Michigan State University Extension
Land Use Series

Restrictions on Zoning Authority

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This publication summarizes the state and federal limitations on zoning in Michigan. Local governments receive power, including authorization for planning and zoning, from the state. The authority to adopt and enforce zoning is granted to local governments through the Michigan Zoning Enabling Act.[1] When authority is granted to a local government, it often comes with strings attached which may require the task to be done a certain way or within certain limitations. In addition, various court cases, other state statutes and the federal code often limit what local governments can do with zoning.

Contents

"Thirty seven million acres is all the Michigan we will ever have."
William G. Milliken

[1] Public Act (PA) 110 of 2006, as amended, the Michigan Zoning Enabling Act, Michigan Compiled Laws (MCL) 125.3101 *et seq.* (This footnote used to cite the following acts, each repealed as of July 1, 2006: PA 183 of 1943, as amended (the County Zoning Act, MCL 125.201 *et seq.*); PA 184 of 1943, as amended (the Township Zoning Act, MCL 125.271 *et seq.*); PA 207 of 1921, as amended (the City and Village Zoning Act, MCL 125.581 *et seq.*).)

This fact sheet was developed by subject matter experts within MSU Extension and is intended to assist Michigan communities as they consider public policy decisions related to the topics discussed. This document is written specifically for use in Michigan and is based on Michigan law and statute. The concepts and rules governing zoning and other municipal or county regulation in Michigan may differ significantly from those in other states and should not be assumed to apply elsewhere.

Limits placed on zoning can change. Always check the MSU Extension - Planning webpage to ensure use of the most recent version of this publication.[2] This document attempts to outline restrictions on zoning as they currently exist. Limitations described here are categorized as outlined above. For the limitations on zoning listed here, detailed footnotes are included to help the reader find the source of the limitation.

Disclaimer: This reference material is provided for educational purposes only and is not intended as legal advice. Communities should consult a municipal attorney experienced in planning and zoning for guidance on specific situations.

1. General rules

A. The Michigan Zoning Enabling Act requires consideration of all legitimate land uses. "A zoning ordinance or zoning decision shall not have the effect of totally prohibiting the establishment of a land use within a local unit of government in the presence of a demonstrated need for that land use within either that local unit of government or the surrounding area within the state, unless a location within the local unit of government does not exist where the use may be appropriately located or the use is unlawful."[3]

B. A nonconformity must be allowed to continue in substantially the same size and essential nature as it existed at the time of the passage of a valid zoning ordinance.[4] Local zoning may provide for the completion, resumption, restoration, reconstruction, extension, or substitution of nonconforming uses and structures upon terms and conditions provided in the ordinance.[5] Abandonment of a nonconformity is more than nonuse, it is nonuse combined with the owner's intention to abandon the right to the nonconforming use or building and the burden of proving abandonment is on the local government.[6] In Michigan, a nonconformity cannot be phased out through amortization, or required to be removed by a certain date.[7]

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

[3] MCL 125.3207 (MZEA)

[4] *Norton Shores v. Carr*, 81 Mich App 715 (1978) and a more recent published case, *Edw C Levy Co. v. Marine City Zoning Board of Appeals*, 293 Mich App 333, 342 (2011)

[5] MCL 125.3208 (MZEA)

[6] *Dusdal v. Warren*, 387 Mich 354 (1972); *Rudnick v. Mayers*, 387 Mich 379 (1972); *Livonia Hotel LLC v. City of Livonia*, 259 Mich App 116 (2003)

[7] *De Mull v. City of Lowell*, 368 Mich 242 (1962)

C. Local zoning cannot constitute a taking, which occurs if a regulation requires or permits physical invasion by others onto private property or the regulation is so sweeping that it, in effect, takes away all economically viable use of land.[8]

D. Zoning must provide for due process of law and must provide equal protection of all persons affected by the laws.[9]

E. Regulation is limited by the principle of substantive due process. Government cannot just regulate anything. A regulation must be within a topic of what is appropriate for government. Substantive due process has to do with the substance of the regulation. (1) The regulation has to have a rational government purpose, or further a legitimate governmental interest. (2) The regulation has to directly relate to the governmental purpose. In simple terms, that means the local government should be able to explain how the regulation accomplishes its purpose or goal. With zoning, in Michigan, one looks to the master plan to contain the goals, objectives, strategies and actions upon which the zoning ordinance (regulation) is based. Within the master plan there are certain elements, comprising the "zoning plan," which more directly tie regulation in zoning to goals, and objectives in the master plan. (3) Finally, the rules should be the least amount of regulation possible to achieve the public purpose. If studies and science show a minor regulation will do the job, then that is all that should be required. It would not be appropriate to require additional regulation.

F. One cannot use community dispute resolution in the process of adopting zoning amendments or permit decisions. A local elected or appointed body cannot delegate away its legislative authority to neighbors or other entities, or require neighbor approval such as what is done in a homeowners association.[10] [11]

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[8] Both state and federal constitutions prohibit taking of private property for public use without just compensation – U.S. Constitution, Amendment V, and Michigan Constitution 1963, Article 10 §2. The U.S. Supreme Court has recognized that the government effectively "takes" a person's property by overburdening that property with regulations. *Pennsylvania Coal Co. v. Mahon*, 260 US 393, 415; 43 S Ct 158; 67 L Ed 2d 322 (1922). See also *K & K Construction, Inc. v. Department of Natural Resources*, 456 Mich 570, 576; 575 NW2d 531 (1998); *Lucas v. South Carolina Coastal Council*, 505 US 1003, 1015; 112 S Ct 2886; 120 L Ed 2d 798 (1992); *Penn Central Transportation Co. v. New York City*, 438 US 104; 98 S Ct 2646; 57 L Ed 2d 631 (1978); *Adams Outdoor Advertising v. City of East Lansing* (after remand), 463 Mich 17, 23-24; 614 NW2d 634 (2000); *Palazzolo v. Rhode Island*, 533 US 606; 121 S Ct 2448, 2457; 150 L Ed 2d 592 (2001); *Loveladies Harbor Inc. v. United States*, 28 F3d 1171 (1994); *Creppel v. United States*, 41 F3d 627 (1994); *Good v. United States*, 189 F3d 1355 (1999); *Lingle v. Chevron USA, Inc.*, 544 U.S. 528 (2005).

[9] U.S. Constitution, Amendment IV.

[10] While not a homeowners association, Traverse City residents adopted a charter amendment through voter initiative requiring voter approval to construct a building over 60-feet in height. This shared authority with voters has been a source of litigation; *326 Land Co., LLC v. City of Traverse City*, 2023 U.S. Dist.; *Save Our Downtown v. City of Traverse City*, 343 Mich App 523, 997 N.W.2d 498 (2022).

[11] Michigan courts have repeatedly affirmed that local legislative or quasi-judicial bodies may not delegate their zoning authority to private parties, such as neighbors or homeowners associations (HOA). In *Square Lake Hills Condominium Ass'n v Bloomfield Twp*, 437 Mich 310, 317-318 (1991), the Michigan Supreme Court clarified that zoning power is a legislative function derived from statute (MZEA) and must be exercised by the governmental body itself, not by private actors. In *Schwartz v City of Flint*, 426 Mich 295, 307-308 (1986), the judiciary was found to have exceeded their authority in a complex rezoning case, noting that the court cannot legislate in lieu of the municipality. Zoning decisions must be based on objective standards set forth in the ordinance. Municipalities cannot condition permits or rezonings on neighbor approval or HOA votes because doing so transfers governmental authority to entities lacking public accountability. Legislative bodies must apply uniform criteria established by law, ensuring equal treatment in land use decisions.

2. Outright preemption

Outright preemption by state law is concerned with whether (1) the statute completely occupies the field that the ordinance attempts to regulate; or (2) the ordinance directly conflicts with a state statute.[12] The Michigan Supreme Court set forth four guidelines to aid courts in determining whether a statute occupies the field of regulation.[13] See Appendix B, for more detail on this.

A. A. Local zoning cannot regulate the location or operation of hazardous waste disposal and/or storage facilities.[14] (It is probably acceptable to regulate fencing and haul routes if approved by the state siting board.)

B. Local zoning cannot regulate the location or operation of materials management facilities regulated under Part 115 of the Natural Resources and Environmental Protection Act (NREPA), and consistent with the Materials Management Plan (MMP) for the county.[15] (It may be acceptable to regulate fencing or other non-operational features.)

C. Local zoning cannot regulate electric transmission lines.[16]

D. Local zoning cannot regulate wind energy power transmission lines[17] within Primary and other Wind Energy Resource Zones established by order of the Michigan Public Service Commission, if a Expedited Siting Certificate for a transmission line is issued to a public utility by the Public Service Commission. Wind Energy Resource Zones do not include areas zoned residential at the time of the designation.

E. Local zoning cannot regulate pipelines that are regulated by the Michigan Public Service Commission.[18]

F. Local zoning (and state and local government) cannot regulate railroads.[19]

[12] *RPF Oil Co v Genesee Co*, 330 Mich App 533, 538 (2019).

[13] *People v. Llewellyn*, 401 Mich 314, 257 NW2d902 (1977).

[14] Section 11122 of Part 111 of Act 451 of 1994, as amended (the hazardous waste part of the Natural Resources and Environmental Protection Act (NREPA), MCL 324.11121). See also MCL 324.11122.

[15] Section 11583 of Part 115 of Act 451 of 1994, as amended (the solid waste management part of NREPA, MCL 324.11583).

[16] MCL 125.3205(1) (MZEA); and section 10(1) of PA 30 of 1995, as amended (the Electric Transmission Line Certification Act, MCL 460.570): "If the commission grants a certificate under this act, that certificate shall take precedence over a conflicting local ordinance, law, rule, regulation, policy, or practice that prohibits or regulates the location or construction of a transmission line for which the commission has issued a certificate."

[17] PA 295 of 2008, as amended, (being the Clean, Renewable, and Efficient Energy Act, MCL 460.1001 *et seq.*). In particular see sections 143, 145(4), 147(1), 149(1), and 153(4) in Part 4 of the act.

[18] The public service commission has the power and jurisdiction to hear and pass upon all matters pertaining to, necessary, or incident to the regulation of public utilities, except for railroads and railroad companies. (Some additional (non-zoning) regulatory powers rest with cities.) Section 4 and 6 of PA 3 of 1939, as amended, (being the Michigan Public Service Commission Act, MCL 460.4 and 460.6). PA 3 of 1895, as amended, (being the General Law Village Act, MCL 67.1a). PA 278 of 1909, as amended, (being the Home Rule Village Act, MCL 78.26a). P. A. 215 of 1895, as amended, (Being the Fourth Class City Act, MCL 91.6). PA 270 of 1909, as amended, (being the Home Rule City Act, MCL 117.5d).

[19] Interstate Commerce Commission Termination Act of 1995, 49 USC § 10101 *et seq.*; Section 131(1) of PA 354 of 1993, as amended, (being the Railroad Code of 1993, MCL 462.101 *et seq.*); and *Wabash, St. L. & P.R. Co. v. Illinois*, 118 U.S. 557 (1886).

G. Local zoning cannot regulate state prisons and public correctional facilities.[20] Private facilities can be regulated.

H. Township and county zoning cannot regulate or control the drilling, completion, operation, or abandonment of oil and gas wells or wells drilled for oil or gas exploration purposes.[21] Brine resulting as a byproduct of oil and gas exploration is not subject to local regulation.[22] Brine extracted from a mineral well for industrial purposes falls under jurisdiction of the Supervisor of Mineral Wells where oil and gas wells fall under the jurisdiction of the Supervisor of Wells (EGLE).[23] A flowline (pipeline) which is part of the operation of a well is also not subject to local regulation.[24] An exception to not regulating oil and gas wells is that local regulation can occur if zoning is for a designated "natural river."[25]

I. Local zoning cannot regulate surface coal mining and reclamation operations.[26] (See also "mining" in this publication.) An exception is that this regulation can occur if zoning is for a designated natural river.[27]

J. State water pollution regulations occupy the field for both point[28] and nonpoint[29] sources of pollution.

K. Regulations about farms/farming[30] are severely restricted by the Right to Farm Act. To determine what can, and cannot, be regulated locally is a two-part thought process. First is the land use going

[20] Section 4 of Chapter I of PA 232 of 1953, as amended, (Department of Corrections Act, MCL 791.204); MCL 791.216. Noted exception is at 791.220g(7). Also, *Dearden v. City of Detroit*, 403 Mich 257, 269 N.W.2d 139 (1978).

[21] MCL 125.3205(2) (MZEA); and part 615 of PA 451 of 1994, as amended (the supervisor of wells part of NREPA, MCL 324.61501 *et. seq.*). MZEA references county and township preemption, for cities see *City of Southfield v. Jordan Dev. Co.*, LLC, No. 333970, 2017 WL 5615838 (Mich. Ct. App. Nov. 21, 2017).

[22] MCL 324.61506 (c)

[23] MCL 324.62505; Supervisor of Mineral Wells' authority under Part 625 is not as broad as that granted to the Supervisor of Wells under Part 615. It is reasonable to conclude that Part 625 preempts local zoning authority with respect to issues such as the location, finishing and operation of industrial brine wells, but that the regulation of ancillary features like landscaping and lighting, to the extent that they are not expressly regulated by a Part 625 permit, *may* be subject to local zoning control.

[24] There are different types of pipelines. For a flowline (pipeline) from an oil or gas well connecting them together, and maybe up to a compression plant (gas), and/or up to the first point of sale (e.g., the meter from which royalty payments are calculated for those oil/gas wells), the Supervisor of Wells has exclusive jurisdiction. But there is dispute over how far the flowline from the well might go. A local government may have some jurisdiction over a pipeline from the point of sale, or "downstream" from the in-field processing (e.g., a compression plant (gas)) that goes to the market point. Third are pipelines which are under the regulation of the Michigan Public Service Commission, see "pipelines" in this publication.

[25] Section 30508 of PA 451 of 1994, as amended (the Natural Rivers part of NREPA, MCL 324.30508).

[26] Sec. 63504 of PA 451 of 1994, as amended (the surface and underground coal mine reclamation part of NREPA, MCL 324.63504). However, section 63505 reads, "This part shall not be construed as preempting a zoning ordinance enacted by a local unit of government or impairing a land use plan adopted pursuant to a law of this state by a local unit of government."

[27] Section 30508 of Act 451 of 1994, as amended (the natural rivers part of NREPA, MCL 324.30508).

[28] Section 3133 of Part 31 of PA 451 of 1994, as amended (the water resources (point source) part of NREPA, MCL 324.3133(1)) and upheld by *City of Brighton and Department of Environmental Quality v. Township of Hamburg,* 260 Mich. App. 345 (2004), Livingston Circuit Court LC No. 00-017695-CH.

[29] Section 8328(1) of Part 83 of PA 451 of 1994, as amended (the general non-point source pollution control part of NREPA, MCL 324.8328(1)).

[30] Farm means any activity that produces a farm product via a farm operation which is commercial, as defined in the Right to Farm Act, MCL 286.472. (There is no minimum amount of commercial required, *Charter Township of Shelby v Papesh*, 267 Mich. App. 92, 704 N.W.2d 92 (2005); and farm operation does not have to be within what one commonly thinks of as a traditional farm.)

to fall under the Right to Farm Act (RTFA), that is, is it a farm or agriculture? Start by asking these questions

- Is it a "farm operation?"[31]
- Is it producing "farm products?"[32]
- Is it commercial?

If the answer is "yes" to each of these above then it applies under the RTFA. If one of the answer(s) is "no" then that land use on that parcel can be regulated by local ordinance.

If all three are "yes", then second, is to determine what local regulations are preempted and which local regulations can still be enforced. If the topic of the regulation is already covered in the RTFA or in any of the published Generally Accepted Agricultural and Management Practices (GAAMPs), then local government cannot regulate it. If the topic is not in RTFA and not in any of the GAAMPs, then local regulation can still apply. Topics in RTFA, and thus off limits for local regulation are:

- Anything about a farmer's liability in a public or private nuisance lawsuit.[33]
- Anything about enforcement or investigation process for complaints involving agriculture.[34]
- The conversion from one or more farm operation activities to other farm operation activities.[35]

However, GAAMPs cover a much larger range of topics and an effort is made to keep GAAMPs up-to-date with the most current science-based best practices for farm operations. Usually in January or February of each year, the Michigan Commission of Agriculture and Rural Development is adopting updated versions of the GAAMPs.

Local zoning of agriculture cannot extend, revise or conflict with provisions of the Right to Farm Act or any GAAMPs,[36] including:

- Manure management and utilization.
- Pesticide utilization and pest control.
- Nutrient utilization.
- Care of farm animals.
- Cranberry production.
- Site selection and odor control for new and expanding livestock production facilities.
- Irrigation water use.
- Farm Markets[37]

[31] Defined in the act: MCL 286.472(b).

[32] Defined in the act: MCL 286.472(c).

[33] MCL 286.473

[34] MCL 286.474

[35] MCL 286.472(b)(ix)

[36] Section 4(6) of Act 93 of 1981, as amended (the Michigan Right to Farm Act, MCL 286.474(6)) and respective Michigan Commission of Agriculture and Rural Development adopted GAAMPs.

[37] The GAAMP sets forth that a farm market is a location where transactions and marketing activities between the farm market operator and customers take place (not necessarily but might be a physical structure). At least 50 percent of the products offered for sale must be from the affiliated farm. The "50 percent" can be measured by floor space or average gross sales for up to the previous five-years.

There is debate as to if one can, or cannot restrict farming to certain zoning districts. Unpublished court rulings suggest farms/farming must be allowed anywhere. Others suggest those cases were dealing with nonconforming farm uses. The Michigan Department of Agriculture and Rural Development takes the position a community can allow, or not allow farm/farming in various zoning districts. If farm/farming is allowed, then all types of farms must be allowed. A community cannot pick and choose what types of farms are allowed.

Complicating things further, some GAAMPs delegate regulation authority back to the local unit of government. Examples of this include:

- Municipalities with a population of 100,000 or more in which a zoning ordinance has been enacted to allow for urban agriculture (and designates existing agricultural operations present as nonconforming uses).
- Category 4 sites for livestock operations as determined in the Site Selection and Odor Control for New and Expanding Livestock Facilities GAAMPs.
- Vehicle access and egress, building setbacks, parking (but not the surface of the parking lot), signs for Farm Markets as designated in the Farm Markets GAAMPs.

There are far more nuances to all this, including unsettled case law as to if GAAMPs can delegate back regulatory authority that is preempted by state statute. See more detailed MSU Extension materials on the Michigan Right to Farm Act.[38]

If a local government submits its ordinance on farm/agriculture, showing that adverse effects on the environment or public health will exist within the local government without the ordinance, to the director of Michigan Department of Agriculture and Rural Development, and the Michigan Commission of Agriculture and Rural Development approves the ordinance, then those local regulations may apply.[39]

L. State fertilizer regulations 'occupy the field' 😉.[40]

M. Local zoning cannot regulate uses on state-owned land on Mackinac Island under the control of the Mackinac Island Park Authority. (Furthermore, buildings within established historic districts in the

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The farm market must be "affiliated" with a farm, meaning a farm under the same ownership or control (e.g. leased) as the farm market, but does not have to be located on the same property where the farm production occurs.

Marketing is part of a farm market and can include promotional and educational activities incidental to farm products with the intention of selling more farm products. These activities include, but are not limited to, farm tours (walking or motorized), demonstrations, cooking and other classes utilizing farm products, farm-to-table dinners. Activities not intended to sell more farm products that attract or entertain customers, onsite processing of farm products, and sales of non-farm products are subject to local zoning ordinances, state, federal laws, and associated rules and regulations.

If in a building/structure, the structure must comply with the Stille-Derosset-Hale Single State Construction Code Act (MCL 125.1501 *et seq.*). Parking may be on paved, vegetative, ground, gravel, or other unpaved material. Driveways must have a Michigan Department of Transportation (MDOT), county road commission, or village/city street agency permits. A minimum of one roadside sign is allowed, subject to applicable regulations on placement.

All details in the GAAMP are not covered, above. See also Section 2(b)(i) of Act 93 of 1981, as amended, (the Michigan Right to Farm Act, MCL 286.472(b)(i)).

[38] https://www.canr.msu.edu/planning/zoning_ordinance_resources/agricultural-right-to-farm

[39] Section 4(7) of PA 93 of 1981, as amended (the Michigan Right to Farm Act, MCL 286.474(7)).

[40] Section 8517(1) of Part 85 of PA 451 of 1994, as amended (the fertilizers part of NREPA, MCL 324.8517) generally preempts local fertilizer regulation but allows local standards where a municipality determines they are necessary to prevent unreasonable adverse environmental or public health effects or violations of other state or federal laws.

City of Mackinac Island are subject to design review and approval by the city historic district commission.)[41]

N. Upper Peninsula State Fairgrounds are under the jurisdiction of the Upper Peninsula State Fair Board of Managers.[42]

O. Local zoning cannot regulate trails that have received Natural Resources Commission designation as a "Michigan trailway"[43] and snowmobile trails which are subject to the Snowmobile Act.[44]

P. Local zoning cannot regulate any part of the Michigan State Police radio communication system.[45] The statute provides for the State Police to notify the local zoning authority of the proposed facility, and a 30-day period where the zoning authority can issue a special use permit or propose an alternative location. If the special use permit is not issued within 30 days, or the alternative location does not meet siting requirements, the state police can proceed with the first proposed site.

Q. Local zoning cannot regulate state-owned or leased armories and accessory buildings, military warehouses, arsenals and storage facilities for military equipment, and the land for military uses.[46]

R. Local zoning cannot regulate U.S. nuclear power[47] facilities and military facilities.[48]

S. Activities of a federally recognized Native American (Indian) tribal government within trust lands or within Indian country[49] are not subject to local zoning. (Tribal zoning, if any, does have jurisdiction.)[50]

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[41] Section 76504(2) of Part 76 of PA 451 of 1994, as amended (Mackinac Island State Park part of NREPA, MCL324.76504(2)).

[42] Section 2(1) of PA 89 of 1927, as amended (the Upper Peninsula State Fair Act, MCL 285.141 *et. seq.*).

[43] Section 82101 *et seq.* of Part 821 of PA 451 of 1994, as amended (Snowmobiles part of NREPA, MCL. 324.72101; *Township of Bingham v. RLTD Railroad Corp.*, 463 Mich. 634, 624 N.W.2d 725 (2001). (See also part 721, section 72103 of PA 451 of 1994, as amended (the Michigan trailways part of NREPA, MCL 324.72103) and section 10 of PA 295 of 1976, as amended (the State Transportation Preservation Act of 1976, MCL 474.60)).

[44] MCL 324.82101 *et seq.*, Michigan Attorney General Opinion No. 4918 (1975), and *Chocolay Charter Township v Department of Natural Resources*, no. 246171 (Mich. App., October 28, 2003) (unpublished). However, Section 82124 of NREPA does not completely bar local regulation of snowmobiles; it plainly allows local units of government to pass ordinances "regulating the operation of snowmobiles if the ordinance meets substantially the minimum requirements" of the act.

[45] PA 152 of 1929, as amended (the Michigan State Police Radio Broadcasting Stations Act, MCL 28.281 *et. seq.*).

[46] Section 380 of chapter 6 of PA 150 of 1967, as amended (the armories and reservations chapter of the Michigan Military Act, MCL 32.780).

[47] Title 42, Chapter 23 of the United States Code (42 USC Chap. 23); Atomic Energy Act of 1954, 68 Stat 919 (1954); 42 USC 2011); Michigan Attorney General Opinion No. 4073 (1962), No. 4979 (1976). According to Michigan Attorney General Opinion No. 5948 (1981), the state can regulate radioactive air pollution, including air pollution from nuclear power plants, but cannot prohibit nuclear power plants or nuclear waste disposal facilities within its boundaries.

[48] Title 40, Chapter 12, Section 619(h) of the United States Code (40 USC Sec. 619(h)).

[49] 18 U.S. Code §§ 1151 defines the term "Indian country." 25 CFR 1.4 preempts state and local regulation of the use of Indian real property held in trust or subject to restriction by the U.S. government. If land is held in trust by the U.S. government, there is no local government land use regulation on the property (i.e., zoning is superseded). There is also restricted fee land that is not held in trust but is restricted to tribal ownership and requires U.S. Secretary of the Interior consent for disposition. Restricted fee land is not subject to local regulation. If the land is owned fee simple by a member of the tribe or a tribal entity, and the land is considered 'open' to nontribal individuals (i.e., could be purchased by nontribal individuals), then state and local government regulation applies outside the boundaries of a reservation (see *Brendale* below).

[50] *Brendale v. Confederated Tribes and Bands of the Yakima Indian Nation et al.*, 492 US 408 (1989) addressed zoning jurisdiction in a checkerboarded ownership pattern area. This case was appealed. The U.S. Supreme Court combined the case with others

T. Public Schools, including public school academies or charter schools, under the jurisdiction of the Michigan superintendent of public instruction are not subject to local zoning.[51]

U. Certain public universities and colleges are not subject to local zoning.[52]

V. A local government is not subject to its own zoning ordinance when performing a governmental function.[53] A local government should carefully consider the implications of not conforming to their own zoning ordinance and consult their attorney before taking action. Inconsistent application of the ordinance to its own government functions could call into question the legitimacy of the local government's decision-making and invite an equal protection challenge. The Michigan Court of Appeals has recognized that a local government may expressly exempt certain government projects or functions from its zoning ordinance by writing the exemptions into the zoning ordinance.[54] The Court of Appeals has also differentiated between governmental function and proprietary function. So long as the local government "...is in pursuance of a governmental function, it would be exempt from

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before hearing it. The Supreme Court case, also involving the Crow Tribe in *Montana v. United States*, 450 US 544 (1981), further modified the *Brendale* decision to say "fee" lands and "trust" lands are different. Trust lands are zoned by the tribal *Ogema* (government).

The tribe also retains its zoning authority over non-Indian members in portions of a reservation where only a few, isolated parcels had been alienated and the tribe's power to determine that area's essential character remains intact. The tribe does not have zoning authority within a reservation in an area predominantly owned and populated by non-Indian members because such an area has lost its character as an exclusive tribal resource. The issue becomes where the lines -- boundary-- for these areas are drawn. Thus, resolution of where tribe or municipality jurisdiction exists is decided in court.

The court requires a case-by-case review to settle the issue of zoning jurisdiction, arguing it is impossible to articulate precise rules that will govern when tribal zoning or municipal/county zoning has jurisdiction.

[51] *Charter Township of Northville et al. v. Northville Public Schools* 469 Mich 285, 666 N.W.2d 213 (2003). Section 1263(3) of Act 451 of 1976, as amended (the Revised School Code, MCL 380.1263(3)). Pursuant to the Revised School Code, a 'public school academy' or 'charter school' is a state-supported public school under the state constitution, operating under a charter contract issued by a public authorizing body (RSC §380.501(1)). There is however a required 'consultation' with a township or county zoning authority before building or expanding a high school (MCL 380.1263(4-7)).

[52]Many public universities and some public colleges are expressly exempted from local zoning, whereas most private colleges are subject to local zoning. Determination is based on the statute creating the university/college. Article VIII Section 5 of the 1963 Michigan Constitution; Article VIII Section 6 of the 1963 Michigan Constitution; Section 5 of Act 151 of 1851, as amended (the University of Michigan Act, MCL 390.5); Sections 2 and 6 of Act 269 of 1909, as amended (the Michigan State University Act, MCL 390.102 and 390.106); Section 5 of Act 183 of 1956, as amended (the Wayne State University Act, MCL 390.645)); Section 4 of Act 35 of 1970, as amended (the Oakland University Act, MCL 390.154); Section 2 of Act 70 of 1885, as amended (the Michigan Technological University Act, MCL 390.352); Section 4 of Act 26 of 1969, as amended (the Lake Superior State University Act, MCL 390.394); Section 3 of Act 72 of 1857, as amended (the Albion College Act, MCL 390.703); Section 1 of Act 278 of 1965, as amended (the Saginaw Valley State University Act, MCL 390.711); Section 2 of Act 95 of 1943, as amended (the Hillsdale College Act, MCL 390.732); Sections 1 and 2 of Territorial Laws of 1833, Vol. III (the Kalamazoo College Act, MCL 390.751 and 390.752); Section 3 of Act 114 of 1949, as amended (the Ferris State University Act, MCL 390.803); Section 3 of Act 120 of 1960, as amended (the Grand Valley State University Act, MCL 390.843); Section 3 of PA 48 of 1963 (2nd Ex. Sess.), as amended (the Central, Eastern, Northern and Western Michigan Universities Act, MCL 390.553). Under the Community College Act (PA 331 of 1966), a community college board of trustees may "Locate, acquire, purchase, or lease in the name of the community college district a site or sites within or without the territory of the community college district for college buildings..." (MCL 389.121). Community colleges are granted corporate powers in the Act (MCL 389.103). However, the Act contains no express exemption from local zoning. Opinions vary on community college preemption, contact your municipal attorney. See also *Marquette Co. v. Bd. of Control of Northern Michigan Univ.*, 111 Mich. App. 521, 314 N.W.2d 678 (1981).

[53] *Morrison et al. v. City of East Lansing*, 255 Mich. App. 505 (2003). This case concerned the City and Village Zoning Act (now repealed), but the language the court used suggests this concept also applies to a township or county.

[54] *Mainster v. West Bloomfield*, 68 Mich. App. 319, 242 N.W.2d 570, 1976 Mich. App. LEXIS 711 (Court of Appeals of Michigan April 5, 1976, Decided).

the strictures of the ordinance."[55] This exemption is only for a government's own zoning ordinance. A local government must comply with another local government's zoning ordinance, unless statute includes evidence of legislative intent to exempt the activity, land use, or authority in question.[56] A local government should carefully consider the implications of not conforming to their own zoning ordinance and consult their attorney before taking action.

W. County buildings owned and built/located by a county board of commissioners are not subject to zoning[57] in so much as the county has the power to determine "the site of, remove, or to designate a new site for a county building," and to erect "the necessary buildings for jails, clerks' offices, and other county buildings…."[58] A county's power under the County Boards of Commissioners Act "is limited to the siting of county buildings." The court case establishing this preemption involved a county building and township zoning, but the language used by the court suggests the county is exempt from city and village zoning as well. Ancillary land uses indispensable to the building's normal use (such as parking lots, sidewalks, and light poles) are also not subject to zoning.[59] Other land uses that are subordinate or accessory to the main building may fall under local regulation.[60]

X. A local unit of government shall not regulate underground storage tanks inconsistent with the state statute and rules, nor require a permit, license, approval, inspection, or the payment of a fee or tax for the installation, use, closure, or removal of an underground storage tank system.[61]

Y. A local unit of government shall not enact or enforce an ordinance that regulates a large quantity water withdrawal[62] (more than an average of 100,000 gallons of water per day).

Z. A local unit of government shall not regulate the ownership, registration, purchase, sale, transfer, transportation, or possession of pistols, other firearms, or pneumatic guns, ammunition, or components thereof.[63]

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[55] *Keiswetter v. Petoskey*, 124 Mich. App. 590, 335 N.W.2d 94, 1983 Mich. App. LEXIS 2855 (Court of Appeals of Michigan April 5, 1983, Decided).

[56] Michigan Attorney General Opinion No. 6982 (1998).

[57] PA 156 of 1851, as amended (the County Boards of Commissioners Act, MCL 46.1 *et seq.*), and *Pittsfield Charter Township v. Washtenaw County and City of Ann Arbor*, 468 Mich 702, 664 N.W.2d 193 (2003).

[58] *Herman v. County of Berrien* 481 Mich. 352; 750 N.W.2d 570 (2008), Michigan Supreme Court.

[59] Ibid.

[60] *Coloma Charter Twp v. Berrien County* 317 Mich. App. 127; 894 N.W.2d 623 (2016), Michigan Court of Appeals.

[61] Section 109, and 108(2) of Part 211 of PA 451 of 1994, as amended, (being the Underground Storage Tanks part of NREPA, (MCL 324.21109, MCL 324.21108(2).) A local government can request a copy of registration and notification of changes to underground storage tank location.

[62] Section 26 of Part 327 of PA 451 of 1994, as amended, (being the Great Lakes Preservation part of NREPA, (MCL 324.32726) reads: "Except as authorized by the public health code, 1978 PA 368, MCL 333.1101 to 333.25211, a local unit of government shall not enact or enforce an ordinance that regulates a large quantity withdrawal. This section is not intended to diminish or create any existing authority of municipalities to require persons to connect to municipal water supply systems as authorized by law."

MCL 324.32701(p) defines "Large quantity withdrawal" to mean "1 or more cumulative total withdrawals of over 100,000 gallons of water per day average in any consecutive 30-day period that supply a common distribution system."

[63] Section 2 of the Firearms and Ammunition Act, PA 319 of 1990 (MCL 123.1101 *et seq.*) *and Michigan Coalition for Responsible Gun Owners v City of Ferndale* (256 Mich App 401, 409-410; 662 NW2d 864 (2003), lv den 469 Mich 880 (2003)).

Local government can only have such regulations that (1) duplicate current state criminal law, (2) regulation of its own government employee's use of firearms in the course of their employment duties, (3) requiring those under 16 to use a pneumatic gun under adult supervision when not on their own private property, (4) prohibiting use of a pneumatic gun in a

AA. Southeast Michigan Regional Transit Authority public transit facilities and public transportation system are exempt from local zoning ordinances or regulations which conflict with a coordination directive issued by the Authority.[64]

BB. Local government unit shall not control the amount of rent charged for leasing private residential property (unless the local government is the property owner/landlord) including through zoning or zoning permit conditions.[65] A local governmental can still adopt an ordinance or resolution to implement a plan to use voluntary incentives and agreements to increase the supply of moderate- or low-cost private residential property available for lease.

CC. Local government shall not require a permit for any other approval or any fees or rates for a) the replacement of a small cell wireless facility with a small cell wireless facility that is not larger or heavier, in compliance with applicable codes, b) routine maintenance of a small cell wireless facility, utility pole, or wireless support structure, c) the installation, placement, maintenance, operation or replacement of a micro wireless facility[66] that is suspended on cables strung between utility poles or wireless support structures in compliance with applicable codes.[67]

DD. Local government cannot regulate the use and growth of recreational marijuana within a residence if the actions fall within the scope of immunity granted by the Michigan Regulation and Taxation of Marihuana Act.[68]

EE. Local government shall not regulate or prohibit a sign that is located on or within a building and that commemorates any of the following who die in the line of duty: police officers, firefighters, medical first responders,[69] members of the United States Armed Forces, correction officers, veterans of the United States Armed Forces.[70]

FF. A municipality may not adopt an ordinance that restricts the transportation of marijuana through the municipality. [71]

GG. A local unit of government cannot regulate no trespassing signs in compliance with the Natural Resources and Environmental Protection Act, which allows no trespassing signs that would "enable

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threatening manner with intent to induce fear in another [MCL 123.1103]; (5) prohibiting discharge of a gun within a city or charter township, and (6) prohibiting discharge of a pneumatic gun within areas of a city or charter township with density of population such that discharge would be dangerous (but does not prevent use of target ranges and does not prevent if contained within private property) [MCL 123.1104].

[64] MCL 125.3205(1)(b) (MZEA) (effective March 27, 2013) and section 8(12) and section 15 of the Regional Transit Authority Act, MCL 124.548(12) and 124.555(15) (PA 387 of 2012).

[65] PA 226 of 1988 (MCL 123.411) Leasing of Private Residential Property

[66] MCL 460.1307(c) Micro wireless facility means a small cell wireless facility that is not more than 24 inches in length, 15 inches in width, and 12 inches in height and that does not have an exterior antenna more than 11 inches in length.

[67] MCL 460.1315(5) of PA 365 of 2018 (the Small Wireless Communications Facilities Deployment Act, MCL 460.1301 *et seq.*)

[68] MCL 333.27955(5) The Michigan Regulation and Taxation of Marihuana Act authorizes up to 2.5 ounces in possession (of which not more than 15 grams could be in the form of marijuana concentrate). Within an individual's residence a person may cultivate up to 12 plants for personal use and possess, store, and process up to 10 ounces of marijuana as long as amounts in excess of 2.5 ounces are stored in a container or area that has locks or other security devices.

[69] MCL 125.3205d(2) "medical first responder" means that term as defined in section 20906 of the Public Health Code, PA 368 of 1978, MCL 333.20906.

[70] MCL 125.3205d (MZEA, amended 2018, effective March 28, 2019)

[71] Section 6 of Michigan Regulation and Taxation of Marihuana Act, Initiated Law 1 of 2018, MCL 333.27956 (5).

a person to observe not less than 1 sign at any point of entry upon the property". The act requires that signs use a minimum 1-inch letter height and be a minimum size of 50 square inches.[72]

HH. A local ordinance shall not prohibit or regulate testing activities undertaken by an electric provider or independent power producer for purposes of determining the suitability of a site for placement of an energy facility.[73] This would include temporary anemometer towers or other equipment which may be moveable or affixed to the ground for a proposed study period, such as up to two years.

3. Preemption, sort of

A. Local governments cannot implement regulations that are more stringent or "higher" than those of the state for the site design of mobile home parks or manufactured housing communities (unless the local regulation has been approved by the Michigan Manufactured Housing Commission).[74]

B. Local government cannot regulate activities of the U.S. government on land owned by the federal government (although privately-owned facilities leased by the federal government can be regulated). Federal government must "consider" local regulations and follow them to "the maximum extent feasible," including consideration of zoning laws, and laws relating to landscaping, open space, minimum distance, maximum height, historic preservation, and esthetic qualities of a building, but it is not required to obtain a permit.[75] A federal instrumentality (where a federal government function

[72] Section 5 of Act 451 of 1994, as amended (the Natural Resource and Environmental Protection Act, Part 731 Recreational Trespass, MCL 324.73102 (b)); MCL 324.73111 (2) "A local unit of government shall not enact, maintain, or enforce an ordinance, regulation, or resolution that contradicts or conflicts in any manner with this part."

[73] MCL 460.1231(1) of the Clean and Renewable Energy and Energy Waste Reduction Act, Act 295 of 2008 (amended 2023, effective November 29, 2024)

[74] MCL 125.2307 of the Mobile Home Commission Act (PA 96 of 1987, as amended, MCL 125.2301 *et seq.*) and MI Administrative Code R 125.1101 *et seq*. A municipality may permit manufactured housing communities (MHCs) or additions to MHCs by special land use (*Silver Creek Twp v Corso*, 246 Mich App 94; 631 NW2d 346 (2001)). If a decision is made to grant the special land use, then the municipality (a) is preempted from imposing any "higher" standards unless they have been approved by the Commission, and (b) is limited only to preliminary plan review. Detailed construction plans cannot be required at a municipality's preliminary review stage. Nor can a municipality apply standards related to the business, sales, and service practices of mobile home dealers, mobile home installers and repairers or the manufacturer's recommended mobile home setup and installation specifications, or mobile home setup and installation standards promulgated by the federal Department of Housing and Urban Development pursuant to the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 USC 5401 to 5426.

[75] Title 40, Chapter 12, Section 619 of the United States Code (40 USC Sec. 619).

In carrying out its Federal functions, neither the United States nor its agencies are subject to state or local regulations absent a clear statutory waiver to the contrary. This concept is based upon the Supremacy Clause of the United States Constitution which states, in part, that it and the laws of the United States are the "supreme law of the land." (U.S. Constitution, Article VI, cl.2.)

It is a "seminal principal" of law that the United States Constitution and the laws made pursuant to it are supreme. *Hancock v. Train*, 426 U.S. 167,178.

"(I)t is of the very essence of supremacy to remove all obstacles to its action within its own sphere, and so to modify every power vested in subordinate governments, as to exempt its own operations from their own influence." *Hancock*, 426 U.S. 167,178 (*McCulloch v. Maryland, 4 Wheat*. 316,426 (1819)). Sovereign immunity means that where "Congress does not affirmatively declare its instrumentalities or property subject to regulation," "the federal function must be left free" of regulation. Id. (*Mayo v. United States*, 319 U.S. 441, 447-48).

is being done by a private entity) is also immune from any state law or local regulation directly inhibiting the purpose (and only its purpose).[76]

C. Local governments cannot implement regulations about nonferrous metallic mineral mining (nonferrous metallic sulfide deposits) that duplicate, contradict, or conflict with part 632 of the Natural Resources and Environmental Protection Act.[77] And such regulations (concerning hours of operation and haul routes) shall be reasonable in accommodating customary nonferrous metallic mineral mining operations.

D. Local zoning can regulate only certain specific aspects of extraction (mining) of natural resources (e.g., gravel, sand and similar pits).[78] Zoning cannot prevent extraction of natural resources unless "very serious consequences"[79] would occur. Regulations can include government's reasonable regulation of hours of operation, blasting hours, noise levels, dust control measures, and traffic (not preempted by the nonferrous metallic mineral mining part of the Natural Resources and Environmental Protection Act[80]). Such regulation shall be reasonable in accommodating customary mining operations. Extraction of minerals supersedes surface rights. (Oil and gas and coal mining cannot be regulated, see 2H and 2I.) Further regulation of mineral extraction might be acceptable if the zoning is for a designated natural river.

E. Local regulation of wireless communication antenna[81] and towers is preempted, in part, by the Federal Communications Act, court cases, and Michigan Zoning Enabling Act. In summary: cannot unreasonably discriminate between different provider companies;[82] "[t]he regulation of the placement, construction, and modification of personal wireless service facilities . . . shall not prohibit or have the effect of prohibiting the provision of personal wireless services"[83]; regulations cannot be based on "environmental effects of radio frequency emissions to the extent that such facilities comply with the [FCC]'s regulations. . ."[84]; applications must be acted on within certain deadlines and decisions shall "be in writing and supported by substantial evidence contained in a written record"[85]

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[76] *City of Detroit v. Ambassador Bridge Co*. Michigan Supreme Court (No. 132329, May 7, 2008); *United States v. Michigan*; and *Name.Space, Inc. v. Network Solutions, Inc*. (2nd Cir.). See also *Commodities Exp. Co. v. Detroit Int'l Bridge*, U.S. Court of Appeals Sixth Circuit No. 11-1758, September 24, 2012.

[77] Part 632 of PA 451 of 1994, as amended, (being the Nonferrous Metallic Mineral Mining part of the Michigan Natural Resources and Environmental Protection Act, (MCL 324.63203(4).

See also Michigan Attorney General Opinion 7269, September 27, 2012.

[78] Section 205(3)-205(6) of PA 110 of 2006, as amended, (being the Michigan Zoning Enabling Act, MCL 125.3206(3)-125.3205(6).

See also Michigan Attorney General Opinion 7269, September 27, 2012.

[79] See *Silva v Ada Township*, 416 Mich 153 (1982); *American Aggregates Corp v Highland Twp*, 151 Mich. App. 37; and MCL 125.3205(5).

[80] Part 632 of PA 451 of 1994, as amended, (being the Nonferrous Metallic Mineral Mining part of the Michigan Natural Resources and Environmental Protection Act, (MCL 324.63203(4).

[81] Title 47, Chapter 5, Subchapter III, Section 332(c)(7) of the United States Code (47 USC Sec. 332(c)(7). (See also section 251 of PA 179 of 1991, as amended (the Michigan Telecommunications Act, MCL 484.2251). Note that section 251 is repealed, effective December 31, 2005.)

[82] 47 USC § 332(c)(7)(B)(i)(I) (2006).

[83] 47 USC § 332(c)(7)(B)(i) (2006) and U.S. Court of Appeals Sixth Circuit (691 F.3d 794; 2012 U.S. App. LEXIS 17534, August 21, 2012).

[84] 47 USC § 332(c)(7)(B)(iv) (2006).

[85] 47 USC §§ 332(c)(7)(B)(ii)-(iii) and *City of Arlington, Texas v. Federal Communications Commission*, U.S. Supreme Court, May 20, 2013.

as well as following deadline requirements of local ordinance (if any) and the Michigan Zoning Enabling Act[86]; anyone harmed by a decision to deny a wireless facility permit can bring the issue to court, and the court must hear and rule on the case in an expedited manner[87]; state or local government must allow certain types of expansion of existing wireless facilities[88]; arguments concerning the impacts of property values must be documented by an expert, such as appraisers or realtors, testifying on the record who has conducted a study of the site[89]; and Michigan requires most applications for wireless facilities to be a permitted use in the local zoning ordinance with two exceptions as well as state decision deadlines.[90]

F. Regulation that (1) unreasonably delay or prevent installation, maintenance or use; (2) unreasonably increase the cost of installation, maintenance or use; or (3) preclude reception of an acceptable quality signal of customer-end antennas to receive signals[91] (e.g., "dish" antenna one meter or less in diameter,[92] direct-to-home satellite service, receive or transmit fixed wireless signals, video programming via broadband radio service (wireless cable) and wireless signals, and antenna designed to receive local television broadcasts). Clearly-defined local regulation exclusively for safety (e.g., securely fastened down), historic site protection are exceptions, and may be locally regulated. This does not apply to local AM/FM radio reception antennas, satellite, wireless, Wi-Fi, broadband, amateur "ham" radio,[93] CB radio, Digital Audio Radio Services "DARS" antennas.

G. A local unit of government may regulate the hours of ignition, discharge, and use of consumer fireworks so long as the regulation does not apply to certain holidays and times including New Years Eve/Day, Memorial Day, July 4th (week of), and Labor Day. [94]

H. A local unit of government with a population of 100,000 or more or a local unit of government located in a county with a population of 750,000 or more may enact or enforce an ordinance that regulates the use of a temporary structure used in the sale, display, storage, transportation or distribution of fireworks.[95] "A temporary structure includes, but is not limited to, a tent or stand. An ordinance established under this subsection may include, but is not limited to, a restriction on the number of permits issued for a temporary structure, regulation of the distance required between 2 or more

[86] MCL 125.3514 (MZEA)

[87] 47 USC § 332(c)(7)(B)(v)

[88] Public Law 112–96—Feb. 22, 2012; 126 USC 156 and FCC Public Notice DA 12-2047 "Wireless Telecommunications Bureau Offers Guidance on Interpretation of Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012"; January 25, 2013.

[89] *New Par v. Charter Twp. of Brighton*, 452 F. Supp. 3d 663 (2020)

[90] MCL 125.3514 (MZEA)

[91] Section 207 of Public Law 104-104 (Title 47, Chapter 5, Subchapter III, Part I, Section 303 of the United States Code (47 USC Sec. 303), the Communications Act of 1934, as amended); and rules adopted by the Federal Communications Commission (rule 47 CFR Section 1.4000) See: http://www.fcc.gov/guides/over-air-reception-devices-rule.

[92] Title 47, Chapter 5, Subchapter III, Section 303(v) of the United States Code (47 USC Sec. 303) and Federal Communications Commission administrative rules (47 USC Sec. 210(c).

[93] But see 47 CFR §97.15.

[94] Act 635 of 2018, as amended (Michigan Fireworks Safety Act, MCL 28.457 (2)) "If a local unit of government enacts an ordinance under this subsection, the ordinance shall not regulate the ignition, discharge, or use of consumer fireworks on the following days after 11 a.m.: (a) December 31 until 1 a.m. on January 1 (b) The Saturday and Sunday immediately preceding Memorial Day until 11:45 p.m. on each of those days (c) June 29 to July 4 until 11:45 p.m. on each of those days (d) July 5, if that date is a Friday or Saturday, until 11:45 p.m. (e) The Saturday and Sunday immediately preceding Labor Day until 11:45 p.m. on each of those days."

[95] MCL 28.457(4)

temporary structures, or a zoning ordinance that regulates the use of a temporary structure. An ordinance established under this subsection may not prohibit the temporary storage, transportation, or distribution of fireworks by a consumer fireworks certificate holder at a retail location that is a permanent building or structure."[96] Local units of government with a population below the threshold identified above "shall not enact or enforce an ordinance, code, or regulation pertaining to or in any manner regulating the sale, display, storage, transportation, or distribution of fireworks…"[97]

I. Activity at a publicly owned airport under control of an airport authority created by the Airport Authorities Act (i.e., Capital Regional Airport in Lansing) which are aeronautical uses are exempt from zoning, though non-aeronautical uses of such an airport are subject to zoning.[98] This may not apply to other types of public or private airports.

J. An amateur radio service station antenna structure may be erected at heights and dimensions sufficient to accommodate amateur radio service communications. Regulation amateur radio antenna must not preclude amateur radio service communications and reasonably accommodate and be the minimum practicable regulation to accomplish local government's purpose.[99] If near an airport federal code[100] and more than 60.96 meters (200 feet) tall must notify the federal aviation administration and register with the federal communications commission.[101]

K. A city, township, or village[102] may opt out of allowing state-licensed commercial medical marijuana facilities under the Medical Marihuana Facilities Licensing Act (MMFLA) by taking no action.[103] If one or more facility types are authorized by municipal ordinance, then local zoning and other ordinances can further regulate these facilities, apart from the purity or pricing of marijuana or any interference with statutory regulations for licensing marijuana facilities.[104] See patient-caregiver (MMMA) and recreational marijuana also in this publication.

L. Local zoning can regulate only certain specific aspects of new small wireless facilities located outside of the road right of way[105] (except for those activities exempt from zoning under section 15(5) of the Act).[106] The applicant must be notified within 30 days if the application is complete and a decision to approve or deny a modification of a wireless support structure must be made in writing within 90 days after an application is received. A written decision for a new wireless support structure must be submitted within 150 days of receiving the application. Time periods may be extended by mutual agreement.[107] An authority shall not deny an application unless all of the following apply: (i) The

[96] MCL 28.457(4)

[97] MCL 28.457(4)

[98] *Capital Region Airport Authority v. Charter Tp. of DeWitt*, 236 Mich. App. 576 (1999). Airport Authorities Act, PA 73 of 1970, as amended, MCL 259.801 *et seq*., in particular MCL 259.801, 259.807, and 259.809. Aeronautics Code, MCL 259.1.

[99] MCL 125.3205a (MZEA)

[100] 47 CFR 97.15

[101] 47 CFR part 17

[102] Counties are not included in the statutory definition of a municipality that may authorize the location of a marijuana facility.

[103] MCL 333.27205. The facility types authorized by the Medical Marihuana Facilities Licensing Act (MMFLA) are grower, processor, provisioning center, secure transporter, and safety compliance facility.

[104] MCL 333.27205

[105] MCL 125.3205(1c) (MZEA)

[106] PA 365 of 2018, Small Wireless Communications Facilities Deployment Act (MCL 460.1315(5)).

[107] MCL 460.1317(2(a-d)).

denial is supported by substantial evidence contained in a written record that is publicly released contemporaneously (ii) There is a reasonable basis for the denial (iii) The denial would not discriminate against the applicant with respect to the placement of the facilities of other wireless providers.[108]

M. Part 8 of the Clean and Renewable Energy and Energy Waste Reduction Act provides a state option for certification of new renewable energy facilities above established energy generation thresholds.[109] Local zoning authorities may adopt a compatible renewable energy ordinance (CREO)[110] to guarantee local decision making on applicable projects.[111] An exception from state siting or a CREO exists for a city and village that owns the subject property, are the developers of the facility or own the electric utility that will take service from the energy facility.[112] A CREO may include one, or more types of energy sources (solar, wind, energy storage).[113] If the local zoning authority fails to make a timely decision[114] , amends the ordinance such that it is more restrictive than Sect. 226(8), or denies an application that meets standards found in Section 226(8), the applicant can file for certification through the Michigan Public Service Commission (MPSC).[115] The Act does not prohibit a local zoning authority from adopting or retaining an incompatible ordinance (referred to as a workable incompatible ordinance or WIO[116]). However, if a developer determines an ordinance to be unworkable, they may apply for certification through the MPSC.[117]

[108] MCL 460.1317(2e).

[109] Clean and Renewable Energy and Energy Waste Reduction Act, PA 295 of 2008 (amended 2023, effective November 24, 2024) MCL 460.1222(1), any solar energy facility with a nameplate capacity of 50 MW or more, any wind energy facility with a nameplate capacity of 100 MW or more, any energy storage facility with a nameplate capacity of 50 MW ore more and an energy discharge capability of 200 MW hours or more.

[110] MCL 460.1221(f), compatible renewable energy ordinance means an ordinance that provides for the development of energy facilities within the local unit of government, the requirements of which are not more restrictive than the provisions of Section 226(8). A local unit of government is considered not to have a compatible renewable energy ordinance if it has a moratorium on the development of energy facilities in effect within its jurisdiction.

[111] MCL 460.1223(3)

[112] MCL 460.1222(4)

[113] Sample compatible renewable energy ordinances are available for MTA members and from U-M, Graham Sustainability Institute, Center for EmPowering Communities: https://graham.umich.edu/project/MI-energy-siting

[114] MCL 460.1223(3.b), A local unit of government with which an application is filed under this subsection shall approve or deny the application within 120 days after receiving the application. The applicant and local unit of government may jointly agree to extend this deadline by up to 120 days

[115] MCL 460.1223(3.c.i-iii)

[116] A workable incompatible ordinance (WIO) is not defined in Michigan statute. It is a term conceived of by practitioners, attorneys, and academicians to describe a local permitting/zoning option after the adoption of PA 233 of 2023.

[117] MCL 460.1222 through 460.1227, MPSC process requirements including, but not limited to, the public input process, application, site plan, decommissioning plan, additional studies and consultation, community benefit agreement.

4. If one use is permitted, others must be, also

A. If land is zoned "residential" of a specified density, then the ordinance must provide for a cluster (open space) type of development in qualified communities.[118]

B. In zoning districts where dwellings are permitted, the ordinance must also allow:

- Manufactured (mobile) homes, subject to reasonable local standards to ensure compatibility within the same residential zone.[119]
- State-licensed residential facilities (e.g. daycare and foster care).[120]
- Expanded capacity for home-based daycare (up to 7 from 6, for family daycare and up to 14, from 12, for group daycare).[121]
- Qualified residential treatment program that provides services to 10 or fewer individuals.[122]
- Home occupation for instruction in a craft or fine art (e.g., music lessons).[123]
- "Family day-care home" and "group day-care home" (e.g., child daycare facilities) in counties and townships are a permitted use in all residential zones and not subject to a procedure different

[118] MCL 125.3506 (MZEA). Qualified communities are those that have adopted a zoning ordinance, have a population of 1,800 or more, and have land that is not developed and that is zoned for residential development at a density describe in subsection 1(a).

[119] *Robinson Township v. Knoll*, 410 Mich 310 (1981): "...a municipality need not permit all mobile homes, regardless of size, appearance, quality of manufacture or manner of onsite installation, to be placed in all residential neighborhoods. A mobile home may be excluded if it fails to satisfy reasonable standards designed to assure favorable comparison of mobile homes with site-built housing which would be permitted on the site, and not merely because it is a mobile home."

Section 7(6) of Act 96 of 1987, as amended (the Mobile Home Commission Act, MCL 125.2307(6)), which reads in part, "A local government ordinance may include reasonable standards relating to mobile homes located outside of mobile home parks or seasonal mobile home parks which ensure that mobile homes compare aesthetically to site-built housing located or allowed in the same residential zone."

[120] MCL 125.3206 refers to state licensed residential facilities are described in M.C.L 722.111, PA 116 of 1973 (Child Care Organizations Act,) and Section 701 and 737 of Public Act 218 of 1979 (Adult Foster Care Facility Licensing Act, MCL 400.703.

[121] MCL 722.111 (1(u)) (Child Care Organizations, Act 116 of 1973 "increased capacity" means 1 additional child added to the total number of minor children received for care and supervision in a family child care home or 2 additional children added to the total number of minor children received for care and supervision in a group child care home. In a circular reference, the MZEA, MCL 125.31032(j), defines family child care home and group child care home as those defined in MCL 722.111.

[122] MCL 125.3206 (MZEA). HB 5041 was signed into law on September 28, 2022 and amended MCL 125.3206 to allow for Qualified Residential Treatment Programs (QRTP), see Child Care Organizations Act (Act 116 of 1973) Section 1 (y) "Qualified residential treatment program" or "QRTP" means a program within a child caring institution to which all of the following apply:
(i) The program has a trauma-informed treatment model, evidenced by the inclusion of trauma awareness, knowledge, and skills into the program's culture, practices, and policies.
(ii) The program has registered or licensed nursing and other licensed clinical staff on-site or available 24 hours a day, 7 days a week, who provide care in the scope of their practice as provided in parts 170, 172, 181, 182, 182A, and 185 of the Public Health Code, PA 368 of 1978, MCL 333.17001 to 333.17097, 333.17201 to 333.17242, 333.18101 to 333.18117, 333.18201 to 333.18237, 333.18251 to 333.18267, and 333.18501 to 333.18518.
(iii) The program integrates families into treatment, including maintaining sibling connections.
(iv) The program provides aftercare services for at least 6 months post discharge.
(v) The program is accredited by an independent not-for-profit organization as described in 42 USC 672(k)(4)(G).
(vi) The program does not include a detention facility, forestry camp, training school, or other facility operated primarily for detaining minor children who are determined to be delinquent.

[123] MCL 125.3204 (MZEA)

from those required for other dwellings of similar density in the same zone.[124] (Cities and villages can regulate these by special use permit.[125])

- Daycare facilities with *increased capacity* (meaning one additional child per family childcare home and two additional children for group childcare homes) that meet state licensing requirements.[126]

C. If land is zoned to allow farms, or farms are allowed as a nonconforming use then a biofuel production facility that produces 100,000 or less gallons of biofuel shall be a permitted use on a farm subject to certain conditions. A biofuel production facility of more than 100,000 but not more than 500,000 gallons of biofuel shall be a possible special use on a farm subject to certain conditions.[127]

D. A municipality may not adopt an ordinance that prohibits a licensed recreational marihuana grower, a marihuana processor, and a marihuana retailer from operating within a single facility or from operating at a location shared with a marihuana facility operating pursuant to the medical marihuana facilities licensing act, PA 281 of 2016, MCL 333.27101 to 333.27801.[128]

E. If one type of agriculture is allowed in a zoning district, then all types of agriculture are allowed in that zoning district.[129]

[124] MCL 125.3206(3) and 125.3206(4) (MZEA)

[125] MCL 125.3206(5) (MZEA)

[126] MCL 722.111(1)(u) Child Care Organizations, Act 116 of 1973, "increased capacity" means 1 additional child added to the total number of minor children received for care and supervision in a family child care home or 2 additional children added to the total number of minor children received for care and supervision in a group child care home. In a circular reference, the MZEA, MCL 125.31032(j) defines family child care home and group child care home as those defined in MCL 722.111. Applicants must meet the State's criteria for increased capacity through application to the Michigan Department of Licensing and Regulatory Affairs, Child Care Licensing Bureau. PA 106 of 2022 (HB 5041) added this definition for increased capacity in MCL 722.111.

[127] MCL 125.3513 (MZEA)

[128] MCL 333.27956(5). Those communities that have opted out of establishing medical marihuana facilities may prohibit recreational marihuana establishments (MCL 333.27956(1). Facilities operating under the Medical Marihuana Facilities Licensing Act cannot be prohibited by local ordinance from becoming a "location shared" with a licensed recreational marihuana grower, processor, or retailer.

[129] MCL 286.473(3), Michigan Right to Farm Act, PA 93 of 1981

5. Can regulate but not prohibit

A. Signs can be regulated so long as the regulation is not dependent on (does not regulate) the content of the sign.[130] Also, sign regulation just for aesthetic purposes can be problematic.[131] A rule of thumb is if one has to read the sign to determine what regulation applies to the sign, you have a content-based regulation which is not appropriate.

   There are many, and complex, additional limitations on sign regulation (for example limited or no regulation of signs via zoning in a road right-of-way, and constraints of regulation (also shared with the Michigan Department of Transportation) in highway rights-of-way). See *Michigan Sign Guidebook, 2nd Edition*, Scenic Michigan,[132] December 2021.

B. Local zoning cannot limit religious activities/land uses in any terms that differ from those for other assemblies and nonreligious activities/land uses, nor can they interfere with religious activity.[133]

C. Adult entertainment or sexually oriented businesses can be regulated but not totally excluded.[134]

D. Existing shooting ranges (gun clubs) can continue after zoning is changed to prohibit or further regulate the range.[135]

E. Under the Michigan Medical Marijuana Act (MMMA) local ordinance can regulate the non-commercial cultivation, manufacture, or possession of marijuana, but not to the extent of prohibiting, or otherwise imposing a penalty on, use or cultivation of marijuana within the scope of immunity granted by the Act.[136] [137] See also medical and recreational marijuana facilities in this publication.

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[130] U.S. Constitution, Amendment I.

Strict scrutiny applies to content-based sign regulations: *Reed v. Town of Gilbert*, 576 U.S. 155 (2015).

Different regulations for off-premises vs. on-premises signs are content-neutral thus subject to facial challenge rather than strict scrutiny: *City of Austin v. Reagan National Advertising of Austin, LLC*, 596 U.S. 61 (2022).

Sign regulation for "commercial speech" (an ad to propose a commercial transaction): *Bolger v. Youngs Drug Products Corp.*, 463 US 60, 66 (1983).

Sign regulation for "noncommercial" speech (political or ideological speech): *Central Hudson Gas & Electric Corp. v, Public Service Commission*, 447 US 557 (1980).

Regulations that relate only to "time, place or manner" (e.g., regulations that are "content-neutral") must meet court rules set down in *U.S. v. O'Brien*, 391 US 367 (1968): (1) furthers an important or substantial governmental interest, (2) is unrelated to the suppression of speech, and (3) limits speech no more than necessary to protect whatever 1st Amendment interests are involved.

[131] *St. Louis Gunning Advertising Co. v. City of St. Louis*, 137 SW 929 (1911), appeal dismissed 231 US 761 (1913). *City of Passaic v. Paterson Bill Posting, Advertising & Sign Co.*, 62 A. 267 (1905).

[132] *Michigan Sign Guidebook*, © Scenic Michigan: https://scenicmichigan.org/sign-regulation-guidebook/

[133] Title 42, Chapter 21C of the United States Code, codification of Religious Land Use and Institutionalized Persons Act of 2000 (PL 106-274). *United States v. City of Troy*, 592 F. Supp. 3d 591; *Catholic Healthcare Int'l, Inc. v. Genoa Charter Twp.*, Mich., 82 F.4th 442 (6th Cir. 2023).

[134] *Young v. American Mini Theaters, Inc.*, 427 US 50, 71, 96 S Ct 2440, 49 L Ed 2d 310 (1976).

[135] Section 2a(1) of Act 269 of 1989, as amended (the Sport Shooting Ranges Act, MCL 691.1542a(1)). *Oakland Tactical Supply, LLC v. Howell Township*, 103 F.4th 1189 (6th Cir. 2024).

[136] MCL 333.26424(a); *Ter Beek v. City of Wyoming*, 495 Mich. 1 (2014).

[137] *Deruiter v. Twp. of Byron*, 505 Mich. 130, 949 N.W.2d 91, (2020).

6. Can regulate but not less strictly than the state

A. Local air pollution regulations must be at least as strict as those of the state.[138]

B. Local zoning cannot conflict with adopted airport zoning.[139]

C. Regulation of Great Lakes shoreland high-risk areas, flood risk areas, and environmental areas are subject to approval and oversight by the Michigan Department of Environment, Great Lakes, and Energy.[140]

D. Designated sand dunes protection is subject to approval and oversight by the Michigan Department of Environment, Great Lakes, and Energy. Zoning cannot be more restrictive than the state model zoning plan.[141]

E. State natural rivers protection is subject to approval and oversight by the Michigan Department of Natural Resources.[142]

F. Local governments can regulate/protect wetlands, but the local regulations cannot deviate from the state's definition of a wetland, and the local parts of the zoning ordinance must be approved by the Michigan Department of Environment, Great Lakes, and Energy.[143]

G. Local regulation of floodplains cannot be less strict than that of the state.[144]

H. Local regulation of soil erosion and sedimentation cannot be less strict than that of the state (or of counties administering rules promulgated under state statute).[145]

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[138] Section 5542(1) of Part 55 of PA 451 of 1994, as amended (the air pollution control part of the NREPA, MCL 324.5542(1)).

"(1) Nothing in this part or in any rule promulgated under this part invalidates any existing ordinance or regulation having requirements equal to or greater than the minimum applicable requirements of this part or prevents any political subdivision from adopting similar provisions if their requirements are equal to or greater than the minimum applicable requirements of this part.

"(2) When a political subdivision or enforcing official of a political subdivision fails to enforce properly the provisions of the political subdivision's ordinances, laws, or regulations that afford equal protection to the public as provided in this part, the department, after consultation with the local official or governing body of the political subdivision, may take such appropriate action as may be necessary for enforcement of the applicable provisions of this part.

"(3) The department shall counsel and advise local units of government on the administration of this part. The department shall cooperate in the enforcement of this part with local officials upon request."

[139] Section 18 of PA 23 of 1950 Extra Session, as amended (the Airport Zoning Act, MCL 259.448 *et seq.*). (Section 15 (MCL 259.445) provides for airport zoning to be a part of local zoning.)

[140] Part 321 of PA 451 of 1994, as amended (the shorelands protection and management part of NREPA, MCL 324.32301 *et seq.*). "A zoning ordinance or a modification or amendment to a zoning ordinance that regulates a high-risk area, a flood risk area, or an environmental area shall be submitted to the department for approval or disapproval" (MCL 324.32311).

[141] Part 353 of PA 451 of 1994, as amended (the sand dunes protection and management part of NREPA. Model zoning plan detailed in MCL 324.35304 to 324.35309 and MCL 324.35311a to 324.35324).

[142] Part 305 of PA 451 of 1994, as amended (the natural rivers part of the NREPA, MCL 324.30501).

[143] Part 303 of PA 451 of 1994, as amended (the wetlands part of the NREPA, MCL 324.30301) and Opinion of the Attorney General No. 6892 (March 5, 1996).

[144] Part 301 of PA 451 of 1994, as amended (the inland lakes and streams part of the NREPA, MCL 324.30501).

[145] Part 91 of PA 451 of 1994, as amended (the soil erosion and sedimentation control part of the NREPA, MCL 324.9101 *et seq.*).

I. Local regulation of disposal of septage can be the same or more strict than state statute.[146]

Authors

This publication was developed by:

- Kurt H. Schindler, AICP Distinguished Senior Educator Emeritus, Government and Public Policy, MSU Extension, Michigan State University (Retired 2018).
- Mary Reilly, AICP, Educator, Government and Community Vitality, Michigan State University Extension.
- Brad Neumann, AICP, Senior Educator, Government and Community Vitality, Michigan State University Extension.

To find contact information for authors or other MSU Extension experts use this web page: http://msue.anr.msu.edu/experts

[146] Part 117 of NREPA (MCL 324.11701 *et seq.*), specifically MCL 324.11715, and *Gmoser's Septic Service, LLC v. Charter Township of East Bay*, Mich App (Published No. 309999, February 19, 2013).

Appendix A. Commonly Believed to be Exempt From Zoning

Items subject to zoning

There are some prevailing misunderstandings which have led some to believe the following activities are exempt, or not subject to zoning. However, in fact these activities are subject to zoning:

1. Michigan Department of Natural Resources boat launches (and by extension other state park and state forest land uses).
2. Private schools and other schools which are not under the jurisdiction of the Michigan superintendent of public instruction.
3. Zoning regulation applies to property which has been sold for construction of a school even though deed restrictions on the sale of the property are not allowed.[147]
4. Electric substations.[148]

Appendix B. Case Law in Preemption

Conflict between statute and local ordinance.

"[A]n ordinance is preempted if it is in direct conflict with the state statutory scheme[.]" *RPF Oil Co v Genesee Co*, 330 Mich App 533, 538 (2019). "A local regulation directly conflicts with a state statute if the regulation permits what the statute prohibits or prohibits what the statute permits." *Id.* at 538-539. "State law may preempt a local government's law either through a direct conflict or through occupying the field of regulation which the municipality seeks to enter." *Id.* at 538. "[A]n ordinance is not conflict preempted as long as its additional requirements do not contradict the requirements set forth in the statute." *DeRuiter v Byron Twp*, 505 Mich 130, 147 (2020) (holding that a local ordinance was not preempted by statute where restrictions imposed by the ordinance "add[ed] to and complement[ed] the limitations imposed by the [statute]" and the restrictions did not effectively prohibit the activity permitted by the statute).

Appendix C. Update List

Note. This Land Use Series is regularly updated. The first edition was prepared May 16, 2002. Subsequent updates include:

- June 23, 2003; July 14, 2003; August 5, 2003; January 21, 2004:
  - County buildings, *Pittsfield Charter Township v. Washtenaw County and City of Ann Arbor*, 468 Mich 702, 664 N.W.2d 193 (2003)

[147] PA 98 of 2017, Educational Instruction Access Act, MCL 123.1041 *et seq.*

[148] If a substation is part of a certified transmission project, a state certificate could override conflicting local zoning. If denied by local zoning, the utility may seek a Certificate of Public Convenience and Necessity through the MPSC, MCL 460.568(1). While local governments generally retain authority to site a substation or substation expansion through zoning, efforts to prohibit necessary service infrastructure may be subject to legal challenge. Some communities classify substations as an essential service, allowing them in all districts and exempting the use from zoning regulation.

  - Follow one's own ordinance, *Morrison et al. v. City of East Lansing*, 255 Mich. App. 505 (2003).
  - Public schools, *Charter Township of Northville et al. v. Northville Public Schools* 469 Mich 285, 666 N.W.2d 213 (2003).
  - State fair, *City of Detroit v. State of Michigan*, 626 Mich. App. 542 (2004), Wayne Circuit Court LC No. 00-021062-CE.
- December 6, 2005:
  - Takings, *Lingle v. Chevron USA, Inc.*, 544 U.S. 528 (2005), and
  - repeal of section 251 of the Michigan Telecommunications Act, MCL 484.2251) effective December 31, 2005.
  - Water pollution, *City of Brighton and Department of Environmental Quality v. Township of Hamburg*, 260 Mich. App. 345 (2004), Livingston Circuit Court LC No. 00-017695-CH.
- April 24, 2006: PA 110 of 2006, as amended, (being the Michigan Zoning Enabling Act, MCL 125.3101 et seq.
- June 26, 2006: Section 109, and 108(2) of Part 211 of PA 451 of 1994, as amended, (being the Underground Storage Tanks part of the Michigan Natural Resources and Environmental Protection Act, (MCL 324.21109, MCL 324.21108(2).)
- January 8, 2007: Large quantity water withdrawal added: Section 26 of Part 327 of PA 451 of 1994, as amended, (being the Great Lakes Preservation part of the Michigan Natural Resources and Environmental Protection Act, (MCL 324.32726), effective February 28, 2006.
- May 2, 2007: Added *Herman v. County of Berrien* ((Published No. 273021, April 26, 2007) 481 Mich. 352; 750 N.W.2d 570; 2008 Mich. LEXIS 1166, June 18, 2008, Michigan Supreme Court) to footnote on county building exception from zoning.
- June 28, 2007: Added information on zoning regulation of railroads.
- January 30, 2008: Added information on snowmobile trails.
- April 9, 2008: To remove: '4.C. If a county zones an area "business," "commercial," "industrial," "manufacturing," "service" or similar (or the area is not zoned), then it must allow billboards along state highways' as a result of PA 93 of 2008 amendment to PA 106 of 1972, as amended, (being the Highway Advertising Act of 1972, MCL 252.301 et. seq.) which provide counties the authority to regulate billboards.
- May 14, 2008: Added "Federal Instrumentality"; Case Name: *City of Detroit v. Ambassador Bridge Co.* Michigan Supreme Court (No. 132329, May 7, 2008); and added "*Kyser v. Kasson Twp.*, Michigan Court of Appeals (Published No. 272516 and No. 273964, May 6, 2008)." to the footnote on gravel/sand mining.
- June 26, 2008: Added more detail about county building exemption from zoning as a result of *Herman v. County of Berrien* (Published No. 134097, June 18, 2008) Michigan Supreme Court.
- October 8, 2008:
  - added further discussion on federal supremacy concerning zoning not having jurisdiction over federal activities.
  - added wind energy power transmission lines as a result of MCL 460.1001 *et seq.*
- December 10, 2008:
  - added farm market discussion.
  - television reception antennas
  - Added Appendix A. List of items which are subject to zoning, but confusions results in some believing the land use is exempt from zoning.

- February 11, 2009: Added appendix B
- April 3, 2009: Added halfway houses operated by the Michigan Department of Corrections.
- August 7, 2009: Moved "farming" from "Preemption, Sort of" to "Outright Preemption" and revised text.
- January 18, 2010: Added "farm market" to list of GAAMPs.
- July 19, 2010: Removed from "5. Can Regulate, but Not Prohibit" the following text:

> Local zoning can regulate extraction (mining) of natural resources (e.g., gravel, sand and similar pits), but this does not include coal, oil and gas. Zoning cannot prevent extraction of natural resources unless "very serious consequences" would occur. Regulations can include time limits for mining and reclamation. Extraction of minerals supersedes surface rights. (Oil and gas and coal mining cannot be regulated, see 2H and 2I.) Further regulation of mineral extraction might be acceptable if the zoning is for a designated natural river.

This was removed as a result of *Kyser v. Kasson Twp.*, July 15, 2010.

- July 14, 2011: Added nonferrous metallic mineral mining (nonferrous metallic sulfide deposits) to "Preempted, sort of."
- July 20, 2011: Added to "Preemption, Sort of" mining of valuable natural resources which reinstates the *Silva v. Ada Township* "no serious consequences rule" along with additional specifics in statute (PA 113 of 2011).
- August 1, 2011: Added "Biofuel production facility" (PA 97 of 2011).
- December 21, 2011: Editing changes. Clarification of jurisdiction over farms concerning the Right to Farm Act.
- May 9, 2012: Added "fireworks" and "novelties" to "outright preemption."
- May 29, 2012: Added "Wireless communications" to preemption, sort of.
- June 14, 2012:
  - Added pistols and firearms.
  - Relocated discussion on Fireworks to "Preempted, Sort of" reflecting A.G. Opinion 7266 (June 12, 2012).
- October 31, 2012:
  - Added Michigan Attorney General Opinion 7269, September 27, 2012, to footnotes on mining.
  - Added *Commodities Exp. Co. v. Detroit Int'l Bridge*, U.S. Court of Appeals Sixth Circuit No. 11-1758, September 24, 2012 to footnote on federal government preemption.
- January 3, 2013: Added the southeast Michigan Regional transit authority public transit facilities as exempt from zoning.
- February 22, 2013: Added disposal of septage.
- June 21, 2013: Revised entry on "fireworks" to reflect amendments (PA 65 of 2013) to the Michigan Fireworks Safety Act.
- September 16, 2013:
  - Updated Wireless Communication Facilities to reflect court, federal law, FCC guidelines, and the Sequestration Act changes.
  - Updated for customer-end antennas to receive signals.
- January 24, 2014: Added further explanation about sign regulation, and reference to Michigan Sign Guidebook.

- February 7, 2014: Added can regulate but not prohibit medical marijuana.
- February 26, 2014: Added footnote to clarify different types of pipelines (flowlines).
- October 1, 2014: Added publicly owned airport under control of an airport authority (Lansing).
- October 16, 2014: Clarified item 2.P. on Michigan State Police communication facilities.
- November 10, 2014: Clarified item 6.D. on sand dunes (local regulation cannot be stricter than the state model regulation, and item 2.K. on Right to Farm Act.
- January 15, 2015: Added amateur radio service station antenna structure regulation restrictions.
- June 22, 2015: Further clarification about Right to Farm Act preemption of local authority and possible GAAMPs delegating that authority back.
- August 24, 2015: Further clarification about prohibition of local regulation of firearms and pneumatic guns (item 2.Z.).
- September 13, 2016: Added court case *Coloma Charter Twp. V. Berrien County* – a county cannot establish a land use over zoning (item 2.W.).
- March 28, 2017:
  - Changed discussion about medical marihuana qualifying patient and care givers (item 5.F.).
  - Added state-licensed commercial medical marijuana facilities (item 3.J.).
- August 3 and 10, 2017: Added item #3 to Appendix A and re-designed the format of this publication to comply with web accessibility and MSU branding standards. Added 1.E. substantive due process and the "rule of thumb" to sign regulation.
- June 14, 2018: Added 2.BB. Outright Preemption statutory prohibition for local government rent controls.
- [June-October 2018}: Added material on not delegating decisions to neighbors and its footnote.
- May 7, 2019: Added preemption of signs commemorating those who died in service, added pre-emption of small wireless communications facilities deemed to be exempt from zoning and those that are subject to zoning (with conditions for denial). Added pre-emptions related to recreational marijuana (MRTMA) and certain pre-emptions triggered by "shared location" with marijuana establishments approved under MMFLA. Added provisions related to the legalization of the adult marijuana use.
- July 9, 2019: Modified #3.G., added H related to amendments to the Michigan Fireworks Safety Act (Act 635 of 2018, MCL 28.457) restrictions on regulating temporary structures and enacting ordinances prohibiting fireworks use around certain holidays/times.
- November 19, 2020: Modified #2V related to local units of government's authority to not follow their own zoning ordinance, new citations and clarification language. Added #2GG local units of government cannot regulate No Trespassing Signs in compliance with NREPA, (MCL 324.7311).
- March 9, 2021: Added *DeRuiter v. Twp of Byron*, MI Supreme Court decision under MMMA provision in 5E. Further modified #2V to caution against local units of government from not conforming to their own zoning ordinance.
- June 7, 2023: Modified #4.B., added Qualified Residential Treatment Program (QRTP) providing service to 10 or fewer individuals as a residential use of property. Included expanded capacity in family daycare (1 additional child) and group daycare homes (2 additional children).
- March 23, 2026: Updates to reference court cases and footnotes throughout, as appropriate. Comprehensive review and update to the document, including but not limited to, manufactured home communities, brine wells, community colleges, substations, nonconformities, Act 233 (renewable energy), daycare facilities.