 1, 6-19-95; Ord. No. 560, § 1, 12-2-96)

Editor's note— Ord. No. 560, § 1, adopted December 12, 1996, which amended § 38-454 by adding a subsection (j), was repealed by voters May 6, 1997.

Secs. 38-455—38-475. - Reserved.

ARTICLE XXII. - PLANNING COMMISSION^[5]

Footnotes:

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Cross reference— Boards and commissions generally, § 2-216 et seq.; city planning commission generally, § 23-16 et seq.

Sec. 38-526. - Establishment, membership, terms.

The city planning commission is hereby designated as the commission specified in section 301 of Act No. 110 of the Public Acts of Michigan of 2006 (MCL 125.3301) as amended and shall perform the zoning duties of the commission as provided in the statute.

(Code 1977, § 5.119; Ord. No. 694, § 1, 3-3-08)

Sec. 38-527. - Approval of certain uses.

In cases where the city planning commission is empowered to approve certain uses of premises under the provisions of this chapter, the applicant shall furnish such surveys, plans or other information as may be reasonably required by the commission for the proper consideration of the matter.

The planning commission shall investigate the circumstances of each such case and shall notify such parties, who may in its opinion be affected thereby, of the time and place of any hearing which may be held relative thereto as required under its rules of procedure.

The planning commission may impose such conditions or limitations in granting approval as may in its judgment be necessary to fulfill the spirit and purpose of this chapter.

Any approval given by the planning commission, under which premises are not used or work is not started within six (6) months or when such use or work has been abandoned for a period of six (6) months, shall lapse and cease to be in effect.

(Code 1977, § 5.120)

Secs. 38-528—38-550. - Reserved.

ARTICLE XXIII. - CHANGES AND AMENDMENTS^[6]

Footnotes:

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Editor's note—Ord. No. 732, §§ 1, 2, adopted May 21, 2012, repealed the former Art. XXIII, §§ 38-551—38-555 and enacted a new Art. XXIII as set out herein. The former Art. XXIII pertained to similar subject matter and derived from the 1977 Code, §§ 5.121—5.124; and Ord. No. 586, § 1, adopted June 21, 1999.

State Law reference— Enactment of ordinances, MCL 125.584.

Sec. 38-551. - Initiation of amendments.

The city council may, from time to time, amend, modify, supplement, or revise the zoning district boundaries shown on the official zoning map or the provisions of this article. Amendments to the provisions of this article may be initiated by the city council, the planning commission, the zoning board of appeals, the zoning administrator or by petition of one (1) or more residents or land owners.

Amendments to the official zoning map may be initiated by the city council, the planning commission, or by the owner or owners of the subject site. All proposed amendments to the provisions of this article or the official zoning map shall be referred to the planning commission for public hearing and recommendation to the city council before to action by the city council.

(Ord. No. 732, § 2, 5-21-12)

Sec. 38-552. - Application procedure.

An amendment to this article or the official zoning map, except those initiated by the city, shall be initiated by submission of a completed application form and fee. The following information shall accompany the application form:

- (1) A legal description and street address of the subject property, with a map identifying the subject property in relation to surrounding properties.
- (2) The name and address of the owner of the subject site, and a statement of the applicant's interest in the subject site if not the owner in fee simple title.
- (3) The existing and proposed zoning district designation of the subject property.
- (4) The land use classification for the subject site as illustrated on the city's master plan.
- (5) For of an amendment to this article, other than an amendment to the official zoning map, a general description of the proposed amendment and rationale for the change shall accompany the application form.
- (6) A written description of how the requested rezoning meets the amendment criteria of this article.

(Ord. No. 732, § 2, 5-21-12)

Sec. 38-553. - Amendment procedure; public hearing and notice.

(1) *Public hearing.* Upon initiation of an amendment, a work session and public hearing to consider the proposed amendment shall be scheduled before the planning commission. If an individual property or ten (10) or fewer adjacent properties are proposed for rezoning, written notice of the public hearing shall be made as follows:

- a. The notice shall do all of the following:
 1. Describe the nature of the request.
 2. Identify 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. Individual addresses are not required for an amendment to the zoning ordinance, or the zoning map that affects eleven (11) or more properties.
 3. State when and where the request will be considered.
 4. State when and where written comments will be received concerning the request.
- b. The notice shall be published and delivered not less than fifteen (15) days before the date of the public hearing as follows:
 1. Notice of the request shall be published in a newspaper of general circulation in the city. This shall be the only notice required for an amendment to the zoning ordinance, or the zoning map that affects eleven (11) or more properties or an interpretation by the zoning board of appeals.
 2. Where approval is being sought under this ordinance for an individual property or a rezoning affecting ten (10) or fewer properties, notice shall also be sent by mail or personal delivery to the owners of property for which approval is being considered.
 3. In addition to paragraph 2. above, notice shall be sent to all persons to whom real property is assessed within three hundred (300) feet of the property and to the occupants of all

structures within three hundred (300) feet of the property regardless of whether the property or occupant is located in the zoning jurisdiction. If the name of the occupant is not known, the term "occupant" may be used in making notification under this subsection.

- c. If eleven (11) or more properties are proposed for rezoning, or if an amendment is proposed to the text of the ordinance, the city shall give a notice of the proposed rezoning in the same manner as required under subsection (1), except for the individual property notices required by subsections (1)b.2., and (1)b.3., and except that no individual addresses of properties are required to be listed under subsection (1)a.2.
- (2) *Planning commission findings and recommendation.* Following the public hearing, the planning commission shall identify and evaluate all factors relevant to the petition and shall report its findings and recommendation to the city council. The planning commission shall consider the criteria listed in section 38-555 for a requested amendment to the official zoning map, and the criteria listed in section 38-556 for requested amendments to the standards and regulations in the text.
- (3) *City council findings and action.* Following receipt of the findings and recommendation of the planning commission, the city council shall act on the proposed amendment. For a text amendment to this article, the city council may modify or revise the proposed amendment recommended by the planning commission before enactment. For an amendment to the official zoning map, the city council shall approve or deny the amendment, based on the criteria in section 38-355 or 38-356 as applicable.

(Ord. No. 732, § 2, 5-21-12)

Sec. 38-554. - Required amendments to comply with a court decree.

Any amendment complying with a decree of a court of competent jurisdiction shall be adopted by the city council and published, without necessity of a public hearing or referral hereof to any other board or agency.

(Ord. No. 732, § 2, 5-21-12)

Sec. 38-555. - Criteria for amendment of the official zoning map.

In considering any petition for an amendment to the official zoning map, the planning commission and city council shall consider the following criteria in making its findings, recommendations and decision:

- (1) Consistency with the goals, policies, and future land use map of the City of Owosso Master Plan. If conditions upon which the master plan was developed (such as market factors, demographics, infrastructure, traffic and environmental issues) have changed significantly since the master plan was adopted, as determined by the city, the planning commission and council shall consider the consistency with recent development trends in the area.
- (2) Compatibility of the site's physical, geological, hydrological, and other environmental features with the host of uses permitted in the proposed zoning district.
- (3) Evidence the applicant cannot receive a reasonable return on investment through developing the property with at least one (1) use permitted under the current zoning.
- (4) The compatibility of all the potential uses allowed in the proposed zoning district with surrounding uses and zoning in terms of land suitability, impacts on the environment, density, nature of use, traffic impacts, aesthetics, infrastructure and potential influence on property values.
- (5) The capacity of the city's infrastructure and services sufficient to accommodate the uses permitted in the requested district without compromising the "health, safety, and welfare."

- (6) The apparent demand for the types of uses permitted in the requested zoning district in relation to the amount of land currently zoned and available to accommodate the demand.
- (7) The request has not previously been submitted within the past one (1) year, unless conditions have changed or new information has been provided.
- (8) Other factors deemed appropriate by the planning commission and city council.

(Ord. No. 732, § 2, 5-21-12)

Sec. 38-556. - Criteria for amendment to the zoning ordinance text.

The planning commission and city council shall consider the following criteria to determine the appropriateness of amending the text, standards and regulations of the zoning ordinance:

- (1) Documentation has been provided from city staff, or the zoning board of appeals indicating problems and conflicts in implementation of specific sections of the ordinance.
- (2) Reference materials, planning and zoning publication, information gained at seminars or experiences of other communities that demonstrate improved techniques to deal with certain zoning issues, or that the city's standards are outdated.
- (3) The city attorney recommends an amendment to respond to significant case law.
- (4) The amendment would promote implementation of the goals and objectives of the city's master plan.
- (5) Other factors deemed appropriate by the planning commission and city council.

(Ord. No. 732, § 2, 5-21-12)

Sec. 38-557. - Restrictions on resubmitting a rezoning request.

An application for an amendment to the official zoning that has been denied shall not be reconsidered for one (1) year, unless the applicant demonstrates that conditions have changed.

(Ord. No. 732, § 2, 5-21-12)

Secs. 38-558—38-575. - Reserved.