Restrictions on Zoning Authority

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. 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.

Limits placed on zoning can change. This document attempts to outline restrictions on zoning as they currently exist. Limitations described here are categorized as outlined below. For the limitations on zoning listed here, detailed footnotes are included to help the reader find the source of the limitation.

This list, starting on the next page, is divided into the following categories:
2. Outright Preemption (page 2).
3. Preemption, sort of (page 7).
4. If one use is permitted, others must be, also (page 9).
5. Can regulate but not prohibit (page 10).
6. Can regulate but not less strictly than the state (page 10).

Appendix A, on page 11, lists a few commonly believed things to be exempt from zoning, but they are subject to zoning. Appendix B, on page 12, reproduces the Michigan Supreme Court and Michigan Appeals Court guidelines to aid courts to determine if state statute preempts zoning. Appendix C, on page 13, reports the history of this Land Use Series updates over time.
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.”

B. Local zoning must allow the continuation of a nonconforming use and expansion of a nonconforming use (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.

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

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. See Appendix B, on page 12, for more detail on this.

A. Local zoning cannot regulate the location or operation of hazardous waste disposal and/or storage facilities.

B. Local zoning cannot regulate the location or operation of solid waste facilities such as Section 207 of P.A. 110 of 2006, as amended, (being the Michigan Zoning Enabling Act, M.C.L. 125.3207).

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


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landfills and incinerators. (It is probably acceptable to regulate fencing and haul routes if included in the county solid waste management plan.)

C. Local zoning cannot regulate utility (power) lines.

D. Local zoning cannot regulate wind energy power transmission lines within Primary and other Wind Energy Resource Zones established by order of the Michigan Public Service Commission, if an 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.

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

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

H. Township and county zoning cannot regulate oil and gas wells, exploration, and operation of the wellhead site (but it can be regulated off-site.) An exception is that this regulation can occur if zoning is for a designated “natural river.”

I. Local zoning cannot regulate surface coal mining and reclamation operations. (See also “mining” on page 13.) An exception is that this regulation can occur if zoning is

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9 Section 11358 of Part 115 of Act 451 of 1994, as amended (the solid waste part of Natural Resources and Environmental Protection Act M.C.L. 324.11358(8)).

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. 460.370). (This footnote used to cite the following acts, each repealed as of July 1, 2006: Section I(2) of P.A. 183 of 1943, as amended (the County Zoning Act, M.C.L. 125.201(2)); and section I(2) of P.A. 184 of 1943, as amended (the Township Zoning Act, M.C.L. 125.271(2)); section I(3) of P.A. 207 of 1921, as amended (the City and Village Zoning Act, M.C.L. 125.381(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).


14 Section 4 of Chapter I of Act 232 of 1933, as amended (Department of Corrections Act M.C.L. 791.204). Also M.C.L. 791.216. Noted exception is at 791.220(7).


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 I(1) of P.A. 183 of 1943, as amended (the County Zoning Act, M.C.L. 125.201(1)); section I(1) of P.A. 184 of 1943, as amended (the Township Zoning Act, M.C.L. 125.271(1))).

17 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).

18 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.”
for a designated natural river.\textsuperscript{19}

J. State water pollution regulations occupy the field for both point\textsuperscript{20} and nonpoint\textsuperscript{21} sources of pollution.

K. Regulations about farms/farming\textsuperscript{22} are severely restricted by the Right To Farm Act: 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.

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)\textsuperscript{23}, including:

\begin{itemize}
  \item[i.] Manure management and utilization.
  \item[ii.] Pesticide utilization and pest control.
  \item[iii.] Nutrient utilization.
  \item[iv.] Care of farm animals.
  \item[v.] Cranberry production.
  \item[vi.] Site selection and odor control for new and expanding livestock production facilities.
  \item[vii.] Irrigation water use.
  \item[viii.] Farm Markets\textsuperscript{24}
\end{itemize}

Basic rule of thumb is if the topic is covered in the Right to Farm Act or in a GAAMP, then that topic is off limits for local agricultural and management practices (GAAMPs).

\textsuperscript{19}Section 30508 of Act 451 of 1994, as amended (the natural rivers part of the Natural Resources and Environmental Protection Act, M.C.L. 324.30508).

\textsuperscript{20}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 \textit{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.

\textsuperscript{21}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)).

\textsuperscript{22}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.)

\textsuperscript{23}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 practices (GAAMPs).

\textsuperscript{24}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)).
regulation. See more detailed materials on this topic at www.msue.msu.edu/lu.

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. 25

L. State fertilizer regulations occupy the field. 26

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.) 27

N. State Fairgrounds are under the jurisdiction of the State Exposition and Fairgrounds Council, one in Detroit and one in the Upper Peninsula. 28

O. Local zoning cannot regulate trails that have received Natural Resources Commission designation as a “Michigan trailway”29 and snowmobile trails which are subject to the Snowmobile Act. 30

P. Local zoning cannot regulate any part of the Michigan State Police radio communication system. 31

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. 32

R. Local zoning cannot regulate U.S. nuclear power facilities and military facilities. 33

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.) 34

(continued...)

29 (...continued)
(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)).


32 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).

33 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.

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

35 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 (continued...)

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

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

V. A municipality that adopts a zoning ordinance need not follow its own ordinance. 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.

W. County buildings owned and built/located by a county board of commissioners is not subject to zoning 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...” A county’s power under the CCA “is limited to the sitting 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.\textsuperscript{42}

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.\textsuperscript{43}

Y. A local unit of government shall not enact or enforce an ordinance that regulates a large quantity water withdrawal\textsuperscript{44} (more than an average of 100,000 gallons of water per day).

Z. A local unit of government cannot regulate the ownership, registration, purchase, sale, transfer, or possession of pistols or other firearms.\textsuperscript{45}

\textsuperscript{42}Herman v. County of Berrien (Published No. 134097, June 18, 2008) Michigan Supreme Court.

\textsuperscript{43}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).

\textsuperscript{44}Section 26 of Part 327 of P.A. 451 of 1994, as amended, (being the Great Lakes Preservation part of the Michigan Natural Resources and Environmental Protection Act, (M.C.L. 324.32726) reads: “Except as authorized by the public health code, 1978 PA 368, M.C.L. 333.1101 to 333.25211, a local unit of government shall not enact or enforce an ordinance that regulates a large quantity withdrawal. This section is not intended to diminish or create any existing authority of municipalities to require persons to connect to municipal water supply systems as authorized by law.”

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

\textsuperscript{45}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 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.]

\textsuperscript{46}Section 205(1)(b) of P.A. 110 of 2006, as amended, (being the Michigan Zoning Enabling Act, M.C.L. 125.3205(1)(b) (effective March 27, 2013 at noon) and section 8(12) and section 15 of the Regional Transit Authority Act, M.C.L. 2.8(12) and 2.15 (P.A.387 of 2012).

\textsuperscript{47}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.

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.\textsuperscript{46}

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).\textsuperscript{47}

B. Local government cannot regulate activities of the U. S. government on land owned by the federal government (although privately-owned facilities leased by the federal government can be regulated). Federal government must “consider” local regulations and follow them to “the maximum extent feasible.” It must also follow requirements for....

\textsuperscript{45}(...continued)
landscaping, open space, minimum distance, maximum height, historic preservation and esthetic qualities, but it is not required to obtain a permit.\(^{48}\) 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).\(^{49}\)

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.\(^{50}\) 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).\(^{51}\) Zoning can not prevent extraction of natural resources unless “very serious consequences”\(^{52}\) 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 nonferous metallic mineral mining part of the Natural Resources and Environmental Protection Act\(^{53}\)). 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.

E. Wireless communication antenna and towers shall be a permitted use on any property on existing support structures, and in certain circumstances (larger support structure) shall be a special use permit (or the community may allow it as

\(^{48}\) Title 40, Chapter 12, Section 619 of the United States Code (40 USC Sec. 619).

\(^{49}\) City of Detroit v. Ambassador Bridge Co., Michigan Supreme Court (No. 132329, May 7, 2008); United States v. Michigan; and NameSpace, Inc. v. Network Solutions, Inc. (2nd Cir.). See also Commodity Exp. Co. v. Detroit Int’l Bridge, U.S. Court of Appeals Sixth Circuit No. 11-1758, September 24, 2012.

\(^{50}\) 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).

\(^{51}\) 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).


\(^{53}\) 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).
a permitted use).  

F. 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. But the Fireworks Safety Act leaves open the door to limited regulation so long as that regulation does 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. A local unit of government may enact an ordinance regulating the ignition, discharge, and use of consumer fireworks, but such ordinance cannot apply to the day preceding, the day of, or the day after a national holiday. It may also be that local ordinances cannot regulate novelties.

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.

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

i. Mobile homes.

ii. State-licensed residential facilities for six or fewer persons.

iii. Home occupation for instruction in a craft or fine art (e.g., music lessons).

iv. “Family day-care home” and “group day-care home” (e.g., child daycare facilities) in counties and townships. (Cities and villages can regulate these by special use permit.)

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.

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56 Section 3 of PA 256 of 2011 (being the Michigan Fireworks Safety Act, M.C.L. 28.457).

57 Section 506 of PA 110 of 2006, as amended, (being the Michigan Zoning Enabling Act, M.C.L. 125.3306). (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 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).)

58 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)).

59 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 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).)

60 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).)

61 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).)

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

63 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. Also, sign regulation just for aesthetic purposes can be problematic.

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.

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

D. Zoning cannot prohibit satellite dishes or cellular telephone towers, but it can regulate location (to a limited extent), design, co-location, etc.

E. Television reception antennas, multichannel multipoint distribution service, or direct broadcast satellite services which are or smaller than one meter (39.37 inches), are subject to very restricted regulation by local municipalities. Local zoning must comply with the act, and the FCC rules concerning Over-the-Air Reception Devices. Those rules prohibits most zoning restrictions 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.

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.


D. 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.


68 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)).

69 Title 47, Chapter 5, Subchapter III, Section 332(c)(7) of the United States Code (47 USC Sec. 332(c)(7). In particular, as amended by H.R. 952 and H.R. 2834 of the 106th Congress, 1st session. (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.)

70 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) on Over-the-Air Reception Devices (“OTARD”).

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

72 Section 5542(1) of Part 55 of P.A. 451 of 1994, as amended (the air pollution control part of the Natural Resources...
B. Local zoning can not conflict with adopted airport zoning.  
C. Regulation of Great Lakes shoreline high-risk erosion areas is subject to approval and oversight by the Michigan Department of Environmental Quality.  
D. Designated sand dunes protection is subject to approval and oversight by the Michigan Department of Environmental Quality.  
E. State natural rivers protection is subject to approval and oversight by the Michigan Department of Natural Resources.  
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.  
G. Local regulation of floodplains cannot be less strict than that of the state.  
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).  

Appendix A.  
COMMONLY BELIEVED TO BE EXEMPT FROM ZONING  
Items subject to zoning  
There are some prevailing misunderstandings which have lead 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.  

72 (...continued) and Environmental Protection Act, M.C.L. 324.5542(1)).
73 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.)  
74 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).  
75 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. 324.33301).  
76 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).  
77 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).  
78 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).  
79 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.).
Appendix B.

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 that 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 preempted.

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.”

See also Attorney General Opinion 7266 (June 12, 2012): http://www.ag.state.mi.us/opinion/datafiles/2010s/opl0345.htm]
Appendix C.

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:
- December 6, 2005:
  - Takings, Lingle v. Chevron USA, Inc., 125 S.Ct. 2074 (2005), and 
- 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-CI.
- 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.)
- May 2, 2007: Added Herman v. County of Berrien ((Published No. 273021, April 26, 2007) ___ Mich. ___, ___ N.W.2d ___ (2007)) to footnote on county building exemption 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 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.
  This was removed as a result of Kyser v. Kasson Twp., July 15, 2010.
- July 14, 2011: Added nonferrous metallic mineral mining

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*81 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).

(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).
- May 9, 2012: Added “fireworks” and “novelties” to “outright preemption.”
- June 14, 2012:

- May 9, 2012: Added “fireworks” and “novelties” to “outright preemption.”
- 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 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.
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