Michigan State University Extension
Land Use Series

Restrictions on Zoning Authority

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

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

1 P.A. 110 of 2006, as amended, (being the Michigan Zoning Enabling Act, M.C.L. 125.3101 *et seq.*). (This footnote used to cite the following acts, each repealed as of July 1, 2006: P.A. 183 of 1943, as amended (the County Zoning Act, M.C.L. 125.201 *et seq.*); P.A. 184 of 1943, as amended (the Township Zoning Act, M.C.L. 125.271 *et seq.*); P.A. 207 of 1921, as amended (the City and Village Zoning Act, M.C.L. 125.581 et seq.).)

This is a fact sheet developed by experts on the topic(s) covered within MSU Extension. Its intent and use is to assist Michigan communities making public policy decisions on these issues. This work refers to university-based peer reviewed research, when available and conclusive, and based on the parameters of the law as it relates to the topic(s) in Michigan. This document is written for use in Michigan and is based only on Michigan law and statute. One should not assume the concepts and rules for zoning or other regulation by Michigan municipalities and counties apply in other states. In most cases they do not. This is not original research or a study proposing new findings or conclusions.

Limits placed on zoning can change. Always check back to web site lu.msue.msu.edu to insure use of the most recent version of this publication. This document attempts to outline restrictions on zoning as they currently exist. Limitations described here are categorized as outlined above. For the limitations on zoning listed here, detailed footnotes are included to help the reader find the source of the limitation.

1. General rules

A. The zoning enabling acts require consideration of all legitimate land uses:

> A zoning ordinance or zoning decision shall not have the effect of totally prohibiting the establishment of a land use within a local unit of government in the presence of a demonstrated need for that land use within either that local unit of government or the surrounding area within the state, unless a location within the local unit of government does not exist where the use may be appropriately located or the use is unlawful.[2]

B. Local zoning must allow the continuation of a nonconforming use[3] and expansion of a nonconforming use[4] (existing building or use of land that lawfully existed prior to zoning or prior to the zoning amendment). However, the ordinance can provide for reasonable terms for restoration, reconstruction, extension, substitution, and acquiring of nonconforming uses that may limit their life span.

C. Local zoning cannot constitute a taking, which occurs if a regulation requires or permits physical invasion by others onto private property or is so sweeping that it, in effect, takes away all economically viable use of land.[5]

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2 Section 207 of P.A. 110 of 2006, as amended, (being the Michigan Zoning Enabling Act, M.C.L. 125.3207). (This footnote used to cite the following acts, each repealed as of July 1, 2006: Section 27a. of P.A. 183 of 1943, as amended (the County Zoning Act, M.C.L. 125.227a); section 27a of P.A. 184 of 1943, as amended (the Township Zoning Act, M.C.L. 125.297a); and section 12 of P.A. 207 of 1921, as amended (the City and Village Zoning Act, M.C.L. 125.592).)

3 Section 208 of P.A. 110 of 2006, as amended, (being the Michigan Zoning Enabling Act, M.C.L. 125.3208). (This footnote used to cite the following acts, each repealed as of July 1, 2006: Section 16 of P.A. 183 of 1943, as amended (the County Zoning Act, M.C.L. 125.216); section 16 of P.A. 184 of 1943, as amended (the Township Zoning Act, M.C.L. 125.286.); and section 3a of P.A. 207 of 1921, as amended (the City and Village Zoning Act, M.C.L. 125.583a.).)

4 *Century Cellunet of Southern Michigan v. Summit Township et al.*, 250 Mich.App. 543 (2002), Jackson Circuit Court LC No. 99-096108-AA.

5 Both state and federal constitutions prohibit taking of private property for public use without just compensation – U.S. Constitution, Amendment V, and Michigan Constitution 1963, Article 10 §2. The U.S. Supreme Court has recognized that the government effectively "takes" a person's property by overburdening that property with regulations. *Pennsylvania Coal Co. v. Mahon*, 260 US 393, 415; 43 S Ct 158; 67 L Ed 2d 322 (1922). See also *K & K Construction, Inc. v. Department of Natural Resources*,

D. Zoning must provide for due process of law and must provide equal protection of all persons affected by the laws.[6]

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

F. One cannot use community dispute resolution in the process of adopting zoning amendments. The local elected body cannot delegate away its legislative authority in this way. (However a community dispute resolution process may be a very good idea, and legal, to deal with complaints about issues revolving around the operation of a wind energy system.)[7]

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456 Mich 570, 576; 575 NW2d 531 (1998); *Lucas v. South Carolina Coastal Council*, 505 US 1003, 1015; 112 S Ct 2886; 120 L Ed 2d 798 (1992); *Penn Central Transportation Co. v. New York City*, 438 US 104; 98 S Ct 2646; 57 L Ed 2d 631 (1978); *Adams Outdoor Advertising v. City of East Lansing* (after remand), 463 Mich 17, 23-24; 614 NW2d 634 (2000); *Palazzolo v. Rhode Island*, 533 US 606; 121 S Ct 2448, 2457; 150 L Ed 2d 592 (2001); *Loveladies Harbor Inc. v. United States*, 28 F3d 1171 (1994); *Creppel v. United States*, 41 F3d 627 (1994); *Good v. United States*, 189 F3d 1355 (1999); *Lingle v. Chevron USA, Inc.*, 125 S.Ct. 2074 (2005).

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

[7] For some reason the idea that getting neighbor's approval should not be done gets challenged and some want the court case or statute that says so. This issue is largely settled law for many of the reasons outlined here but there is not much case law on it. Rather it is a compilation of court cased about related issues:

When a community conditions approval on neighbor approval it opens the door to a neighbor saying "yes" or "no" for any number of reasons, which are not known or documented by anyone. So Neighbor "A" decides he is mad at neighbor "B" because "B's" dog does the dog-business in "A's" yard. So in revenge "A" says "no" to "B's" special use permit request.

What a dog does in another's yard has nothing to do with a zoning approval, and goes into the category of an arbitrary and capricious decision. So look for case law about being arbitrary and capricious.

This practice also raises substantive due process issues. So how does neighbor approval directly tie to health, safety, welfare governmental purpose? In other words, we might document that a big flashing sign is dangerous within 50 feet of a busy intersection. So the regulation is to not allow big flashing signs within 50 feet of a busy intersection. But if the regulation is one needs to have the neighbor's consent/disapproval to have/not have the big flashing sign – then how does that tie back to the purpose of the regulation – especially when the neighbor says "okay" and the sign is allowed while the documentation is such a sign is dangerous? So look for case law about substantive due process and regulation directly tied to accomplishing the public purpose.

Equal treatment also enters into this. Neighbor A" says "no" to neighbor "B's" permit because of the revenge for dog business. But Neighbor "A" (or maybe it is neighbor "C") says "yes" to neighbor "D's" the exact same land use request in the same zoning district, etc. etc. Neighbor "B" and "D" did not get treated equally. So look for case law about equal treatment under law.

2. Outright preemption

Outright preemption occurs if the regulation of a particular land use is reserved to the state – that is, it "occupies the field." The Michigan Supreme Court set forth four guidelines to aid courts in determining whether a statute occupies the field of regulation:[8] See Appendix B, for more detail on this.

A. A. Local zoning cannot regulate the location or operation of hazardous waste disposal and/or storage facilities.[9] (It is probably acceptable to regulate fencing and haul routes if approved by the state siting board.)

B. Local zoning cannot regulate the location or operation of solid waste facilities such as landfills and incinerators.[10] (It is probably acceptable to regulate fencing and haul routes if included in the county solid waste management plan.)

C. Local zoning cannot regulate utility (power) lines.[11]

D. Local zoning cannot regulate wind energy power transmission lines[12] within Primary and other Wind Energy Resource Zones established by order of the Michigan Public Service Commission, if a Expedited Siting Certificate for a transmission line is issued to a public utility by the Public Service

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When an administrative body delegates decision making authority to another entity – a neighbor – that in itself may be problematic. So look for case law about inability of government to delegate away its legislative and administrative authority. Delegating legislative authority is VERY clearly something that cannot be done. There is a small bit more debate about delegating away administrative authority as pointed out here:

The establishment of rules or standards to guide the zoning authority is essential to preserving the constitutionality of the zoning law. Id., § 25.161, p 570. This administrative function should be distinguished from the legislative function of zoning itself. See *West v Portage*, 392 Mich 458; 221 NW2d 303 (1974), and *Schwartz v Flint*, 426 Mich 295; 395 NW2d 678 (1986). Zoning ordinances have been invalidated when a consent provision, in effect, delegates the legislative power, originally given by the people to a legislative body, to a narrow segment of the community. *City of Eastlake v Forest City Enterprises, Inc*, 426 U.S. 668, 677; 96 S Ct 2358; 49 L Ed 2d 132 (1976). However, not all consent provisions are invalid. As stated in Cady v Detroit, 289 Mich 499, 515; 286 NW 805 (1939):

> "A distinction is made between ordinances or regulations which leave the enactment of the law to individuals and ordinances or regulations prohibitory in character but which permit the prohibition to be modified with the consent of the persons who are to be most affected by such modification." 43 CJ, p 246.
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> If such consent is used for no greater purpose than to waive a restriction which the legislative authority itself has created and in which creation it has made provision for waiver, such consent is generally regarded as being within constitutional limitations. *City of East Lansing v Smith*, 277 Mich 495 [269 NW 573 (1936)].

Here, the consent provision does not delegate legislative power to a narrow segment of the community. Rather, it merely requires a waiver as the first step in an administrative procedure authorized by the zoning ordinance. The inclusion [***13] of a consent requirement in Ordinance No. 89 is not unlawful. *Howard Twp. Bd. of Trs. v. Waldo*, 168 Mich. App. 565, 573-74, 425 N.W.2d 180, 184 (1988)

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

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

[10] Section 11538 of Part 115 of Act 451 of 1994, as amended (the solid waste part of Natural Resources and Environmental Protection Act M.C.L. 324.11538(8)).

[11] Section 205(1) of P.A. 110 of 2006, as amended, (being the Michigan Zoning Enabling Act, M.C.L. 125.3205(1)); and section 10 of Act 30 of 1955, as amended (the Electric Transmission Line Certification Act, M.C.L. 460.570). (This footnote used to cite the following acts, each repealed as of July 1, 2006: Section 1(2) of P.A. 183 of 1943, as amended (the County Zoning Act, M.C.L. 125.201(2)); and section 1(2) of P.A. 184 of 1943, as amended (the Township Zoning Act, M.C.L. 125.271(2)); section 1(3) of P.A. 207 of 1921, as amended (the City and Village Zoning Act, M.C.L. 125.581(2)).)

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

Commission. Wind Energy Resource Zones do not include areas zoned residential at the time of the designation.

E. Local zoning cannot regulate pipelines that are regulated by the Michigan Public Service Commission.[13]

F. Local zoning (and state and local government) cannot regulate railroads.[14]

G. Local zoning cannot regulate state prisons and public correctional facilities[15] including halfway houses.[16] Private facilities can be regulated.

H. Township and county zoning cannot regulate oil and gas wells, exploration, and operation of the wellhead site[17] (but it can be regulated off-site.) A flowline (pipeline) which is part of the operation of a well is also not subject to local regulation.[18] An exception to not regulating oil and gas wells is that local regulation can occur if zoning is for a designated "natural river."[19]

I. Local zoning cannot regulate surface coal mining and reclamation operations.[20] (See also "mining" in this publication.) An exception is that this regulation can occur if zoning is for a designated natural river.[21]

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

[14] Interstate Commerce Commission Termination Act of 1995, 49 U.S.C. § 10101 *et seq.* P.A. 354 of 1993, as amended, (being the Railroad Code of 1993, M.C.L. 462.131) and *Wabash, St. L. & P.R. Co. v. Illinois*, 118 U.S. 557 (1886).

[15] Section 4 of Chapter I of Act 232 of 1953, as amended, (Department of Corrections Act, M.C.L. 791.204). Also M.C.L. 791.216. Noted exception is at 791.220g(7).

[16] *Dearden v. Detroit*; Supreme Court of Michigan, 403 Mich. 257; 269 N.W.2d 139; 1978 Mich., August 30, 1978, Decided.

[17] Section 205(2) of P.A. 110 of 2006, as amended, (being the Michigan Zoning Enabling Act, M.C.L. 125.3205(2)); and part 615 of Act 451 of 1994, as amended (the supervisor of wells part of the Natural Resources and Environmental Protection Act, M.C.L. 324.61501 *et. seq.*). (This footnote used to cite the following acts, each repealed as of July 1, 2006: Section 1(1) of P.A. 183 of 1943, as amended (the County Zoning Act, M.C.L. 125.201(1)); section 1(1) P.A. 184 of 1943, as amended (the Township Zoning Act, M.C.L. 125.271(1)).

[18] There are different types of pipelines. For a flowline (pipeline) from an oil or gas well connecting them together, and maybe up to a compression plant (gas)), and/or up to the first point of sale (e.g., the meter from which royalty payments are calculated for those oil/gas wells), the Supervisor of Wells has exclusive jurisdiction. But there is dispute over how far the flowline from the well might go.

A local government may have some jurisdiction over a pipeline from the point of sale, or "downstream" from the in-field processing (e.g., a compression plant (gas)) that goes to the market point.

Third are pipelines which are under the regulation of the Michigan Public Service Commission, see "pipelines" in this publication.

[19] Section 30508 of Act 451 of 1994, as amended (the Natural Rivers part of the Natural Resources and Environmental Protection Act, M.C.L. 324.30508).

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

[21] Section 30508 of Act 451 of 1994, as amended (the natural rivers part of the Natural Resources and Environmental Protection Act, M.C.L. 324.30508).

J. State water pollution regulations occupy the field for both point[22] and nonpoint[23] sources of pollution.

K. Regulations about farms/farming[24] are severely restricted by the Right To Farm Act. To determine what can, and cannot, be regulated locally is a two part thought process. First is the land use going to fall under the Right To Farm Act (RTFA), that is, is it a farm or agriculture? Start by asking these questions

- Is it a "farm operation?"[25]
- Is it producing "farm products?"[26]
- Is it commercial?

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

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

- Anything about a farmer's liability in a public or private nuisance lawsuit.27
- Anything about enforcement or investigation process for complaints involving agriculture.28
- The conversion from one or more farm operation activities to other farm operation activities.29

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

Local zoning of agriculture cannot extend, revise or conflict with provisions of the Right to Farm Act or any generally accepted agricultural and management practices (GAAMPs),[30] including:

- Manure management and utilization.
- Pesticide utilization and pest control.
- Nutrient utilization.
- Care of farm animals.

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

[23] Section 8328(1) of Part 83 of P.A. 451 of 1994, as amended (the general non-point source pollution control part of the Natural Resources and Environmental Protection Act, M.C.L. 324.8328(1)).

[24] Farm means any activity that produces a farm product via a farm operation which is commercial, as defined in the Right To Farm Act, M.C.L. 286.472. (There is no minimum amount of commercial required, and farm operation does not have to be within what one commonly thinks of as a traditional farm.)

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

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

[27] MCL 286.473

[28] MCL 286.474

[29] MCL 286.472(b)(ix)

[30] Section 4(6) of Act 93 of 1981, as amended (the Michigan Right to Farm Act, M.C.L. 286.474(6)) and respective Michigan Department of Agriculture adopted generally accepted agricultural and management practices (GAAMPs).

- Cranberry production.
- Site selection and odor control for new and expanding livestock production facilities.
- Irrigation water use.
- Farm Markets[31]

See more detailed materials on this topic at www.msue.msu.edu/lu.

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

Complicating things further, some GAAMPs delegate regulation authority back to the local unit of government. Examples of this (as of April 2015) include:

- Municipalities with a population of 100,000 or more in which a zoning ordinance has been enacted to allow for urban agriculture (and designates existing agricultural operations present as non-conforming uses).
- Category 4 sites for livestock operations as determined in the Site Selection and Odor Control for New and Expanding Livestock Facilities GAAMPs.
- Vehicle access and egress, building setbacks, parking (but not the surface of the parking lot), signs for Farm Markets as designated in the Farm Markets GAAMPs.
- Beer breweries, bonfires, camping, carnival rides, concerts, corn mazes, distilleries, fishing pond, haunted barns/trails, mud runs, play-scapes, riding stables, and winery/hard cider associated with Farm Markets as designated in the Farm Markets GAAMPs (or not considered as part of the Farm Market GAAMPs).

There are far more nuances to all this, including unsettled case law as to if a GAAMPs can delegate back regulatory authority that is preempted by state statute.

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[31] The GAAMP sets forth that a farm market is an "area" where transactions between a farm market operator and customers take place (not necessarily but might be a building). At least 50 percent of the products marketed/offered for sale (measured over a five year timeframe) must be from the affiliated farm. The "50 percent" is measured by use of floor space.

The farm market must be "affiliated" with a farm, meaning a farm under the same ownership or control (e.g. leased) as the farm market, but does not have to be located on the same property where the farm production occurs. The market must be located on land where local land use zoning allows for agriculture and its related activities.

Marketing is part of a farm market, and can include Community Supported Agriculture (CSA), U-Pick operations (also known as pick your own (PYO)), and associated activities and services to attract and entertain customers (e.g., cooking demonstrations, corn mazes, tours, fishing pond, hay rides, horseback riding, petting farms, picnic areas, etcetera (a much longer list is in the GAAMP)). Services to attract and entertain customers are subject to local zoning ordinances, state, federal laws, and associated rules and regulations.

If in a building/structure, the structure must comply with the Stille-Derosset-Hale Single State Construction Code Act (MCL 125.1501 et seq.) and placement of the structure shall comply with local zoning, including set-backs from property lines and right-of-ways. Parking may be on grass, gravel, or pavement; one vehicle parking space for every 200 sq. ft. of interior retail space or 1,000 sq. ft. of outdoor activity space. Driveways must have an Michigan Department of Transportation (MDOT), county road commission, or village/city street agency permits. Signs outside the farm market must comply with sign regulations of MDOT, and all applicable local regulations. External lighting must comply with all applicable local, state, and federal regulations for lighting outside the farm market.

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

If a local government submits its ordinance on farm/agriculture, showing that adverse effects on the environment or public health will exist within the local government without the ordinance, to the Michigan Department of Agriculture and the Michigan Agricultural Commission approves the ordinance then those local regulations may apply.[32]

L. State fertilizer regulations occupy the field.[33]

M. Local zoning cannot regulate uses on state-owned land on Mackinac Island under the control of the Mackinac Island Park Authority. (Furthermore, all buildings in the city of Mackinac Island are subject to design review and approval by the city architect.)[34]

N. State Fairgrounds are under the jurisdiction of the State Exposition and Fairgrounds Council, one in Detroit and one in the Upper Peninsula.[35]

O. Local zoning cannot regulate trails that have received Natural Resources Commission designation as a "Michigan trailway"[36] and snowmobile trails which are subject to the Snowmobile Act.[37]

P. Local zoning cannot regulate any part of the Michigan State Police radio communication system.[38] The statute provides for the State Police to notify the local zoning authority of the proposed facility, and a 30 day period where the zoning authority can issue a special use permit or propose an alterative location. If the special use permit is not issued within 30 days, or the alternative location does not meet siting requirements the state police can proceed with the first proposed site.

Q. Local zoning cannot regulate state-owned or leased armories and accessory buildings, military warehouses, arsenals and storage facilities for military equipment, and the land for military uses.[39]

R. Local zoning cannot regulate U.S. nuclear power[40] facilities and military facilities.[41]

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[32] Section 4(7) of Act 93 of 1981, as amended (the Michigan Right to Farm Act, M.C.L. 286.474(7)).

[33] Section 8517(1) of Part 85 of Act 451 of 1994, as amended (the fertilizer part of the Natural Resources and Environmental Protection Act, M.C.L. 324.8517.

[34] Section 76504(2) of Part 76 of Act 451 of 1994, as amended (Mackinac Island State Park part of Natural Resources and Environmental Protection Act, M.C.L.324.76504(2)).

[35] P.A. 361 of 1978, as amended (the Michigan Exposition and Fairgrounds Act, M.C.L. 285.161 *et. seq.*) and *City of Detroit v. State of Michigan*, 626 Mich.App. 542 (2004), Wayne Circuit Court LC No. 00-021062-CE.

[36] Section 82101 *et seq.* of Part 821 of Act 451 of 1994, as amended (Snowmobiles part of Natural Resources and Environmental Protection Act, M.C.L.. §§ 324.72101; *Township of Bingham v. RLTD Railroad Corp.*, 463 Mich. 634, 624 N.W.2d 725 (2001). (See also part 721, section 72103 of P.A. 451 of 1994, as amended (the Michigan trailways part of the Natural Resources and Environmental Protection Act, M.C.L. 324.72103) and section 10 of P.A. 295 of 1976, as amended (the State Transportation Preservation Act of 1976, M.C.L. 474.60)).

[37] M.C.L. 324.82101 *et seq.* and *Chocolay Charter Township v Department of Natural Resources*, no. 246171 (Mich. App., October 28, 2003) (unpublished).

[38] P.A. 152 of 1929, as amended (the Michigan State Police Radio Broadcasting Stations Act, M.C.L. 28.281 *et. seq.*).

[39] Section 380 of chapter 6 of P.A. 150 of 1967, as amended (the armories and reservations chapter of the Michigan Military Act, M.C.L. 32.780).

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

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

S. Activities of a federally recognized Native American (Indian) tribal government within trust lands or within "Indian country" are not subject to local zoning. (Tribal zoning, if any, does have jurisdiction.)[42]

T. Public Schools under the jurisdiction of the Michigan superintendent of public instruction are not subject to local zoning.[43]

U. Certain public colleges and universities are not subject to local zoning.[44]

V. A municipality that adopts a zoning ordinance need not follow its own ordinance.[45] The court case establishing this preemption is specifically interpreting the City and Village Zoning Act, but the language the court used suggests this concept might also apply to a township or county. The Michigan Zoning Enabling Act does not directly address the question. The courts have also recognized that a local government may expressly exempt certain government projects or functions from its zoning ordinance by writing the exemptions into the zoning ordinance. [46] The Michigan Court of Appeals has differentiated between governmental function and proprietary function. So long as the municipality "...is in pursuance of a governmental function, it would be exempt from the strictures of the ordinance."[47] This exemption is only for a government's own zoning ordinance. A city, township, and village government must comply with another government's zoning ordinance.[48]

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[42] *Brendale v. Confederated Tribes and Bands of the Yakima Indian Nation et al.*, 492 US 408 (1989) addressed zoning jurisdiction in a checkerboarded ownership pattern area. This case was appealed. The U.S. Supreme Court combined the case with others before hearing it. The Supreme Court case, also involving the Crow Tribe in *Montana v. United States*, 450 US 544 (1981), further modified the *Brendale* decision to say "fee" lands and "trust" lands are different. Trust lands are zoned by the tribal *Ogema* (government).

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

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

[43] *Charter Township of Northville et al. v. Northville Public Schools* 469 Mich 285, 666 N.W.2d 213 (2003). Section 1263(3) of Act 451 of 1976, as amended (the Revised School Code, M.C.L. 380.1263(3)).

[44] Article VIII Section 5 of the 1963 Michigan Constitution; Article VIII Section 6 of the 1963 Michigan Constitution; Section 5 of Act 151 of 1851, as amended (the University of Michigan Act, M.C.L. 390.5); Sections 2 and 6 of Act 269 of 1909, as amended (the Michigan State University Act, M.C.L. 390.102 and 390.106); Section 5 of Act 183 of 1956, as amended (the Wayne State University Act, M.C.L. 390.645)); Section 4 of Act 35 of 1970, as amended (the Oakland University Act, M.C.L. 390.154); Section 2 of Act 70 of 1885, as amended (the Michigan Technological University Act, M.C.L. 390.352); Section 4 of Act 26 of 1969, as amended (the Lake Superior State University Act, M.C.L. 390.394); Section 3 of Act 72 of 1857, as amended (the Albion College Act, M.C.L. 390.703); Section 1 of Act 278 of 1965, as amended (the Saginaw Valley State University Act, M.C.L. 390.711); Section 2 of Act 95 of 1943, as amended (the Hillsdale College Act, M.C.L. 390.732); Sections 1 and 2 of Territorial Laws of 1833, Vol. III (the Kalamazoo College Act, M.C.L. 390.751 and 390.752); Section 3 of Act 114 of 1949, as amended (the Ferris State University Act, M.C.L. 390.803); Section 3 of Act 120 of 1960, as amended (the Grand Valley State University Act, M.C.L. 390.843); Section 3 of P.A. 48 of 1963 (2nd Ex. Sess.), as amended (the Central, Eastern, Northern and Western Michigan Universities Act, M.C.L. 390.553). See also *Marquette Co. v. Bd. of Control of Northern Michigan Univ.*, 111 Mich.App. 521, 314 N.W.2d 678 (1981).

[45] *Morrison et al. v. City of East Lansing*, 255 Mich. App. 505 (2003).

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

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

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

A local government should carefully consider the implications of not conforming to their own zoning ordinance and consult their municipal attorney before taking action. Inconsistent application of the ordinance to its own government functions could call into question the legitimacy of the local government's decision-making and invite an equal protection challenge.

W. County buildings owned and built/located by a county board of commissioners is not subject to zoning[49] in so much as the county has the power to determine "the site of, remove, or to designate a new site for a county building," and to erect "the necessary buildings for jails, clerks' offices, and other county buildings…."[50] A county's power under the CCA "is limited to the siting of county buildings." The court case establishing this preemption involved a county building and township zoning, but the language used by the court suggests the county is exempt from city and village zoning as well. Ancillary land uses indispensable to the building's normal use (not other types of land uses) are also not subject to zoning.[51] But a county has no authority to establish a principal land use (with or without ancillary building(s)).[52]

X. A local unit of government shall not regulate underground storage tanks that is inconsistent with the state statute and rules, nor require a permit, license, approval, inspection, or the payment of a fee or tax for the installation, use, closure, or removal of an underground storage tank system.[53]

Y. A local unit of government shall not enact or enforce an ordinance that regulates a large quantity water withdrawal[54] (more than an average of 100,000 gallons of water per day).

Z. A local unit of government cannot regulate the ownership, registration, purchase, sale, transfer, possession of, or otherwise deals with pistols or other firearms.[55] (Under current statute local government can only have such regulations that (1) duplicate current state criminal law, (2) regulation of its own government employee's use of firearms in the course of their employment duties, (3) requiring those under 16 to use a pneumatic gun under adult supervision when not on their own private property, (4) prohibiting use of a pneumatic gun in a threatening manner with intent to

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[49] *Pittsfield Charter Township v. Washtenaw County and City of Ann Arbor*, 468 Mich 702, 664 N.W.2d 193 (2003).

[50] *Herman v. County of Berrien* 481 Mich. 352; 750 N.W.2d 570; 2008 Mich. LEXIS 1166, June 18, 2008, Michigan Supreme Court.

[51] *Herman v. County of Berrien* 481 Mich. 352; 750 N.W.2d 570; 2008 Mich. LEXIS 1166, June 18, 2008, Michigan Supreme Court.

[52] *Coloma Charter Twp v. Berrien County* 317 Mich. App. 127; 894 N.W.2d 623; 2016 Mich. App. LEXIS 1651, September 6, 2016) Michigan Court of Appeals.

[53] Section 109, and 108(2) of Part 211 of P.A. 451 of 1994, as amended, (being the Underground Storage Tanks part of the Michigan Natural Resources and Environmental Protection Act, (M.C.L. 324.21109, M.C.L. 324.21108(2).) However the DEQ may delegate underground storage tanks to certain local governments, M.C.L. 324.21102(7). Note: these sections are repealed by act 451 of 1994, as amended, effective upon the expiration of 12 months after part 215 becomes invalid pursuant to section M.C.L. 324.21546 (3).

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

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

[55] MCL 123.1102 *and Michigan Coalition for Responsible Gun Owners v City of Ferndale* (256 Mich App 401, 409-410; 662 NW2d 864 (2003), lv den 469 Mich 880 (2003))

A local unit of government shall not . . . enact or enforce any ordinance or regulation pertaining to, or regulate in any other manner the ownership, registration, purchase, sale, transfer, transportation, or possession of pistols or other firearms, ammunition for pistols or other firearms, or components of pistols or other firearms, except as otherwise provided by federal law or a law of this state. [MCL 123.1102; emphasis added.]

induce fear in another,[56] (5) prohibiting discharge of a gun within a city or charter township, and (6) prohibiting discharge of a pneumatic gun within areas of a city or charter township with density of population such that discharge would be dangerous [but does not prevent use of target ranges and does not prevent if contained within private property].[57])

AA. Southeast Michigan Regional Transit Authority public transit facilities and public transportation system are exempt from local zoning ordinances or regulations which conflict with a coordination directive issued by the Authority.[58]

BB. Local government unit shall not control the amount of rent charged for leasing private residential property (unless the local government is the property owner/landlord) including through zoning or zoning permit conditions.[59]

CC. Local government shall not require a permit for any other approval or any fees or rates for a) the replacement of a small cell wireless facility with a small cell wireless facility that is not larger or heavier, in compliance with applicable codes, b) routine maintenance of a small cell wireless facility, utility pole, or wireless support structure, c) the installation, placement, maintenance, operation or replacement of a micro wireless facility[60] that is suspended on cables strung between utility poles or wireless support structures in compliance with applicable codes. [61]

DD. Local government cannot regulate the use and growth of recreational marijuana within a residence if the actions fall within the scope of immunity granted by the Michigan Regulation and Taxation of Marihuana Act[62].

EE. Local government shall not regulate or prohibit a sign that is located on or within a building and that commemorates any of the following who die in the line of duty: police officers, firefighters, medical first responders[63], members of the United States Armed Forces, correction officers, veterans of the United States Armed Forces.[64]

FF. A municipality may not adopt an ordinance that restricts the transportation of marijuana through the municipality. [65]

GG. A local unit of government cannot regulate no trespassing signs in compliance with the Natural Resources and Environmental Protection Act (MCL 324.73102(b) which allows no trespassing signs

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[56] M.C.L. 123.1103.

[57] M.C.L. 123.1104.

[58] Section 205(1)(b) of P.A. 110 of 2006, as amended, (being the Michigan Zoning Enabling Act, MCL 125.3205(1)(b) (effective March 27, 2013 at noon) and section 8(12) and section 15 of the Regional Transit Authority Act, MCL 124.558(12) and 124.558(15) (P.A.387 of 2012).

[59] 1988 PA 226 (MCL 123.411) Leasing of Private Residential Property

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

[61] 2018 PA 365 Small Wireless Communications Facilities Act (MCL 460.1315(5))

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

[63] MCL 125.3205d(2) "medical first responder" means that term as defined in section 20906 of the public health code, 1978 PA 368, MCL 333.20906.

[64] Section 205d, Michigan Zoning Enabling Act, MCL 125.3205d (amended 2018, effective March 28, 2019)

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

that would "enable a person to observe not less than 1 sign at any point of entry upon the property". The act requires that signs use a minimum 1 inch letter height and be a minimum size of 50 square inches.[66]

3. Preemption, sort of

A. Local governments cannot implement regulations that are more stringent than those of the state for the interior design of mobile (manufactured) home parks or standards related to the business, sales, and service practices of mobile home dealers, mobile home installers and repairers (unless the local regulation has been approved by the Michigan Manufactured Home Commission).[67]

B. Local government cannot regulate activities of the U. S. government on land owned by the federal government (although privately-owned facilities leased by the federal government can be regulated). Federal government must "consider" local regulations and follow them to "the maximum extent feasible." It must also follow requirements for landscaping, open space, minimum distance, maximum height, historic preservation and esthetic qualities, but it is not required to obtain a permit.[68] A federal instrumentality (where a federal government function is being done by a private entity) is also immune from any state law or local regulation directly inhibiting the purpose (and only its purpose).[69]

C. Local governments cannot implement regulations about nonferrous metallic mineral mining (nonferrous metallic sulfide deposits) that duplicate, contradict, or conflict with part 632 of the Natural Resources and Environmental Protection Act.[70] And such regulations (concerning hours of operation and haul routes) shall be reasonable in accommodating customary nonferrous metallic mineral mining operations.

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[66] Section 5 of Act 451 of 1994, as amended (the Natural Resource and Environmental Protection Act, Part 731 Recreational Trespass, M.C.L. 324.73105). MCL 324.73111 (2) "A local unit of government shall not enact, maintain, or enforce an ordinance, regulation, or resolution that contradicts or conflicts in any manner with this part."

[67] Section 7 of Act 96 of 1987, as amended (the Mobile Home Commission Act, M.C.L. 125.2307). Also, a local ordinance shall not be stricter than the manufacturer's recommended mobile home setup and installation specifications, or mobile home setup and installation standards promulgated by the federal Department of Housing and Urban Development pursuant to the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. 5401 to 5426.

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

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

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

"(I)t is of the very essence of supremacy to remove all obstacles to its action within its own sphere, and so to modify every power vested in subordinate governments, as to exempt its own operations from their own influence."

Hancock, 426 U.S. 167,178 (*McCulloch v. Maryland, 4 Wheat*. 316,426 (1819)). Sovereign immunity means that where "Congress does not affirmatively declare its instrumentalities or property subject to regulation," "the federal function must be left free" of regulation. Id. (*Mayo v. United States*, 319 U.S. 441, 447-48).

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

[70] Part 632 of P.A. 451 of 1994, as amended, (being the Nonferrous Metallic Mineral Mining part of the Michigan Natural Resources and Environmental Protection Act, (M.C.L. 324.63203(4).

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

D. Local zoning can regulate only certain specific aspects of extraction (mining) of natural resources (e.g., gravel, sand and similar pits).[71] Zoning cannot prevent extraction of natural resources unless "very serious consequences"[72] would occur. Regulations can include government's reasonable regulation of hours of operation, blasting hours, noise levels, dust control measures, and traffic (not preempted by the nonferrous metallic mineral mining part of the Natural Resources and Environmental Protection Act[73]). Such regulation shall be reasonable in accommodating customary mining operations. Extraction of minerals supersedes surface rights. (Oil and gas and coal mining cannot be regulated, see 2H and 2I.) Further regulation of mineral extraction might be acceptable if the zoning is for a designated natural river.

E. Wireless communication antenna[74] and towers local regulation is preempted, in part by the Federal Communications Act, court cases, and Michigan Zoning Enabling Act. In summary: cannot unreasonably discriminate between different provider companies;[75] "[t]he regulation of the placement, construction, and modification of personal wireless service facilities . . . shall not prohibit or have the effect of prohibiting the provision of personal wireless services"[76]; regulations cannot be based on "environmental effects of radio frequency emissions to the extent that such facilities comply with the [FCC]'s regulations. . . ."[77]; applications must be acted on within a certain deadlines and decisions shall "be in writing and supported by substantial evidence contained in a written record"[78] as well as following deadline requirements of local ordinance (if any) and the Michigan Zoning Enabling Act[79]; anyone harmed by a decision to deny a wireless facility permit can bring the issue to court, and the court must hear and rule on the case in an expedited manner[80]; state or local government must allow certain types of expansion of existing wireless facilities[81]; arguments concerning the impacts of property values must be documented by an expert, testifying on the record who has conducted a study of the specific site[82]; and Michigan requires most applications for wireless

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[71] Section 205(3)-205(6) of P.A. 110 of 2006, as amended, (being the Michigan Zoning Enabling Act, M.C.L. 125.3206(3)-125.3205(6).

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

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

[73] Part 632 of P.A. 451 of 1994, as amended, (being the Nonferrous Metallic Mineral Mining part of the Michigan Natural Resources and Environmental Protection Act, (M.C.L. 324.63203(4).

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

[75] 47 U.S.C. § 332(c)(7)(B)(i)(I) (2006).

[76] 47 U.S.C. § 332(c)(7)(B)(i) (2006) and U.S. Court of Appeals Sixth Circuit (691 F.3d 794; 2012 U.S. App. LEXIS 17534, August 21, 2012).

[77] 47 U.S.C. § 332(c)(7)(B)(iv) (2006).

[78] 47 U.S.C. §§ 332(c)(7)(B)(ii)-(iii) and *City of Arlington, Texas v. Federal Communications Commission*, U.S. Supreme Court, May 20, 2013.

[79] Section 514 of P.A. 110 of 2006, as amended, (being the Michigan Zoning Enabling Act, M.C.L. 125.3514).

[80] 47 U.S.C. § 332(c)(7)(B)(v).

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

[82] Donna J. Pugh; FOLEY & LARDNER LLP, Chicago office, presenting at the APA national conference, April 15, 2013.

facilities to be a permitted use in the local zoning ordinance with two exceptions as well as state decision deadlines.[83]

F. Regulation that (1) unreasonably delay or prevent installation, maintenance or use; (2) unreasonably increase the cost of installation, maintenance or use; or (3) preclude reception of an acceptable quality signal of customer-end antennas to receive signals[84] (e.g., "dish" antenna one meter or less in diameter,[85] direct-to-home satellite service, receive or transmit fixed wireless signals, video programming via broadband radio service (wireless cable) and wireless signals, and antenna designed to receive local television broadcasts). Clearly-defined local regulation exclusively for safety (e.g., securely fastened down), historic site protection are exceptions, and may be locally regulated. This does not apply to local AM/FM radio reception antennas, satellite, wireless, WiFi, broadband, amateur "ham" radio,[86] CB radio, Digital Audio Radio Services "DARS" antennas.)

G. A local unit of government may regulate the hours of use of fireworks so long as the regulation does not apply to certain holidays and times identified by the Michigan Fireworks Safety Act. The ignition, discharge, and use of consumer fireworks cannot be regulated at certain times around New Years Eve/Day, Memorial Day, July 4th (week of), and Labor Day. [87]

H. Beginning August 1, 2019, a local unit of government with a population of 100,000 or more or a local unit of government located in a county with a population of 750,000 or more may enact or enforce an ordinance that regulates the use of a temporary structure used in the sale, display, storage, transportation or distribution of fireworks.[88] A temporary structure includes, but is not limited to, a tent or stand. An ordinance established under this subsection may include, but is not limited to, a restriction on the number of permits issued for a temporary structure, regulation of the distance required between 2 or more temporary structures, or a zoning ordinance that regulates the use of a temporary structure. An ordinance established under this subsection may not prohibit the temporary storage, transportation, or distribution of fireworks by a consumer fireworks certificate holder at a retail location that is a permanent building or structure.[89]

I. Activity at a publically owned airport under control of an airport authority created by the Airport Authorities Act (Capital Regional Airport in Lansing) which are aeronautical uses are exempt from

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[83] Section 514 of P.A. 110 of 2006, as amended, (being the Michigan Zoning Enabling Act, M.C.L. 125.3514).

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

See also U.S. Federal Communications Commission Information Sheet (Dec. 2007), http://www.fcc.gov/mb/facts/otard.html, and http://www.hindmansanchez.com/docs/fcc_otard_rule_questions_and_answers_05240652_.pdf .

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

[86] But see 47 C.F.R. §97.15.

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

[88] M.C.L. 28.457 (4)

[89] M.C.L. 24.457 (4)

zoning, though non-aeronautical uses of such an airport are subject to zoning.[90] This may not apply to other types of public or private airports.

J. An amateur radio service station antenna structure may be erected at heights and dimensions sufficient to accommodate amateur radio service communications. Regulation amateur radio antenna must not preclude amateur radio service communications and reasonably accommodate and be the minimum practicable regulation to accomplish local government's purpose.[91] If near an airport federal code[92] and more than 60.96 meters (200 feet) tall must notify the federal aviation administration and register with the federal communications commission.[93]

K. A city, township, or village[94] may opt out of allowing state-licensed commercial medical marijuana facilities under the Medical Marihuana Facilities Licensing Act (MMFLA) by taking no action.[95] If one or more facility types are authorized by municipal ordinance, then local zoning and other ordinances can further regulate these facilities, apart from the purity or pricing of marijuana or any interference or conflict with statutory regulations for licensing marijuana facilities.[96] See patient-caregiver (MMMA) and recreational marijuana also in this publication.

L. Local zoning can regulate only certain specific aspects of new small wireless facilities located outside of the road right of way[97] (except for those activities exempt from zoning under section 15(5) of the Act)[98]. The applicant must be notified within 30 days if the application is complete and a decision to approve or deny a modification of a wireless support structure must be made in writing within 90 days after and application is received. A written decision for a new wireless support structure must be submitted within 150 days or receiving the application. Time periods may be extended by mutual agreement.[99] An authority shall not deny an application unless all of the following apply: (i) The denial is supported by substantial evidence contained in a written record that is publicly released contemporaneously (ii) There is a reasonable basis for the denial (iii) The denial would not discriminate against the applicant with respect to the placement of the facilities of other wireless providers.[100]

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

91 Section 205a of P.A. 110 of 2006, as amended, (being the Michigan Zoning Enabling Act, M.C.L. 125.3205a).

92 47 CFR 97.15.

93 47 CFR part 17.

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

95 M.C.L. 333.27205. The facility types authorized by the Medical Marihuana Facilities Licensing Act (MMFLA) are grower, processor, provisioning center, secure transporter, and safety compliance facility.

96 M.C.L. 333.27205.

97 Section 205 P.A. 110 of 2006, as amended (being the Michigan Zoning Enabling Act M.C.L. 125.3205 (1c).

98 Act 365 of 2018 Small Wireless Communications Facilities Deployment Act (MCL 460.1315 (5).

99 Act 365 of 2018 Small Wireless Communications Facilities Deployment Act (MCL 460.1317 (2 (a-d)).

100 MCL 460.1317 (2e).

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

A. If land is zoned "residential" of a specified density, then the ordinance must provide for a cluster (open space) type of development.[101]

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

- Mobile homes.[102]
- State-licensed residential facilities for six or fewer persons.[103]
- Home occupation for instruction in a craft or fine art (e.g., music lessons).[104]
- "Family day-care home" and "group day-care home" (e.g., child daycare facilities) in counties and townships.[105] (Cities and villages can regulate these by special use permit.[106])

C. If land is zoned to allow farms, or farms are allowed as a nonconforming use then a biofuel production facility that produces 100,000 or less gallons of biofuel shall be a permitted use on a farm subject to certain conditions. A biofuel production facility of more than 100,000 but not more than 500,000 gallons of biofuel shall be a possible special use on a farm subject to certain conditions.[107]

D. A municipality may not adopt an ordinance that prohibits a licensed recreational marihuana grower, a marihuana processor, and a marihuana retailer from operating within a single facility or from operating at a location shared with a marihuana facility operating pursuant to the medical marihuana facilities licensing act, 2016 PA 281, MCL 333.27101 to 333.27801.[108]

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[101] Section 506 of P.A. 110 of 2006, as amended, (being the Michigan Zoning Enabling Act, M.C.L. 125.3506). (This footnote used to cite the following acts, each repealed as of July 1, 2006: Section 16h of P.A. 183 of 1943, as amended (the County Zoning Act, M.C.L. 125.216h.); section 16h of P.A. 184 of 1943, as amended (the Township Zoning Act, M.C.L. 125.286h.); and section 4f of P.A. 207 of 1921, as amended (the City and Village Zoning Act, M.C.L. 125.584f).)

[102] *Robinson Township v. Knoll*, 410 Mich 310 (1981) and Section 7(6) of Act 96 of 1987, as amended (the Mobile Home Commission Act, M.C.L. 125.2307(6)).

[103] Section 206 of P.A. 110 of 2006, as amended, (being the Michigan Zoning Enabling Act, M.C.L. 125.3206). (This footnote used to cite the following acts, each repealed as of July 1, 2006: Section 16a of P.A. 183 of 1943, as amended (the County Zoning Act, M.C.L. 125.216a); section 16a. of P.A. 184 of 1943, as amended (the Township Zoning Act, M.C.L. 125.286a.); and section 3b of P.A. 207 of 1921, as amended (the City and Village Zoning Act, M.C.L. 125.583b).)

[104] Section 204 of P.A. 110 of 2006, as amended, (being the Michigan Zoning Enabling Act, M.C.L. 125.3204). (This footnote used to cite the following acts, each repealed as of July 1, 2006: Section 1a of P.A. 183 of 1943, as amended (the County Zoning Act, M.C.L. 125.201a); section 1a. of P.A. 184 of 1943, as amended (the Township Zoning Act, M.C.L. 125.271a.); and section 3c of P.A. 207 of 1921, as amended (the City and Village Zoning Act, M.C.L. 125.583c).)

[105] Section 206(3) and 206(4) of P.A. 110 of 2006, as amended, (being the Michigan Zoning Enabling Act, M.C.L. 125.3206(3) and 125.3206(4)). (This footnote used to cite the following acts, each repealed as of July 1, 2006: Section 16g of P.A. 183 of 1943, as amended (the County Zoning Act, M.C.L. 125.216g); and section 16g of P.A. 184 of 1943, as amended (the Township Zoning Act, M.C.L. 125.286g).)

[106] Section 206(5) of P.A. 110 of 2006, as amended, (being the Michigan Zoning Enabling Act, M.C.L. 125.3206(5)).

[107] Section 513 of P.A. 110 of 2006, as amended, (being the Michigan Zoning Enabling Act, M.C.L. 125.3513.

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

5. Can regulate but not prohibit

A. Signs can be regulated so long as the regulation is not dependent on (does not regulate) the content of the sign.[109] Also, sign regulation just for aesthetic purposes can be problematic.[110]A rule of thumb is if one has to read the sign to determine what regulation applies to the sign, you have a content-based regulation which is not appropriate.

   There are many, and complex, additional limitations on sign regulation (for example limited or no regulation of signs via zoning in a road right-of-way, and constrains of regulation (also shared with the Michigan Department of Highway) in highway right-of-ways. See *Michigan Sign Guidebook*, Scenic Michigan,[111] December 2011, in particular table 7-2 on pages 7-13 and 7-14.

B. Local zoning cannot limit religious activities/land uses in any terms that differ from those for other assemblies and nonreligious activities/land uses, nor can they interfere with religious activity.[112]

C. Adult entertainment or sexually oriented businesses can be regulated but not totally excluded.[113]

D. Existing shooting ranges (gun clubs) can continue after zoning is changed to prohibit or further regulate the range.[114]

E. Under the Michigan Medical Marijuana Act (MMMA) local ordinance can regulate the non-commercial cultivation, manufacture, or possession of marijuana, but not to the extent of prohibiting, or otherwise imposing a penalty on, use or cultivation of marijuana within the scope of immunity granted by the Act.[115] [116] See also medical and recreational marijuana facilities in this publication.

6. Can regulate but not less strictly than the state

A. Local air pollution regulations must be at least as strict as those of the state.[117]

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[109] U.S. Constitution, Amendment I. Sign regulation for "commercial speech" (an ad to propose a commercial transaction): *Bolger v. Youngs Drug Products Corp.*, 463 US 60, 66 (1983).

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

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

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

[111] *Michigan Sign Guidebook*, © Scenic Michigan: http://www.scenicmichigan.org/guidebook_2011.html.

[112] Title 42, Chapter 21C of the United States Code, codification of Religious Land Use and Institutionalized Persons Act of 2000 (PL 106-274).

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

[114] Section 2a(1) of Act 269 of 1989, as amended (the Sport Shooting Ranges Act, M.C.L. 691.1542a(1)).

[115] M.C.L. 333.26424(a); *Ter Beek v. City of Wyoming*, 495 Mich. 1 (2014).

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

[117] Section 5542(1) of Part 55 of P.A. 451 of 1994, as amended (the air pollution control part of the Natural Resources and Environmental Protection Act, M.C.L. 324.5542(1)).

B. Local zoning can not conflict with adopted airport zoning.[118]

C. Regulation of Great Lakes shoreline high-risk erosion areas is subject to approval and oversight by the Michigan Department of Environmental Quality.[119]

D. Designated sand dunes protection is subject to approval and oversight by the Michigan Department of Environmental Quality.[120] Zoning cannot be more restrictive that the state model plan.[121]

E. State natural rivers protection is subject to approval and oversight by the Michigan Department of Natural Resources.[122]

F. Local governments can regulate/protect wetlands, but the local regulations cannot deviate from the state's definition of a wetland, and the local parts of the zoning ordinance must be approved by the Michigan Department of Environmental Quality.[123]

G. Local regulation of floodplains cannot be less strict than that of the state.[124]

H. Local regulation of soil erosion and sedimentation cannot be less strict than that of the state (or of counties administering rules promulgated under state statute).[125]

I. Local regulation of disposal of septage can be the same or more strict than state statute.[126]

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

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

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

[118] Section 18 of P.A. 23 of 1950 Extra Session, as amended (the Airport Zoning Act, M.C.L. 259.448 et. seq.). (Section 15 (M.C.L. 259.445) provides for airport zoning to be a part of local zoning.)

[119]Part 321 of P.A. 451 of 1994, as amended (the shorelands protection and management part of the Natural Resources and Environmental Protection Act, M.C.L. 324.32301).

[120] Part 353 of P.A. 451 of 1994, as amended (the sand dunes protection and management part of the Natural Resources and Environmental Protection Act, M.C.L. 324.35301).

[121] Part _ of P.A. 451 of 1994, as amended (the shorelands protection and management part of the Natural Resources and Environmental Protection Act, M.C.L. 324.32312(2)). The statute was changed by amendment in 2012.

[122] Part 305 of P.A. 451 of 1994, as amended (the natural rivers part of the Natural Resources and Environmental Protection Act, M.C.L. 324.30501).

[123] Part 303 of P.A. 451 of 1994, as amended (the wetlands part of the Natural Resources and Environmental Protection Act, M.C.L. 324.30301) and Opinion of the Attorney General No. 6892 (March 5, 1996).

[124] Part 301 of P.A. 451 of 1994, as amended (the inland lakes and streams part of the Natural Resources and Environmental Protection Act, M.C.L. 324.30501).

[125] Part 91 of P.A. 451 of 1994, as amended (the soil erosion and sedimentation control part of the Natural Resources and Environmental Protection Act, M.C.L. 324.9101 et seq.).

[126] Part 117 of the Natural Resources & Environmental Protection Act (NREPA) (MCL 324.110701 et seq.) And *Gmoser's Septic Service, LLC v. Charter Township of East Bay* Michigan Court of Appeals (Published No. 309999, February 19, 2013).

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Appendix A. Commonly Believed to be Exempt From Zoning

Items subject to zoning

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

1. Michigan Department of Natural Resources boat launches (and by extension other state park and state forest land uses).
2. Private schools and other schools which are not under the jurisdiction of the Michigan superintendent of public instruction.
3. Zoning regulation applies to property which has been sold for construction of a school even through deed restrictions on the sale of the property are not allowed (PA 98 of 2017).

Appendix B. Case Law in Preemption

The following court case is instructive in determining if a state statute preempts local zoning.

Court: Michigan Court of Appeals (Unpublished No. 248702)

Case Name: *Salamey v. Dexter Twp. Zoning Bd. Of Appeals*

Based on the plain language of MCL 324.21109 and the ordinance, the court rejected plaintiff's argument the ordinance was preempted because it was in direct conflict with Natural Resources and Environmental Protection Act (NREPA), and the court further held NREPA did not preempt the ordinance by virtue of completely occupying the field the ordinance attempted to regulate.

Plaintiff appealed from the trial court's order affirming the zoning board of appeals' (ZBA) decision denying plaintiff's request for a conditional use permit to operate a gas station in an area zoned a "General Commercial District." Plaintiff contended NREPA preempted local regulation of the installation and use of underground storage tanks (UST) systems, and the ZBA's decision was not supported by competent, material, and substantial evidence. The court concluded MCL 324.21109 neither expressly permits, nor prohibits, operation of a gas station in a general commercial district and the ordinance did not strictly regulate USTs – rather, it promulgated rules for the operation of automobile service stations. NREPA also did not preempt municipal regulation under the facts presented when the record showed various factors other than the installation of the UST system were legitimate reasons for denial of the permit. In addition, the court held the record demonstrated there was competent, material, and substantial evidence supporting the denial of the permit. Affirmed.

Quoting, on the issue of state law preemption:

> "State law preempts a municipal ordinance where "1) the statute completely occupies the field that ordinance attempts to regulate, or 2) the ordinance directly conflicts with a state statute." *Michigan Coalition for Responsible Gun Owners, supra*, 256 Mich App 408, quoting *Rental Prop Owners Ass'n of Kent Co v Grand Rapids*, 455 Mich 246, 257; 566 NW2d 514 (1997). Regarding the second method of preemption set forth above, our Supreme Court has held that "[a] direct conflict exists . . . when the ordinance permits what the statute prohibits

or the ordinance prohibits what the statute permits." *People v Llewellyn* (*City of East Detroit v Llewellyn*), 401 Mich 314, 322 n 4; 257 NW2d 902 (1977).

"According to MCL 324.21109(3) of NREPA, a local unit of government "shall not enact or enforce a provision of an ordinance that requires a permit, . . . [or] approval . . . for the installation, use, closure, or removal of an underground storage tank system." The act further provides that a local unit of government "shall not enact or enforce a provision of an ordinance that is inconsistent with this part or rules promulgated under this part." M.C.L. 324.21109(2). Under the township zoning ordinance at issue in the instant case, Section 13.01(D)(5), Art XIII of the Dexter Township zoning ordinance requires a special approval use permit in order for the ZBA to permit an "automobile service station" in a general commercial district.

"Plaintiff contends that, because the township zoning ordinance requires plaintiff to obtain a special approval use permit in order to operate a gas station, i.e., a facility with an underground storage tank system, NREPA preempts that section of the zoning ordinance. This argument is not persuasive in light of the plain language of MCL 324.21109 1 and the plain language of the ordinance. Clearly, M.C.L. 324.21109 of NREPA neither expressly permits nor prohibits the operation of a gas station in a general commercial district. And, Section 13.01(D)(5), Art XIII of the Dexter Township zoning ordinance does not strictly regulate underground storage tanks, but rather promulgates rules for the operation of an automobile service station.

....

"Our Supreme Court set forth four guidelines to aid courts in determining whether a statute occupies the field of regulation:

First, where the state law expressly provides that the state's authority to regulate in a specified area of the law is to be exclusive, there is no doubt that municipal regulation is pre-empted.

Second, preemption of a field of regulation may be implied upon an examination of legislative history.

Third, the pervasiveness of the state regulatory scheme may support a finding of preemption. While the pervasiveness of the state regulatory scheme is not generally sufficient by itself to infer preemption, it is a factor which should be considered as evidence of preemption.

Fourth, the nature of the regulated subject matter may demand exclusive state regulation to achieve the uniformity may demand exclusive state regulation to achieve the uniformity necessary to serve the state's purpose or interest."

[*Llewellyn*, supra, 401 Mich 323-324 (citations omitted).]

Full Text Opinion: http://www.michbar.org/opinions/appeals/2004/120204/25398.pdf

See also Attorney General Opinion 7266 (June 12, 2012):

http://www.ag.state.mi.us/opinion/datafiles/2010s/op10345.htm

Appendix C. Update List

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

- June 23, 2003; July 14, 2003; August 5, 2003; January 21, 2004:

- County buildings, *Pittsfield Charter Township v. Washtenaw County and City of Ann Arbor*, 468 Mich 702, 664 N.W.2d 193 (2003)
- Follow one's own ordinance, *Morrison et al. v. City of East Lansing*, 255 Mich. App. 505 (2003).
- Public schools, *Charter Township of Northville et al. v. Northville Public Schools* 469 Mich 285, 666 N.W.2d 213 (2003).
- State fair, *City of Detroit v. State of Michigan*, 626 Mich.App. 542 (2004), Wayne Circuit Court LC No. 00-021062-CE.

- December 6, 2005:
  - Takings, *Lingle v. Chevron USA, Inc.*, 125 S.Ct. 2074 (2005), and
  - repeal of section 251 of the Michigan Telecommunications Act, M.C.L. 484.2251) effective December 31, 2005.
  - Water pollution, *City of Brighton and Department of Environmental Quality v. Township of Hamburg*, 260 Mich.App. 345 (2004), Livingston Circuit Court LC No. 00-017695-CH.
- April 24, 2006: P.A. 110 of 2006, as amended, (being the Michigan Zoning Enabling Act, M.C.L. 125.3101 et seq.
- June 26, 2006: Section 109, and 108(2) of Part 211 of P.A. 451 of 1994, as amended, (being the Underground Storage Tanks part of the Michigan Natural Resources and Environmental Protection Act, (M.C.L. 324.21109, M.C.L. 324.21108(2).)
- January 8, 2007: Large quantity water withdrawal added: Section 26 of Part 327 of P.A. 451 of 1994, as amended, (being the Great Lakes Preservation part of the Michigan Natural Resources and Environmental Protection Act, (M.C.L. 324.32726), effective February 28, 2006.
- May 2, 2007: Added *Herman v. County of Berrien* ((Published No. 273021, April 26, 2007) 481 Mich. 352; 750 N.W.2d 570; 2008 Mich. LEXIS 1166, June 18, 2008, Michigan Supreme Court) to footnote on county building exception from zoning.
- June 28, 2007: Added information on zoning regulation of railroads.
- January 30, 2008: Added information on snowmobile trails.
- April 9, 2008: To remove:

  '4.C. If a county zones an area "business," "commercial," "industrial," "manufacturing," "service" or similar (or the area is not zoned), then it must allow billboards along state highways.'

  as a result of P.A. 93 of 2008 amendment to P.A. 106 of 1972, as amended, (being the Highway Advertising Act of 1972, M.C.L. 252.301 et. seq.) which provide counties the authority to regulate billboards.
- May 14, 2008: Added "Federal Instrumentality"; Case Name: *City of Detroit v. Ambassador Bridge Co.* Michigan Supreme Court (No. 132329, May 7, 2008); and added "*Kyser v. Kasson Twp.*, Michigan Court of Appeals (Published No. 272516 and No. 273964, May 6, 2008)." to the footnote on gravel/sand mining.
- June 26, 2008: Added more detail about county building exemption from zoning as a result of *Herman v. County of Berrien* (Published No. 134097, June 18, 2008) Michigan Supreme Court.
- October 8, 2008:
  - added further discussion on federal supremacy concerning zoning not having jurisdiction over federal activities.
  - added wind energy power transmission lines as a result of M.C.L. 460.1001 *et seq.*
- December 10, 2008:

- added farm market discussion.
- television reception antennas
- Added Appendix A. List of items which are subject to zoning, but confusions results in some believing the land use is exempt from zoning.

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

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

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

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

  - Updated for customer-end antennas to receive signals.
- January 24, 2014: Added further explanation about sign regulation, and reference to Michigan Sign Guidebook.
- February 7, 2014: Added can regulate but not prohibit medical marijuana.
- February 26, 2014: Added footnote to clarify different types of pipelines (flowlines).
- October 1, 2014: Added publically owned airport under control of an airport authority (Lansing).
- October 16, 2014: Clarified item 2.P. on Michigan State Police communication facilities.
- November 10, 2014: Clarified item 6.D. on sand dunes (local regulation cannot be stricter than the state model regulation, and item 2.K. on Right to Farm Act.
- January 15, 2015: Added amateur radio service station antenna structure regulation restrictions.
- June 22, 2015: Further clarification about Right to Farm Act preemption of local authority and possible GAAMPs delegating that authority back.
- August 24, 2015: Further clarification about prohibition of local regulation of firearms and pneumatic guns (item 2.Z.).
- September 13, 2016: Added court case *Coloma Charter Twp. V. Berrien County* – a county cannot establish a land use over zoning (item 2.W.).
- March 28, 2017:
  - Changed discussion about medical marihuana qualifying patient and care givers (item 5.F.).
  - Added state-licensed commercial medical marijuana facilities (item 3.J.).
- August 3 and 10, 2017: Added item #3 to Appendix A and re-designed the format of this publication to comply with web accessibility and MSU branding standards. Added 1.E. substantive due process and the "rule of thumb" to sign regulation.
- June 14, 2018: Added 2.BB. Outright Preemption statutory prohibition for local government rent controls.
- [June-October 2018}: Added material on not delegating decisions to neighbors and its footnote.
- May 7, 2019: Added preemption of signs commemorating those who died in service, added pre-emption of small wireless communications facilities deemed to be exempt from zoning and those that are subject to zoning (with conditions for denial). Added pre-emptions related to recreational marijuana (MRTMA) and certain pre-emptions triggered by "shared location" with marijuana establishments approved under MMFLA. Added provisions related to the legalization of the adult marijuana use.
- July 9, 2019: Modified #3.G., added H related to amendments to the Michigan Fireworks Safety Act (Act 635 of 2018, M.C.L. 28.457) restrictions on regulating temporary structures and enacting ordinances prohibiting fireworks use around certain holidays/times.
- November 19, 2020: Modified #2V related to local units of government's authority to not follow their own zoning ordinance, new citations and clarification language (BN). Added #2GG local units of government cannot regulate No Trespassing Signs in compliance with NREPA, (MCL 324.7311).
- March 9, 2021: Added *DeRuiter V. Twp of Byron*, MI Supreme Court decision under MMMA provision in 5E. Further modified #2V to caution against local units of government from not conforming to their own zoning ordinance.