



City Hall
208 North First Avenue
Alpena, Michigan 49707
www.alpena.mi.us

Planning, Development, & Zoning

City of Alpena Planning Commission

Regular Meeting

Tuesday, March 14th, 2023 @ 6:00 p.m.

This meeting will be held in Council Chambers as well as virtually.

Please join my meeting from your computer, tablet or smartphone.

<https://www.gotomeet.me/CityofAlpena/planning-commission>

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United States: [+1 \(571\) 317-3112](tel:+15713173112)

Access Code: 178-564-461

AGENDA

CALL TO ORDER;

ROLL CALL;

PLEDGE OF ALLEGIANCE

APPROVAL OF AGENDA

APPROVAL OF MINUTES – Joint Session CIP Meeting February 13, 2023

Regular meeting February 14, 2023

PUBLIC HEARING AND COMMISSION ACTION:

1. Marihuana Ordinance Update

Ordinance 23-487

500' Buffer Map

BUSINESS

a) UNFINISHED:

a. Zoning Ordinance Updates: Article 2: Sign Definitions; Article 4: Signs

b) NEW:

a. CIP Update: Fire Department Additions, T125 and E126 Replacements

c) COMMUNICATIONS OR REPORTS:

d) CONTINUING EDUCATION:

a. Article: Restrictions on Zoning Authority by MSU Extension

PUBLIC COMMENT

MEMBER COMMENTS

ADJOURNMENT



MINUTES
City of Alpena Planning Commission
Joint CIP Meeting (Council Chambers and Virtual)
February 13, 2023
Alpena, Michigan

CALL TO ORDER:

The special meeting of the Planning Commission, conducted as a joint meeting with City Council, was called to order at 5:00 p.m. by Randy Boboltz, Planning Commission Chairman.

ROLL CALL: PLANNING COMMISSION

PRESENT: Wojda, Peterson, Boboltz, VanWagoner (appeared at 5:03 pm), Gilmore, Moses, Sundin, Kostelic

ABSENT: None.

STAFF: Rachel Smolinski (City Manager), Steve Shultz (City Engineer), Shannon Smolinski (Engineering Assistant/Harbormaster), Anna Soik (City Clerk), Rob Edmonds (Fire Chief), Eric Hamp (Police Chief), Montiel Birmingham (Planning, Development, Zoning and Building Safety Director), Cassie Stone (Engineering Clerk), Kathleen Sauve (Planning, Development, Zoning and Building Safety Clerk), Anne Gentry (Executive Director of the Downtown Development Authority)

COUNCIL: Waligora, Johnson, Mitchell, Nowak, Walchak

ABSENT: None.

PLEDGE OF ALLEGIANCE: Pledge of Allegiance was recited.

PUBLIC COMMENT: None.

BUSINESS: 2024-2029 Capital Improvement Plan (CIP) - Birmingham explained the order of business and that they would only be explaining the new items; any and all questions were encouraged, and at the end they would vote.

Gentry began by explaining one of the new projects, corridor improvements, which could be used toward banner replacements, lighting upgrades, trees, and any other general streetscaping needs, especially with the possible boundary expansion or the existing district. The next topic was a change from last years' Historic Preservation Activities entry, in which Birmingham would discuss later. Other priorities for next year, in addition to the economic development fund and façade grant program, is a grant for a Fresh Waves mural project, with a number higher than it usually is for the Public Art entry. She stated that alleyway improvements are also a top priority and trying to get a more year-round closure of an alleyway along with a

contribution to the Culligan Plaza update. The last ongoing project, planters and bicycle racks, will continue moving forward. Sundin asked why Culligan Plaza was only listed under DDA fund and not parks. Schultz explained that the total project is already being funded by ARPA and the [First Federal] Foundation; it is in the fund right now, as opposed to being planned for in the CIP later. Waligora asked about the alleyway [between River and Chisholm, Second Avenue and Third Avenue] and the plan for that. Gentry said that although they had not developed anything formal at the last meeting on this topic, the idea is that the business owners love it and it is safer to keep it closed, as long as they can get Council's support and work out kinks such as snow removal and bollards instead of concrete blocks. She stated that the intent is to request to have it closed year-round but it has not been prepared to present yet.

Birmingham stated that the Zoning Ordinance update was carried over from the previous year as they continue to make progress on the update. With some of the funds allocated for this year likely not being used, dollars will be pushed into next year. A new item on the list is a disability assessment throughout the City. It will be focused on public buildings, election locations, potentially the website, streets and intersections and is still in the development stages. Birmingham explained the National Register of Historic Places Listing was added because it is required for a grant from the State Historic Preservation office; part of the grant dollars can go to the registration and they are working to limit the expense as much as possible by utilizing the help of the Historic District Study Committee. The Recreation Plan Update was discussed and would be updated in a few years; however we are considering updating ours in partnership with a County wide update, as it makes sense to have a joint review of both recreation plans. EV infrastructure came next, with Birmingham explaining that it is a place holder, to add it in to the Zoning Ordinance and looking at language for that. She said that with all the grants out there, there may not be any cost to [the City], but if there are some minimal expenses, they wanted to add funds to cover them. Sundin inquired why the River Center was listed in Planning, but also in Parks and Long Term. Birmingham explained that the Planning side has allocated \$5,000 per year for several years, which will continue. The additional \$150,000 in parks next year is for a grant that the City received for the pavilion and bathrooms. The long-range dollars are for the future if the full River Center were to be built. S. Smolinski explained that the two million dollars in the Parks category was there for if they were awarded the Spark grant; she explained that Spark is ARPA funding at the state level.

Edmonds started with Fire Engine Replacement of Engine 123. He explained he moved that up in the CIP because they are starting to have some aging problems and need to look at replacing it. It would be a 24-36 month build time on a new truck. If not replaced in the near future, it will require a \$35,000 pump rebuild on a 27-year-old fire truck. Next, Edmonds explained the need for new Turnout Gear in the amount of \$112,000. He stated the reason for moving both the Turnout Gear and the Ward Diesel Exhaust System up on the request is because MIOSHA Part 74 was revised last October putting some unfunded mandates towards the Fire Service. Currently, he said, their gear has a ten-year shelf life. Some of their gear is currently 17 or 18 years old, and so it is a MIOSHA requirement to put in funding for that. MIOSHA also requires a Ward diesel exhaust capture system on all of their trucks and they have two ambulances that currently do not have them. The capture system is designed to reduce the carcinogens that are

given off from diesel fuel. He concluded that those were the three major changes they are looking for in the new CIP request.

Hamp started on the Police end with Active Shooter Vests/Kits. They are requesting them because they do not have enough for every officer. He explained that an Active Shooter Vest provides a much higher level of protection than the vests the officers wear currently; the kit would contain a carrier vest, armor inserts and a ballistic helmet. Each officer would have a gear bag they would take with them each shift and load into their car and be ready to respond without concern of not having the extra protection. He stated that there is a shelf life on them of five years. They would be purchasing one for each of their 15 officers, although that number constantly fluctuates. Next, he requested funds to purchase eCitation ticket printers, to reduce legibility concerns, improve accuracy, and improve the Officer's safety and efficiency. He said it is a small printer that goes inside the patrol car, information is entered in the tablet and then it prints out the ticket that is handed to the driver and it also will send the ticket to district court. He said it is a huge advantage because often times, people will get a ticket and go straight to the court to pay it, but they cannot accept payment yet because typically the Officer is unable to get them there until the next day. Third, Hamp talked about the need for new physical fitness equipment to renew their current out of date facility. He explained that there are fitness programs implemented in their union contracts and without the proper equipment, it falls back on the officers to pay for a membership to a gym. He said that Police and Fire would share the cost.

S. Smolinski moved on to Marina and Building Maintenance. She said that she has two new projects at the marina with one being supply line upgrades that run from the shoreline out to the end of the docks. Currently, the lines are not bad, but the material is known to have issues and it was recommended by the contractor to replace it. Second, the parking lot resurfacing at the Marina, done in small sections.

In the Building Maintenance section, Smolinski said that there is not anything new for City Hall. She stated that about half of the City Hall windows replacement will be funded by ARPA. For Fire/Police, she said that the Squad Room switch will happen this year, giving them the ability to put a female locker room into the building. Another item at the top of the list for Fire/Police is replacement of the paging system.

Shultz discussed the IT category, stating that number one is new budgeting and transparency software which will work with the existing BS&A software to help generate the budget without having to combine a bunch of other files; it will also provide some transparency for reporting that the City frequently receives requests for. Next, he discussed new website design and content management. Shultz explained that the current website design software does not have the tools that the City needs, and he would like something more robust. He explained that everything else on the list are systematic replacements. The BS&A Cloud Conversion will start with the Building department, allowing them to use a tablet in the field to look up information they need [on specific properties]. Nowak asked if the new Website design would allow for people to sign up for messages or texts. Schultz replied that it is his intention to find something that would improve the ability to do those things.

Moving on to equipment, Shultz stated that the current trucks and loaders that are old are breaking, and it is getting harder and harder to find replacement parts for them so when they break, it turns into a long-term break. Sundin asked what the Equipment fund looked like. Shultz said it is looking good and they need to start purchasing some of the big-ticket items on the list. Waligora asked if the tractor that the City Council approved for lease is one of the items on the list. Shultz explained that it is not really replacing anything, but rather something that they have been doing every three years. He also said that they are looking into lease options on some of the other bigger equipment.

In Cemetery Fund, Shultz said that there are not a lot of new things there, but some things moving up on the scale. Evergreen Cemetery road resurfacing moved up to number one after being cut for the last several years. Shultz said they are going to start paving some roads in the cemetery this year. Cemetery Entrance and Roadside Improvements came next, with Shultz stating that discussions have been had with several folks, including the Historic District Study Committee and others that are interested in improvements with the fencing and such along the cemetery. He said he would like to keep it relatively maintenance free but keep the historic look.

Lighting was discussed next, with Shultz explaining that a lot of the projects listed are here [in the CIP] every year, with the newest one being the Downtown Wiring Replacement. He said he has received many phone calls about lights being out and lights flashing. He explained that over time, a lot of it has happened due to the age of the wiring and concrete replacement downtown. It will be replaced a few blocks at a time, over the course of the next four years. Waligora asked why there are different colored lights all over town. Shultz said it is simply about availability, different lots and batches when ordering, and it is being considered to purchase in bulk in the future; some of the money from the City wide efficiency improvements would go toward lighting and some of those purchases.

Parks came next, with Shultz stating that the new item on the list was the Riverside Skate park, with \$1,000,000 requested out two years, in hopes of getting a Spark Grant. Staff were notified that they were not awarded the grant, but there are two more rounds and they plan to resubmit. In working with a skate park group and the Rec Board, they all support having a new concrete park by the water tower, and moving the existing wooden park to Mich-E-Ke-Wis. Currently, they have material to replace some boards at the existing park in the spring and, at that time, they will review what it might take to move those ramps to another paved area at Mich-E-Ke-Wis. Shultz stated the local skate park group is very excited about it and they felt that they could do some fundraising as well. Shultz said that a concrete skate park was the original intent when the park was built so that all different kinds of equipment could be used on it, and that is the direction they are going in now.

Shultz went on to discuss the needs of the Public Works department. One new item is the Public Works cold storage door replacement but that is projected for 2027-2028. Next, he discussed the need for the City Hall parking lot resurfacing in 2024-2025.

In major and local streets, Shultz said it is mostly preventative maintenance and overlays, nothing that they haven't seen before. He said that now that they have Charlie [Kendzioriski] on

board, he is very bridge focused, that is what his background is, they are now able to add CIP items for the Second Avenue bridge that are not just major projects but focus more on electrical work and routine bridge inspections. He said there are not a lot of new projects, just some others moving up the list each year. Waligora stated that the Second Avenue Biennial Routine Bridge Inspection should be repeated every other year on the CIP but it is not. Shultz acknowledged the mistake and said he would add it every other year.

City Sewer does not have anything new on the CIP, but Shultz said there are a lot of projects nonetheless. A lot of projects will get kicked back a year or two, but they have it on the CIP so it demonstrates the need. The Water Recycling Plant had two new projects added – Methane Gas Lifter Enclosure and Water Recycling Plant Security Gate. A lot of the other plant related items are due to S. Smolinski working with the managers at the plants and having done a good job of planning some of the projects on the list and getting them honed down to a need versus want. Water Distribution is also much of the same, where a few of them will get kicked back if they cannot afford them in the budget. In Water Production, Shultz said there are a few new projects there, with the first being to Replace the Plant Supply Line from High Service Pump. Walchak asked Shultz if the water distribution line items were rotational. Shultz explained that the Water Valve Replacement is an item that they put money into every year because there are so many of them that need to be replaced. S. Smolinski said that that will replace four to five each year. Sundin asked if they have applied for a grant for the \$6,048,000 Water Production Plant Clear Well Replacement. Shultz said that they just got the grant agreement, and they should be receiving half of the money soon, but will be getting \$6,000,000 in total. R. Smolinski clarified that it was a direct appropriation. Shultz said that in the coming week, they will be advertising for the design. Shultz said that Hueber Street, Prentiss St/Harbor Drive, Second Avenue Bridge Epoxy Overlay and Eleventh Avenue concrete repairs are new in the long range CIP for Major Street Fund. In the Local Street Fund, the Long Lake Avenue Bypass is one that always sits out there, uncertain if it will happen.

With no further questions, Mayor Waligora expressed his appreciation to the staff for the hard work they put into the CIP. He also stated that Lenny Avery has been hired as the Target person who will be facilitating the City's grant writing.

Planning Commission: VanWagoner motioned to approve the 2024-2029 Capital Improvement Plan, as drafted, and to correct the Second Avenue Routine Bridge Inspection project to reflect that it occurs biennially in the CIP document. Peterson seconded the motion. Motion approved by unanimous vote.

Council: Moved by Mayor Pro Tem Johnson, seconded by Councilmember Walchak, to approve the 2024 – 2029 Capital Improvement Plan, as drafted, and to correct the Second Avenue Biennial Routine Bridge Inspection project to reflect that it occurs biennially in the CIP document]. Motion carried 5-0.

ADJOURNMENT: On motion of Mayor Waligora, seconded by Councilmember Nowak, the Municipal Council adjourned at 5:54 p.m. Chairman Boboltz adjourned the Planning Commission at 5:54 p.m.

Clayton C. VanWagoner, Secretary

MINUTES
City of Alpena Planning Commission
Regular Meeting (Council Chambers and Virtual)
February 14, 2023
Alpena, Michigan

CALL TO ORDER:

The regular meeting of the Planning Commission was called to order at 6:00 p.m. by Randy Boboltz, Planning Commission Chairman.

ROLL CALL: PLANNING COMMISSION

PRESENT: Wojda, Boboltz, VanWagoner, Gilmore, Moses, Sundin, Kostelic

ABSENT: Peterson

STAFF: Montiel Birmingham (Planning, Development, and Zoning Director), Kathleen Sauve (Recording Secretary)

COUNCIL: Councilwoman Johnson

PLEDGE OF ALLEGIANCE: Pledge of Allegiance was recited.

APPROVAL OF AGENDA: Agenda was approved as printed.

APPROVAL OF MINUTES: Meeting January 10, 2023, minutes were approved with a correction suggested by Sundin on page 3, line 10, to read - He said that he feels a 500-foot buffer between marihuana businesses may be too much.

PUBLIC HEARING: None.

UNFINISHED BUSINESS: None.

NEW BUSINESS: Zoning Ordinance Updates: Article 2: Sign Definitions; Article 4: Signs – Birmingham gave the Board some background information on what was included in the meeting packet. She then introduced Denise Cline (NEMCOG). Cline explained that the proposed changes to the Ordinance are still only in draft form, but will later be put into amending Ordinance format. She said that the purpose of the changes is to provide some clarity and also provide some leeway to what it is currently. Beginning with discussion about

Murals, Cline stated that the current definition of a wall sign would include a mural. Their goal is not to restrict murals, so they excluded murals from the definition of signs. Extensive discussion ensued about Murals concerning whether murals are in fact signs, the specific exclusion of murals in the sign definition, do murals have a commercial or non-commercial message, whether content could be regulated, on-premise versus off-premise, the difference between art and advertising, potential mitigation in the future surrounding regulation of murals, potential changes to murals when refreshing them, potentially having a second level of approval for murals, and what is the purpose of regulating signs to begin with.

Cline reviewed the proposed changes to other definitions such as Sign Area, Feather Banner or Sail Sign, Air Dancers, Awning Sign, new pictures of marquee sign, addition of Permanent Sign, Small Off-Premise Sign, and Large Off-Premise Sign. Birmingham explained the new definition of Roof Sign and that it was changed because of recent cases that had to go to the Zoning Board of Appeals. She also explained how a sign would be allowed on a mansard roof. Next, she said that flags have never been regulated unless attached flat to the wall of a house or building. She asked the Planning Commission if the City should regulate flags in the future, and if the word 'flagpole' needs to be more clearly defined. The members all agreed that a hands-off approach is best, and flags should not be regulated. Numerical restrictions on political signs were discussed, along with Johnson questioning why signs in the right-of-way are confiscated instead of moving them into the corresponding yards. They discussed that they should restrict but relax/increase the number of [temporary] signs allowable during certain times of the year.

Section 4.1 – Sign Permit Procedure and Enforcement - Cline explained changes to when a sign permit is required. A permit would be required when the sign structure is being removed and replaced or if any structural change is being made to the sign, including a change to the sign's size. A sign permit would not be required if a sign message is being changed by re-painting, changing lettering, or changing the sign "skin", or non-rigid covering. It was then clarified that the Building Official shall be responsible for issuing a building permit for signs that require one. Sundin asked how portable signs are to be regulated if they do not require a permit. He suggested a free permit process so that the days allowable can start to be counted. Cline explained they will no longer require a license for sign erectors. Birmingham elaborated by explaining that requirements are built in from a safety standpoint [in the permitting process] and are also inspected after they are erected.

Section 4.2 - General Sign Standards - Cline said they are proposing the visibility triangle be changed from a twenty-five-foot setback to fifteen feet, and also changed the height requirement within the visibility triangle from three feet to four feet, in order to align with the height requirements of fences within the Ordinance. Language was added about [sign illumination] becoming a nuisance to people on the street or adjacent properties, so that the illumination is not shining all over houses. The Flashing/Moving signs section was struck out due to it being repeated elsewhere in the Ordinance. Subsection K -Abandoned Signs was added. Subsection O - Allowable Sign Size Increase was changed to allow the Zoning

Administrator to increase the allowable sign sizes and heights listed by up to twenty-five percent when it can be demonstrated that an increase in size is necessary, and would lessen the need for ZBA cases. Birmingham explained that currently, if someone wanted a variance for a sign they would have to go to the Zoning Board of Appeals, but the requirements for the Zoning Board of Appeals really do not fit a sign. She stated that they should consider putting something in the ZBA section so that there is a better process for asking for a variance for a sign. She said she would like to have some flexibility but also questioned whether the overall sign size and height are right [in the Zoning Ordinance]. She stated that she had four sign variance requests in one month which were all approved. Wojda agreed that there should be a certain amount of discretion with standards, and if the variance standards for the ZBA do not make a lot of sense, there should be similar types of standards to the ZBA for proposed increases of greater than whatever percentage they decide upon; it would speed things along creating less need for ZBA hearings, while still having to come in and meet standards. Sundin suggested that there should be an appeals process to go to the ZBA [should they disagree with the Administrator's decision], rather than saying that the Administrator has the sole authority.

Section 4.3 - District Regulations for Signs - Cline explained that B-2 was moved to the same category as OS-1 and B-1. Birmingham asked for input for sign sizes, to which much discussion by members took place. Birmingham explained that most of the time, the City is getting applications from sign companies, whose expertise is signs, and it is important to have some flexibility because every situation is unique. She also suggested changing the monument sign height to be less, and increasing the maximum height of pylon signs.

Section 4.4 – Temporary Signs, Cline explained that rather than limiting the number of temporary ground signs, they could limit the total square footage of all the signs together. Discussion took place among members in regard to multi-family establishments, certain deed restrictions that may not allow signage, signs on vacant lots, and the difference between zoning lots and platted lots. Permitted time periods for portable signs and attention getting devices were discussed, as well as the number of them allowed.

Section 4.5 – Wall Signs – Supplemental Regulations – No objections were made to the wall sign increase table, but Sundin expressed concern about how far a wall sign may project above the wall to which it is attached. Cline suggested putting a percentage restriction on it, while Birmingham suggested a height restriction.

Section 4.6 – Projecting Signs – Supplemental Regulations – Birmingham explained that the current square footage restriction of only ten feet is too small, and it is proposed to change to forty feet. She said that if you look at old pictures of the downtown, a lot of the projecting signs are larger than what the City currently allows but they looked really nice.

Section 4.7 – Marquee or Awning Signs – Supplemental Regulations – No concerns or discussion about proposed changes.

Section 4.8 – Roof Signs – Supplemental Regulations – Cline explained that this language was put in there but then struck out because they decided that roof signs would not be allowed except for on certain parts of a roof.

Section 4.9 – Message Boards – Supplemental Regulations – Cline explained that Message Boards shall count toward the total available sign square footage allowed on the property, rather than the former language which restricted it to fifty percent of the primary sign.

Section 4.10 – Off-Premise Signs – Cline said that Off Premise Advertising Signs were changed to Large Off-Premise Signs (Billboards), and the Illumination section was changed to match that of the Highway Advertising Act. She also said that the section for Combination Off-Premise and On-Premise Electronic Message Board was removed completely because the standards were content based. Next, she explained that Off-Premise Directional Signs were changed to Small Off-Premise Signs on Private Property (Permanent or Temporary) because the word ‘directional’ made it content based. There were no objections from the Board. Cline told the Board that Map 4.1 was removed. The Sign Diagrams page was also deleted because the diagrams are now located within the definitions section. She added that Murals content was inserted into Section 4.11.

COMMUNICATIONS OR REPORTS: Council Meeting Update – Marihuana – Birmingham told the Commission that there are still some tasks that they are going to go back to Council with at the next session, primarily around growers and processors, and a possible buffer from residential [zones] to protect from the smell. She, along with Rachel Smolinski, had an opportunity to visit some locations around the area and got some great feedback from them. She stated that due to some power companies not having enough energy or bandwidth to support them, some growers use large diesel fueled generators to power their facilities which are extremely loud and would need to be addressed. From an odor perspective, she said that one facility smelled strongly while the other did not; the one that did not smell strongly used better technology to rid the smell and said that carbon filters alone are not enough. From a curbside perspective, she said she thought that Council and Planning Commission are on the same page; Council also agreed that the Planning Commission should be the ones to decide if the drive through makes sense or not. Birmingham also stated that they would like to lump Micro-businesses together with growing establishments as opposed to being allowed in the Business district. Also, they [Council] will look at a few different buffers for growers from residential zones. Having watched the last City Council meeting recording, Boboltz said he agreed with the direction Council was going on that, and agreed that generators would need to be addressed. Birmingham said that she will have Zoning Ordinance modifications ready to go shortly after any decisions are made and that both the Zoning Ordinance and the Municipal Code will need to align with one another.

CONTINUING EDUCATION: None.

PUBLIC COMMENT: None.

MEMBERS' COMMENTS: None.

ADJOURNMENT: There being no further business, the meeting was adjourned at 8:10 p.m., by Boboltz, Planning Commission Chairman.

Clayton C. VanWagoner, Secretary



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Planning, Development, & Zoning

To: City of Alpena Planning Commission

From: Montiel Birmingham, Director

cc: Rachel Smolinski, City Manager

Date: February 24, 2023

RE: Marihuana Zoning Ordinance Amendments

As the Planning Commission is aware, staff (at the request of Council) was requested to review the Municipal Ordinance Section 18-1 Medical Marihuana Facilities and Adult Use Marihuana Establishments.

As part of the discussion, staff completed the following:

1. Surveyed marihuana retail locations to better understand curbside procedures and potential risks, including payment options
2. Confirmed the State of Michigan requirements for curbside pickup programs
3. Evaluated approval needs for curbside and drive thru services
4. Visited a Microbusiness and Marihuana Grower to evaluate potential community risks associated with these use types
5. Reviewed options for protection of residential neighborhoods based on resident and Council feedback
6. Presented the Council with the proposed Zoning Text Amendment and a proposed Municipal Code Amendment

The above research resulted in the following recommendations: #1-3 were adopted on 3/6/2023 by City Council; #4 must be recommended through the Planning Commission prior to City Council adoption:

1. That curbside will be allowed subject to approval of the plan by the State of Michigan and that payment may occur in the parking area
2. That drive-thru service will be allowed subject to current zoning ordinance approval requirements
3. That Microbusinesses, Growers, and Processors be prohibited within City limits in order to prevent nuisance odors in proximity to residential neighborhoods or other properties
4. That there be a 500' buffer between locations to limit density near residential neighborhoods and general concentration within the city, as outlined in Municipal Ordinance Section 18-1 under *Purpose*, specifically:
 - b. *Protect public health and safety through reasonable limitations on marihuana operations as they relate to noise, air and water quality, neighborhood and patient/customer safety, security for the facility and its personnel, and other health and safety concerns;*
 - c. *Protect residential neighborhoods by limiting the location and the concentration of types of medical marihuana facilities and adult use marihuana establishments to specific areas of the city;*

Based on the above factors, Staff recommends consideration and approval of ordinance 23-487, which will be presented for Council's approval at the March 20th City Council meeting.

**City of Alpena
Ordinance No. 23-487 of 2023**

An ordinance to amend the City of Alpena Zoning Ordinance Article 2 (Construction of Language & Definitions), Article 5 (Zoning Districts) and Article 7 (Supplemental Development Regulations).

City of Alpena, Alpena County, Michigan ordains:

SECTION 1: AMENDMENT TO THE CITY OF ALPENA ZONING ORDINANCE

That the City of Alpena Zoning Ordinance, Article 2 (Construction of Language & Definitions) is hereby amended to read as follows:

Section 2.1 Definitions

(Revise the following definition)

- A. **MARIHUANA MICROBUSINESS.** A person licensed to cultivate ~~not more than one hundred fifty (150)~~ marihuana plants **in an amount defined by state law**; process and package marihuana; and sell or otherwise transfer marihuana to individuals who are twenty-one (21) years of age or older or to a marihuana safety compliance facility, but not to other marihuana establishments.

That the City of Alpena Zoning Ordinance, Article 5 (Zoning Districts) is hereby amended to read as follows:

Section 5.14 CCD COMMERCIAL CORRIDOR DISTRICT

R = Permitted by right S = Permitted with a Special Use Permit *uses with Supplemental Regulations -Article 7	CCD
COMMERCIAL/BUSINESS/SERVICE	
<i>Adult Use Marihuana Establishments:</i>	
<i>Marihuana Retailers</i>	S*
<i>Marihuana Microbusiness</i>	S*
<i>Marihuana Safety Compliance Facilities</i>	S*

Section 5.15 OS-1: OFFICE SERVICE DISTRICT

R = Permitted by right S = Permitted with a Special Use Permit *uses with Supplemental Regulations -Article 7	OS-1
COMMERCIAL/BUSINESS/SERVICE	
<i>Adult Use Marihuana Establishments:</i>	
<i>Marihuana Retailers</i>	S*
<i>Marihuana Microbusiness</i>	S*
<i>Marihuana Safety Compliance Facilities</i>	S*

Section 5.17 B-2: GENERAL BUSINESS DISTRICT

R = Permitted by right S = Permitted with a Special Use Permit *uses with Supplemental Regulations -Article 7	B-2
COMMERCIAL/BUSINESS/SERVICE	
<i>Adult Use Marihuana Establishments:</i>	
<i>Marihuana Retailers</i>	S*
<i>Marihuana Microbusiness</i>	S*
<i>Marihuana Safety Compliance Facilities</i>	S*

Section 5.18 B-3: COMMERCIAL DISTRICT

R = Permitted by right S = Permitted with a Special Use Permit *uses with Supplemental Regulations -Article 7	B-2
COMMERCIAL/BUSINESS/SERVICE	
<i>Adult Use Marihuana Establishments:</i>	
<i>Marihuana Retailers</i>	S*
<i>Marihuana Microbusiness</i>	S*
<i>Marihuana Safety Compliance Facilities</i>	S*

Section 5.19 I-1: LIGHT INDUSTRIAL DISTRICT

R = Permitted by right S = Permitted with a Special Use Permit *uses with Supplemental Regulations -Article 7	I-1
COMMERCIAL/BUSINESS/SERVICE	
<i>Medical Marihuana Facilities:</i>	
<i>Grow Facilities</i>	S*
<i>Processing Facilities</i>	S*
<i>Provisioning Centers</i>	S*
<i>Safety Compliance Facilities</i>	S*
<i>Secure Transport Facilities</i>	S*
<i>Adult Use Marihuana Establishments:</i>	
<i>Marihuana Growers</i>	S*
<i>Marihuana Processors</i>	S*
<i>Marihuana Retailers</i>	S*
<i>Marihuana Microbusiness</i>	S*
<i>Marihuana Safety Compliance Facility</i>	S*
<i>Marihuana Secure Transporters</i>	S*

Section 5.20 I-2: GENERAL INDUSTRIAL DISTRICT

R = Permitted by right S = Permitted with a Special Use Permit *uses with Supplemental Regulations -Article 7	I-2
COMMERCIAL/BUSINESS/SERVICE	
<i>Medical Marihuana Facilities:</i>	
<i>Grow Facilities</i>	S*
<i>Processing Facilities</i>	S*
<i>Provisioning Centers</i>	S*
<i>Safety Compliance Facilities</i>	S*
<i>Secure Transport Facilities</i>	S*
<i>Adult Use Marihuana Establishments:</i>	
<i>Marihuana Growers</i>	S*
<i>Marihuana Processors</i>	S*
<i>Marihuana Retailers</i>	S*
<i>Marihuana Microbusiness</i>	S*
<i>Marihuana Safety Compliance Facility</i>	S*
<i>Marihuana Secure Transporters</i>	S*

Section 5.26 Use Matrix:

TABLE OF PERMITTED USES & SPECIAL LAND USES																	
R = Permitted by right S = Permitted with a Special Use Permit	R1	R2	RT	RM 1	RM 2	OS1	CBD	CCD	B1	B2	B3	I1	I2	P1	WD	CR	PR
COMMERCIAL/BUSINESS/SERVICE																	
<i>Medical Marihuana Facilities:</i>																	
<i>Grow Facilities</i>												S*	S*				
<i>Processing Facilities</i>												S*	S*				
<i>Provisioning Centers</i>						S*		S*		S*	S*	S*	S*				
<i>Safety Compliance Facilities</i>						S*		S*		S*	S*	S*	S*				
<i>Secure Transport Facilities</i>												S*	S*				
<i>Adult Use Marihuana Establishments:</i>																	
<i>Marihuana Growers</i>												S*	S*				
<i>Marihuana Processors</i>												S*	S*				
<i>Marihuana Retailers</i>						S*		S*		S*	S*	S*	S*				
<i>Marihuana Microbusiness</i>						S*		S*		S*	S*	S*	S*				
<i>Marihuana Safety Compliance Facilities</i>						S*		S*		S*	S*	S*	S*				
<i>Marihuana Secure Transporters</i>												S*	S*				

That the City of Alpena Zoning Ordinance, Article 7 (Supplemental Development Regulations) is hereby amended to read as follows:

Section 7.41 MEDICAL MARIHUANA FACILITIES AND ADULT USE MARIHUANA ESTABLISHMENTS

A. Standards:

1. Medical Marihuana Facilities and Adult Use Marihuana Establishments shall not be located within one thousand (1,000) feet of any school.
2. Medical Marihuana Facilities and Adult Use Marihuana Establishments shall not be located within two hundred fifty (250) feet of any place of worship, child care centers, addiction clinics and treatment facilities, the Boys and Girls Club of Alpena, or McRae, Bay View, or Water Tower Parks, ~~or be directly adjacent to Starlite Beach Park or Mich-e-ke-wis Park.~~
3. Medical Marihuana Facilities and Adult Use Marihuana Establishments shall not be located in the district or area known as the "Downtown Development Authority."
4. ~~Medical Marihuana Facilities and Adult Use Marihuana Establishments shall not be located within five hundred (500) feet of another Medical Marihuana Facility or Adult Use Marihuana Establishment, with the exception of Marihuana Secure Transporters and Marihuana Safety Compliance Facilities.~~
4. ~~5.~~ Medical Marihuana Facilities and Adult Use Marihuana Establishments shall comply with the City of Alpena Ordinance ~~No. 21-467~~ **No. 23-484** (Medical Marihuana Facilities and Adult Use Marihuana establishments).

B. Submittal Requirements (in addition to submittal requirements in **Section 6.11**): Applicant shall submit the documentation contained in 1-3 below which will be reviewed by the Planning Commission. The Planning Commission shall also evaluate the site plan using the site plan review standards in **Section 6.6** and Special Land Use review standards in **Section 6.12**.

1. Applicant shall submit a plan which details economic benefits to the City by way of improvements to real property.
2. If an existing building is proposed to be utilized, applicant shall commit to physical improvements to exterior of existing building or structure. If no improvements are necessary, applicant shall include a statement indicating the reasons.
3. Applicant shall submit a maintenance plan that provides for upkeep of property, including exterior or right-of-way.

SECTION 2: SEVERABILITY

If any clause, sentence, paragraph or part of this Ordinance shall for any reason be finally adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder of this Ordinance but shall be confined in its operation to the clause, sentence, paragraph or part thereof directly involved in the controversy in which such judgment is rendered.

SECTION 3: SAVING CLAUSE

The City of Alpena Zoning Ordinance, except as herein or heretofore amended, shall remain in full force and effect. The amendments provided herein shall not abrogate or affect any offense or act committed or done, or any penalty or forfeiture incurred, or any pending fee, assessments, litigation, or prosecution of any right established, occurring prior to the effective date hereof.

SECTION 4: EFFECTIVE DATE

The ordinance changes shall take effect upon the expiration of seven days after the publication of the notice of adoption.

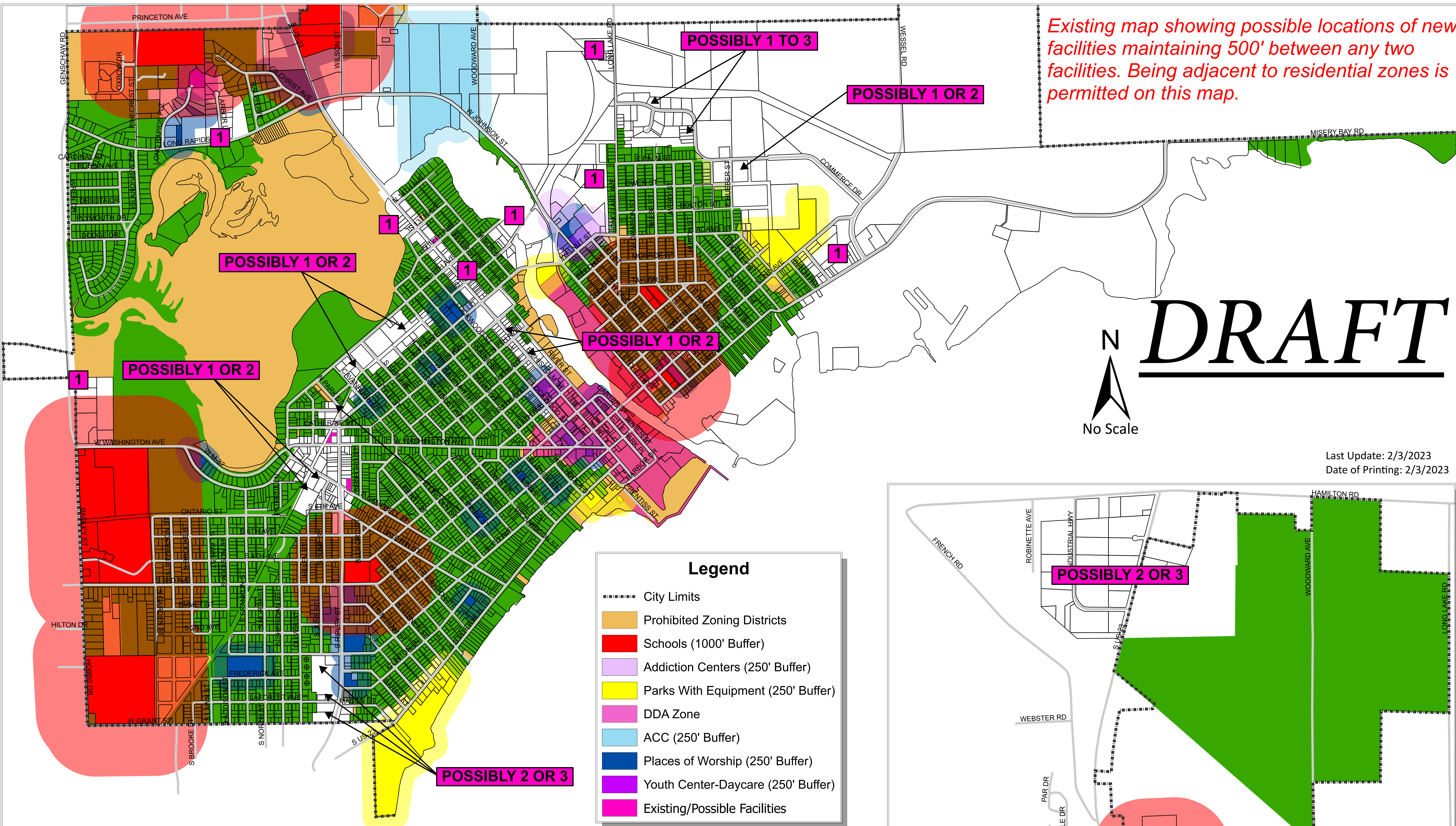
Mayor

Clerk

I, _____, Clerk for the City of Alpena, hereby certify that the foregoing is a true and correct copy of Ordinance No. 23-487 of 2023 of the City of Alpena, adopted by at a meeting of the Alpena City Council held on _____.

A copy of the complete ordinance text may be inspected or purchased at the Alpena City Hall, at 208 N. First Avenue, Alpena, Michigan.

Adopted: _____ Published: _____ Effective: _____, subject to PA 110 of 2006 as amended.



Existing map showing possible locations of new facilities maintaining 500' between any two facilities. Being adjacent to residential zones is permitted on this map.

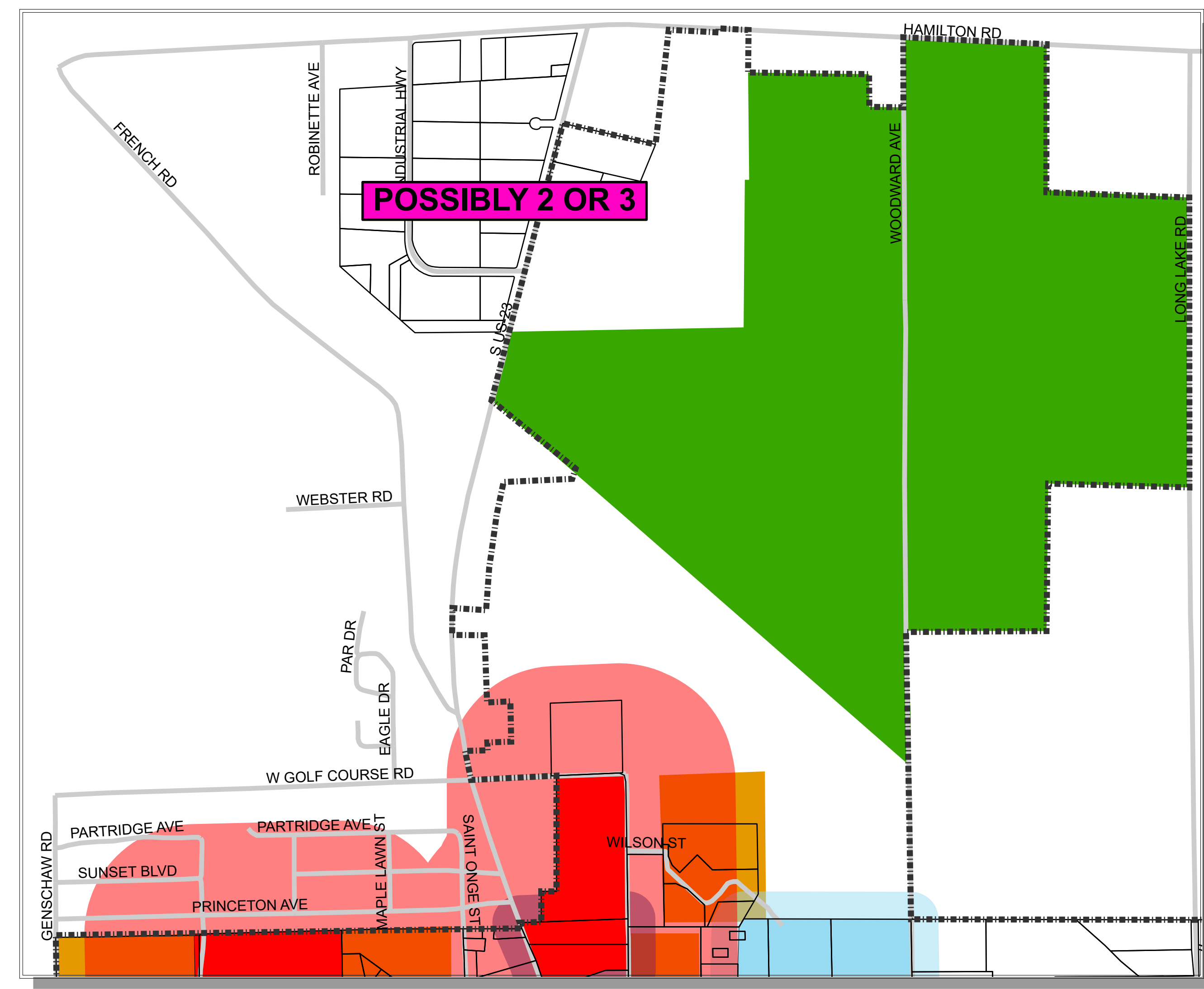
DRAFT

N
No Scale

Last Update: 2/3/2023
Date of Printing: 2/3/2023

Approved Marihuana Facility Locations for: Retailer, Microbusiness, & Safety Compliance

Parcels displayed in white (no color) indicate approved locations for retailers, microbusinesses, or safety compliance facilities. This map is offered only as a guide and it shall be the responsibility of the user to verify a proposed location with city staff based on review of the current zoning and parcel location.



SIGN: Any structure or wall or other object used for the display of any message. Murals are not considered a sign.

SIGN AREA: Measurement of a sign includes the entire area within a circle, triangle, or parallelogram enclosing the extreme limits of writing, representation, emblem, or any figure of similar character, together with any frame or other material or color forming an integral part of the display or used to differentiate the sign from the background against which it is placed (see diagrams below). When a sign uses a shape other than a parallelogram, a rectangular box shall be drawn around the shape to determine the area (Figure B). Sign area excludes the necessary supports or uprights on which the sign is placed. Where a sign has two (2) or more faces, the area of all faces shall be included in determining the area of the sign, except that where two (2) such faces are placed back-to-back and are at no point more than two (2) feet from one another, the area of the sign shall be taken as the area of one (1) face if the two (2) faces are of equal area, or as the area of the larger face if the two (2) faces are of unequal area. In the case of a sphere, the total area of the sphere shall be divided by four (4) to determine the maximum permitted sign area.

Figure A

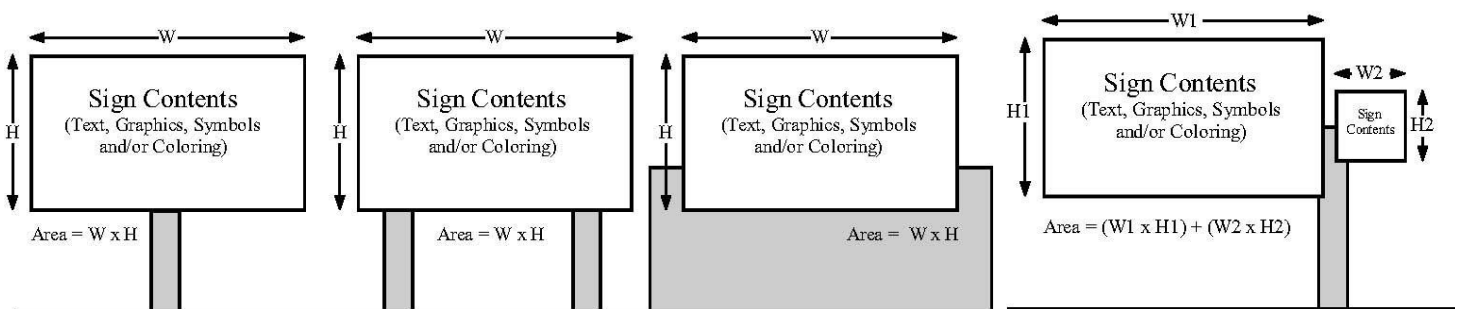
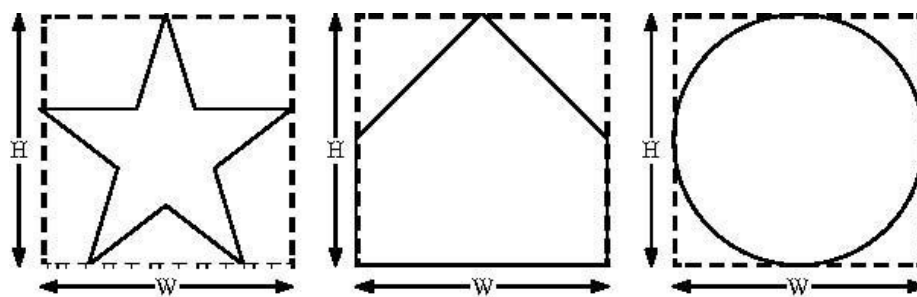


Figure B



- A. The sign face area shall be computed by including the entire area within a single, continuous perimeter of not more than eight (8) straight lines or a circle or an ellipse enclosing the extreme limits of the writing, representation, emblem, or other display, together with any material or color forming an integral part of the background of the display or used to differentiate the sign from the backdrop or structure against which it is placed, but not including any supporting framework or bracing that is clearly incidental to the display itself.

- ~~B. If the sign consists of more than one (1) section or module, all of the area, including that between sections or modules, shall be included in the computation of the sign face area.~~
- ~~C. With respect to two-sided, multi-sided, or three-dimensional signs, the sign face area shall be computed by including the total of all sides designed to attract attention or communicate information that can be seen at any one time by a person from one vantage point, without otherwise limiting the generality of the foregoing:~~
- ~~1. The sign face of a double-faced, back-to-back sign shall be calculated by using the area of only one (1) side of such sign, so long as the distance between the backs of such signs does not exceed eighteen (18) inches.~~
 - ~~2. The sign face area of a double-faced sign constructed in the form of a "V" shall be calculated by using the area of only one (1) side of such sign (the larger side if there is a size difference) so long as the interior angle of the "v" does not exceed thirty (30) degrees and at no point does the distance between the backs of such sides exceed five (5) feet.~~

SIGN HEIGHT: The vertical distance measured from the ground immediately beneath the sign to the highest point of the sign or its projecting structure.

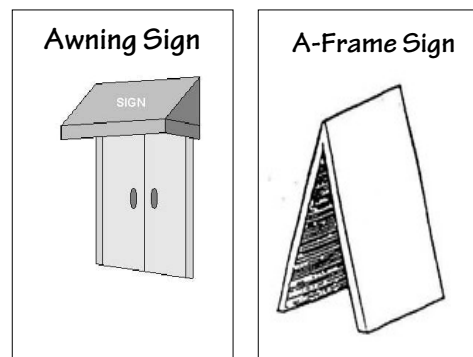
SIGN TYPES: The following definitions are related to signs:

A. **ATTENTION-GETTING DEVICE:**

1. **FEATHER BANNER OR SAIL SIGN:** A temporary banner made of flexible material and typically shaped like a sail or feather that is usually placed in an upright position.
2. **AIR DANCERS:** A tall inflatable model, usually of a person or an animal, that appears to move around due to air being blown into it.

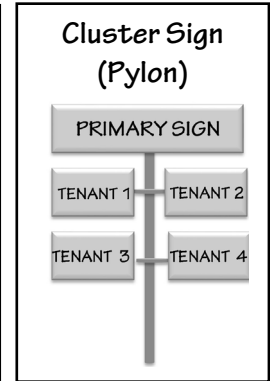
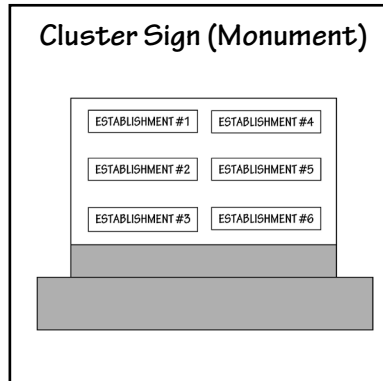
- B. **A-FRAME SIGN:** Self-supporting temporary sign consisting of two (2) panels hinged at the top providing advertising on each panel and can be readily moved within a property or to another property.

- C. **AWNING SIGN:** A sign painted on, printed on, or attached flat against the surface of an awning ~~or canopy~~. The awning of a building may be made of flexible or rigid material. Rigid awnings may be covered in a traditional building treatment (such as siding) or may be covered in traditional roofing materials (such as shingles).



- D. **BANNER**: A linear sign made of natural or synthetic material used to call attention to a message; however, not including pennants or flags.

- E. **CLUSTER SIGN**: An on-premises sign which identifies a complex of establishments/tenants on one (1) parcel lot and contains multiple signs on one structure including one for each establishment and one for the complex as a whole.

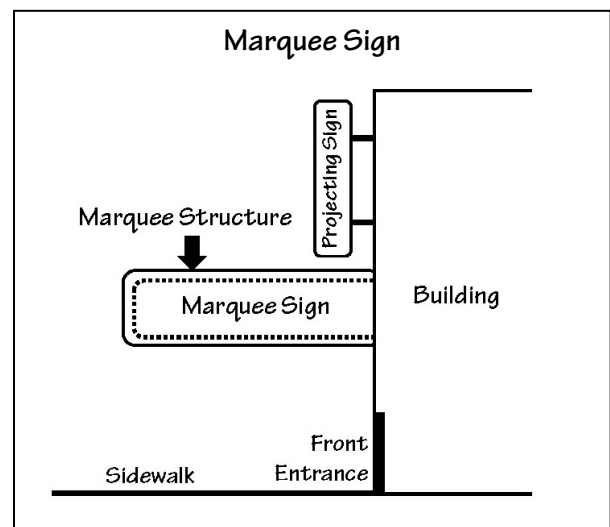


- F. **CANOPY SIGN**: A sign affixed or applied to the exterior facing surface or surfaces of a building or freestanding canopy. See **AWNING SIGN**.

ELECTRONIC MESSAGE BOARD: A sign with a fixed or changing display/message composed of a series of lights that may be changed through electronic means.

- G. **FREESTANDING SIGN**: A pylon sign or monument sign.

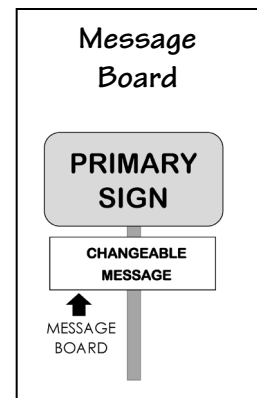
- H. **LIGHTED SIGN**: Any sign having a conspicuous, continuous, or intermittent variation in the illumination of the physical position of any part of the sign.



- I. **MARQUEE SIGN**: Any sign attached to or supported by a marquee structure. See **MARQUEE**.

- J. **MESSAGE BOARD, STATIC**: A sign with a changeable display/message consisting of alphabetic, pictographic, or symbolic informational content that must be changed manually by non-electronic means.

- K. **MESSAGE BOARD, ELECTRONIC**: A sign with a changeable display/message consisting of alphabetic, pictographic, or symbolic informational content that is composed of a series of lights that may be changed through electronic means.



L. **MONUMENT SIGN**: Any sign attached directly to the ground by a solid base and foundation constructed of masonry, brick, stone, decorative metal, wood or other durable material.

M. **MOVING SIGN**: A sign that uses movement, lighting, or special materials to depict action or create a special effect to imitate movement.

N. **MURAL**: Any message, or image painted directly onto the wall of a building. Decorative art elements attached to a mural are considered part of the mural.

O. **PERMANENT SIGN**: A sign of durable construction and durable materials designed to remain in one location and position either through attachment to a building element or mounting on a standard secured to a below-grade footing.

P. **OFF-PREMISE ADVERTISING SIGN (BILLBOARD)**: A sign which contains a message unrelated to a business or profession conducted or to a commodity, service, or activity sold or offered other than upon the premises where such sign is located.

1. **SMALL OFF-PREMISE SIGN**: An off-premise sign which does not exceed six (6) square feet in area.

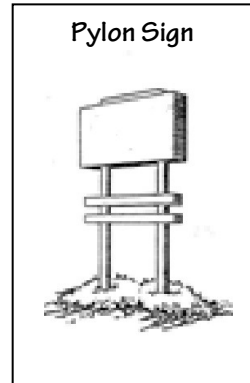
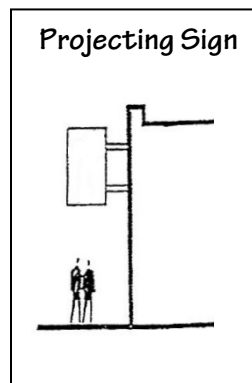
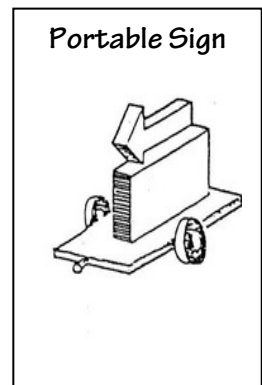
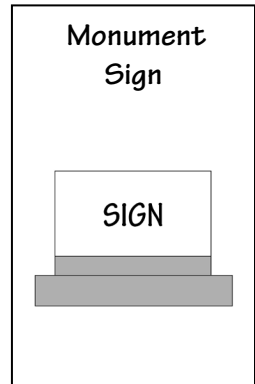
2. **LARGE OFF-PREMISE SIGN (BILLBOARD)**: An off-premise sign which is larger than six (6) square feet in area.

Q. ~~**OFF-PREMISE ADVERTISING SIGN, DIGITAL (BILLBOARD - DIGITAL)**: A billboard displaying static images controlled by electronic communications.~~

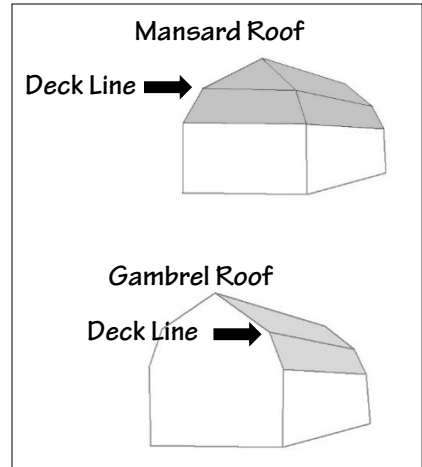
R. **PORTABLE SIGN**: Any sign not permanently attached to the ground or a building and is designed to be transported by trailer or wheels including such signs with wheels removed.

S. **PROJECTING SIGN**: A sign which is affixed to any building or structure, other than a marquee, where the face of the sign is generally perpendicular to the face of the building or structure.

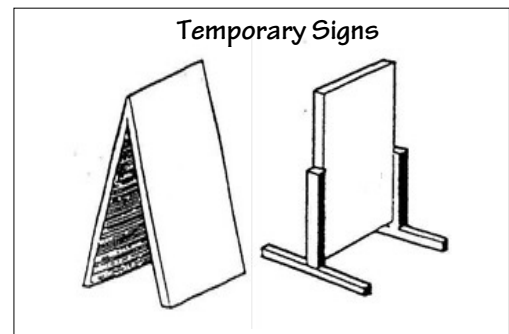
T. **PYLON SIGN**: A sign which is an elevated sign supported by one (1) or more bearing columns, ~~the sign portion of which is not less than ten (10) feet from the surface of the ground.~~



U. **ROOF SIGN**: A display sign which is erected, constructed, and maintained above the roof of the building. A sign that is located upon, above, or over the roof of a structure, or in the case of a building with a mansard roof or a gambrel roof, a sign that is above the deck line of the roof. A sign is not allowed on a hip roof.

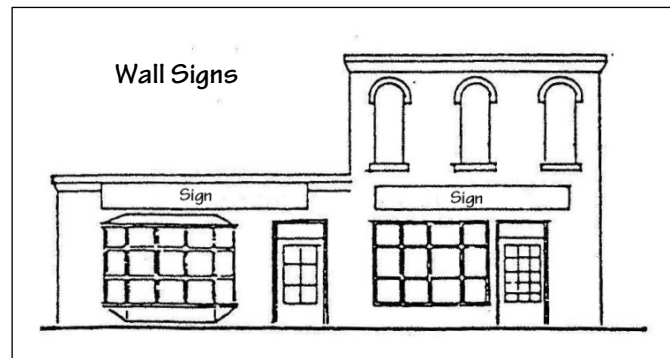


V. **TEMPORARY SIGN**: A display sign, banner, or other advertising device constructed of cloth, canvas, fabric, plastic, or other light temporary material, with or without a structural frame, or any other sign intended for a limited period of display, but not including decorative displays for holidays. A temporary sign shall not be used as a substitute for a permanent on-premise advertising sign, except as permitted within this ordinance. A temporary sign is one that is not affixed to the ground permanently and can easily be moved. ~~Flags which are not located on a flagpole are considered temporary signs.~~



W. **WALL SIGN**: A display sign which is painted on or attached directly to the building wall.

X. **WINDOW SIGN**: A sign installed inside or projected upon a window and intended to be viewed from the outside.



SIGNABLE AREA: ~~For walls or of buildings with architectural detailing (windows, doors, cornices, moldings, columns, etc.), the signable area shall be the two dimensional area that describes the square, rectangle, or parallelogram on the façade wall of a building free of architectural details where a wall sign would be placed. The signable area for a wall building façade, with or without architectural detailing shall not exceed twenty five (25) percent of the total square footage of the façade wall.~~



Article 4

Signs

Sec	Name	Pg
4.0	Purpose	
4.1	Sign Permit Procedure & Enforcement	
4.2	General Sign Standards	
4.3	District Regulations for Signs	
4.4	Temporary Signs	
4.5	Wall Signs - Supplemental Regulations	
4.6	Projecting Signs - Supplemental Regulations	
4.7	Marquee or Awning Signs - Supplemental Regulations	
4.8	Roof Signs	
4.9	Message Boards	
4.10	Off-Premise Signs	
4.11	Murals	
4.12	Severability Clause for Signs	

Section 4.0 Purpose

The purpose of this Section is to regulate outdoor signs, designed to be visible to the public, in a manner which does not restrict the content while recognizing the ~~mass~~ communications needs of both businesses and other parties and creating a more attractive business environment **and attractive residential neighborhoods**. The number and size of signs may be distracting to motorists and pedestrians and can create a traffic hazard. The number and size of signs can also reduce the effectiveness of signs needed to direct the public and may mar the appearance of the landscape. The provisions of this Section are intended to apply the minimum amount of regulation in order to protect property values and neighborhood character; ~~create a more attractive business climate~~; promote pedestrian and traffic safety; and promote pleasing community ~~environmental~~ aesthetics.

Section 4.1 Sign Permit Procedure & Enforcement

A. Approval.

No sign, ~~plates and those signs established by the City, County, State or Federal governments,~~ shall be erected, altered, replaced, or relocated until approved by the Zoning Administrator and a Sign Permit issued **unless noted in subsection A.6.**

1. When a Sign Permit is Required.

- a. A sign permit is required when the sign structure is being removed and replaced or if any structural change is being made to the sign (including a change to a sign's size). A sign permit is not required if a sign's message is being changed by re-painting, changing lettering, or changing the sign's "skin" (non-rigid covering).
- b. A property owner may maintain an existing ~~conforming~~ sign without a sign permit provided the type, size, shape, and height do not change and the use remains the same.

2. Application for Sign Permit. Applications for permits shall be made upon forms provided by the Zoning Administrator and shall contain or have ~~there to~~ the following information attached:

- a. Name, address, and telephone number of the applicant.
- b. Location of building, structure, or lot to which the sign or other advertising structure is to be attached or erected.
- c. Site plan showing the location of the sign and nearby structures.
- d. One (1) blueprint or drawing of the plans and specifications and methods of construction and attachment to the building or in the ground.
- e. In some cases, the Zoning Administrator may request copies of stress sheets and calculations showing the structure is designed for dead load and wind pressure in any direction in the amount required by this and all other laws and ordinances of the City. Provided, further, that where the Zoning Administrator deems it advisable, he/~~she~~ may require the approval of the structural design by a registered architect or engineer.
- f. Name of person, firm, corporation, or association erecting ~~the~~ structure.
- g. Written consent of the owner where the sign is to be erected on vacant land.
- h. In all cases where wiring is to be used in connection with the sign, it shall comply with the National Electrical Code and the necessary permits shall be obtained.

~~Insurance policy or bond as required by subsection 9 below.~~

- i. Such other information as the Zoning Administrator shall require to show full compliance with this and all other Ordinances of the City.
3. **Sign Permit Issued if Application in Order.** It shall be the duty of the Zoning Administrator, upon the filing of an application for a sign permit, to examine the plans and specifications and other data and the premises upon which it is proposed to erect the sign or other advertising structure, and, if it shall appear that the proposed structure is in compliance with all requirements of the City, the permit shall be issued. In the case of illuminated signs, an electrical permit ~~and a sign permit must~~ **shall also** be issued. **The Building Official shall be responsible for issuing building permits for signs that require a building permit.**
4. **Sign Permit Fee.** ~~It shall be unlawful in the City of Alpena for any person to erect or alter any sign, except those signs specifically exempted herein, unless a permit shall first have been obtained from the Zoning Administrator for such erection or alteration, and~~ **Prior to the issuance of a sign permit, a sign permit fee shall be** paid to the City according to the schedule as shall be established from time to time by resolution of the City Council.
5. **Sign Permit Revocable at Any Time.** All rights and privileges accrued under the provisions of this Ordinance or any amendment thereto are mere licenses and may be revoked upon the violation of any of the conditions contained herein. If the work authorized under a ~~erection~~ **sign** permit has not been completed within four (4) months after date of issuance, the said permit shall become null and void. **The Zoning Administrator may grant an extension if weather or other unforeseen circumstances impact the construction of the sign.**
6. **Signs Excluded from Permits.** The following signs are permitted in all districts except where restrictions are indicated, in accordance with the provisions of this Section and shall not require permits for erection.

Signs Excluded from Permits

- a. Wall signs **(whether on buildings or accessory structures)** not exceeding two (2) square feet in area. **Freestanding** signs ~~on private property~~ that do not exceed four (4) square feet each. ~~This would take into account (Example: signs located at entrances and exits) and off-premise directional signs.~~
- b. Plaques **or letters** when cut into any masonry surface or when constructed of bronze or aluminum and attached to a building.
- c. Signs erected by an official governmental body, public utility, or historic agency.
- d. Flags. **Flags which are on a flagpole are not considered signs. Refer to U.S. Flag Code for Federal Guidelines.**
- e. Integral decorative or architectural features of buildings or works of art, so long as such

features or works do not contain moving parts or lights.

- ~~f. Signs less than two (2) square feet in size and located on the perimeter (along a parcel lot boundary).~~
- g. Projecting Signs ~~when located~~ **that hang below** an **canopy**, awning or marquee which do not exceed ~~two (2)~~ **ten (10)** square feet in area or extend below a minimum height of eight (8) feet from ground level. ~~Signs contained directly on a marquee canopy or awning.~~
- ~~h. Permanent signs on accessory structures such as gas pumps or storage sheds.~~
- i. Banners across public rights-of-way subject to any terms or conditions City Council or its designee deems appropriate.
- j. Temporary signs, ~~portable signs, A-frame signs, feather banners, sail-type signs, air dancers, and other attention-getting devices.~~
- k. Signs erected by the City of Alpena, State of Michigan, or Downtown Development Authority as part of a community wayfinding program.
- l. Signs not ~~readable~~ **visible** by motorists or pedestrians on any road, alley, water body, public lands, or adjacent parcels.
- m. Legal postings as required by law.
- n. Murals**

7. Prohibited Signs.

Prohibited Signs **and Devices**

The following ~~signs~~ are prohibited with**in** the City:

- a. Signs which incorporate in any manner any flashing or moving lights with the exception of approved electronic message boards.
- ~~b. String lights used in connection with business premises for commercial purposes, other than Christmas decorations.~~
- c. Rotating **and moving** signs, except as otherwise regulated in this Ordinance.
- d. Any sign unlawfully installed, erected, or maintained.
- e. Signs on park-type benches.
- f. **Roof signs.** ~~Any sign attached on to the roof of any building.~~
- g. ~~Advertising~~ Devices such as pennants, pinwheels, streamers, search lights, or other devices with similar characteristics.
- ~~h. Signs which no longer advertise an existing use occurring on the premises after one (1) year has elapsed.~~

i. ~~No sign or banner shall be placed across any public right-of-way except by permission of the City.~~ *Moved to 4.2 B.*

j. ~~It shall be unlawful for any person to display upon any sign or other structure any obscene, indecent or immoral matter.~~

~~8. License for Sign Erectors.~~

a. ~~Every person, firm, or corporation engaged in the business of erecting or installing signs for which permits are required by this Section shall obtain a license, hereinafter referred to as a sign erector's license, from the City Clerk to conduct such operation.~~

b. ~~The sign erector's license shall be renewed annually on or before May 1st of each year.~~

c. ~~A fee for sign erector's licenses shall be established by resolution of the City Council. A fee shall be paid to the City Clerk for each sign erector's license and each renewal of a sign erector's license.~~

d. ~~The City Manager shall revoke the license of any sign erector who does not comply with the requirements of this Article.~~

~~9. Sign Erector's and Owner's and User's Insurance.~~

a. ~~Each licensed sign erector shall file evidence of insurance in amounts determined by the City of Alpena.~~

b. ~~**Lapsing of Insurance.** At any time the insurance of any sign erector is permitted to lapse, his license shall automatically be revoked.~~

B. Enforcement.

See **Section 9.0** (Enforcement) and **Section 9.7** (Violations).

Section 4.2 General Sign Standards

A. Wind Pressure and Dead Load Requirements.

Freestanding ~~Ground~~, projecting, wall, and marquee signs shall be designed and shall be constructed to receive wind and dead loads as required in the City Building Code or other ordinances of the City.

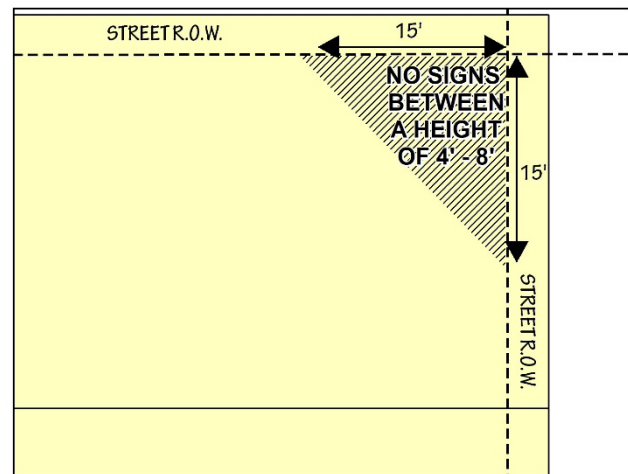
B. Signs in Right-Of-Way.

1. Any sign except those established and maintained by city, county, state, or federal governments shall not be erected in, nor project into, or overhang a right-of-way except as otherwise allowed in this Ordinance. ~~The owner of any sign which has been removed by the City from the right-of-way because it is in violation of this provision shall pay to the City the sum of Five Dollars (\$5.00) before recovering said sign. If any sign is not claimed within thirty (30) fourteen (14) days, it shall be destroyed. Where a sign projects over a private right-of-way, there shall be a fourteen (14) foot vertical clearance.~~
2. No sign or banner shall be placed across any public right-of-way except by permission of the City.
3. The right-of-way includes the **LAWN EXTENSION**.

C. Signs Not To Constitute a Traffic Hazard.

No sign shall be erected at the intersection of any streets in such a manner as to obstruct free and clear vision or at any location where, by reason of the position, shape or color, it may interfere with, obstruct the view of, or be confused with any authorized traffic sign, signal or device. At street intersections, no signs other than municipal traffic control signs shall be located in the clear-vision triangle formed by the property lines paralleling the streets and extending for a distance of ~~twenty-five (25)~~ **fifteen (15)** feet each way from the intersection of the right-of-way lines at the corner lot. This clear vision triangle shall be free of any pole, column, support, sign face, or other obstruction having a width exceeding eight (8) inches. The clear vision triangle shall consist of that space which is between ~~three (3)~~ **four (4)** feet and eight (8) feet in height as measured from the curb. This vision triangle does not apply in zoning districts that allow buildings to be constructed up to a corner property line.

Figure 4.2A: Sign Visibility Triangle



D. Signs Affixed to Nontraditional Surfaces.

No sign shall be affixed to trees, rocks, shrubs, utility poles, or other similar objects except signs of any political subdivision of this State. No sign shall be affixed to a fence without first being approved by the Zoning Administrator as meeting a special purpose. No sign shall be affixed to a stationary motor vehicle or other similar object not usually used for signage and put on non-mobile display.

E. Illumination/Glare.

Internally and externally lighted reflective, glowing, and other forms of illumination shall be permitted on all signs except where specifically prohibited. All illumination shall be concentrated on the area of the sign or landscape feature or directed or shielded so as to not interfere with the vision of ~~or become a nuisance to~~ persons on the adjacent streets or adjacent property. Illumination shall not constitute a traffic hazard. No sign shall be illuminated by other than electrical means or devices, and wiring shall be installed in accordance with the National Electrical Code. ~~Any signs shall be a wattage not exceeding sixty (60) watts per bulb.~~ Any lighting used to illuminate signs shall be directed away from and shall be shielded from any adjacent residential zoning districts.

~~Flashing/Moving Signs.~~

~~Illuminated signs shall not be of the flashing, moving or intermittent type unless elsewhere allowed in this Ordinance or approved by the Zoning Administrator, who shall find that the lighting is non-glaring and does not interfere with traffic control devices.~~

F. Obstructions To Doors, Windows and Fire Escapes.

No sign shall be erected or maintained so as to prevent free ingress or egress from any door, window, or fire escape. No sign of any kind shall be attached to a stand pipe or fire escape.

G. ~~Free Speech/~~Obscene Material.

No sign shall contain statements, words, or pictures of an obscene nature which would appeal predominantly to a prurient interest in sexual conduct, depict or describe sexual conduct in a patently offensive way, and be offensive, rude, lewd or disgusting according to accepted moral standards.

H. Sign Construction.

1. No nails, tacks, or wires shall be permitted to protrude from the front of any sign. ~~This shall not exclude, however, the use of block letters, electrical reflectors, or other devices which may extend over the top and in front of the structure.~~
2. Signs shall be comparable to a professionally designed and constructed sign.
3. All wall signs shall be safely and securely attached to structural members of the building by means of metal anchors, bolts, or expansion screws, or other means as approved by

the Building Official. In no case shall any wall sign be secured with wire, strips of wood, or nails.

I. **Size Sign Area Limitations.**

Size limitations apply to the **area of the** sign face only, not the support structure. *See Sign, Area definition.*

Multiple Signs.

~~Where multiple signs are permitted by zoning district, the number, size, and placement of signs in combination on a lot shall comply with the following:~~

- ~~1. A freestanding sign shall not be permitted on lots where a projecting, awning canopy or marquee sign extends into the front yard to within eight (8) feet of the public right of way.~~
- ~~2. A projecting, awning, canopy, or marquee sign may not extend into the public right of way from lots on which a ground **freestanding** sign is located.~~
- ~~3. A projecting, awning, canopy, or marquee sign shall not be located on the same building wall in which a permanent sign of a differing sign type is located, other than wall signs.~~

J. **Nonconforming Signs.**

1. Nonconforming signs that were otherwise lawful on the effective date of this Zoning Ordinance may be continued.
2. No person shall increase the extent of nonconformity of a nonconforming sign. Without limiting the generality of the foregoing, no nonconforming sign may be enlarged or altered in such a manner as to aggravate the nonconforming condition. Nor may illumination be added to any nonconforming sign.
3. A nonconforming sign may not be moved or replaced except to bring the sign into complete conformity with this section.
4. If a nonconforming sign is destroyed by natural causes, it may not thereafter be repaired, reconstructed, or replaced except in conformity with all provisions of this Zoning Ordinance. The remnants of the former sign structure not usable for a new conforming sign shall be cleared from the land. For purposes of this Section, a nonconforming sign is considered destroyed if it is damaged to an extent that the cost of repairing the sign to its former stature or replacing it with an equivalent sign equals or exceeds the value of the

sign so damaged.

5. Subject to the other provisions of this Section, nonconforming signs may be repaired, maintained, serviced, or repainted if the framework and/or the size and/or shape of the sign remain unchanged. If such framework is altered or removed or the size and/or shape of the sign are altered, said sign must be changed to a conforming sign.
6. **If a nonconforming sign has been abandoned, then subsection L shall apply.** ~~If a nonconforming sign, other than an off-premise sign, advertises a business, service, commodity, accommodation, attraction, or other enterprise or activity that is no longer operating or being offered or conducted, that sign shall be deemed abandoned and shall be removed by the owner of the sign, the owner of the property where the sign is located, or the party having control over such sign within thirty (30) days after such abandonment.~~
7. ~~If a nonconforming off-premise sign remains blank for a continuous period of one hundred eighty (180) days, that off-premise sign shall be deemed abandoned and shall, within thirty (30) days after such abandonment, be altered to comply with this Zoning Ordinance or be removed by the owner of the sign, the owner of the property where the sign is located, or the persons having control over such sign. For purposes of this section, a sign is "blank" if:~~
 - a. ~~It advertises a business, service, commodity, accommodation, attraction, or other enterprise or activity that is no longer operating or being offered or conducted;~~
 - b. ~~The advertising message it displays becomes illegible in whole or substantial part; or~~
 - c. ~~The advertising copy that either has been paid for by a party other than the sign owner or promotes an interest other than rental of the sign has been removed.~~
8. **Subsections 6 and 7** ~~above~~ shall not apply to signs **advertising contained on lots with** seasonal businesses.

K. Abandoned Signs.

1. **An abandoned sign is any sign to which any of the following applies:**
 - a. **The sign is located on a property on which the use has been abandoned for a continuous period of one (1) year. When determining the intent of the property owner to abandon a use, the Zoning Administrator shall consider the following factors:**

(1) Whether utilities such as water, gas, and electricity to the property have been

disconnected.

(2) Whether the property, buildings, and grounds have fallen into disrepair.

(3) Whether equipment or fixtures necessary for the operation of the use have been removed.

(4) Other information or actions that evidence an intention on the part of the property owner to abandon the use.

If the sign is located on property that is actively for sale, the property owner may request an extension of this time period and the Zoning Administrator may grant this extension.

- b. The sign has remained blank over a continuous period of one hundred (180) days.
 - c. The sign's message becomes illegible in whole or substantial part.
 - d. The sign has fallen into disrepair.
2. **Removal of Abandoned Signs.** In the event that a sign is determined to be abandoned, the Zoning Administrator shall give notice in the form of a letter to the property owner that the sign has been determined to be abandoned. The property owner shall have thirty (30) days to remove said sign and any remaining sign structure. Upon the expiration of thirty (30) days, the Zoning Administrator shall give a second notice in the form of a letter. If the sign and structure have not been removed upon the expiration of thirty (30) days from the date of the second notice, the Zoning Administrator is authorized to cause removal of such sign and structure and any expense incident thereto shall be paid by the owner or lessee of the sign or, if such person cannot be found, by the owner of the building or structure or property to which such sign or structure is affixed. If such expense is not paid, the City shall have a lien on the property and such cost shall be added to the tax bill for the property.

L. Unsafe, Damaged, and Illegal Signs:

In the event that any sign becomes insecure, in danger of falling, unsafe, damaged, or if any sign shall be unlawfully installed, erected, or maintained in violation of any of the provisions of this Ordinance, the owner or lessee shall upon twenty-hour (24) hours of receipt of a written notice from the Zoning Administrator make such sign conform to the provisions of this Ordinance or shall cause it to be removed. The Zoning Administrator may grant a time extension if, after inspection, the Zoning Administrator determines that no immediate danger exists. In the event said owner or lessee does not remove said sign pursuant to said notice, or cannot establish a

good faith effort to comply, the Zoning Administrator is authorized to cause removal of such sign and any expense incident thereto shall be paid by the owner or lessee of the sign or, if such person cannot be found, by the owner of the building or structure or property to which such sign or structure is affixed. If such expense is not paid, the City shall have a lien on the property and such cost shall be added to the tax bill for the property.

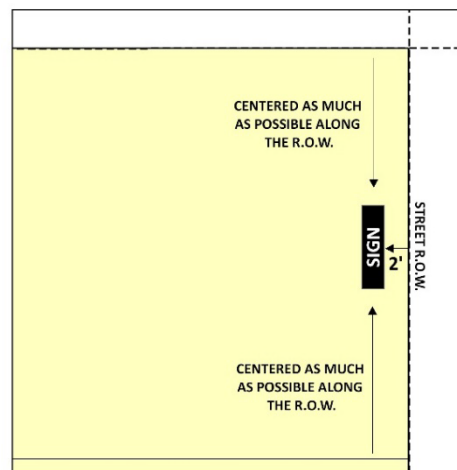
M. Sign Maintenance.

1. All signs for which a permit is required, together with all their supports, braces, guys, and anchors, shall be maintained in good working order, and when not galvanized or constructed of approved corrosion-resistant, noncombustible materials, shall be painted when necessary to prevent corrosion. The exteriors of all signs, supporting members, painted surfaces, ~~advertising materials~~, and lettering shall be kept painted and in good repair, so as to present a neat and orderly appearance. All bulbs or component parts of the sign, including the electrical switches, boxes, and wiring used in the illumination of the sign must be well maintained and in good repair.
2. The Zoning Administrator may order the removal of any sign that is not maintained in accordance with the provisions of this Ordinance.
- ~~1. It shall be the duty and responsibility of the owner or lessee of every sign to maintain the immediate premises occupied by the sign in a clean, sanitary and healthful condition.~~

N. Sign Setbacks.

Freestanding signs shall be set back at least two (2) feet from the property line and shall be centered as much as possible along the street frontage.

Figure 4.2.B Sign Setbacks



O. Allowable Sign Size Increase.

The Zoning Administrator may increase the allowable sign sizes and heights listed in this Section by up to ~~twenty-five (25)~~ fifteen (15) percent ~~when it can be demonstrated that an increase is necessary to maintain proper sign visibility or to maintain architectural integrity.~~ The following factors shall be considered by the Zoning Administrator when determining allowable increases:

1. Relationship of the sign to surrounding properties and rights-of-way
 - a. Compatibility with adjacent land uses and signs.
 - b. Visibility of neighboring signs or buildings.
 - c. Visibility and legibility of the sign for pedestrian and vehicular traffic.
 - d. Lighting trespass impacts.
2. Relationship of the sign to features on the site of the sign installation:
 - a. Suitability of the sign and its location relative to particular site characteristics such as yard areas, vegetation, topography, and the like.
 - b. Compatibility of the sign with the size, location, and character of the principal building(s) on-site.
 - c. Impact of the sign upon on-site vehicular and pedestrian circulation.
3. Impact of the sign upon parks and historic properties:
 - a. Impact of the sign upon views of prominent natural features
 - b. Impact of the sign upon parks and public spaces.
 - c. Impact of the sign upon historic buildings or properties.
4. Impacts of the sign upon public safety:
 - a. Visibility of traffic safety devices.
 - b. Visibility of pedestrians and vehicles entering or exiting the site or on adjacent rights-of-way.
 - c. Impacts of sign lighting upon vehicular traffic.
 - d. The safety of the placement of the sign.

If the applicant is denied a sign size increase by the Zoning Administrator or if the requested size increase exceeds fifteen (15) percent, the applicant may present their case to the Zoning Board of Appeals using the standards listed above.

Section 4.3 District Regulations for Signs

1 Purpose	2 Definitions	3 General Provisions	4 Signs	5 District Regulations
6 Plan Review	7 Supplemental Regulations	8 Zoning Board of Appeals	9 Administration	10 Adoption & Amendments

The use of signs ~~over two (2) square feet~~ in each district shall be limited to the following tables. Lots may contain any of the sign types listed in the table. A lot which contains a sign of one (1) type (i.e. freestanding signs) may also contains signs of any other type (i.e. wall signs)

Table 4A: Residential District Sign Requirements						
	<div>R-1</div>	<div>R-2</div>	<div>TBO</div>	<div>R-T</div>	<div>RM-1</div>	<div>RM-2</div>
	Single & Two-Family Uses <i>(per each dwelling unit)</i>	Multiple Family, Subdivisions, Manufactured Housing Dev.		Lots that contain a Home Occupation (additional signage allowed)		Churches, Schools, and Nonprofit Institutions Non-Residential
Free-Standing Signs <i>(permanent primary sign)</i>	Number: 1 per street frontage Size: 4 sq ft Height: 4 ft	Number: 1 double-sided or 2 single-sided per entrance. Size: 24 sq ft Height: 6 ft		Number: 1 Size: 8 sq ft Height: 4 ft Allowed <u>either</u> an additional freestanding sign or an additional wall sign		Number: 1 Size: 30 sq ft If sign is located more than 50 ft behind the property line, may be increased by 5 additional sq ft for each additional 10 ft of setback. Shall not exceed 50 sq ft Height: 6 ft
Wall Signs <i>(permanent primary sign)</i>	Number: 1 Size: 2 sq ft per dwelling unit	No sign shall exceed 25% of each wall area to a maximum of forty (40) sq ft. Wall sign increases may be permitted as per §4.5.B		Number: 1 Size: 4 sq ft Allowed <u>either</u> an additional freestanding sign or an additional wall sign		No sign shall exceed fifty (50) percent of the signable area 25% of each wall area to a maximum of forty (40) sq ft. Wall sign increases may be permitted as per §4.5.B
						See Section 4.5
Projecting Signs	Not Allowed					See Section 4.6
Marquee or Awning Signs	Not Allowed					There shall be no limit to sign size when located on an awning or marquee. See Section 4.7
Temporary Signs	See Section 4.4.					
Message Boards	Not Allowed					See Section 4.9
Off-Premise Signs	Not Allowed					Not Allowed
Roof Signs	Not Allowed					See Section 4.8
Illumination	Not Allowed	External illumination only*		Not Allowed		External illumination only*
<div><div></div><div>Sign numbers, sizes and heights are listed as the maximum allowed.</div><div>Window signs (temporary or permanent) are regulated as wall signs in these districts.</div><div>Unless otherwise indicated, lots may contain the maximum listed for each type of sign.</div></div>						
*No internal illumination shall be allowed in residential districts except for electronic message boards on lots which contain churches and schools. Externally illuminated signs shall not glare onto or cross the property line onto residential lots.						

Table 4B: Business & Industrial District Sign Requirements

	Added B-2 to this category						<div>WD</div> <div>DOD</div>	<div>CBD</div> <div>CCD</div>
	<div>OS-1</div>	<div>B-1</div>	<div>B-2</div>	<div>B-3</div>	<div>I-1</div>	<div>I-2</div>		
Free-Standing Signs	Number: 1 Lots with at least 100 feet of frontage on each of 2 streets may have 2 signs. If sign is at intersection of 2 streets, only 1 sign is permitted.							
	Size: 64 sq ft Lots with 100 ft or less of frontage: 40 sq ft Lots with more than 100 ft of frontage: 40 sq ft may be increased 1 sq ft for each 7 lineal feet of frontage above 100 ft. Not to exceed 80 sq ft.							
	Pylon Sign Height Limit: 6 13 ft			Pylon Sign Height Limit: 13 ft			Pylon Sign Height Limit: 6 13 ft	
	Monument Sign Height Limit: 6 ft							
	Height may be increased 1 ft for each additional 10 sq ft of sign area in excess of 40 sq ft Height shall not extend above the highest point of the principal structure.							
Wall Signs	40 25% of each wall the Signable area to a maximum of 50 75 sq ft per wall façade			50 25% of each wall the Signable area to a maximum of 75 sq ft per wall façade			50 25% of each wall the Signable area to a maximum of 50 75 sq ft per wall façade	
	See Section 4.5 for “Signable Area” and “Wall Sign Increase”							
Projecting Signs	1 at 40 40 sq ft Minimum height of 8 ft Bottom of the signs shall be at least 8 ft from the ground. See Section 4.6							
Marquee or Awning or Canopy Signs	Signable Area shall be limited to 50% of the area of the front and top plane and 25% of the side plan. Minimum height of 8 ft			1 at 32 sq ft Minimum height of 8 ft			1 at 32 sq ft Minimum height of 8 ft	
	There shall be no limit to sign size when located on an awning or marquee. See Section 4.7							
Roof Signs	Not Allowed (signs are allowed below the deck line of a mansard roof and a gambrel roof)							
Message Boards (Static & Digital)	See Section 4.9. Not allowed in DOD.							
Temporary Signs	See Section 4.4							
Off-Premise Signs	See Section 4.10							
Cluster Signs	A development containing multiple buildings, separate parties, tenants, or uses shall be considered as a single development and shall adhere to the freestanding sign regulations stated above, regardless of the number of buildings, separate parties, tenants, or uses contained therein. Cluster signs shall not exceed the maximum square footage for an allowable freestanding sign in each district. The Zoning Administrator may allow area and height increases above the district maximum for a freestanding sign.							
Window Signs	Between 2 ft and 10 ft above the sidewalk: DOD: Only clear or lightly tinted glass shall be allowed in windows and doors. Windows shall not be blocked by an opaque treatment.							
	CCD: Up to 50% of the window may be blocked by opaque treatment.							
<ul style="list-style-type: none">Sign numbers, sizes and heights are listed as the maximum allowed.Unless otherwise indicated, lots may contain the maximum listed for each type of sign.Illuminated signs shall not glare onto or cross the property line onto residential lots. *No internal illumination shall be allowed on lots abutting residential lots except for lots which contain churches and schools.								

1 Purpose

2 Definitions

3 General Provisions

4 Signs

5 District Regulations

6 Plan Review

7 Supplemental Regulations

8 Zoning Board of Appeals

9 Administration

10 Adoption & Amendments

Section 4.4 Temporary Signs

A. Residential.

1. Single-Family and Two-Family Dwellings and Vacant Lots in Residential Districts.

- a. **Ground signs.** No more than twelve (12) square feet, in sum, of temporary signage shall be allowed per zoning lot. No individual temporary sign shall exceed four (4) square feet.
 - b. **Window Signs.** No more than one (1) window sign at two (2) square feet shall be allowed per dwelling unit.
 - c. From sixty (60) days prior until five (5) days after a national, state, or local election, the total square footage limit does not apply. However, no individual sign shall exceed four (4) square feet.
2. **Individual Dwellings Units within Multiple-Family Dwellings.** No more than one (1) window sign at two (2) square feet shall be allowed per each dwelling unit within a multiple-family establishment. From sixty (60) days prior until five (5) days after a national, state, or local election, the total number limit does not apply. However, no individual sign shall exceed two (2) square feet.
 3. **Multiple-Family Establishments as a Whole.** No more than two (2) temporary signs, erected by the owner or manager of the establishment shall be allowed per multiple-family dwelling establishment as a whole for a total of thirty (30) square feet in sum. The larger of any one (1) temporary sign shall be no greater than twenty (20) square feet. From sixty (60) days prior until five (5) days after a national, state, or local election, the total square footage limit does not apply. However, no individual sign shall exceed twenty (20) square feet.

B. Non-Residential.

1. **Number and Limit.** No more than two (2) temporary signs shall be allowed per commercial or industrial establishment for a total of thirty (30) square feet in sum. The larger of any one (1) temporary sign shall be no greater than twenty (20) square feet. From sixty (60) days prior until five (5) days after a national, state, or local election, the limit of two (2) signs and the total square footage limit does not apply. However, no individual sign shall exceed twenty (20) square feet.
- a. **A-Frame Signs (count toward the temporary sign limits in subsection B.1).**

~~(1) Shall be permitted by right in the DOD, CBD, WD, CCD, OS 1, B 1, B 2, B 3, P 1, I~~

1 Purpose

2 Definitions

3 General Provisions

4 Signs

5 District Regulations

6 Plan Review

7 Supplemental Regulations

8 Zoning Board of Appeals

9 Administration

10 Adoption & Amendments

~~1, I 2, and PUD districts and on lots which contain non-residential uses and multi-family residential uses in the R-1, R-2, R-T, RM-1, and RM-2 Districts.~~

~~(2) No more than one (1) sign per business per street frontage shall be allowed.~~

~~(3) No permit is required.~~

~~(4) Must be constructed of durable materials~~

(5) Sign shall be removed when business facility is closed.

~~(6) Maximum size two (2) feet wide by four (4) in total height for each panel with a maximum of two (2) panels per sign. A frame signs located entirely on private property may be a maximum of three (3) feet in width.~~

(7) ~~Must~~ Shall be located on or adjacent to the lot in which the business facility is located. Exception: If a building has no front yard, the sign may be located on the sidewalk. Signs located on the sidewalk shall provide at least three (3) feet of continuous pedestrian clearance.

~~(8) Off-Premise A-Frame Signs. Sign may be located in a right-of-way as a directional off-premise sign upon approval by the Zoning Administrator. DDA Director approval is also required if the sign is proposed within the DOD.~~

~~(9) A-frame signs count against the total allowable temporary sign limits of the zoning lot. Off-premise A-frame signs do not count against the total allowable signage of the lot on which it is located.~~

2. Other Types of Temporary Signs (do not count toward the temporary sign limits in subsection B.1).

- a. **Portable Signs (Non-Residential and Multiple-Family Establishments).** One (1) portable sign shall be considered the same as two (2) temporary signs and shall be no greater than thirty (30) square feet. The portable signs shall be permitted as a temporary sign for a period not to exceed fourteen (14) days in a one (1) year period. A no-fee permit is required. In no instance shall such sign be located so as to obstruct automobile or pedestrian travel lanes. Such signs shall neither be illuminated nor connected to an energy source. Such signs shall not constitute a safety hazard to the public. Portable signs do not count against the total allowable temporary sign limits of the zoning lot.

- b. **Attention-Getting Devices.** Attention-getting devices such as but not limited to

feather banners, sail signs, and air dancers shall be allowed for a maximum period of fourteen (14) consecutive days as follows:

- (1) One (1) shall be allowed per lot. For lots with more than one hundred (100) feet of lineal street frontage, one (1) attention-getting device shall be allowed per one hundred (100) feet of lineal street frontage.
- (2) Attention-getting devices do not count against the total allowable temporary sign limits of the zoning lot.
- (3) One zoning lot shall not contain both sail signs/feather banners and air dancer(s).
- (4) Attention-getting devices shall remain in good condition, as determined by the Zoning Administrator.

- C. **Temporary Sign Covers.** Non-rigid material which is used to cover an existing permanent sign shall be placed on the sign on a temporary basis not to exceed six (6) months. Such material shall not be considered a temporary sign and shall not be affixed permanently to the sign. Fabric signs which are stretched across a sign frame and do not cover another existing sign do not fall under this subsection C.

Section 4.5 Wall Signs - Supplemental Regulations

Delete image:

A. Signable Area

~~For walls or of buildings with architectural detailing (windows, doors, cornices, moldings, columns, etc.), the signable area shall be the two-dimensional area that describes the square, rectangle, or parallelogram on the façade wall of a building free of architectural details where a wall sign would be placed. The signable area for a wall building façade, with or without architectural detailing shall not exceed twenty five (25) percent of the total square footage of the façade wall.~~

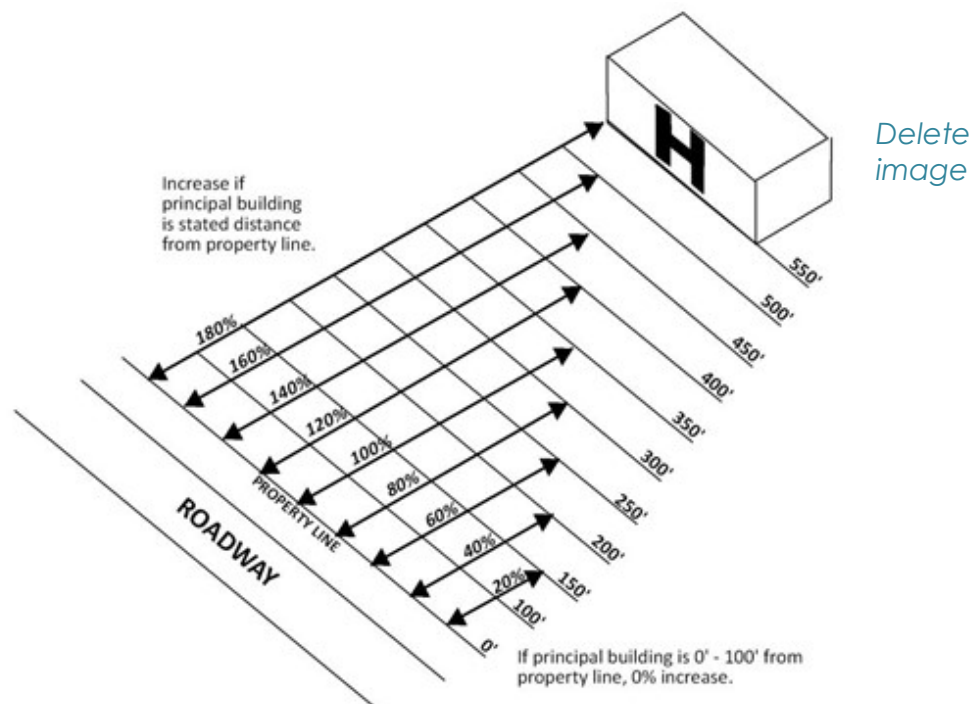


B. Wall Sign Increase.

~~The size of a wall sign may be increased twenty (20) percent for principal structures located between one hundred (100) feet and one hundred fifty (150) feet from the property line, and twenty (20) percent for every fifty (50) feet beyond one hundred fifty (150) feet thereafter, to a maximum of one hundred eighty (180) percent of the original sign size. However, under no~~

circumstances may the area of a wall sign(s) exceed ninety (90) percent of the signable area for a building façade. **The maximum size of a wall sign may be increased as follows:**

Wall Signs	
Distance of Wall Sign from Road	% of Building Face Permitted for Sign Area
0-100 ft.	25%
101-300 ft.	35%
Over 300 ft.	45%



C. Materials Required. All wall signs shall have a surface or facing of noncombustible material.

D. Limitation on Placement.

No wall sign shall cover wholly or partially any wall opening nor project beyond the ends or top of the wall to which it is attached. **No more than three (3) feet of a wall sign may project above the top of the wall to which it is attached.** Wall signs should not block architectural details. In the DOD, wall signs should match the character of the DOD, as determined by the Zoning Administrator with input from the DDA.

E. Projection and Height.

No wall sign shall have a greater thickness than twelve (12) inches measured from the wall to which it is attached to the outer surface. Wall signs may project over the public right-of-way not to exceed twelve (12) inches and shall not extend below a minimum height of eight (8) feet above the ground level if such sign exceeds four (4) inches in thickness.

~~F. Supports and Attachments.~~

~~All wall signs shall be safely and securely attached to structural members of the building by means of metal anchors, bolts, or expansion screws or other means as approved by the Building Official. In no case shall any wall sign be secured with wire, strips of wood, or nails.~~ Moved

Section 4.6 Projecting Signs - Supplemental Regulations

The **Zoning Administrator** ~~Planning Commission, with a recommendation from the DDA,~~ may authorize a sign to project into the public right-of-way subject to the following conditions:

- A. One (1) projecting sign limited to not more than ~~ten (10)~~ **forty (40)** square feet of sign area for each side of such sign.
- B. No projecting sign shall exceed a height greater than the front wall height of the building to which it is attached or extend below a minimum height of eight (8) feet above the ground level.
- C. ~~The distance measured between the principal faces of any projecting sign shall not exceed twelve (12) inches.~~
- D. In the case of a zero lot line establishment, ~~no projecting sign may project beyond the property line by more than three (3) feet~~ **a projecting sign may extend into the public right-of-way from the front property line to the edge of the street curb, unless otherwise restricted by ordinance. The Zoning Administrator has the discretion to limit the distance of the projection in the right-of-way.**
- E. Any movable part of a projecting sign, ~~such as the cover of a service opening,~~ shall be securely fastened by chains or hinges.
- F. ~~Time and temperature signs shall be permitted.~~

Section 4.7 Marquee or Awning Signs - Supplemental Regulations

- A. ~~The signable area of a marquee, awning or canopy sign shall be limited to fifty (50) percent of the area of the front or top plane and twenty five (25) percent of the side plane of the marquee, awning or canopy.~~ There is no limit to the size of the signage located on a marquee or awning. If an awning is a rigid awning (non-fabric) and is essentially part of the building structure, then the wall sign size limits shall apply.
- B. Signage shall be attached directly to the marquee or awning ~~or canopy~~.
- C. Letters shall not project above, below, or beyond the physical dimensions of the awning ~~or canopy~~.
- D. A marquee may extend above the building to which it is attached.
- E. ~~No marquee or awning, or canopy sign shall extend below a minimum height of eight (8) feet.~~
- F. ~~Every marquee sign shall be constructed entirely of noncombustible materials.~~
- G. Every marquee sign shall be thoroughly secured to the building by iron or metal anchors, bolts, supports, rods, braces, or other means as approved by the Building Official.
- H. Awnings and marquees may project into the public right-of-way subject to the following conditions:
 - 1. The awning or marquee is located on a building wall that is set back no more than two (2) feet from the property line.
 - 2. The setback requirement for the yard in which the architectural feature is located is zero (0) feet.
 - 3. The architectural feature ~~shall not~~ may extend into the public right-of-way ~~by more than forty (40) percent of the distance~~ from the front property line to the edge of the street curb, unless otherwise ~~permitted~~ restricted by ordinance. The Zoning Administrator has the discretion to limit the distance of the projection in the right-of-way.
 - 4. ~~The architectural feature will not interfere with any existing or planned public improvement.~~
 - 5. The ~~Zoning Administrator~~ Planning Commission, with a recommendation from the DDA, may authorize a marquee to project into the public right-of-way in excess of the limitations set forth in item c ~~when incidental to a theater, subject to the other conditions set forth in this section and subsequent to receipt of the Planning Commission's recommendations.~~

Section 4.8 Roof Signs – Supplemental Regulations

~~Roof signs may be allowed at the discretion of the Zoning Administrator in cases where no better alternative would exist for signage or when said roof display is necessary to maintain the architectural integrity of the structure to which it will be attached. Under no conditions shall any roof sign impair or obstruct the view of another structure or contribute to structural deficiency to the structure upon which it is mounted. The allowable square footage of the sign shall not exceed the allowable sign size for wall signs. In no case shall more than fifty (50) percent of the roof sign extend beyond the highest point of the roof.~~

Section 4.9 Message Boards – Supplemental Regulations

A. Static Message Boards.

One (1) static message board shall be allowed in addition to the primary freestanding or wall sign in the OS-1, B-1, B-2, B-3, CBD, CCD, I-1 and I-2 Districts and for ~~non-residential uses~~ churches, schools, or nonprofit institutions in all districts.

- ~~1. The static message board shall be no greater than fifty (50) percent of the area of the primary freestanding or wall sign either existing on the property or as allowed by zoning district, whichever is less.~~ Message boards shall count toward the total available sign square footage allowed on the property.
- ~~2. Static message boards shall only contain advertising for on-premise establishments or public service announcements.~~
3. Static message boards shall be an integral part of the primary sign.

B. Electronic Message Boards.

One (1) electronic message board shall be allowed in addition to the primary freestanding or wall sign in the CCD, OS-1, B-1, B-2, B-3, I-1 and I-2 Districts and for churches and schools, or nonprofit institutions in all districts.

- ~~1. The electronic message board shall be no greater than fifty (50) percent of the area of the primary freestanding or wall sign either existing on the property or as allowed by zoning district, whichever is less.~~ Message boards shall count toward the total available sign square footage allowed on the property.
2. Electronic message boards shall be an integral part of the primary sign.

3. An electronic message board shall be allowed to have changing messages, scrolling message, and animation, but shall not be allowed to contain flashing elements.
4. The electronic elements shall be of an intensity that the brightness and motion shall not adversely affect surrounding or facing premises, nor adversely affect safe vision of pedestrians or operators of vehicles on public or private streets, driveways or parking areas.
5. An electronic message board shall contain a default mechanism that freezes the sign in one position if a malfunction occurs.
6. An electronic message board shall contain a mechanism to automatically adjust the intensity of its display according to natural ambient light conditions.
- ~~7. Electronic message boards shall only contain advertising for on-premise establishments unless otherwise allowed in this Ordinance.~~

C. Number Allowed.

Only one (1) static or one (1) electronic message board shall be permitted per property.

Section 4.10 Off-Premise Signs

A. Large Off-Premise Advertising Signs (Billboards).

The regulation of ~~off-premise signs~~ **billboards** is intended to enhance and protect community character and image by minimizing visual blight and pollution, and to minimize traffic safety hazards due to diversion of the driver's attention and blockage of sight distances. Off-premise sign regulations address the location, size, height and related characteristics of such signs.

1. **Area and Height Limitations.** No ~~off-premise sign~~ **billboard** may be erected or maintained of a greater surface area than three hundred (300) square feet for each side of such sign. The top of the sign shall be no more than fifteen (15) feet above the ground and the bottom of the sign shall be at least three (3) **feet** above the ground. Double-faced-~~off-premise sign~~ **billboard** structures (i.e., structures having back-to-back faces) and V-type structures having only one face visible to traffic proceeding from any given direction on a street or highway shall be considered as one ~~off-premise sign~~ **billboard**.
2. **Location.** Static and digital ~~off-premise signs~~ **billboards** may be erected only in an Industrial District along a State trunkline. No ~~off-premise sign~~ **billboard** may be erected or

maintained within five hundred (500) feet of any public park, recreation area, public reservation, bridge, school, or church nor within fifty (50) feet of street lines at any street intersection and shall have a minimum setback from the front property line of twenty-five (25) feet. No ~~off-premise sign~~ billboard shall be installed or placed on top of, cantilevered, or otherwise suspended above the roof of any building.

3. **Spacing.** ~~Off-premise signs~~ Billboards shall be located no closer to one another than two thousand (2000) feet.
4. **Material Required.** All ~~off-premise signs~~ billboards shall have a surface or facing of non-combustible material.
5. **Illumination.** A billboard ~~off-premise sign~~ may be illuminated, provided such illumination is concentrated on the surface of the sign and is so located as to avoid glare or reflection onto any portion of an adjacent street or highway, into the path of on-coming vehicles, or on any adjacent premises. In no event shall any ~~off-premise sign~~ billboard have flashing or intermittent lights, nor shall the lights be permitted to rotate or oscillate.
6. **Digital Off-Premise Signs Billboards.**
 - a. **Rate of Change.** The rate of change between static messages or images shall not exceed more than one (1) change per ~~six (6)~~ eight (8) seconds. Each change shall be complete in one (1) second or less.
 - b. **Luminance.** ~~The maximum daylight sign luminance level shall not exceed 62,000 candelas per meter squared at 40,000 lux illumination beginning 1/2 hour after sunrise and continuing until 1/2 hour before sunset and does not exceed 375 candelas per meter squared at 4 lux illumination at all other times. The sign shall possess and utilize automatic dimming capabilities so that the maximum luminescence level is not more than 0.3 footcandles over ambient light levels measured at a distance of one hundred (150) feet for those sign faces less than or equal to three hundred (300) square feet.~~
 - c. Digital ~~off-premise signs~~ billboards shall be configured to default to a static display in the event of mechanical failure.
7. ~~An off-premise sign~~ A billboard must be constructed in such a fashion that it will withstand all wind and vibration forces which can normally be expected to occur in the vicinity. ~~An off-premise sign~~ A billboard must be maintained so as to assure proper alignment of structure, continued structural soundness, and continued readability of the message(s).

8. ~~An off-premise sign~~ **A billboard** established within an industrial area, as defined in the Highway Advertising Act of 1972 (1972 PA 106, as amended) bordering interstate highways, freeways or primary highways as defined in said Act shall, in addition to complying with the above conditions, also comply with all applicable provisions of said Act and the regulations promulgated thereunder.

~~COMBINATION OFF-PREMISE & ON-PREMISE ELECTRONIC MESSAGE BOARDS (Table 4D): Digital signs which are used to advertise both on-premise and off-premise establishments shall comply with the following regulations:~~

9. ~~A permanent, static on-premise primary sign must be in existence totaling at least twenty-five (25) percent of the allowable sign size in the district. The balance of the total allowable sign area may consist of the Combination Off-Premise/On-Premise Sign.~~
10. ~~The Combination Off-Premise/On-Premise Sign shall adhere to the regulations contained in §4.7(B)(2-6).~~
11. ~~Over fifty (50) percent of the digital messages contained on such sign shall advertise the on-premise establishment. The balance of the messages may advertise off-premise establishments under the same ownership and/or public service announcements.~~
12. ~~Each message shall remain readable for at least six (6) seconds.~~
13. ~~Combination Off-Premise & On-Premise Digital Signs shall be spaced at least one thousand (1,000) feet apart in all Districts.~~
14. ~~Combination Off-Premise & On-Premise Digital Signs shall be allowed in the OS-1, B-2, B-3, CBD, CCD, I-1 and I-2 Districts.~~
15. ~~Combination Off-Premise/On-Premise Signs shall count toward the total sign area allowed for the property.~~

B. **Small Off-Premise Directional Signs on Private Property (Permanent or Temporary).**

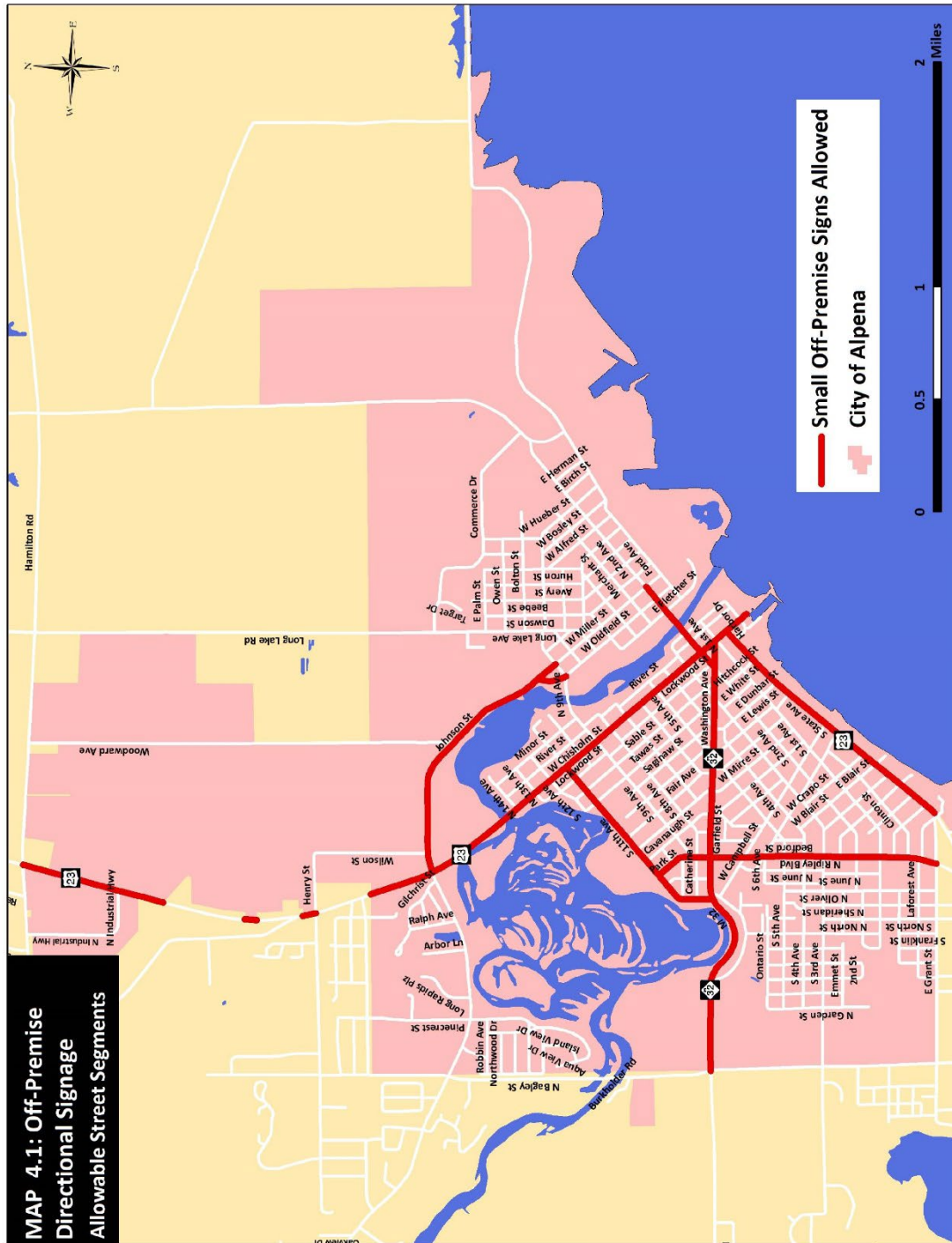
1. **Small** off-premise signs shall be no greater than six (6) square feet **in area**.
2. **Small** off-premise signs shall be no greater than four (4) feet in height.
3. **Small** off-premise signs must be located at intersections.

4. **Small** off-premise signs shall only be located on commercial or industrial property ~~on the streets designated on Map 4.1.~~ *Remove map.*
5. One (1) **Small** off-premise sign is permitted per commercial or industrial zoning lot.
6. **Small off-premise signs on occupied lots shall NOT count toward that lot's sign size limitations.**
7. **A zoning permit is required if the sign is permanent.**

~~C. Off-Premise Signs In The Public Right-Of-Way.~~

~~A frame signs may be allowed in the public right-of-way. The following regulations shall apply:~~

- ~~1. Signs shall be approved by the City Council.~~
- ~~2. Signs shall be removed each night.~~
- ~~3. Signs shall only be located at intersections on the streets designated in Map 4.1.~~
- ~~4. Maximum size 2' wide by 4' in total height for each panel with a maximum of 2 panels per sign. Maximum spread between the two panels at the base shall be 2'6".~~
- ~~5. The owner of the property abutting the right-of-way on which the sign is placed shall be notified, prior to City Council approval, that the sign is being requested.~~ *Delete map*



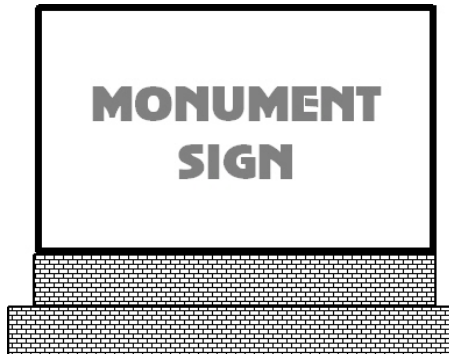
Sign Diagrams

Remove diagrams – these are already in the definitions

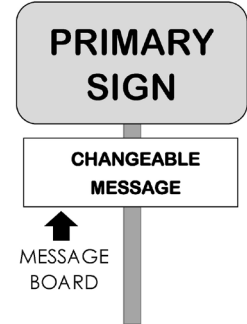
**Pylon Sign
(Freestanding)**



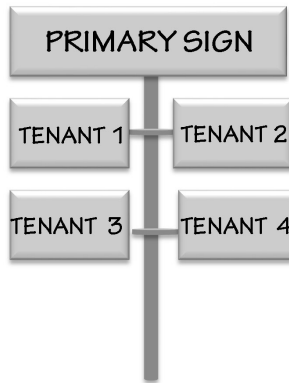
**Monument Sign
(Freestanding)**



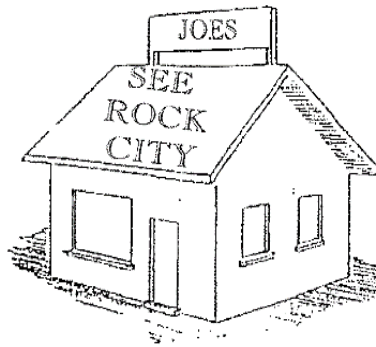
Message Board



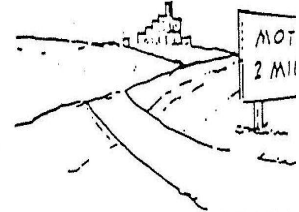
Cluster Sign



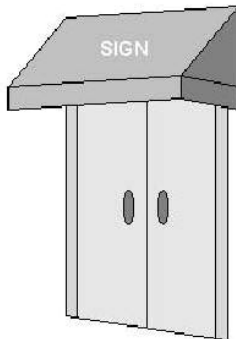
Roof Sign



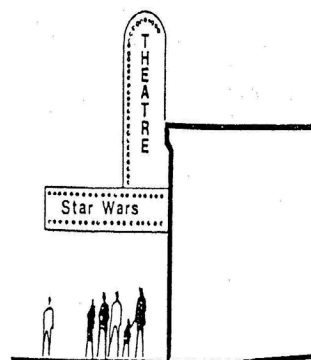
Off-Premise Sign



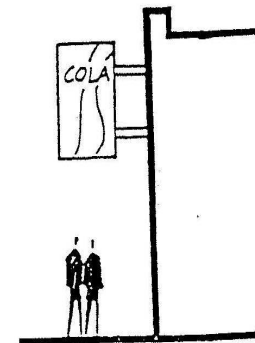
Awning Sign



Marquee Sign



Projecting Sign



1 Purpose

2 Definitions

3 General Provisions

4 Signs

5 District Regulations

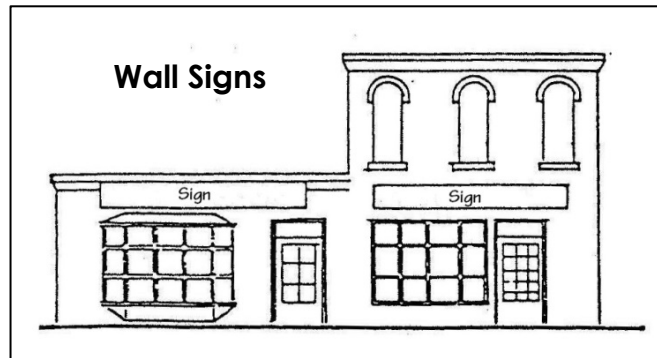
6 Plan Review

7 Supplemental Regulations

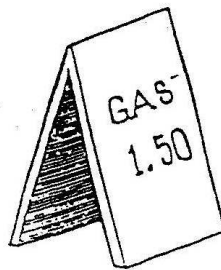
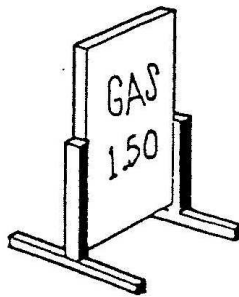
8 Zoning Board of Appeals

9 Administration

10 Adoption & Amendments



Temporary Signs



A-Frame Sign



Portable Sign

Section 4.11 Murals

Murals are not considered wall signs and are not required to adhere to the sign sizes limitations in this Section and do not require a zoning permit. Murals shall not be located on the front façade of a building unless approved by the Zoning Administrator.

Section 4.12 Severability Clause for Signs

Provisions of **Article 4** shall be deemed to be severable, and should any section, subsection, paragraph or provision thereof be declared by the courts to be unconstitutional or invalid, such holdings shall not affect the validity of this **Chapter Section** as a whole or any other part thereof, other than the part so declared to be unconstitutional or invalid. If any court shall declare invalid the application of any provision of this **Chapter Section** to a particular parcel, lot use, building or structure, such ruling shall not affect the application of said provision to any other parcel, lot use, building or structure not specifically included in said ruling.

Capital Projects Request Form

City Of Alpena

Project Title:
Status:
Rank:

Fund:
Category:
Department:

Project Location:

Project Description:

Date Prepared:
Preparer:
Inception Date:
☐ Connected to Master Plan

Account No.:

Expenditure Schedule by Fiscal Year

2023-2024	2024-2025	2025-2026	2026-2027	2027-2028	2028-2029	Long Range	Total
\$0	\$0	\$0	\$2,500,000	\$0	\$0		\$2,500,000

Funding Source

General Fund	<input type="text"/>	Equipment Fund	<input type="text" value="\$2,500,000"/>	Special Assessment	<input type="text"/>	Bond	<input type="text"/>
Sewer Fund	<input type="text"/>	Major Street Fund	<input type="text"/>	Grant	<input type="text"/>	Grant Source	<input type="text"/>
Water Fund	<input type="text"/>	Local Street Fund	<input type="text"/>	Other	<input type="text"/>	Specify Source	<input type="text"/>
IT Fund	<input type="text"/>					Total	\$2,500,000

Explanation/Justification/Connection to Master Plan

T125 is our 1994 E-one 95' aerial tower. Much like E123, it is getting increasingly difficult to locate repair/maintenance parts for this aging apparatus. This apparatus was purchased in July 1994 at a cost of \$549,574. This apparatus is our only apparatus capable of operating at an elevated angle for fire suppression, ventilation, high angle rescue, elevated access and as an elevated master fire stream for large type fire incidents. The purpose of this apparatus is for protection of our commercial and industrial incidents as often an elevated advantage is needed. The estimated cost to replace this apparatus is anticipated to be \$2,500,000 and an expected build time is 24-36 months from time of order. The community cannot afford to wait until it is in critical need of replacement as the time to secure one and have it in service is quite lengthy and costly. We have the only aerial device in the local area so are often requested for its mutual aid assistance to surrounding communities.

Capital Projects Request Form

City Of Alpena

Project Title: **Status:** **Rank**
Fund: **Category:** **Department:**

Project Location:
Project Description:
Date Prepared: **Preparer:** **Inception Date:** ☐ Connected to Master Plan

Account No.:

Expenditure Schedule by Fiscal Year

2023-2024	2024-2025	2025-2026	2026-2027	2027-2028	2028-2029	Long Range	Total
<input type="text" value="\$0"/>	<input type="text" value="\$0"/>	<input type="text" value="\$0"/>	<input type="text" value="\$0"/>	<input type="text" value="\$0"/>	<input type="text" value="\$0"/>	<input type="text" value="\$750,000"/>	<input type="text"/>

Funding Source

General Fund	<input type="text"/>	Equipment Fund	<input type="text" value="\$750,000"/>	Special Assessment	<input type="text"/>	Bond	<input type="text"/>
Sewer Fund	<input type="text"/>	Major Street Fund	<input type="text"/>	Grant	<input type="text"/>	Grant Source	<input type="text"/>
Water Fund	<input type="text"/>	Local Street Fund	<input type="text"/>	Other	<input type="text"/>	Specify Source	<input type="text"/>
IT Fund	<input type="text"/>					Total	<input type="text" value="\$750,000"/>

Explanation/Justification/Connection to Master Plan

E126 is a 2000 E-One fire engine that is now 23 years old. Inclusion into long range planning for the replacement of apparatus is essential in ensuring a fleet of dependable fire apparatus for community safety relative to fire suppression and rescue operations. This apparatus is a 1000gallon pumper and has no immediate maintenance or mechanical issues that are identified. To plan for its replacement within 8-10 years would be the goal as it is currently utilized as a mutual aid pumper, second in apparatus for fire response, and is mainly utilized as a back up apparatus. A 10 year replacement of this apparatus would put it's in service life at 33 years which exceeds intustry standards.



Michigan State University Extension Land Use Series

Restrictions on Zoning Authority

Original version: May 16, 2002

Last revised: June 14, 2018

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.

Contents

Restrictions on Zoning Authority.....	1
1. General rules	2
2. Outright preemption.....	3
3. Preemption, sort of	10
4. If one use is permitted, others must be, also.....	14
5. Can regulate but not prohibit	15
6. Can regulate but not less strictly than the state.....	15
Authors.....	17
Appendix A. Commonly Believed to be Exempt From Zoning.....	18
Appendix B. Case Law in Preemption.....	18
Appendix C. Update List	19

*“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 use³ and expansion of a nonconforming use⁴ (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

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

- 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.

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:⁷ See Appendix B, for more detail on this.

- A. Local zoning cannot regulate the location or operation of hazardous waste disposal and/or storage facilities.⁸ (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.⁹ (It is probably acceptable to regulate fencing and haul routes if included in the county solid waste management plan.)

the government effectively "takes" a person's property by overburdening that property with regulations. *Pennsylvania Coal Co. v. Mahon*, 260 US 393, 415; 43 S Ct 158; 67 L Ed 2d 322 (1922). See also *K & K Construction, Inc. v. Department of Natural Resources*, 456 Mich 570, 576; 575 NW2d 531 (1998); *Lucas v. South Carolina Coastal Council*, 505 US 1003, 1015; 112 S Ct 2886; 120 L Ed 2d 798 (1992); *Penn Central Transportation Co. v. New York City*, 438 US 104; 98 S Ct 2646; 57 L Ed 2d 631 (1978); *Adams Outdoor Advertising v. City of East Lansing* (after remand), 463 Mich 17, 23-24; 614 NW2d 634 (2000); *Palazzolo v. Rhode Island*, 533 US 606; 121 S Ct 2448, 2457; 150 L Ed 2d 592 (2001); *Loveladies Harbor Inc. v. United States*, 28 F3d 1171 (1994); *Creppel v. United States*, 41 F3d 627 (1994); *Good v. United States*, 189 F3d 1355 (1999); *Lingle v. Chevron USA, Inc.*, 125 S.Ct. 2074 (2005).

⁶ U.S. Constitution, Amendment IV.

⁷ *People v. Llewellyn*, 401 Mich 314, 257 NW2d902 (1977).

⁸ 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.

⁹ 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)).

- C. Local zoning cannot regulate utility (power) lines.¹⁰
- D. Local zoning cannot regulate wind energy power transmission lines¹¹ within Primary and other Wind Energy Resource Zones established by order of the Michigan Public Service Commission, if a Expedited Siting Certificate for a transmission line is issued to a public utility by the Public Service Commission. Wind Energy Resource Zones do not include areas zoned residential at the time of the designation.
- E. Local zoning cannot regulate pipelines that are regulated by the Michigan Public Service Commission.¹²
- F. Local zoning (and state and local government) cannot regulate railroads.¹³
- G. Local zoning cannot regulate state prisons and public correctional facilities¹⁴ including halfway houses.¹⁵ Private facilities can be regulated.
- H. Township and county zoning cannot regulate oil and gas wells, exploration, and operation of the wellhead site¹⁶ (but it can be regulated off-site.) A flowline (pipeline) which is part of the operation

¹⁰ 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)).)

¹¹ 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.

¹² 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).

¹³ 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).

¹⁴ 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).

¹⁵ *Dearden v. Detroit*; Supreme Court of Michigan, 403 Mich. 257; 269 N.W.2d 139; 1978 Mich., August 30, 1978, Decided.

¹⁶ 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)).)

of a well is also not subject to local regulation.¹⁷ An exception to not regulating oil and gas wells is that local regulation can occur if zoning is for a designated “natural river.”¹⁸

- I. Local zoning cannot regulate surface coal mining and reclamation operations.¹⁹ (See also “mining” in this publication.) An exception is that this regulation can occur if zoning is for a designated natural river.²⁰
- J. State water pollution regulations occupy the field for both point²¹ and nonpoint²² sources of pollution.
- K. Regulations about farms/farming²³ 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?”²⁴
 - Is it producing “farm products?”²⁵
 - 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

¹⁷ 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.

¹⁸ 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).

¹⁹ 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.”

²⁰ 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).

²¹ 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.

²² 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)).

²³ 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.)

²⁴ Defined in the act: MCL 286.472(b).

²⁵ Defined in the act: MCL 286.472(c)).

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.²⁶
- Anything about enforcement or investigation process for complaints involving agriculture.²⁷
- The conversion from one or more farm operation activities to other farm operation activities.²⁸

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),²⁹ including:

- Manure management and utilization.
- Pesticide utilization and pest control.
- Nutrient utilization.
- Care of farm animals.
- Cranberry production.
- Site selection and odor control for new and expanding livestock production facilities.
- Irrigation water use.
- Farm Markets³⁰

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

²⁶ MCL 286.473

²⁷ MCL 286.474

²⁸ MCL 286.472(b)(ix)

²⁹ 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).

³⁰ 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)).

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.

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.³¹

- L. State fertilizer regulations occupy the field.³²
- 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.)³³
- N. State Fairgrounds are under the jurisdiction of the State Exposition and Fairgrounds Council, one in Detroit and one in the Upper Peninsula.³⁴

³¹ Section 4(7) of Act 93 of 1981, as amended (the Michigan Right to Farm Act, M.C.L. 286.474(7)).

³² 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).

³³ 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)).

³⁴ 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.

- O. Local zoning cannot regulate trails that have received Natural Resources Commission designation as a “Michigan trailway”³⁵ and snowmobile trails which are subject to the Snowmobile Act.³⁶
- P. Local zoning cannot regulate any part of the Michigan State Police radio communication system.³⁷ The statute provides for the State Police to notify the local zoning authority of the proposed facility, and a 30 day period where the zoning authority can issue a special use permit or propose an alternative location. If the special use permit is not issued within 30 days, or the alternative location does not meet siting requirements the state police can proceed with the first proposed site.
- Q. Local zoning cannot regulate state-owned or leased armories and accessory buildings, military warehouses, arsenals and storage facilities for military equipment, and the land for military uses.³⁸
- R. Local zoning cannot regulate U.S. nuclear power³⁹ facilities and military facilities.⁴⁰
- 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.)⁴¹
- T. Public Schools under the jurisdiction of the Michigan superintendent of public instruction are not subject to local zoning.⁴²

³⁵ 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)).

³⁶ M.C.L. 324.82101 *et seq.* and *Chocolay Charter Township v Department of Natural Resources*, no. 246171 (Mich. App., October 28, 2003) (unpublished).

³⁷ P.A. 152 of 1929, as amended (the Michigan State Police Radio Broadcasting Stations Act, M.C.L. 28.281 *et seq.*).

³⁸ 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).

³⁹ 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.

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

⁴¹ *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.

⁴² *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)).

- U. Certain public colleges and universities are not subject to local zoning.⁴³
- V. A municipality that adopts a zoning ordinance need not follow its own ordinance.⁴⁴ 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. This preemption is only for a government's own zoning ordinance. A city, township, and village government must comply with another government's zoning ordinance.⁴⁵
- W. County buildings owned and built/located by a county board of commissioners is not subject to zoning⁴⁶ 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..."⁴⁷ 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.⁴⁸ But a county has no authority to establish a principal land use (with or without ancillary building(s)).⁴⁹
- 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.⁵⁰
- Y. A local unit of government shall not enact or enforce an ordinance that regulates a large quantity water withdrawal⁵¹ (more than an average of 100,000 gallons of water per day).

⁴³ 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).

⁴⁴ *Morrison et al. v. City of East Lansing*, 255 Mich. App. 505 (2003).

⁴⁵ Michigan Attorney General Opinion No. 6982 (1998).

⁴⁶ *Pittsfield Charter Township v. Washtenaw County and City of Ann Arbor*, 468 Mich 702, 664 N.W.2d 193 (2003).

⁴⁷ *Herman v. County of Berrien* 481 Mich. 352; 750 N.W.2d 570; 2008 Mich. LEXIS 1166, June 18, 2008, Michigan Supreme Court.

⁴⁸ *Herman v. County of Berrien* 481 Mich. 352; 750 N.W.2d 570; 2008 Mich. LEXIS 1166, June 18, 2008, Michigan Supreme Court.

⁴⁹ *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.

⁵⁰ 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).

⁵¹ 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,

- Z. A local unit of government cannot regulate the ownership, registration, purchase, sale, transfer, possession of, or otherwise deals with pistols or other firearms.⁵² (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 induce fear in another,⁵³ (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].⁵⁴)
- 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.⁵⁵
- 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.⁵⁶

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).⁵⁷
- 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).

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.”

⁵² 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.]

⁵³ M.C.L. 123.1103.

⁵⁴ M.C.L. 123.1104.

⁵⁵ 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).

⁵⁶ 1988 PA 226 (MCL 123.411) Leasing of Private Residential Property

⁵⁷ 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.

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.⁵⁸ 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).⁵⁹

- 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.⁶⁰ And such regulations (concerning hours of operation and haul routes) shall be reasonable in accommodating customary nonferrous metallic mineral mining operations.
- D. Local zoning can regulate only certain specific aspects of extraction (mining) of natural resources (e.g., gravel, sand and similar pits).⁶¹ Zoning can not prevent extraction of natural resources unless “very serious consequences”⁶² 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 Act⁶³). Such regulation shall be reasonable in accommodating customary mining operations. Extraction of minerals supercedes 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.

⁵⁸ 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).

⁵⁹ *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.

⁶⁰ 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.

⁶¹ 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.

⁶² See *Silva v Ada Township*, 416 Mich 153 (1982); *American Aggregates Corp v Highland Twp*, 151 Mich. App. 37; and MCL 125.3205(5).

⁶³ 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).

- E. Wireless communication antenna⁶⁴ 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;⁶⁵ “[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”⁶⁶; regulations cannot be based on “environmental effects of radio frequency emissions to the extent that such facilities comply with the [FCC]’s regulations. . . .”⁶⁷; 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”⁶⁸ as well as following deadline requirements of local ordinance (if any) and the Michigan Zoning Enabling Act⁶⁹; 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 manner⁷⁰; state or local government must allow certain types of expansion of existing wireless facilities⁷¹; 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 site⁷²; and Michigan requires most applications for wireless facilities to be a permitted use in the local zoning ordinance with two exceptions as well as state decision deadlines.⁷³
- 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 signals⁷⁴ (e.g., “dish” antenna one meter or less in diameter,⁷⁵ 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

⁶⁴ 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.)

⁶⁵ 47 U.S.C. § 332(c)(7)(B)(i)(I) (2006).

⁶⁶ 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).

⁶⁷ 47 U.S.C. § 332(c)(7)(B)(iv) (2006).

⁶⁸ 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.

⁶⁹ Section 514 of P.A. 110 of 2006, as amended, (being the Michigan Zoning Enabling Act, M.C.L. 125.3514).

⁷⁰ 47 U.S.C. § 332(c)(7)(B)(v).

⁷¹ 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.

⁷² Donna J. Pugh; FOLEY & LARDNER LLP, Chicago office, presenting at the APA national conference, April 15, 2013.

⁷³ Section 514 of P.A. 110 of 2006, as amended, (being the Michigan Zoning Enabling Act, M.C.L. 125.3514).

⁷⁴ 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.

⁷⁵ 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)).

does not apply to local AM/FM radio reception antennas, satellite, wireless, WiFi, broadband, amateur “ham” radio,⁷⁶ CB radio, Digital Audio Radio Services “DARS” antennas.)

- G. A local unit of government is limited to regulate the hours of use of fireworks so long as the regulation does not apply to the day of, preceding, or after a national holiday. (If a municipality with 50,000 or more population in a county with 750,000 or more population may regulate fireworks between midnight and 8am on New Year’s day. If a municipality with less than 50,000 population in a county with less than 750,000 population may regulate fireworks between 1am and 8am on New Year’s day.)⁷⁷ A local unit of government is limited to regulate fireworks sale, display, storage, transportation or distribution which are regulated under the Michigan Fireworks Safety Act in a manner that is only incidental.⁷⁸ But the Fireworks Safety Act leaves open the door to limited regulation so long as that regulation does not contravene the state law and the local ordinance is incidental because it applies its regulations to any and all retail operations, and fireworks sales are not treated any differently than all other retail enterprises. It may also be that local ordinances cannot regulate novelties.⁷⁹
- H. 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 zoning, though non-aeronautical uses of such an airport are subject to zoning.⁸⁰ This may not apply to other types of public or private airports.
- I. 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.⁸¹ If near an airport federal code⁸² and more than 60.96 meters (200 feet) tall must notify the federal aviation administration and register with the federal communications commission.⁸³
- J. A city, township, or village⁸⁴ may opt out of allowing state-licensed commercial medical marijuana facilities under the Medical Marihuana Facilities Licensing Act (MMFLA) by taking no action.⁸⁵ 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

⁷⁶ But see 47 C.F.R. §97.15.

⁷⁷ MCL 28.457(2).

⁷⁸ Michigan Attorney General Opinion 7266 (June 12, 2012) and Section 7 of PA 256 of 2011 (being the Michigan Fireworks Safety Act, M.C.L. 28.457).

⁷⁹ Section 3 of PA 256 of 2011 (being the Michigan Fireworks Safety Act, M.C.L. 28.453). “Novelties” is defined in M.C.L. 28.452(t) as the same as defined under 2001 APA standard 87-1 (American Pyrotechnics Association of Bethesda, Maryland), and toy paper caps/pistols, flitter sparklers, toy noisemakers, toy snakes, etc.

⁸⁰ *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.

⁸¹ Section 205a of P.A. 110 of 2006, as amended, (being the Michigan Zoning Enabling Act, M.C.L. 125.3205a).

⁸² 47 CFR 97.15.

⁸³ 47 CFR part 17.

⁸⁴ Counties are not included in the statutory definition of a municipality that may authorize the location of a marijuana facility.

⁸⁵ 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.

interference or conflict with statutory regulations for licensing marijuana facilities.⁸⁶ See non-commercial medical marijuana (patient and care giver) in this publication.

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.⁸⁷
- B. In zoning districts where dwellings are permitted, the ordinance must also allow:
- Mobile homes.⁸⁸
 - State-licensed residential facilities for six or fewer persons.⁸⁹
 - Home occupation for instruction in a craft or fine art (e.g., music lessons).⁹⁰
 - “Family day-care home” and “group day-care home” (e.g., child daycare facilities) in counties and townships.⁹¹ (Cities and villages can regulate these by special use permit.⁹²)
- 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.⁹³

⁸⁶ M.C.L. 333.27205.

⁸⁷ 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).)

⁸⁸ *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)).

⁸⁹ 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).)

⁹⁰ 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).)

⁹¹ 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).)

⁹² Section 206(5) of P.A. 110 of 2006, as amended, (being the Michigan Zoning Enabling Act, M.C.L. 125.3206(5)).

⁹³ Section 513 of P.A. 110 of 2006, as amended, (being the Michigan Zoning Enabling Act, M.C.L. 125.3513).

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.⁹⁴ Also, sign regulation just for aesthetic purposes can be problematic.⁹⁵ A rule of thumb is if one has to read the sign to determine what regulation applies to the sign, you have a content-based regulation which is not appropriate.

There are many, and complex, additional limitations on sign regulation (for example limited or no regulation of signs via zoning in a road right-of-way, and constraints of regulation (also shared with the Michigan Department of Highway) in highway right-of-ways. See *Michigan Sign Guidebook*, Scenic Michigan,⁹⁶ 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.⁹⁷
- C. Adult entertainment or sexually oriented businesses can be regulated but not totally excluded.⁹⁸
- D. Existing shooting ranges (gun clubs) can continue after zoning is changed to prohibit or further regulate the range.⁹⁹
- E. 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 of medical marihuana for medical purposes by a registered qualifying patient, or the assistance of a primary caregiver, within the scope of immunity granted by the Michigan Medical Marijuana Act (MMMA).¹⁰⁰ See commercial or medical 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.¹⁰¹

⁹⁴ 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 Hudson Gas & Electric Corp. v. Public Service Commission*, 447 US 557 (1980).

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

⁹⁵ *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).

⁹⁶ *Michigan Sign Guidebook*, © Scenic Michigan: http://www.scenicmichigan.org/guidebook_2011.html.

⁹⁷ Title 42, Chapter 21C of the United States Code, codification of Religious Land Use and Institutionalized Persons Act of 2000 (PL 106-274).

⁹⁸ *Young v. American Mini Theaters, Inc.*, 427 US 50, 71, 96 S Ct 2440, 49 L Ed 2d 310 (1976).

⁹⁹ Section 2a(1) of Act 269 of 1989, as amended (the Sport Shooting Ranges Act, M.C.L. 691.1542a(1)).

¹⁰⁰ M.C.L. 333.26424(a); *Ter Beek v. City of Wyoming*, 495 Mich. 1 (2014).

¹⁰¹ 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.¹⁰²
- C. Regulation of Great Lakes shoreline high-risk erosion areas is subject to approval and oversight by the Michigan Department of Environmental Quality.¹⁰³
- D. Designated sand dunes protection is subject to approval and oversight by the Michigan Department of Environmental Quality.¹⁰⁴ Zoning cannot be more restrictive than the state model plan.¹⁰⁵
- E. State natural rivers protection is subject to approval and oversight by the Michigan Department of Natural Resources.¹⁰⁶
- 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.¹⁰⁷
- G. Local regulation of floodplains cannot be less strict than that of the state.¹⁰⁸
- 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).¹⁰⁹
- I. Local regulation of disposal of septage can be the same or more strict than state statute.¹¹⁰

“(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.”

¹⁰² 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.)

¹⁰³ 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).

¹⁰⁴ 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).

¹⁰⁵ 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.

¹⁰⁶ 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).

¹⁰⁷ 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).

¹⁰⁸ 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).

¹⁰⁹ 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.).

¹¹⁰ 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:

Michigan State University Extension Land Use Series

- 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.