

Memo

To: Mayor Hall

From: Sanya Vitale

cc: City Council

Date: 04/11/2023

Re: Planning Commission Compliance

Under the current set of Ordinances, the City's Planning Commission and associated zoning powers are authorized through Public Act 207 of 1921.

This Act was repealed and replaced by two new acts:

1. The Michigan Planning Enabling Act 33 of 2008
2. The Michigan Zoning Enabling Act 110 of 2006

Per our colleagues at MSU Extension, *the Michigan Planning Enabling Act changes how various planning procedures are done and provides new duties and power to planning commissions in the state. The purpose of this act was to create a single set of procedures to follow regardless of whether planning is being done by a city, village, township, or county. After September 1, 2008 (the effective date of the act) only the procedures in the Michigan Planning Enabling Act should be used as the act replaced the former authorizing legislation used by the City of Hartford (PA 207 of 1921 as well as two other Acts used by County and Townships).*

Communities were provided time to transition their ordinances and planning commissions to the new legislation and while most finalized the work prior to the July 1, 2011, deadline, there are still communities, like Hartford, that still need to transition. The good news is that while we have not transitioned to the new laws, our colleagues at the MSU Extension have shared that this should not undermine the planning commission's day-to-day decision-making. We can break this process of transitioning towards compliance into 2 phases as outlined below.

Phase 1: I have utilized best practice guidance provided by the MSU Extension in creating a draft Planning Commission ordinance for review and consideration, my comments are in blue. The attached draft Planning Commission ordinance was provided by MSU Extension with an algorithm on how to prepare the document dependent on if your municipality is a city, township or county.

1. The ordinance or resolution creating the local unit of government's planning commission, will need to be updated. This will need to be done by July 1, 2011, or sooner if the ordinance, or resolution, is updated/amended for any other reason at any point sooner than July 1, 2011. [\(I am attaching a draft Planning Commission ordinance to comply with this provision. We will need to amend Section 151.290 of the current Code of Ordinances to comply with the MPEA.\)](#)

2. The planning commission's bylaws, will need to be updated. This will need to be done by July 1, 2011, or sooner, if the bylaws are updated/amended for any other reason at any point sooner than July 1, 2011. (I have spoken to the Planning Commission and will take a draft of compliant Bylaws to the next meeting for review and consideration)
3. Any existing plan (like the City's Master Plan) adopted prior to the effective date of the Michigan Planning Enabling Act, continues to be the adopted plan(s) for a local unit of government. Any amendments to those plan(s) must be done in conformance with the new act. Once the plan(s) are five or more years old, the planning commission shall conduct a five-year review of the plan(s). (Because the City's Master Plan is more than 5-years old, we need to reconsider it for approval it under the MPEA or begin working on a new one as outlined in the MPEA- this is a function of the Planning Commission)
4. Any ordinance or rules which govern subdivisions of land (under authority of §105 of the Land Division Act (M.C.L. 560.105)) does not need to be readapted or amended. If a local unit of government does choose to amend or re-adopt an ordinance or rules, then it must do so following the new act. (The City's Ordinances do govern subdivisions of land but at this time, there is no recommendation to change the Zoning Ordinance. The Planning Commission will conduct a complete review of the Zoning Ordinance this year and make recommendations for changes based on the MPEA and MZEA)
5. If the planning commission has had zoning powers and duties transferred to it (which ours does), those powers and duties continue. Even if amendments or updates to ordinances, rules, or bylaws are not done, that authority continues. However, the updating of ordinances, rules, and bylaws still must be completed by July 1, 2011.
6. Since the ordinance or resolution creating the planning commission must comply with the Michigan Planning Enabling Act prior to any change to the adopted plan, including amendments to the amendments, it is recommended that local governments update the Planning Commission Ordinance sooner rather than later. (See attached recommended draft Planning Commission ordinance)

Phase 2: With regards to the City's Zoning Ordinance and compliance with the Michigan Zoning Enabling Act, the process for compliance is a bit different. The process for amending the Zoning Ordinance is outlined as follows with guidance from our colleagues at the MSU Extension:

Step 1: Propose to amend the Zoning Ordinance CHAPTER 151 of the CITY OF HARTFORD CODE OF ORDINANCES. I recommend that the City Council recommend that the Planning Commission start work on preparing changes to the Zoning Ordinance as outlined below:

Step 2: The Planning Commission should cause preparation of a draft of (1) the text of a zoning amendment

Step 3: The planning commission should review existing procedure, policy for the administration and enforcement of the zoning ordinance to determine if the proposed amendments require any modification to those procedures and policies

Generally, we must update certain sections of the City's current Zoning Ordinance which are built into the City's General Code of Ordinances to comply with the MZEA.

- a. Legal Basis for formation must be amended to comply with P.A. 110 of 2006, as amended, (being the Michigan Zoning Enabling Act, M.C.L. 125.3101 et seq.
- b. Zoning Commission duties must be transferred to the Planning Commission (our ordinance reads Zoning Commission 151.290)
- c. Public Notice requirements change as follows:
 - i. Zoning amendments by §306 (M.C.L. 125.3306) with cross reference to §202 (M.C.L. 125.3202), and by §401(2) (M.C.L. 125.3401(2) with cross reference to §202 (M.C.L. 125.3202) (currently outlined at 151.253, 151.291, 151.293);
 - ii. Special use permits by §502(2)-502(3) (M.C.L. 125.3502(2)-125.3502(3)) (currently outlined at 151.292);
 - iii. Planned unit developments by §503(5) (M.C.L. 125.3503(5));

- iv. Planned unit development as a zoning amendment by §306 (M.C.L. 125.3306) with cross reference to §202 (M.C.L. 125.3202);
- v. Purchase of a development rights by §508(4), (M.C.L. 125.3508(4)); and
- vi. Appeals board hearings by §604(4) (M.C.L. 125.3604(4) and §604(5) (M.C.L. 125.3604(5)) ([151.308.B.2.f](#))
- d. Removal of a Planning Commission Member or Zoning Board of Appeals member for conflict of interest, misfeasance, malfeasance or nonfeasance
 - i. The legislative body shall provide for the removal of a member of a zoning commission for misfeasance, malfeasance or nonfeasance in office upon written charges and after public hearing.” (§301(9) (M.C.L. 125.3301(9)))
 - ii. A member shall disqualify himself or herself from a vote in which the member has a conflict of interest. Failure of a member to disqualify himself or herself from a vote in which the member has a conflict of interest constitutes malfeasance in office.” (§601(9) (M.C.L. 125.3601(9)))
- e. Special Use Changes:
 - i. Review the zoning ordinance requirements for special uses with §502 (M.C.L. 125.3502) and §504 (M.C.L. 125.3504) ([151.292](#)). If there are any discrepancies between what your zoning ordinance reads and what the Michigan Zoning Enabling Act requires, then prepare an amendment to the zoning ordinance to comply with the statute. It is likely the discrepancy which will be found is the notice requirements for hearings or when a decision on a special use will be made.
 - ii. The new Act has incorporated the Michigan Appellate Court distinction that a use variance requires a showing of “unnecessary hardship” while a dimensional variance (non-use variance) requires a showing of “practical difficulty” (§604(7) (M.C.L. 125.3604(7))). If your ordinance requires a showing of either or both, an ordinance change will be needed.
 - iii. A written “statement of findings and conclusions relative to the special land use which specifies the basis for the decision and any conditions imposed” (§502(4) (M.C.L. 125.3502(4))) is now required with any special land use decision. The “findings” language is new. The zoning ordinance should be amended to include this requirement.
- f. Planned Unit Development (PUD) Review the zoning ordinance requirements for planned unit developments (PUD) with §503 (M.C.L. 125.3503) and §504 (M.C.L. 125.3504).
- g. Zoning Board of Appeals:
 - i. Review the zoning ordinance requirements for zoning board of appeals with §601-607 (M.C.L. 125.3601- 125.3607) ([151.313](#))
 - ii. [As our ZBA has not met in several years, we will have to reorganize it.](#) Reorganized appeals boards shall have a membership of: ([151.305](#))
 - 1. Three or more members if the local unit of government has a population of less than 5,000 (§601(3) (M.C.L. 125.3601(3))).
 - 2. The fixed number of members shall be specified in the zoning ordinance.
 - 3. One member shall be a member of the planning commission in counties and townships. It continues to be optional in cities and villages. (§601(4) (M.C.L. 125.3601(4))). (It was always required in counties and townships.)
 - 4. The remaining members shall be selected from the electors residing in the zoning jurisdiction. (For a county members shall not live in a city or village.)
 - 5. Membership shall be representative of the population distribution and of the various interests present in the local unit of government.
 - 6. Terms are for three years, staggered. (Unless they are the member from the planning commission or legislative body. In those cases the term of office on the appeals board is the same as their term of office on the planning commission or legislative body.)
 - 7. Appointments to vacancies must be made within one month after the preceding member’s term has expired. This is a new requirement for everyone. (§601(10) (M.C.L. 125.3601(10)))

8. Up to two alternate members may be selected from the electors residing in the zoning jurisdiction. (Having the same term as regular members. Alternates are called to serve for the duration of a case when a regular member is absent for one or more meetings (absent due to illness, vacation, conflict of interest, etc.).) (§601(7) (M.C.L. 125.3601(7)))
 9. One member may be a member of the legislative body (but cannot be chair of the appeals board).
 10. Any member, or alternate member can be removed from office by the legislative body for misfeasance, malfeasance, or nonfeasance upon written charges and a public hearing.
- iii. Requirements for appeals/variances hearings must comply as follows: (151.307)
1. The notices shall be given not less than 15 days before the date of the hearing on an appeal. Notice is considered to be given when personally delivered or when deposited during normal business hours for delivery with the U.S. Postal Service or other public or private delivery service.
 - a. Notices shall be sent to: (151.311)
 - i. The individual demanding the appeal.
 - ii. The owner (or other owners) of the property, if different.
 - iii. The owners of all real property within 300 feet of the boundary for the property for which the approval has been requested, as shown by the latest assessment roll, regardless of whether the owner and property is located in the zoning jurisdiction or not.
 - iv. One occupant of each structure, or each unit within multiple-unit structures, within 300 feet of the boundary for the property for which the approval has been requested, regardless of whether the owner and property is located in the zoning jurisdiction or not. (For multiple-unit structures containing more than four dwelling units, only the manager of the structure needs to be notified and post the information at the main entrance to the structure.)
 - v. The general public by publication in a newspaper which circulates in the City of Hartford.
 - vi. Members of the appeals board.
 - b. The notice shall include:
 - i. The nature of the appeal being requested.
 - ii. The property(ies) for which the appeal or variance has been made.
 - iii. A listing of all existing street addresses within the property(ies) which is(are) subject of the appeal. (Street addresses do not need to be created and listed if no such addresses currently exist. If there are no street addresses another means of identification may be used.)
 - iv. The location where the demand for appeal can be viewed and copied prior to the date of the hearing.
 - v. The date, time and location of when the hearing before the appeals board will take place.
 - vi. The address at which written comments should be directed prior to the hearing.
 - vii. For members of the appeals board only, a copy of the demand for appeal being requested.
- iv. Use Variances: Under no circumstances shall the Appeals Board grant a variance to allow a use not permissible under the terms of this Ordinance in the district involved, or any use expressly or by implication prohibited by the terms of this Ordinance in said district.

- v. If the demand for appeal is for a variance the appeals board shall either grant, grant with conditions, or deny the application. The appeals board may reverse or affirm, wholly or partly, or modify the order, requirement, decision or determination and may issue or direct the issuance of a permit. A majority vote of the membership of the appeals board is necessary to grant a dimensional variance and rule on an interpretation of the ordinance. The decision shall be in writing and reflect the reasons for the decision.
 - 1. At a minimum the record of the decision shall include:
 - a. Formal determination of the facts,
 - b. The conclusions derived from the facts (reasons for the decision)
 - c. The decision.
 - 2. Within eight days of the decision the record of the decision shall be certified and a copy delivered by first class mail to the person demanding the appeal, the administrator, and other parties.
- vi. Any person having an interest affected by such decision shall have a right to appeal to Circuit Court within 30 days of the certified decision of the appeals board, as provided by law.
- h. Zoning Amendments: Review the zoning ordinance requirements for zoning amendments (151.292) with §306 (M.C.L. 125.3306) with cross reference to §202 (M.C.L. 125.3202), and by §401(2) (M.C.L. 125.3401(2) with cross reference to §202 (M.C.L. 125.3202)
 - i. The notices shall be given not less than 15 days before the date of the hearing on a proposed zoning amendment. Notice is considered to be given when personally delivered or when deposited during normal business hours for delivery with the U.S. Postal Service or other public or private delivery service. Notices shall be sent to:
 - 1. The applicant
 - 2. The owner (or other owners) of the property, if different.
 - 3. If the zoning amendment is for less than 11 adjacent properties: the owners of all real property within 300 feet of the boundary for the property for which the approval has been requested, as shown by the latest assessment roll, regardless of whether the owner and property is located in the zoning jurisdiction or not.
 - 4. If the zoning amendment involves less than 11 adjacent properties: One occupant of each structure, or each unit within multiple-unit structures, within 300 feet of the boundary for the property for which the approval has been requested, regardless of whether the owner and property is located in the zoning jurisdiction or not. (For multiple-unit structures containing more than four dwelling units, only the manager of the structure needs to be notified and post the information at the main entrance to the structure.)
 - 5. The general public by publication in a newspaper which circulates in the [name of local government].
 - 6. Members of the planning commission.
 - ii. The notice shall include:
 - 1. The nature of the zoning amendment being requested.
 - 2. The property(ies) for which the zoning amendment has been made.
 - 3. If the zoning amendment is for less than 11 adjacent properties: a listing of all existing street addresses within the property(ies) which is(are) subject of the zoning amendment. (Street addresses do not need to be created and listed if no such addresses currently exist. If there are no street addresses another means of identification may be used.)
 - 4. The location where the application documents can be viewed and copied prior to the date the zoning amendment hearing.
 - 5. The date, time when and location where the hearing on the zoning amendment will take place.
 - 6. The address at which written comments should be directed prior to the hearing on the zoning amendment.

7. For members of the planning commission only, a copy of the request for the zoning amendment, the draft of the zoning amendment, and supporting documents in the record.
 - i. Nonconformities: Review the zoning ordinance requirements for nonconformities with §208 (M.C.L. 125.3208) (151.201)
 - j. Site Plans: Review the zoning ordinance requirements for site plans with §501 (M.C.L. 125.3501) (151.250-151.257)
 - k. Discretionary Decisions: Review the zoning ordinance requirements for discretionary decisions with §504 (M.C.L. 125.3504)
 - l. Performance Guarantees: Review the zoning ordinance requirements for performance guarantees with §505 (M.C.L. 125.3505)
 - m. Update Resolution/Ordinance Creating Planning Commission: See previous section
 - n. Update Rules of Procedure (Bylaws): Compare rules of procedure to MZEA.

Step 4 Submit the proposed ordinance for an informal review to a third party like MSU Extension **and review by an attorney is strongly recommended.**

Step 5. The planning commission shall hold at least one public hearing on the zoning ordinance (§306(1), M.C.L. 125.3306(1)). Notices for the public hearing are required.

Step 6. After the hearing, the planning commission should consider adoption of the zoning amendment. Action may be to recommend to the legislative body adoption, or not. The determination as to if the zoning amendment should be recommended for adoption, or not, is based mainly on if the amendment complies with, or furthers, the plan upon which the zoning ordinance is based.

Step 7: The planning commission should adopt a resolution recommending to the legislative body to adopt the zoning amendment, or to not adopt the zoning amendment, and file with the legislative body (§305, M.C.L. 125.3305).

Step 8: The legislative body shall review the proposed zoning amendment.

Step 9: (Optional, which may or may not happen) The legislative body may hold an additional hearing on the proposed ordinance/amendment if it considers it necessary (§401(1), M.C.L. 125.3401(1)). Notices for the public hearing are required (§401(2), M.C.L. 125.3401(2)). The notice shall include the following information

Step 10: If the legislative body considers changes, additions or amendments to the proposed zoning amendment; the changes, etc., may be referred back to the planning commission for consideration and comment within the legislative body's specified period of time. (§401(3), M.C.L. 125.3401(3))

Step 11: Protest petition (abutter's challenge) concerning the proposed zoning amendment may be filed with the city or village. The protest petition shall be signed by one or more of the following:

- Be signed by owners of at least 20% of the area of land included in the proposed zoning amendment.
- Be signed by owners of at least 20% of the area of land included within an area extending outward 100 feet from any point on the boundary of the land included in the proposed change (not including publicly owned land).
- (§202(4), M.C.L. 125.3202(4) and §403, M.C.L. 125.3403)

Step 12: The legislative body shall vote on the adoption of the proposed zoning amendment, with or without amendments. The vote to adopt is done with a majority vote of the members of the legislative body (unless subject to a protest petition in a village or city, see step 11b) (§401(5), M.C.L. 125.3401(5)). The zoning amendment shall take effect (§401(6), M.C.L. 125.3401(6)) seven days after a "notice of adoption" has been published.

Step 13: A copy of the zoning amendment, amendments, supplements, and maps shall be filed with the local unit of government's clerk (§401(7), M.C.L. 125.3401(7))

Step 14. One notice of "ordinance adoption", within 15 days of adoption (step 12), shall be published in a local newspaper (§401(7), M.C.L. 125.3401(7)). (Note: "General circulation" means a newspaper which has a paid subscription, and does not mean a free-distribution advertiser or similar type publication.) The notice shall include (§401(9), M.C.L. 125.3401(9)):

- Either:
 - A summary of the regulatory effect of the amendment, including the geographic area affected, or
 - The text of the amendment.
- The effective date of the ordinance or amendment.
- The place where and the time when a copy of the ordinance or amendment may be purchased or inspected.