

ZONING BOARD OF APPEALS

Second Thursday of each month at 7:00 p.m. in City Commission Chambers, City Hall.
As set forth in the Code of Ordinance of the City of Kalamazoo, Appendix A, Sections 12.1 to 12.5

Sec. 12.1. Establishment and Composition. A Zoning Board of Appeals consisting of six (6) members having the powers and duties conferred by state law as this ordinance is hereby established. The members of the Zoning Board of Appeals in existence prior to the effective date of this ordinance shall be the members of the Zoning Board of Appeals without change in the length of their terms of office. The board shall adopt its own rules of procedure. (Ord. No. 1204, § 2, May 27, 1980)

Sec. 12.2. Alternate Members. The City Commission may appoint two (2) alternate members. One of the first appointments shall be for a term of two (2) years and one for three (3) years. Thereafter, alternate members shall hold office for three-year terms. At the time of the first appointment, one of the appointees shall be designated as the first alternate. Thereafter the alternate member with the greatest seniority shall be the first alternate. The alternate members may take part in all deliberations of the board but shall not have a vote unless a regular member is unable to vote because of a conflict of interest or the absence or inability to attend required by state law. If the first alternate is present, the second alternate shall have a vote only if more than one regular member has a conflict of interest or meets the absence or inability requirements of state law. (Ord. No. 1204 §2, May 27, 1980)

Sec. 12.3. Jurisdiction and Powers. In addition to the jurisdiction and powers granted by state law, the board shall have jurisdiction to hear and decide the following:

- (1) Requests for an interpretation of this ordinance and request to determine the location of boundary lines between zones;
- (2) To act as an appeal board or other tribunal when it is so designated by other sections of this ordinance or by other ordinances and to exercise any powers conferred by those sections or ordinances;
- (3) To classify a use not mentioned in this ordinance along with those which the board, in the exercise of its discretion, determines to be most nearly comparable. (Ord. No. 1204, §2, May 27, 1980)

Sec. 12.4. Use Variances. The applicant must present evidence to show that if the zoning ordinance is applied strictly, unnecessary hardship to the applicant will result and that all four (4) of the following requirements are met:

- (1) That the property could not be reasonably used for the purposes permitted in that zone; and
- (2) That the appeal results from unique circumstances peculiar to the property and not from general neighborhood conditions; and
- (3) That the use requested by the variance would not alter the essential character of the area; and
- (4) That the alleged hardship has not been created by any person presently having an interest in the property.

When granting any variance, the board must ensure that the spirit of the ordinance is observed, public safety secured and substantial justice done. (Ord. No. 1204, §2, May 27, 1980; Ord. No. 1493, § 1, April 30, 1990)

Sec. 12.5. Nonuse Variances. The applicant must present evidence to show that if the zoning ordinance is applied strictly, practical difficulty will result to the applicant and that:

- (1) The ordinance restrictions unreasonably prevent the owner from using the property for a permitted purpose; or

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- (2) The variance would do substantial justice to the applicant as well as to other property owners in the district, and a lesser relaxation than that requested would not give substantial relief to the owner of the property or be more consistent with justice to other property owners; or
- (3) The plight of the landowner is due to the unique circumstances of the property; or
- (4) The alleged hardship has not been created by any person presently having an interest in the property.

When granting any variance, the board must ensure that the spirit of the ordinance is observed, public safety secured and substantial justice done. (Ord. No. 1204, §2, May 27, 1980; Ord. No. 1493, § 1, April 30, 1990)

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RULES OF PROCEDURE

ARTICLE I - OFFICERS

Sec. 1.0. Officers. The officers of the City of Kalamazoo Zoning Board of Appeals shall consist of a Chairperson, Vice-Chairperson, and Secretary, elected by the Board of Appeals at its annual meeting. Officers shall serve for a period of one year and may be reelected.

A representative of the Economic Development and Planning Division shall serve as Recording Secretary of the Board of Appeals, but shall not have a vote in matters before the Board. In the event of the absence of the Recording Secretary from any meeting, the officer presiding shall designate an Acting Recording Secretary to serve for the meeting in question.

Sec. 1.1. Duties of Officers.

- a) Chairperson
 - 1) To preside at all meetings of the Board.
 - 2) To call Special Meetings in accordance with the Rules of Procedure.
 - 3) To see that all actions of the Board are properly taken.
 - 4) To sign all documents and letters of the Board.
- b) Vice-Chairperson
 - 1) During the absence, disability or disqualification of the Chairperson, the Vice-Chairperson shall exercise or perform all the duties and be subject to all the responsibilities of the Chairperson.
- c) Secretary
 - 1) To present to the Board all such business as shall properly and legally come before it.
 - 2) To inform the Board of all correspondence relating to business of the Board and to attend to such correspondence.
 - 3) To conduct the election of officers at the Board's Annual Meeting.
 - 4) To conduct a special election for the appointment of any officer to fill a vacancy, in accordance with these Rules of Procedure.
 - 5) During the absence, disability or disqualification of the Chairperson and Vice-Chairperson, the Secretary shall exercise or perform all the duties and be subject to all responsibilities of the Chairperson.
- d) Recording Secretary
 - 1) To take and keep the Minutes of all meetings of the Board.
 - 2) To give or serve all notices required by law or these Rules of Procedure.
 - 3) To prepare the Agenda for all meetings of the Board.
 - 4) To be custodian of the Board's records.

Sec. 1.2. Vacancies. Should any vacancy occur among the members of the Zoning Board of Appeals by reason of death, resignation, disability, or otherwise, immediate notice thereof shall be given by the secretary to the City Clerk. Should any vacancy occur among the officers of the Zoning Board of Appeals, the vacant office shall be filled in accordance with the provisions of these Rules of Procedure, such officer to serve the unexpired term of the office in which such vacancy shall occur.

ARTICLE II - MEETINGS

Sec. 2.0. Annual Meeting. The Annual Meeting of the Zoning Board of Appeals shall be the first regular meeting in the month of February each year. Such meetings shall be devoted to the election officers for the ensuing year and such other business as shall be scheduled by the Board.

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Sec. 2.1. Regular Meetings. Regular meetings of the Zoning Board of Appeals shall be held in City Hall at 7:00 p.m. on the Second Thursday of each month. At such meetings, the Board shall consider all matters properly brought before it. A regular meeting may be canceled or rescheduled by the Board at a prior meeting or by a majority of the members of the Board with sufficient public notice of said change. In the event a quorum of board members is not present at the regular meeting, the meeting shall be rescheduled to the next regularly scheduled meeting.

Sec. 2.2. Special Meetings. Special meetings of the Zoning Board of Appeals shall be held at a time and place designated by the officer calling the same, and shall be called by the Chairperson, Vice-Chairperson, or Secretary with the permission of a majority of the members of the Board, which permission may be obtained by telephone. Sufficient notice thereof as required by law or these Rules of Procedure shall be given by the Recording Secretary.

Sec. 2.3. Quorum. At any meeting of the Zoning Board of Appeals, a quorum shall consist of four members of the Board. No action shall be taken in the absence of a quorum except to adjourn the meeting to a subsequent date. Only when just four members are present shall the appellant be given the option to delay until a board of more than four members can hear his appeal.

Sec. 2.4. Voting. At all meetings of the Zoning Board of Appeals, each member attending shall be entitled to cast one vote. Voting on all appeals, and other matters upon which the Board is required to pass pursuant to law, shall be by roll call. All other action shall be by voice vote, except when a majority of the members present prefers a roll call or ballot vote.

Sec. 2.5. Disclosure. In the event that any members of the Zoning Board of Appeals shall have a personal interest in a matter then before the Board, he or she shall disclose his or her interest and be disqualified from voting upon the matter, and the Recording Secretary shall so record in the Minutes that no vote was cast by such member.

Sec. 2.6. Conduct of Meetings. All meetings of the Zoning Board of Appeals shall be open to the public. The order of Business at meetings shall be as follows:

- a) Roll Call
- b) Approve of the Minutes of the Previous Meetings
- c) Public Hearings
- d) Deliberations and determinations
- e) Old Business
- f) New Business

No member or other person shall speak until duly recognized by the chairperson, and he or she shall immediately cease speaking if ruled out of order. Speakers other than members, after being recognized, shall commence by identifying themselves by name and address.

Sec. 2.7. Adjourned Meeting. The Zoning Board of Appeals may adjourn a regular or special meeting if all business cannot be disposed of on the day set, and no further public notice shall be necessary for such meeting if time and place of its resumption is stated at the time of adjournment and is not changed after adjournment.

Sec. 2.8. Robert's Rules of Order. All meetings of the Zoning Board of Appeals shall, other than as provided in the Rules of Procedure, be governed by Robert's Rules of Order.

**ZONING BOARD OF APPEALS
ARTICLE III - APPEALS**

Sec. 3.0. Appeals. In addition to all other matters properly brought before the Zoning Board of Appeals, the Board shall hear and decide appeals from, and review any order, requirement, decision, or determination made by the Zoning Inspectors in their enforcement of the Zoning Ordinance of the City of Kalamazoo. The appropriate city staff shall appear in person to present information to the Zoning Board of Appeals (ZBA) when the work has been started before the appeal was brought to the Board.

Sec. 3.1. Time. All appeals to the zoning Board from any order, requirement, decision or determination made by the Zoning Inspector shall be made not later than ten (10) days after the start of construction or alterations or change in use authorized by any permit or certificate issued by the Zoning Inspector or within thirty (30) days of an action, order, requirement, decision or determination made by the Zoning Inspector.

Sec. 3.2. Schedule of Hearings. All appeals to the Zoning Board from any order, requirement, decision or determination made by the Zoning Inspector shall be heard, if scheduling permits, at the next regular meeting of the Board, if a notice of appeals and grounds therefore have been submitted to the Zoning Inspector and the Board on or before the fourth Thursday of the previous month. The Recording Secretary shall, at least ten (10) days prior to any scheduled hearing, mail all notices required by law.

Sec. 3.3. Findings of Fact. Following the hearing of any appeal to the Zoning Board, the Board shall make a finding of fact upon which they shall base their decision. A finding of fact shall consist of the facts and circumstances relied upon by the Board in its determination of an appeal, and shall be based upon the evidence presented to the Board. The findings of fact and the decision thereon shall be recorded in the Minutes of the meeting.

Sec. 3.4. Decision. The Zoning Board shall adopt a decision on all matters properly brought before it within ninety (90) days from the date of the filing of the appeal.

Sec. 3.5. Conditions to appeals.

- (1) Unless otherwise specified by the Board all variances granted shall become null and void if not exercised within one year from the date of granting.
- (2) Unless otherwise specified by the Board all variances granted are granted in accordance with the site plan submitted to the Board for consideration.

Sec. 3.6. Reconsideration. Following any decision adopted by the Zoning Board, a Motion to Reconsider may be made at any time during the same meeting, or within ten (10) days thereof. The Motion may be made only by a member who either voted with the prevailing side or did not vote, and shall be filed in writing with the Recording Secretary. It may be seconded by any member. No decision shall be reconsidered more than once, nor shall a vote to reconsider be reconsidered. The applicant or aggrieved person who originally appealed to the Zoning Board shall be given notice if a Motion to Reconsider is made and filed in wiring with the Recording Secretary.

Sec. 3.7. Rehearing. A person having an interest affected by the Zoning Ordinance may, in the event of a change in circumstance or the existence of new evidence for the Board to Consider, file for a rehearing which the Board may hear if it decides that there has in fact been a change in circumstances or that new evidence does exist.

- (1) Such requests shall be submitted to the Economic Development and Planning Division in writing, concisely stating the grounds for a rehearing and any new evidence or change of circumstance.
- (2) Such rehearings shall require a re-notice at least ten (10) days prior to any scheduled

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hearing as outlined under Section 3.2.

Sec. 3.8. Amendment. The Rules may be amended at any meeting of the Zoning Board of Appeals provided that said proposed amendment is provided each member in writing at least five (5) days prior to said meeting.

CITY AND VILLAGE ZONING ACT

Act 207 of 1921

AN ACT to provide for the establishment in cities and villages of districts or zones within which the use of land and structures and the height, area, size, and location of buildings may be regulated by ordinance, and for which districts regulations shall be established for the light and ventilation of those buildings, and for which districts or zones the density of population may be regulated by ordinance; to designate the use of certain state licensed residential facilities; to provide by ordinance for the acquisition by purchase, condemnation, or otherwise of private property that does not conform to the regulations and restrictions of the various zones or districts provided; to provide for the administering of this act; to provide for amendments, supplements, or changes in zoning ordinances, zones, or districts; to provide for conflict with the state housing code or other acts, ordinances, or regulations; to provide sanctions for the violation of this act; to authorize the purchase of development rights; to authorize the issuance of bonds and notes; and to provide for special assessments.

History: 1921, Act 207, Imd. Eff. May 17, 1921;—Am. 1947, Act 272, Eff. Oct. 11, 1947;—Am. 1976, Act 396, Eff. Mar. 31, 1977;—Am. 1994, Act 25, Eff. May 1, 1994;—Am. 1996, Act 571, Eff. Mar. 31, 1997.

The People of the State of Michigan enact:

125.581 Regulating and restricting use of land and structures; purpose; division of city or village into districts; plan for land development regulations and districts; ordinance subject to electric transmission line certification act. [M.S.A. 5.2931]

Sec. 1. (1) The legislative body of a city or village may regulate and restrict the use of land and structures; to meet the needs of the state's residents for food, fiber, energy and other natural resources, places of residence, recreation, industry, trade, service, and other uses of land; to insure that uses of the land shall be situated in appropriate locations and relationships; to limit the inappropriate overcrowding of land and congestion of population and transportation systems and other public facilities; to facilitate adequate and efficient provision for transportation systems, sewage disposal, water, energy, education, recreation, and other public service and facility needs; and to promote public health, safety, and welfare, and for those purposes may divide a city or village into districts of the number, shape, and area considered best suited to carry out this section. For each of those districts regulations may be imposed designating the uses for which buildings or structures shall or shall not be erected or altered, and designating the trades, industries, and other land uses or activities that shall be permitted or excluded or subjected to special regulations.

(2) The land development regulations and districts authorized by this act shall be made in accordance with a plan designed to promote and accomplish the objectives of this act.

(3) An ordinance adopted pursuant to this act is subject to the electric transmission line certification act.

History: 1921, Act 207, Imd. Eff. May 17, 1921;—CL 1929, 2633;—CL 1948, 125.581;—Am. 1978, Act 638, Eff. Mar. 1, 1979;—Am. 1995, Act 36, Imd. Eff. May 17, 1995.

125.581a Airport layout plan or airport approach plan; incorporation; zoning ordinance; adoption.

Sec. 1a. (1) If, after an airport layout plan or airport approach plan is filed with the zoning commission or, if there is no body exercising the powers of a zoning commission, with the legislative body of a city or village, a plan required under section 1 is adopted or revised, the city or village shall incorporate the airport layout plan or airport approach plan into the plan required under section 1.

(2) A zoning ordinance adopted after the effective date of the amendatory act that added this section shall be adopted after reasonable consideration of both of the following:

- (a) The environs of any airport within a district.
- (b) Comments received at or before a public hearing under section 4 from the airport manager of any airport.

(3) If a zoning ordinance was adopted before the effective date of the amendatory act that added this section, the zoning ordinance is not required to be consistent with any airport zoning regulations, airport

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layout plan, or airport approach plan. However, any zoning ordinance amendment adopted or variance granted after the effective date of the amendatory act that added this section shall not increase any inconsistency that may exist between the zoning ordinance or structures or uses and any airport zoning regulations, airport layout plan, or airport approach plan. This subsection does not limit the right under section 4 to file a protest petition concerning a zoning ordinance amendment.

(4) If a zoning ordinance is adopted after the effective date of the amendatory act that added this section, the zoning ordinance shall be consistent with any airport zoning regulations, airport layout plan, and airport approach plan. This subsection does not limit the right under section 4 to file a protect petition concerning a zoning ordinance.

History: Add. 2000, Act 383, Imd. Eff. Jan. 2, 2001.

Compiler's note: In subsection (4), the phrase "protect petition" evidently should read "protest petition."

125.582 Regulation of buildings and open spaces. [M.S.A. 5.2932]

Sec. 2. To further carry out the objectives of this act, the legislative body of a city or village may regulate and limit the height and bulk of buildings erected, and regulate and determine the area of yards, courts, and other open spaces, and for those purposes divide a city or village into districts of the number, shape, and area considered best suited to carry out the purposes of this section. The regulations shall be uniform for each class of buildings throughout each district, but the regulations in 1 district may differ from those in other districts.

History: 1921, Act 207, Imd. Eff. May 17, 1921;—CL 1929, 2634;—CL 1948, 125.582;—Am. 1978, Act 638, Eff. Mar. 1, 1979.

125.583 Regulations limiting and restricting maximum number of families housed in dwellings; regulations and districts applicable to land areas and activities involved in special program. [M.S.A. 5.2933]

Sec. 3. (1) To further carry out the objectives of this act, the legislative body of a city or village may limit and restrict the maximum number of families which may be housed in dwellings erected or altered, and for those purposes divide the city or village into districts of the number, shape, and area considered best suited to carry out the purposes of this section. The regulations shall be uniform throughout a specified district, but may differ from the regulations adopted for other districts.

(2) The legislative body of a city or village may use this act to adopt land development regulations and districts which apply only to land areas and activities which are involved in a special program to achieve specific land management objectives and avert or solve specific land use problems, including the establishment of land development regulations and districts in areas subject to damage from flooding or beach erosion, and for that purpose may divide the city or village into districts of the number, shape, and area best suited to accomplish those objectives.

History: 1921, Act 207, Imd. Eff. May 17, 1921;—CL 1929, 2635;—CL 1948, 125.583;—Am. 1978, Act 638, Eff. Mar. 1, 1979.

125.583a Nonconforming uses and structures. [M.S.A. 5.2933(1)]

Sec. 3a. (1) The lawful use of land or a structure exactly as the land or structure existed at the time of the enactment of the ordinance affecting that land or structure, may be continued, except as otherwise provided in this act, although that use or structure does not conform with the ordinance.

(2) The legislative body may provide by ordinance for the resumption, restoration, reconstruction, extension, or substitution of nonconforming uses or structures upon terms and conditions provided in the ordinance. In establishing terms for the resumption, restoration, reconstruction, extension, or substitution of nonconforming uses or structures, different classes of nonconforming use may be established in the ordinance with different regulations applicable to each class.

(3) In addition to the power granted in this section, a city or village may acquire by purchase, condemnation, or otherwise private property or an interest in private property for the removal of nonconforming uses and structures, except that the property shall not be used for public housing. The legislative body may provide that the cost and expense of acquiring private property be paid from general funds, or the cost and expense or a portion thereof be assessed to a special district. The elimination of nonconforming uses and structures in a zoned district as provided in this act is declared to be for a public purpose and for a public use. The legislative body may institute and prosecute proceedings for the condemnation of nonconforming uses and structures under the power of eminent domain in accordance with the provisions of a city or village charter relative to condemnation or in

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accordance with Act No. 149 of the Public Acts of 1911, as amended, being sections 213.21 to 213.41 of the Michigan Compiled Laws, or any other applicable statute.

History: Add. 1947, Act 272, Eff. Oct. 11, 1947;—CL 1948, 125.583a;—Am. 1978, Act 638, Eff. Mar. 1, 1979.

125.583b “State licensed residential facility” defined; state licensed residential facility considered residential use and permitted use; provisions inapplicable to adult foster care facilities; review by council; notice to residents; denial of license; exceptions. [M.S.A. 5.2933(2)]

Sec. 3b. (1) As used in this section, “state licensed residential facility” means a structure constructed for residential purposes that is licensed by the state pursuant to the adult foster care facility licensing act, Act No. 218 of the Public Acts of 1979, being sections 400.701 to 400.737 of the Michigan Compiled Laws, or Act No. 116 of the Public Acts of 1973, as amended, being sections 722.111 to 722.128 of the Michigan Compiled Laws, that provides resident services or care for 6 or fewer persons under 24-hour supervision for persons in need of that supervision or care.

(2) In order to implement the policy of this state that persons in need of community residential care shall not be excluded by zoning from the benefits of normal residential surroundings, a state licensed residential facility providing supervision or care, or both, to 6 or less persons shall be considered a residential use of property for the purposes of zoning and a permitted use in all residential zones, including those zoned for single family dwellings, and shall not be subject to a special use or conditional use permit or procedure different from those required for other dwellings of similar density in the same zone.

(3) This section does not apply to adult foster care facilities licensed by a state agency for care and treatment of persons released from or assigned to adult correctional institutions.

(4) At least 45 days before licensing a residential facility, the state licensing agency shall notify the council of the city or village or the designated agency of the city or village where the proposed facility is to be located to review the number of existing or proposed similar state licensed residential facilities whose property lines are within a 1,500-foot radius of the property lines of the proposed facility. The council of a city or village or an agency of the city or village to which the authority is delegated, when a proposed facility is to be located within the city or village, shall give appropriate notification of the proposal to license the facility to those residents whose property lines are within a 1,500-foot radius of the property lines of the proposed facility. A state licensing agency shall not license a proposed residential facility if another state licensed residential facility exists within the 1,500-foot radius of the proposed location, unless permitted by local zoning ordinances or if the issuance of the license would substantially contribute to an excessive concentration of state licensed residential facilities within the city or village. In a city with a population of 1,000,000 or more a state licensing agency shall not license a proposed residential facility if another state licensed residential facility exists within a 3,000-foot radius of the proposed location unless permitted by local zoning ordinances. This subsection shall not apply to state licensed residential facilities caring for 4 or fewer minors.

(5) This section does not apply to a state licensed residential facility licensed before March 31, 1977, or to a residential facility that was in the process of being developed and licensed before March 31, 1977 if approval was granted by the appropriate local governing body before that date.

History: Add. 1976, Act 396, Eff. Mar. 31, 1977;—Am. 1977, Act 28, Imd. Eff. June 15, 1977;—Am. 1993, Act 210, Imd. Eff. Oct. 21, 1993.

Constitutionality: Section 3b of the City and Village Zoning Act and § 33 of the Adult Foster Care Facility Licensing Act do not violate the Title-Object Clause of the Michigan Constitution. *City of Livonia v. Department of Social Services*, 423 Mich. 466, 335 N.W.2d 473 (1985).

125.583c Residence used to give instruction in craft or fine art; regulations not prohibited. [M.S.A. 5.2933(3)]

Sec. 3c. (1) A zoning ordinance adopted under this act shall provide for the use of a single family residence by an occupant of that residence for a home occupation to give instruction in a craft or fine art within the residence.

(2) This section does not prohibit the regulation of noise, advertising, traffic, hours of operation, or other conditions that may accompany the use of a residence described in subsection (1).

History: Add. 1994, Act 376, Eff. Mar. 30, 1995.

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125.584 Ordinances; public hearing; notice; affidavit; appointment and report of commission; transmission of summary and report; determination of boundaries or imposition of regulations; amendment and adoption of ordinances or maps; supplements; protest petition; vote; exclusion of publicly owned land; publication and contents of notice of adoption.

Sec. 4. (1) The legislative body of a city or village may provide by ordinance for the manner in which regulations and boundaries of districts or zones shall be determined and enforced or amended, supplemented, or changed. At least 1 public hearing shall be held by the commission appointed to recommend zoning regulations or, if a commission does not exist, by the legislative body before a regulation becomes effective. Not less than 15 days' notice of the time and place of the public hearing shall first be published in an official paper or a paper of general circulation in the city or village. Not less than 15 days' notice of the time and place of the public hearing shall first be given by mail to each public utility company and each railroad company owning or operating any public utility or railroad within the districts or zones affected, and the airport manager of each airport, that registers its name and mailing address with the city or village clerk for the purpose of receiving the notice. An affidavit of mailing shall be maintained. A hearing shall be granted to an interested person at the time and place specified on the notice.

(2) The legislative body of a city or village, unless otherwise provided by charter, may appoint a commission to recommend in the first instance the boundaries of districts and appropriate regulations to be enforced in the districts. If a city or village has a planning commission, that commission shall be appointed to perform the duties set forth in this section. The commission shall make a tentative report and hold at least 1 public hearing before submitting its final report to the legislative body. A summary of the comments submitted at the public hearing shall be transmitted with the report of the commission to the legislative body. The legislative body may hold additional public hearings if it considers it necessary or as may be required by charter.

(3) In a city or village having a commission appointed to recommend zoning requirements, the legislative body shall not in the first instance determine the boundaries of districts or impose regulations until after the final report of the commission. In such a city or village, the legislative body shall not amend the ordinance or maps after they are adopted in the first instance until the proposed amendment has been submitted to the commission and it has held at least 1 hearing and made report thereon. In either case, the legislative body may adopt the ordinance and maps, with or without amendments, after receipt of the commission's report, or refer the ordinance and maps again to the commission for a further report.

(4) After the ordinance and maps have in the first instance been approved by the legislative body of a city or village, amendments or supplements thereto may be made as provided in this section, except that if an individual property or several adjacent properties are proposed for rezoning, notice of the proposed rezoning and hearing shall be given to the owners of the property in question at least 15 days before the hearing.

(5) Upon presentation of a protest petition meeting the requirements of this subsection, an amendment to a zoning ordinance which is the object of the petition shall be passed only by a 2/3 vote of the legislative body, unless a larger vote, but not to exceed 3/4 vote, is required by ordinance or charter. The protest petition shall be presented to the legislative body before final legislative action on the amendment and shall be signed by 1 of the following:

- (a) The owners of at least 20% of the area of land included in the proposed change.
- (b) The owners of at least 20% of the area of land included within an area extending outward 100 feet from any point on the boundary of the land included in the proposed change.

(6) For purposes of subsection (5), publicly owned land shall be excluded in calculating the 20% land area requirement.

(7) Following adoption of a zoning ordinance and subsequent amendments by the legislative body of a city or village, 1 notice of adoption shall be published in a newspaper of general circulation in the city or village within 15 days after adoption. Promptly following adoption of a zoning ordinance or subsequent amendment by the legislative body of the city or village, a copy of the notice of adoption shall also be mailed to the airport manager of an airport entitled to notice under subsection (1).

(8) The notice of adoption under subsection (7) shall include the following information:

- (a) In the case of a newly adopted zoning ordinance, the following statement: "A zoning ordinance regulating the development and use of land has been adopted by the city (village) council of the city (village) of _____".

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(b) In the case of an amendment to an existing ordinance, either a summary of the regulatory effect of the amendment, including the geographic area affected, or the text of the amendment.

(c) The effective date of the ordinance.

(d) The place and time where a copy of the ordinance may be purchased or inspected. The filing and publication requirements in this section relating to city and village zoning ordinances supersede charter provisions relating to the filing and publication of city and village ordinances.

History: 1921, Act 207, Imd. Eff. May 17, 1921;—CL 1929, 2636;—Am. 1941, Act 287, Eff. Jan. 10, 1942;—Am. 1941, Act 306, Eff. Jan. 10, 1942;—CL 1948, 125.584;—Am. 1976, Act 145, Eff. Mar. 31, 1977;—Am. 1978, Act 638, Eff. Mar. 1, 1979;—Am. 2000, Act 383, Imd. Eff. Jan. 2, 2001.

125.584a Special land uses. [M.S.A. 5.2934(1)]

Sec. 4a. (1) A city or village may provide in a zoning ordinance for special land uses which shall be permitted in a zoning district only after review and approval by the commission appointed to formulate and subsequently administer the zoning ordinance, an official charged with administering the ordinance, or the legislative body. The ordinance shall specify the following:

(a) The special land uses and activities eligible for approval consideration and the body or official charged with reviewing special land uses and granting approval.

(b) The requirements and standards upon which decisions on requests for special land use approval shall be based.

(c) The procedures and supporting materials required for application, review, and approval.

(2) Upon receipt of an application for a special land use which requires a decision on discretionary grounds, 1 notice that a request for special land use approval has been received shall be published in a newspaper of general circulation in the city or village and shall be sent by mail or personal delivery to the owners of property for which approval is being considered, to all persons to whom real property is assessed within 300 feet of the boundary of the property in question, and to the occupants of all structures within 300 feet, except that the notice shall be given not less than 5 and not more than 15 days before the application will be considered. If the name of the occupant is not known, the term "occupant" may be used in making notification. Notification need not be given to more than 1 occupant of a structure, except that if a structure contains more than 1 dwelling unit or spatial area owned or leased by different individuals, partnerships, businesses or organizations, 1 occupant of each unit or spatial area shall receive notice. In the case of a single structure containing more than 4 dwelling units or other distinct spatial areas owned or leased by different individuals, partnerships, businesses, or organizations, notice may be given to the manager or owner of the structure who shall be requested to post the notice at the primary entrance to the structure. The notice shall:

(a) Describe the nature of the special land use request.

(b) Indicate the property which is the subject of the special land use request.

(c) State when and where the special land use request will be considered.

(d) Indicate when and where written comments will be received concerning the request.

(e) Indicate that a public hearing on the special land use request may be requested by a property owner or the occupant of a structure located within 300 feet of the boundary of the property being considered for a special use.

(3) At the initiative of the body or official responsible for approving special land uses, or upon the request of the applicant for special land use authorization, or a property owner or the occupant of a structure located within 300 feet of the boundary of the property being considered for a special land use, a public hearing with notification as required for a notice of a request for special land use approval as provided in subsection (2) shall be held before a decision on the special land use request which is based on discretionary grounds. If the applicant or the body or official responsible for approving special land uses requests a public hearing, only notification of the public hearing need be made. A decision on a special land use request which is based on discretionary grounds shall not be made unless notification of the request for special land use approval, or notification of a public hearing on a special land use request is given as required by this section.

(4) The body or official designated in the zoning ordinance to review and approve special land uses may deny, approve, or approve with conditions, requests for special land use approval. The decision on a special land use shall be incorporated in a statement of conclusions relative to the special land use under consideration. The decision shall specify the basis for the decision, and any conditions imposed.

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History: Add. 1978, Act 638, Eff. Mar. 1, 1979.

125.584b Planned unit development. [M.S.A. 5.2934(2)]

Sec. 4b. (1) As used in this section, "planned unit development" includes cluster zoning, planned development, community unit plan, planned residential development, and other terminology denoting zoning requirements designed to accomplish the objectives of the zoning ordinance through a land development project review process based on the application of site planning criteria to achieve integration of the proposed land development project with the characteristics of the project area.

(2) A city or village may establish planned unit development requirements in a zoning ordinance which permit flexibility in the regulation of land development; encourage innovation in land use and variety in design, layout, and type of structures constructed; achieve economy and efficiency in the use of land, natural resources, energy, and the providing of public services and utilities; encourage useful open space; and provide better housing, employment, and shopping opportunities particularly suited to the needs of the residents of the state. The review and approval of planned unit developments shall be by the commission appointed to formulate and subsequently administer the zoning ordinance, an official charged with administration of the ordinance, or the legislative body.

(3) Within a land development project designated as a planned unit development, regulations relating to the use of land, including but not limited to permitted uses, lot sizes, setbacks, height limits, required facilities, buffers, open space areas, and land use density shall be determined in accord with the planned unit development regulations specified in the zoning ordinance. The planned unit development regulations need not be uniform with regard to each type of land use if equitable procedures recognizing due process principles and avoiding arbitrary decisions are followed in making regulatory decisions.

(4) The planned unit development regulations established by a city or village shall specify:

(a) The body or official which will review and approve planned unit development requests.

(b) The conditions which create planned unit development eligibility, the participants in the review process, and the requirements and standards upon which applications will be judged and approval granted.

(c) The procedures required for application, review, and approval.

(5) Following receipt of a request to approve a planned unit development, the body or official charged in the ordinance with the review and approval of planned unit developments shall hold at least 1 public hearing on the request. An ordinance may provide for preapplication conferences before submission of a planned unit development request, and the submission of preliminary site plans before the public hearing. Notification of the public hearing shall be given in the same manner as required by section 4a(3) for public hearings on special land uses. Within a reasonable time following the public hearings, the body or official responsible for approving planned unit developments shall meet for final consideration of the request, and shall deny, approve, or approve with conditions, the request. It shall prepare a report stating its conclusions on the request for a planned unit development, the basis for its decision, the decision, and any conditions relating to an affirmative decision. If the ordinance requires that the legislative body amend the ordinance to act on the planned unit development request, and if the hearing was not held by the legislative body, the report, a summary of comments received at the public hearing, minutes of all proceedings, and all documents related to the planned unit development request, shall be transmitted to the legislative body for consideration in making a final decision. If an amendment of a zoning ordinance is required by the planned unit development regulations of a city or village zoning ordinance, the ordinance amendment procedures of this act shall be followed, except that the hearing required by this subsection shall be regarded as fulfilling the public hearing requirement of section 4.

(6) If the planned unit development regulations of a city or village zoning ordinance do not require amendment of the ordinance to authorize a planned unit development, the body or official charged in the zoning ordinance with review and approval of planned unit developments may give final approval, approval with conditions, or denial to a request.

(7) Final approvals may be granted on each phase of a multi-phased planned unit development if each phase contains the necessary components to insure protection of natural resources and the health, safety, and welfare of the users of the planned unit development and the residents of the surrounding area.

(8) In establishing planned unit development regulations, a city or village, when available and applicable, may incorporate by reference other ordinances or statutes which regulate land development.

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The planned unit development regulations contained in zoning ordinances shall encourage complimentary relationships between zoning regulations and other regulations affecting the development of land.

History: Add. 1978, Act 638, Eff. Mar. 1, 1979.

125.584c Discretionary decisions; requirements, standards, and conditions. [M.S.A. 5.2934(3)]

Sec. 4c. (1) If a city or village zoning ordinance authorizes the consideration and approval of special land uses or planned unit developments pursuant to sections 4a or 4b, or otherwise provides for discretionary decisions, the requirements and standards upon which the decisions are made shall be specified in the ordinance. The standards shall be consistent with, and promote the intent and purpose of the zoning ordinance, and insure that the land use or activity authorized shall be compatible with adjacent uses of land, the natural environment, and the capacities of public services and facilities affected by the land use. The standards shall insure that the land use or activity is consistent with the public health, safety, and welfare of the city or village. A request for approval of a land use or activity which is in compliance with the standards stated in the zoning ordinance and the conditions imposed thereunder, other applicable ordinances, and state and federal statutes shall be approved.

(2) Reasonable conditions may be required in conjunction with the approval of a special land use, planned unit development, or other land uses or activities permitted by discretionary decision. The conditions may include, conditions necessary to insure that public services and facilities affected by a proposed land use or activity will be capable of accommodating increased service and facility loads caused by the land use or activity, to protect the natural environment and conserve natural resources and energy, to insure compatibility with adjacent uses of land, and to promote the use of land in a socially and economically desirable manner. Conditions imposed shall do all the following:

(a) Be designed to protect natural resources, the health, safety, and welfare, as well as the social and economic well-being of those who will use the land use or activity under consideration, residents and landowners immediately adjacent to the proposed land use or activity, and the community as a whole.

(b) Be related to the valid exercise of the police power and purposes which are affected by the proposed use or activity.

(c) Be necessary to meet the intent and purpose of the zoning regulations; be related to the standards established in the ordinance for the land use or activity under consideration; and be necessary to insure compliance with those standards.

(3) The conditions imposed with respect to the approval of a land use or activity shall be recorded in the record of the approval action and shall remain unchanged except upon the mutual consent of the approving authority and the landowner. The approving authority shall maintain a record of changes granted in conditions.

History: Add. 1978, Act 638, Eff. Mar. 1, 1979.

125.584d Site plan. [M.S.A. 5.2934(4)]

Sec. 4d. (1) As used in this section, "site plan" includes the documents and drawings specified in the zoning ordinance necessary to insure that a proposed land use or activity is in compliance with the local ordinance and state and federal statutes.

(2) A city or village may require the submission and approval of a site plan before authorization of a land use or activity regulated by a zoning ordinance. The zoning ordinance shall specify the body, board, or official charged with reviewing site plans and granting approval.

(3) If a zoning ordinance requires site plan approval, the site plan, as approved, shall become part of the record of approval, and subsequent actions relating to the activity authorized shall be consistent with the approved site plan, unless a change conforming to the zoning ordinance receives the mutual agreement of the landowner and the administrative official or body which initially approved the site plan.

(4) The procedures and requirements for the submission and approval of site plans shall be specified in the zoning ordinance. Site plan submission, review, and approval shall be required for special land uses and planned unit developments. Decisions rejecting, approving, or conditionally approving a site plan shall be based upon standards and requirements contained in the zoning ordinance.

(5) A site plan shall be approved if it contains the information required by the zoning ordinance and is in compliance with the zoning ordinance and the conditions imposed thereunder, other applicable ordinances, and state and federal statutes.

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History: Add. 1978, Act 638, Eff. Mar. 1, 1979.

125.584e Improvements; deposit of performance guarantee. [M.S.A. 5.2934(5)]

Sec. 4e. (1) As used in this section, "improvements" means those features and actions associated with a project which are considered necessary by the body or official granting zoning approval to protect natural resources or the health, safety, and welfare of the residents of a city or village, and future users or inhabitants of the proposed project or project area, including roadways, lighting, utilities, sidewalks, screening, and drainage. Improvements does not include the entire project which is the subject of zoning approval.

(2) To insure compliance with a zoning ordinance and any conditions imposed under the ordinance, a city or village may require that a cash deposit, certified check, irrevocable bank letter of credit, or surety bond acceptable to the city or village covering the estimated cost of improvements associated with a project for which zoning approval is sought, be deposited with the clerk of the city or village to insure faithful completion of the improvements. The performance guarantee shall be deposited at the time of the issuance of the permit authorizing the activity or project. The city or village may not require the deposit of the performance guarantee before the date on which the city or village is prepared to issue the permit. The city or village shall establish procedures under which a rebate of any cash deposits in reasonable proportion to the ratio of work completed on the required improvements will be made as work progresses.

(3) This section shall not be applicable to improvements for which a cash deposit, certified check, irrevocable bank letter of credit, or surety bond has been deposited pursuant to Act No. 288 of the Public Acts of 1967, as amended, being sections 560.101 to 560.293 of the Michigan Compiled Laws.

History: Add. 1978, Act 638, Eff. Mar. 1, 1979.

125.584f Qualified city or village zoning ordinances; option of landowner to develop land zoned for residential development; requirements; limitations; "qualified city" or "qualified village" defined; zoning ordinance provisions cited as "open space preservation."

Sec. 4f. (1) Subject to subsection (4) and the right of referendum if provided by charter, beginning 1 year after the effective date of the amendatory act that added this section, each qualified city or qualified village shall provide in its zoning ordinance that land zoned for residential development may be developed, at the option of the landowner, with the same number of dwelling units on a portion of the land specified in the zoning ordinance, but not more than 80%, that, as determined by the city or village, could otherwise be developed, under existing ordinances, laws, and rules, on the entire land area, if all of the following apply:

(a) The land is zoned at a density equivalent to 2 or fewer dwelling units per acre, or, if the land is served by a public sewer system, 3 or fewer dwelling units per acre.

(b) A percentage of the land area specified in the zoning ordinance, but not less than 20%, will remain perpetually in an undeveloped state by means of a conservation easement, plat dedication, restrictive covenant, or other legal means that runs with the land, as prescribed by the zoning ordinance.

(c) The development does not depend upon the extension of a public sewer or public water supply system, unless development of the land without the exercise of the option provided by this subsection would also depend upon such an extension.

(d) The option provided pursuant to this subsection has not previously been exercised with respect to that land.

(2) After a landowner exercises the option provided pursuant to subsection (1), the land may be rezoned accordingly.

(3) The development of land under subsection (1) is subject to other applicable ordinances, laws, and rules, including rules relating to suitability of groundwater for on-site water supply for land not served by public water and rules relating to suitability of soils for on-site sewage disposal for land not served by public sewers.

(4) Subsection (1) does not apply to a qualified city or qualified village if both of the following requirements are met:

(a) Since October 1, 2001, the city or village has had in effect a zoning ordinance provision providing for both of the following:

(i) Land zoned for residential development may be developed, at the option of the landowner, with

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the same number of dwelling units on a portion of the land that, as determined by the city or village, could otherwise be developed, under existing ordinances, laws, and rules, on the entire land area.

(ii) If the landowner exercises the option provided by subparagraph (i), the portion of the land not developed will remain perpetually in an undeveloped state by means of a conservation easement, plat dedication, restrictive covenant, or other legal means that runs with the land.

(b) On or before the enactment date of the amendatory act that added this section, a landowner exercised the option provided under the zoning ordinance provision referred to in subdivision (a) with at least 20% of the land area remaining perpetually in an undeveloped state.

(5) As used in this section, "qualified city" or "qualified village" means a city or village, respectively, that meets all of the following requirements:

- (a) Has adopted a zoning ordinance.
- (b) Has a population of 1,800 or more.
- (c) Has land that is not developed and that is zoned for residential development at a density described in subsection (1)(a).

(6) The zoning ordinance provisions required by subsection (1) shall be known and may be cited as the "open space preservation" provisions of the zoning ordinance.

History: Add. 2001, Act 179, Imd. Eff. Dec. 15, 2001.

125.585 Board of appeals; rules governing procedure; appointment and terms of members; powers and duties of board; appeals; variances; remuneration; finality of decision; judicial review.

Sec. 5. (1) The legislative body of a city or village may act as a board of appeals upon questions arising under a zoning ordinance. The legislative body may establish rules to govern its procedure as a board of appeals. In the alternative, the legislative body may appoint a board of appeals consisting of not less than 5 members, each to be appointed for a term of 3 years. Appointments of the first members shall be for terms of 1, 2, and 3 years, respectively, so as nearly as possible to provide for the subsequent appointment of an equal number of members each year. After the initial appointments, each member shall hold office for the full 3-year term.

(2) Under procedures specified in the zoning ordinance, the legislative body of a city or village may appoint not more than 2 alternate members for the same term as regular members of the board of appeals. The alternate members may be called on a rotating basis as specified in the zoning ordinance to sit as regular members of the board of appeals in the absence of a regular member. An alternate member may also be called to serve in the place of a regular member for the purpose of reaching a decision on a case in which the regular member has abstained for reasons of conflict of interest. The alternate member called shall serve in the case until a final decision is made. The alternate member has the same voting rights as a regular member of the board of appeals.

(3) The board of appeals shall hear and decide appeals from and review any order, requirements, decision, or determination made by an administrative official or body charged with the enforcement of an ordinance adopted under this act. The board of appeals shall also hear and decide matters referred to the board or upon which the board is required to pass under an ordinance adopted under this act. For special land use and planned unit development decisions, an appeal may be taken to the board of appeals only if provided for in the zoning ordinance.

(4) In a city or village having a population of less than 1,000,000, the concurring vote of a majority of the members of the board is necessary to reverse an order, requirement, decision, or determination of an administrative official or body, or to decide in favor of the applicant a matter upon which the board is required to pass under an ordinance, or to effect a variation in an ordinance except that a concurring vote of 2/3 of the members of the board is necessary to grant a variance from uses of land permitted in an ordinance. In a city having a population of 1,000,000 or more, the concurring vote of 2/3 of the members of the board is necessary to reverse an order, requirement, decision, or determination of an administrative official or body, or to decide in favor of the applicant a matter upon which the board is required to pass under an ordinance, or to grant a variance in an ordinance.

(5) An appeal may be taken by a person aggrieved, or by an officer, department, board, or bureau of the city or village. In addition, a variance in an ordinance may be applied for and granted pursuant to section 4 of the uniform condemnation procedures act, 1980 PA 87, MCL 213.54, and this act. A board of rules or board of building appeals of a city or village may be enlarged to consist of not less than 5

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members, and these may be appointed as the board of appeals as provided in this section.

(6) An appeal under this section shall be taken, within a time prescribed by the board of appeals by general rule, by filing, with the officer or body from whom the appeal is taken and with the board of appeals, a notice of appeal specifying the grounds for the appeal. The officer or body from whom the appeal is taken shall immediately transmit to the board all the papers constituting the record upon which the action appealed from was taken.

(7) An appeal under this section stays all proceedings in furtherance of the action appealed from unless the officer or body from whom the appeal is taken certifies to the board of appeals, after the notice of appeal is filed, that by reason of facts stated in the certificate, a stay would in the opinion of the officer or body cause imminent peril to life or property. If such a certification is filed, the proceedings shall only be stayed by a restraining order. A restraining order may be granted by the board of appeals or by the circuit court, on application, on notice to the officer or body from whom the appeal is taken and on due cause shown.

(8) The board of appeals shall fix a reasonable time for the hearing of the appeal and give notice of the appeal to the persons to whom real property within 300 feet of the premises in question is assessed, and to the occupants of single and 2-family dwellings within 300 feet. The notice shall be delivered personally or by mail addressed to the respective owners and tenants at the address given in the last assessment roll. If a tenant's name is not known, the term "occupant" may be used. Upon the hearing, a party may appear in person or by agent or by attorney.

(9) The board of appeals shall decide the appeal within a reasonable time. The board of appeals may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination appealed from and shall make an order, requirement, decision, or determination as in the board's opinion ought to be made in the premises, and to that end shall have all the powers of the officer or body from whom the appeal is taken. If there are practical difficulties or unnecessary hardship in carrying out the strict letter of the ordinance, the board of appeals may in passing upon appeals grant a variance in any of its rules or provisions relating to the construction, or structural changes in, equipment, or alteration of buildings or structures, or the use of land, buildings, or structures, so that the spirit of the ordinance shall be observed, public safety secured, and substantial justice done.

(10) The board of appeals may impose conditions upon an affirmative decision, as provided in section 4c(2). The legislative body of a city or village may authorize the remuneration of the members of the board for attendance at each meeting.

(11) The decision of the board of appeals is final. However, a person having an interest affected by the zoning ordinance may appeal to the circuit court. Upon appeal, the circuit court shall review the record and decision of the board of appeals to ensure that the decision meets all of the following requirements:

- (a) Complies with the constitution and laws of this state.
- (b) Is based upon proper procedure.
- (c) Is supported by competent, material, and substantial evidence on the record.
- (d) Represents the reasonable exercise of discretion granted by law to the board of appeals.

(12) If the court finds the record of the board of appeals inadequate to make the review required by this section, or that additional material evidence exists that with good reason was not presented to the board of appeals, the court shall order further proceedings before the board of appeals on conditions that the court considers proper. The board of appeals may modify its findings and decision as a result of the new proceedings, or may affirm the original decision. The supplementary record and decision shall be filed with the court.

(13) As a result of the review required by this section, the court may affirm, reverse, or modify the decision of the board of appeals.

History: 1921, Act 207, Imd. Eff. May 17, 1921;—CL 1929, 2637;—Am. 1941, Act 306, Eff. Jan. 10, 1942;—Am. 1947, Act 272, Eff. Oct. 11, 1947;—CL 1948, 125.585;—Am. 1952, Act 97, Eff. Sept. 18, 1952;—Am. 1968, Act 202, Eff. Nov. 15, 1968;—Am. 1973, Act 204, Imd. Eff. Jan. 11, 1974;—Am. 1978, Act 638, Eff. Mar. 1, 1979;—Am. 1979, Act 180, Eff. Mar. 18, 1980;—Am. 1986, Act 191, Imd. Eff. July 8, 1986;—Am. 2000, Act 20, Imd. Eff. Mar. 8, 2000.

125.585a Board of appeals; conducting business at public meeting; notice of meeting; availability of certain writings to public. [M.S.A. 5.2935(1)]

Sec. 5a. (1) The business which the board of appeals or the legislative body acting as a board of

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appeals may perform shall be conducted at a public meeting of the board of appeals or legislative body acting as a board of appeals held in compliance with Act No. 267 of the Public Acts of 1976, being sections 15.261 to 15.275 of the Michigan Compiled Laws. Public notice of the time, date, and place of the meeting shall be given in the manner required by Act No. 267 of the Public Acts of 1976.

(2) A writing prepared, owned, used, in the possession of, or retained by the board of appeals or the legislative body acting as a board of appeals or a commission appointed pursuant to section 5 in the performance of an official function shall be made available to the public in compliance with Act No. 442 of the Public Acts of 1976, being sections 15.231 to 15.246 of the Michigan Compiled Laws.

History: Add. 1977, Act 186, Imd. Eff. Nov. 17, 1977.

125.586 Conflicting laws; governing law. [M.S.A. 5.2936]

Sec. 6. Wherever the provision of any ordinance or regulations, adopted by the legislative body of any city or village under the provisions of this act, impose requirements for lower heights of buildings, or a less percentage of lot that may be occupied, or require wider or larger courts or deeper yards than are imposed or required by existing provisions of law or ordinance, the provisions of such local ordinance or regulation adopted under the provisions of this act shall govern. Where, however, the provisions of the state housing code or other ordinances or regulations of any city or village impose requirements for lower heights of buildings or less percentage of lot that may be occupied, or require wider or larger courts or deeper yards than are required by any ordinance or regulation which may be adopted by the legislative body of any city or village under the provisions of this act, the provisions of said state housing code or other ordinance or regulations shall govern.

History: 1921, Act 207, Imd. Eff. May 17, 1921;—CL 1929, 2638;—CL 1948, 125.586.

125.587 Violation as nuisance per se; abatement; liability; administration and enforcement of ordinance; penalties. [M.S.A. 5.2937]

Sec. 7. A building erected, altered, razed, or converted, or a use carried on in violation of a local ordinance or regulation adopted pursuant to this act is a nuisance per se. The court shall order the nuisance abated, and the owner or agent in charge of the building or land, or both the owner and the agent, are liable for maintaining a nuisance per se. The legislative body in the ordinance adopted pursuant to this act shall designate the proper officials whose duty it is to administer and enforce the ordinance and do either of the following for each violation of the ordinance:

- (a) Impose a penalty for the violation.
- (b) Designate the violation as a municipal civil infraction and impose a civil fine for the violation.

History: 1921, Act 207, Imd. Eff. May 17, 1921;—CL 1929, 2639;—CL 1948, 125.587;—Am. 1978, Act 638, Eff. Mar. 1, 1979;—Am. 1994, Act 25, Eff. May 1, 1994.

125.589 Declaration of necessity. [M.S.A. 5.2939]

Sec. 9. The provisions of this act are hereby declared to be immediately necessary for the preservation of the public peace, health and safety and are hereby given immediate effect.

History: 1921, Act 207, Imd. Eff. May 17, 1921;—CL 1929, 2641;—CL 1948, 125.589.

125.590 Review by circuit courts; appeals to supreme court; procedure. [M.S.A. 5.2940]

Sec. 10. Any party aggrieved by any order, determination or decision of any officer, agency, board, commission, board of appeals, or the legislative body of any city or village, made pursuant to the provisions of section 3a of this act may obtain a review thereof both on the facts and the law, in the circuit court for the county wherein the property involved or some part thereof, is situated: Provided, That application is made to the court within 30 days after delivery of a copy of such order, determination or decision, by certiorari or by any other method permissible under the rules and practices of the circuit courts of this state. On such review the courts shall have jurisdiction to make such further orders in respect thereto as justice may require. An appeal may be had from the decision of any circuit court or condemnation court to the supreme court in the same manner as provided by the laws of this state with respect to appeals from circuit courts; and in the event of such appeal, the issue of non-conformity may be reviewed as an issue of law in the supreme court.

History: Add. 1947, Act 272, Eff. Oct. 11, 1947;—CL 1948, 125.590.

125.591 Action for review; proper and necessary party; notice; failure to enter appearance. [M.S.A. 5.2941]

Sec. 11. Any person required to be given notice under section 5(8), shall be a proper and necessary party to any action for review instituted under section 10 and shall be given notice personally or by registered or certified mail of proceedings under section 10 in the same manner as provided in section 5(8). If any person receiving notice under this section fails within 20 days of receiving that notice to enter an appearance in the court in which the proceedings were instituted, further notice to that person of subsequent proceedings is not required and the court may proceed to determine the issues.

History: Add. 1967, Act 225, Eff. Nov. 2, 1967;—Am. 1986, Act 191, Imd. Eff. July 8, 1986.

125.592 Effect of zoning ordinance or decision in presence of demonstrated need. [M.S.A. 5.2942]

Sec. 12. A zoning ordinance or zoning decision shall not have the effect of totally prohibiting the establishment of a land use within a city or village in the presence of a demonstrated need for that land use within either the city or village or the surrounding area within the state, unless a location within the city or village does not exist where the use may be appropriately located or use is unlawful.

History: Add. 1978, Act 638, Eff. Mar. 1, 1979.

125.593 Adoption of development rights ordinance; establishment, financing, and administration of purchase of development rights program; limitation; use; scope; separate ordinance; agreements between counties, cities, villages, and townships. [M.S.A. 5.2943]

Sec. 13. (1) The legislative body of a city or village may adopt a development rights ordinance limited to the establishment, financing, and administration of a PDR program as provided under this section and sections 14 and 15. The PDR program may be used only to protect agricultural land and other eligible land. This section and sections 14 and 15 do not expand the condemnation authority of a city or village as otherwise provided for in this act. A PDR program shall not acquire development rights by condemnation. This section and sections 14 and 15 do not limit any authority that may otherwise be provided by law for a city or village to protect natural resources, preserve open space, provide for historic preservation, or accomplish similar purposes.

(2) A city or village shall not establish, finance, or administer a PDR program unless the legislative body of the city or village adopts a development rights ordinance. If the city or village has a zoning ordinance, the development rights ordinance may be adopted as part of the zoning ordinance pursuant to the procedures governing adoption of a zoning ordinance set forth in this act. Whether or not the city or village has a zoning ordinance, the development rights ordinance may be adopted as a separate ordinance pursuant to the procedures governing ordinance adoption in general.

(3) The legislative body of a city or village may promote and enter into agreements between counties, cities, villages, and townships for the purchase of development rights, including cross-jurisdictional purchase, subject to applicable development rights ordinances of cities and villages and similar ordinances of counties and townships.

History: Add. 1996, Act 571, Eff. Mar. 31, 1997.

125.594 Development rights ordinance providing for PDR program; specifications; consistency with plan; conveyance. [M.S.A. 5.2944]

Sec. 14. (1) A development rights ordinance shall provide for a PDR program. Under a PDR program, the city or village purchases development rights, but only from a willing landowner. A development rights ordinance providing for a PDR program shall specify all of the following:

(a) The public benefits that the city or village may seek through the purchase of development rights.
(b) The procedure by which the city or village or a landowner may by application initiate a purchase of development rights.

(c) The development rights authorized to be purchased subject to a determination under standards and procedures required by subdivision (d).

(d) The standards and procedure to be followed by the legislative body of the city or village for approving, modifying, or rejecting an application to purchase development rights including the determination of all of the following:

(i) Whether to purchase development rights.

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- (ii) Which development rights to purchase.
 - (iii) The intensity of development permitted after the purchase on the land from which the development rights are purchased.
 - (iv) The price at which development rights will be purchased and the method of payment.
 - (v) The procedure for ensuring that the purchase or sale of development rights is legally fixed so as to run with the land.
 - (e) The circumstances under which an owner of land from which development rights have been purchased under a PDR program may repurchase those development rights and how the proceeds of the purchase are to be used by the city or village.
- (2) If the city or village has a zoning ordinance, the purchase of development rights shall be consistent with the plan referred to in section 1 upon which the zoning ordinance is based.
- (3) Development rights acquired under a PDR program may be conveyed only as provided pursuant to subsection (1)(e).

History: Add. 1996, Act 571, Eff. Mar. 31, 1997.

125.595 Financing for PDR program; sources; borrowing money and issuing bonds or notes; pledge; lien; exemption from taxation; investment; disposition; refunding existing indebtedness; special assessments. [M.S.A. 5.2945]

Sec. 15. (1) A PDR program may be financed through 1 or more of the following sources:

- (a) General appropriations by the city or village.
 - (b) Proceeds from the sale of development rights by the city or village subject to section 14(3).
 - (c) Grants.
 - (d) Donations.
 - (e) Bonds or notes issued under subsections (2) to (6).
 - (f) General fund revenue.
 - (g) Special assessments under subsection (7).
 - (h) Other sources approved by the city or village and permitted by law.
- (2) The city or village may borrow money and issue bonds or notes under the municipal finance act, Act No. 202 of the Public Acts of 1943, being sections 131.1 to 139.3 of the Michigan Compiled Laws, subject to the general debt limit applicable to the city or village. The bonds or notes may be revenue bonds or notes; general obligation limited tax bonds or notes; subject to section 6 of article IX of the state constitution of 1963, general obligation unlimited tax bonds or notes; or bonds or notes to refund in advance bonds or notes issued under this section.
- (3) The legislative body of the city or village may secure bonds or notes issued under this section by mortgage, assignment, or pledge of property including, but not limited to, anticipated tax collections, revenue sharing payments, or special assessment revenues. A pledge made by the legislative body of the city or village is valid and binding from the time the pledge is made. The pledge immediately shall be subject to the lien of the pledge without a filing or further act. The lien of the pledge shall be valid and binding as against parties having claims in tort, contract, or otherwise against the city or village, irrespective of whether the parties have notice of the lien. Filing of the resolution, the trust agreement, or another instrument by which a pledge is created is not required.
- (4) Bonds or notes issued under this section are exempt from all taxation in this state except inheritance and transfer taxes, and the interest on the bonds or notes is exempt from all taxation in this state, notwithstanding that the interest may be subject to federal income tax.
- (5) The bonds and notes issued under this section may be invested in by the state treasurer and all other public officers, state agencies and political subdivisions, insurance companies, banks, savings and loan associations, investment companies, and fiduciaries and trustees, and may be deposited with and received by the state treasurer and all other public officers and the agencies and political subdivisions of this state for all purposes for which the deposit of bonds or notes is authorized. The authority granted by this section is in addition to all other authority granted by law.
- (6) The legislative body of the city or village may borrow money and issue bonds or notes for refunding all or part of existing bond or note indebtedness only if the net present value of the principal and interest to be paid on the refunding bonds or notes, excluding the cost of issuance, will be less than the net present value of the principal and interest to be paid on the bonds or notes being refunded, as calculated using a method approved by the department of treasury.

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(7) A development rights ordinance may authorize the legislative body of the city or village to finance a PDR program by special assessments. In addition to meeting the requirements of section 14, the development rights ordinance shall include in the procedure to approve and establish a special assessment district both of the following:

(a) The requirement that there be filed with the legislative body a petition containing all of the following:

(i) A description of the development rights to be purchased, including a legal description of the land from which the purchase is to be made.

(ii) A description of the proposed special assessment district.

(iii) The signatures of the owners of at least 66% of the land area in the proposed special assessment district.

(iv) The amount and duration of the proposed special assessments.

(b) The requirement that the legislative body specify how the proposed purchase of development rights will specially benefit the land in the proposed special assessment district.

History: Add. 1996, Act 571, Eff. Mar. 31, 1997.

125.600 Definitions; short title.

Sec. 20. (1) As used in this act:

(a) "Agricultural land" means substantially undeveloped land devoted to the production of plants and animals useful to humans, including forage and sod crops; grains, feed crops, and field crops; dairy products; poultry and poultry products; livestock, including breeding and grazing of cattle, swine, and similar animals; berries; herbs; flowers; seeds; grasses; nursery stock; fruits; vegetables; Christmas trees; and other similar uses and activities.

(b) "Airport" means an airport licensed by the Michigan department of transportation, bureau of aeronautics under section 86 of the aeronautics code of the state of Michigan, 1945 PA 327, MCL 259.86.

(c) "Airport approach plan" means a plan, or an amendment to a plan, adopted under section 12 of the airport zoning act, 1950 (Ex Sess) PA 23, MCL 259.442, and filed with the commission appointed to recommend zoning regulations for the city or village under section 151 of the aeronautics code of the state of Michigan, 1945 PA 327, MCL 259.151.

(d) "Airport layout plan" means a plan, or an amendment to a plan, that shows current or proposed layout of an airport, that is approved by the Michigan aeronautics commission, and that is filed with the commission appointed to recommend zoning regulations for the city or village under section 151 of the aeronautics code of the state of Michigan, 1945 PA 327, MCL 259.151.

(e) "Airport manager" means that term as defined in section 10 of the aeronautics code of the state of Michigan, 1945 PA 327, MCL 259.10.

(f) "Airport zoning regulations" means airport zoning regulations under the airport zoning act, 1950 (Ex Sess) PA 23, MCL 259.431 to 259.465, for an airport hazard area that lies in whole or part in the area affected by a zoning ordinance under this act.

(g) "Conservation easement" means that term as defined in section 2140 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.2140.

(h) "Development rights" means the rights to develop land to the maximum intensity of development authorized by law.

(i) "Development rights ordinance" means an ordinance, which may comprise part of a zoning ordinance, adopted under section 13.

(j) "Greenway" means a contiguous or linear open space, including habitats, wildlife corridors, and trails, that link parks, nature reserves, cultural features, or historic sites with each other, for recreation and conservation purposes.

(k) "Intensity of development" means the height, bulk, area, density, setback, use, and other similar characteristics of development.

(l) "Other eligible land" means land that has a common property line with agricultural land from which development rights have been purchased and that is not divided from that agricultural land by a state or federal limited access highway.

(m) "PDR program" means a program under section 14 for the purchase of development rights by a city or village.

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(n) "Undeveloped state" means a natural state preserving natural resources, natural features, or scenic or wooded conditions; agricultural use; open space; or a similar use or condition. Land in an undeveloped state does not include a golf course but may include a recreational trail, picnic area, children's play area, greenway, or linear park. Land in an undeveloped state may be, but is not required to be, dedicated to the use of the public.

(2) This act shall be known and may be cited as the "city and village zoning act".

History: Add. 1996, Act 571, Eff. Mar. 31, 1997;—Am. 2000, Act 383, Imd. Eff. Jan. 2, 2001;—Am. 2001, Act 179, Imd. Eff. Dec. 15, 2001.

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