

Land Use Series

May 1, 2008

Bringing
Knowledge
to Life!

1C:

Summary of changes between new Michigan Planning Enabling Act and the three old planning acts: Municipal Planning Act, County Planning Act, and Township Planning Act.

*"Thirty seven million
acres is all the Michigan
we will ever have."*

Former Governor
William G. Milliken

This is a summary of Michigan Public Act 33 of 2008, as amended, (being the Michigan Planning Enabling Act, M.C.L. 125.3801 *et. seq.*), and compares it to the old statutes. The Michigan Planning Enabling Act is a new statute, that changes how various planning procedures are done, and provides new duties and power to many planning commissions in the state. A purpose of this act was to create a single set of procedures to follow regardless of whether planning is being done by a city, village, township, or by a county. To attempt to unify procedures from three old acts which had different processes, some change was inevitable.

After September 1, 2008 (the effective date of the act) only the procedures in the Michigan Planning Enabling Act should be used as the act replaces the following statutes.

Only for matters that took place before September 1, 2008 should these old statutes still be referenced:

- County Planning Act, being P.A. 282 of 1945, as amended, M.C.L. 125.101 *et seq.*
- Township Planning Act, being P.A. 168 of 1959, as amended, M.C.L. 125.321 *et seq.*
- Municipal Planning Act, being P.A. 285 of 1931, as amended, M.C.L. 125.31 *et seq.* (For cities, villages, and some township planning commissions created prior to 1959.)

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<http://ntweb11a.ais.msu.edu/luaoe/index.asp>

This outline is not designed as a substitute for reading and understanding the Michigan Planning Enabling Act. This outline is not a substitute for legal advice or for professional planner services.

Article I - General Provisions

The vast majority of the first article of the new

Related Publications

There are also separate procedural checklists for performing other planning and zoning functions. They are:

- *Land Use Series*, "Checklist #1A; To create a planning commission"
- *Land Use Series*: "Sample #1B; Ordinance to create a planning commission"
- *Land Use Series*: "#1C; Summary of changes between new Michigan Planning Enabling Act and the three old planning acts: Municipal Planning Act, County Planning Act, and Township Planning Act."
- *Land Use Series*: "Checklist #1D; Steps to transition an existing planning commission to comply with the Michigan Planning Enabling Act"
- *Land Use Series*: "Sample #1E; Bylaws for a planning commission."
- *Land Use Series*: "Checklist #1F; Content of a Plan"
- *Land Use Series*: "Checklist #1G; Adoption of a Plan in Michigan"
- *Land Use Series*: "Checklist #1H; The Five Year Plan Review."
- *Land Use Series*: "Checklist #1I; Adoption of an Amendment to a Plan"
- *Land Use Series*: "Checklist #1J; Adopting and Updating a Capital Improvement Program"
- *Land Use Series*: "Checklist #1K; Review of Infrastructure/Public Capital Expenditure"
- *Land Use Series*: "Checklist #1L; Adoption or Amendment of Subdivision Rules"
- *Land Use Series*: "#1M; How Governments Make Submissions on a Neighbor's or County's Proposed Plan"
- *Land Use Series*: "#1N; How a Planning Commission Should Respond to Submissions"
- *Land Use Series*, "Checklist #2; for Adoption of a Zoning Ordinance in Michigan."
- *Land Use Series*, "Checklist #3; for Adoption of an Interim Zoning Ordinance in Michigan."
- *Land Use Series*, "Checklist #4; for Adoption of a Zoning Ordinance Amendment (Including PUD) in Michigan"
- *Land Use Series*, "Checklist #5: for Processing a Special Use Permit (Including PUD) Application in Michigan."
- *Land Use Series*, "Checklist #6: for Processing a Zoning Appeal and Variance in Michigan."

All of these are available at
<http://web1.msue.msu.edu/wexford/LU/>.

Michigan Planning Enabling Act consists of the definitions in Section 3. The main purpose of these definitions is to simplify, clarify, and unify requirements as part of a new, consistent, and easier to understand statute. Three definitions are of special importance, they are: "ex officio member" (§3(d)), "master plan" (§3(g)), and "planning commission." (§3(i)) It is also important to keep in mind that "municipality" (§3(h)) refers to cities, villages, and townships. While a county is not a "municipality", a county, city, village or township is each a "local unit of government" under Section 3 (f) of the Michigan Planning Enabling Act, PA 33 of 2008.

Glossary

The following terms are used in this publication, and have the following specific meanings.

§ means the section number of Public Act 33 of 2007, as amended, (being the Michigan Planning Enabling Act, M.C.L. 125.3801 *et. seq.*),

Chief administrative official means the manager or other highest nonelected administrative official of a city or village.

Chief elected official means the mayor of a city, president of a village, supervisor of a township, or chair of a county board of commissioners.

Ex officio member means a member of a planning commission, with full voting rights unless otherwise specified by city or village charter, by virtue of holding another office.

Legislative Body means the county board of commissioners of a county, the board of trustees of a township, the council of a city or village, or other similar duly elected representative body of a county, township, city, or village.

Local Unit of Government means a county, township, city, or village.

Municipality means a city, village or township.

Plan means any plan adopted under the Michigan Planning Enabling Act or one of the three former planning acts, regardless of what it is titled.

Planning Commission means the local unit of government planning commission created under the Michigan Planning Enabling Act or one of the three former planning acts, regardless of what it is titled.

Planning jurisdiction means the area encompassed by one of the following:

- legal boundaries of a city or village for a city or village respectively;
- legal boundaries of a township outside the limits of a city(ies) and village(s) for a township;
- legal boundaries of a county outside the limits of a city(ies) and village(s); or the county including any city(ies) and village(s) which has adopted the county plan (See §31(1)).

Article II - Planning Commission Creation and Administration

Notice of Planning Commission Creation

In the past, some planning commissions were created by resolution; now all must be created by ordinance. (§11(1)) When any local unit of government adopts an ordinance creating a planning commission (§11(2)), or amends the ordinance to conform to the requirements of the MPEA (§81(2)(b), §81(3)(b)), it must send notice within 14 days to the county or regional planning commission. In cities, villages, and townships, the notice must be sent to the county planning commission of the county where the municipality is located, or to the regional planning commission for the region in which the municipality is located, if the county does not have a planning commission. Counties must send notice to the appropriate regional planning commission. (§11(2))

Counties and regional planning commissions should keep a permanent file of these notices in a place easily accessible for public inspection.

Planning Commission Members

Membership guidelines for planning commissions in counties and municipalities were all very different from one another under the original planning enabling acts. They have been unified by the MPEA and while some differences remain, there are more similarities.

City, village, and township planning commissions must now consist of 5, 7, or 9 members; county planning commissions of 5, 7, 9, or 11 members. Terms are 3 years, with the exception of the first appointed members, whose terms must be staggered so that $\frac{1}{3}$ of the members' terms expire each year. Vacancies on the planning commission are to be filled for the unexpired term in the same manner as appointments; members hold office until a successor is appointed. (§ 15 (2))

In townships and counties, all but one member of the planning commission must be qualified electors. A qualified elector is a person who resides in and is eligible to vote in the local unit of

government in which they reside. Thus, one member of the planning commission could reside outside the boundaries of the jurisdiction, such as a person who owns a local business but resides elsewhere. In cities and villages, the requirement varies according to population. Cities and villages with a population less than 5,000 may have two who are not electors on the planning commission; while cities (not villages) with a population between 2,700 and 2,800, may have three who are not electors on the planning commission. In cities and villages with a population above 5,000, only one member of the planning commission may not be an elector. (§ 15 (4))

In cities, villages, and counties, only the chief elected official, the chief administrative official, persons designated by the chief administrative official, and members of the legislative body, or any combination thereof, are eligible to serve on the planning commission as ex officio members. Ex officio members are members with full voting rights, unless otherwise provided by charter, who serve on the planning commission by virtue of holding another office for the term of that other office. (§15(5)) However, in townships with a planning commission previously formed under the Municipal Planning Act, 1931 PA 285, one member of the legislative body or the chief elected official, or both, is also eligible to serve as an ex officio member. In townships, one member of the legislative body must serve as an ex officio member.

Terms of ex officio members on the planning commission shall coincide with their respective elected or appointed term. (§15(5)(a) - §15(5)(c)) (Sentence removed.) Finally, no more than $\frac{1}{3}$ of planning commission members may be ex officio members. (§ 15(5))

Conflicts of Interest and Removal of Planning Commission Members

Members of the planning commission are to be removed by the legislative body for misfeasance, malfeasance or nonfeasance in office; this is new terminology for all jurisdictions (although it parallels language in the Michigan Zoning Enabling Act that applies to zoning boards and zoning boards

of appeals) and establishes a new procedure for townships, cities and villages. The procedure is to first prepare written charges, have a public hearing before the legislative body, and, finally, to vote on the removal of the member. (§15(9))

Also, new to all jurisdictions is a procedure for addressing and defining conflicts of interest. “Conflict of interest” (§15(9)) must be defined in the bylaws of the planning commission, unless the legislative body does so by ordinance. Members of the planning commission must disclose a potential conflict of interest to the planning commission before casting a vote on the matter. The member will be disqualified from voting on the matter in the manner provided for in the bylaws, or by a majority vote of the remaining members of the planning commission. (§15(9))

Officers of the Planning Commission

The new guidelines for appointing officers of the planning commission contain changes for all jurisdictions. The planning commission must elect a chairperson and secretary, and may elect other officers as it deems advisable. The term of all officers must be 1 year. In addition, ex officio members are not eligible to serve as chairperson. (§17(1))

Planning Commission Procedures

Planning commissions must make an annual report to the legislative body detailing operations of the commission and the status of planning activities. The report must include recommendations to the legislative body related to planning and development. (§19(2)) These requirements are new for cities, villages and counties.

The planning commission must hold at least four regular meetings annually, the time and place of which shall be determined by resolution of the planning commission. Special meetings may be called by the chairperson or two or more members of the planning commission upon written request to the secretary. Written notice of a special meeting must be given to all planning commission members by the secretary, at least 48 hours prior to the meeting, unless the bylaws provide otherwise.

(§21(1))

Article III - Preparation and Adoption of Master Plan Planning for Neighboring Jurisdictions

When preparing a master plan, a planning commission must take into account the jurisdiction’s relationship to neighboring jurisdictions while making careful and comprehensive surveys and studies of the current conditions and future growth of the jurisdiction. (§31(2)(a)) This is more explicit language for townships and counties than under their respective original planning enabling acts. Counties, townships, cities, and villages are all now required to cooperate with all departments of the federal and state government and other public agencies, and must consult with representatives of adjacent jurisdictions. (§31(2)(b) - §31(2)(c))

Cities, villages, and those townships originally formed under the Municipal Planning Act may plan for areas outside the municipal boundaries that the planning commission deems related to the planning of the municipality. (§31(1)(b)) Counties, and townships organized under the Township Planning Act, must plan for territory within their boundaries. (§31(1)(a)) See (§3(j)) “Planning Jurisdiction”.

Relationship to Zoning

All reference to site plans conforming to the land use plan under the Township Planning Act are no longer in the Michigan Planning Enabling Act because the issue is covered in section 501 of the Michigan Zoning Enabling Act, as amended by PA 12 of 2008 (M.C.L. 125.3501).

Subsection 33(2)(d) requires a zoning plan for various zoning districts, if considered to be pertinent to the future development of the zoning jurisdiction, to be included in the master plan in jurisdictions with an adopted zoning ordinance. The specifics of this are new for counties and townships. The subsection requires an explanation in the zoning plan of how the land use categories on the future land use map relate to the districts on the zoning map. This language is new for all jurisdictions, but

has been a common element in zoning plans of cities and villages for many years.

Implementation of a Master Street Plan

If a master plan includes a master street plan, the master street plan must be developed in cooperation with the county road commission and state transportation department (as relevant). (§33(3)) In addition, notice of a public hearing with a request for cooperation and comment must be sent to the county road commission and state transportation department. (§41(2)(g)) Finally, the secretary of the planning commission must send a copy of the proposed master plan to the county road commission and the state transportation department. (§43(5)) This is new for all jurisdictions.

Subplans

If part of a jurisdiction has unique characteristics and needs more intensive planning, a planning commission may adopt a subplan for that area by majority vote. This was provided for in the Township Planning Act, but the term “subplan” is new to all jurisdictions. (§35) A planning commission may indicate in a notice that it will prepare a subplan, and that it does not intend to send notice of future subplans, unless the entity receiving the notice requests that such notice be sent. (§45(1)(c)) This is new for all jurisdictions.

Electronic Submission of Proposed Master Plans

If a planning commission, which is preparing a master plan or master plan amendments, desires to send submittals of proposed master plans or master plan amendments to adjoining jurisdictions electronically, it must state that it intends to do so in the notice of preparation of a master plan. Submittals may only be sent electronically if the planning commission indicates that it will send submittals electronically in its notice of master plan preparation and the entity does not object to receiving submittals electronically. If the entity receiving notice of preparation objects to receiving submittals electronically, submittals must be

delivered by first class mail. (§39(3)) This is new for all jurisdictions.

Notice of Time and Place of Public Hearing for Proposed Master Plan

The planning commission must give notice of the time and place of public hearing(s) for approval of a proposed master plan at least 15 days before the hearing in a newspaper of general circulation. (§43(1)) This represents a change for townships and counties.

Resolution Approving a Proposed Master Plan

The resolution approving the master plan must refer specifically to the maps and all matter intended to form the master plan. A statement recording the planning commission’s approval of the master plan must also be included on the inside of the front or back cover of the master plan and any separate future land use map. The statement must be signed by the chairperson or secretary of the planning commission. (§43(2)) This is entirely new for townships and the latter part is new for counties, cities, and villages.

Application of County Plans to Incorporated Areas

Subsection 47(1), which prohibits county master plans from applying in an incorporated area unless adopted by the appropriate city or village, does not apply to an incorporated area if it is subject to county zoning according to the Michigan Zoning Enabling Act, and there is a contract under the Urban Cooperation Act. (§47(2)) This is new for cities, villages, and counties.

Article IV - Special Provisions, Including Capital Improvements and Subdivision Review

Planning Commission's Failure to Act

A project for the construction of a street, square, park, playground, public way, ground, open space, public building, or other public structure shall be considered approved in a township, city, or village if the planning commission fails to act within 35 days. (§61(1)) The deadline was formerly 60 days. In counties, such work involving county funds and requiring the planning commission's report and advice may commence if that report and advice are not received within 35 days of filing the proposal with the planning commission. (§61(2)) This time period used to be 30 days.

Capital Improvements Programs

County, city, village and some township planning commissions must annually prepare a capital improvements program of public structures and improvements. (§65(1)) This is new for townships not organized under the Municipal Planning Act, and only applies to townships which own or operate, alone or jointly, with 1 or more other units of local government, a water supply or sewage disposal system. (§65(2)) If the planning commission is exempted, by charter or otherwise, the legislative body must prepare and adopt a capital improvements program, separate from or as part of the annual budget. A legislative body may designate the duty of preparing a capital improvements program to the chief elected official or a nonelected administrative official. A capital improvements program must prioritize the projects which the body with authority deems are needed or desirable within the next 6 years. (§65(1))

Zoning Ordinances Submitted to Counties

A county may request (§69), using first-class mail or personal delivery, a municipal planning commission to submit a copy of its zoning ordinance and any amendments to it. The municipal planning commission must submit the documents

within 63 days of receiving the request and must submit future amendments within 63 days of their adoption. When submitting a township, city, or village zoning ordinance to a county, the submission may be done electronically. The electronic filing option is new for all jurisdictions, and the entire provision is new for cities, villages, and counties. Townships are no longer automatically required to submit zoning ordinances and amendments to the county under this new provision; however, the county planning commission may request zoning ordinances and amendments to be submitted. (§69)

Planning Commissions May Recommend Subdivision Ordinance

Any planning commission may recommend a subdivision ordinance or rules to the legislative body. The county planning commission may also make the same recommendations to the legislative body of a township, as well as to a city or village that is subject to county zoning and has a contract under the Urban Cooperation Act of 1967. (§71(1)) This provision is new. Formerly planning commissions under the Municipal Planning Act could independently adopt subdivision rules or ostensibly, even a subdivision ordinance (although that would have usurped the power of the legislative body, it was the way the statute was written).

Proposed Subdivision Ordinances

Recommendations for a subdivision ordinance or rule are allowed to address plat design, including the proper arrangement of streets in relation to other existing or planned streets and to the master plan. Recommendations may also provide adequate and convenient open spaces for traffic, utilities, access for firefighting equipment, recreation, light and air; and the avoidance of population congestion, including width and area for lots. The extent to which streets must be graded and improved and to which water, sewer, and other utility mains, piping, and other facilities which must be installed as a condition for the approval of a plat may also be addressed in the recommendations. (§71(2)) This is new for counties and those townships with planning

commissions not formed under the Municipal Planning Act, 1931 PA 285.

Planning Commission Hearings on Proposed Subdivision Ordinances and Rules

The planning commission must hold a public hearing on a proposed subdivision ordinance or rule. It must publish notice of the time and place of the public hearing in a newspaper of general circulation at least 15 days before the hearing. (§71(3)) All of this subsection is new for counties and townships and the specifications are new for cities and villages.

Planning Commission Review of Plats before Legislative Action

If a master plan or master street plan has been adopted, a planning commission must review and make recommendations on plats before the respective legislative body takes action under section 112 of the Land Division Act. A county planning commission shall review and make recommendations on plats of municipalities subject to county zoning, before the legislative body takes action on a plat. (§71(4)) Some or all of this section is new to all local units of government.

Plats

A planning commission may not take action on a proposed plat without providing an opportunity for a hearing. The proposed plat must contain the name and address of the proprietor or other person to whom notice of a hearing must be sent. Notice of the hearing must be sent to the proprietor of the plat and to the owners of land immediately adjoining the land in question by mail. The notice must be sent at least 15 days before the hearing and it must include the date, time, and place of the hearing. The notice must also be published in a newspaper of general circulation in the jurisdiction. (§71(5)) The specifics are new for cities and villages and all is new for counties and townships (unless the township planning commission was organized under the Municipal Planning Act, 1931 PA 285).

A planning commission must recommend approval, approval with conditions, or disapproval within 63 days of receiving a plat, otherwise the plat shall be considered approved. Furthermore, only the proprietor may allow an extension of the 63-day time limit. The grounds for disapproval of a plat must be stated in the records of the planning commission. If the plat meets the pertinent standards under the Land Division Act, and the ordinance or rules governing subdivision of land, under section 105 of the same act, the planning commission must recommend approval. (§71(6)) The specifics of this paragraph are new for cities and villages and all is new for counties and townships (unless the township planning commission was organized under the Municipal Planning Act, 1931 PA 285).

A plat approved by a township, city, or village and recorded under section 172 of the Land Division Act, must be considered to be a part of, and an amendment to, the master plan. If the township, city, or village approves a plat, it does not imply public acceptance of any street or other open space shown on the plat. (§71(7)) This paragraph is new for townships.

Article V - Transitional Provisions and Repealer

The vast majority of this article is new, it consists of three sections; Sections 81 and 83 transition provisions under the original planning enabling acts to the MPEA, while Section 85 repeals the former acts. There are five notable provisions of the article that are not included in the original planning enabling acts:

1. Any plan adopted or amended under the repealed planning acts does not need to be readopted under the MPEA; the plan will continue as a master plan under the MPEA, regardless of its original title. (§81(1))
2. An ordinance still in effect that created a planning commission under the original planning enabling acts continues under the MPEA. (§81(2))
3. An ordinance that created a planning

commission must conform to the requirements of the MPEA when an amendatory or new ordinance is first adopted under the new act, or by July 1, 2011, whichever is earlier. (§81(2)(b))

4. Ordinances or published rules, governing the subdivision of land, authorized under the land division act, need not be readopted or amended. However, if amended, the ordinance or published rules must be amended under the procedures of the MPEA.
5. If a planning commission has the powers and duties of a zoning board or zoning commission as of the effective date of the MPEA, a planning commission may continue to exercise those powers and duties without amendment of the ordinance creating the planning commission. (§ 83 (1))

Provisions in Former Planning Acts Eliminated by the MPEA

Section 3 (2) of the Township Planning Act (PA 168 of 1959)

Copies of a resolution to adopt an ordinance to create a planning commission no longer need to be transmitted to the Secretary of State.

Section 11 (partial) of the Municipal Planning Act (PA 285 of 1931)

The MPEA does not give the planning commission the authority to “enter upon land and make examinations and surveys and place and maintain necessary monuments, and marks thereon.” (§11 1931, PA 285, M.C.L. 125.3 to 125.42) Planning commissions may still make property examinations, but the consent of the property owner must be obtained prior to entrance—as is true under a variety of other existing statutory and case law. Placing of monuments is regulated under the Land Division Act.

Planning Commission Membership on the Zoning Board of Appeals

Section 3(1) of the Municipal Planning Act, PA 285 of 1931, permits one member of the planning commission to sit on the zoning board of appeals or on a joint fire administrative board. Section 6(2) of the County Planning Act, PA 282 of 1945, requires a member of the planning commission to sit on the county zoning board of appeals in counties where the planning commission has been granted the powers of the zoning commission. Neither of these provisions has been retained, so appointments to the zoning board of appeals are governed exclusively by the Michigan Zoning Enabling Act, PA 110 of 2006.

[May 1, 2008; Wexford County MSUE CED: C:\Documents and Settings\Kurt Schindler\My Documents\wp\Presentation Handouts\2008MiPlanningEnablingAct\pamphlet1C ChangesInStatute.wpd]