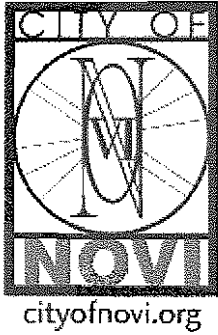


MEMORANDUM



TO: Members of the Planning Commission
FROM: Barbara ^{Baib} McBeth, AICP, Community Development
SUBJECT: Text Amendment related to Temporary Special Exceptions
DATE: March 10, 2008

The attached strike-through language proposed for Section 3004, Temporary Special Exception and Temporary Special Land Use Permits will allow for improved administration of the ordinance in several ways.

The ordinance modification in Section 1.b. gives authority to the Building Official to grant a permit for the temporary erection of a tent for a special event, such as a promotional event, a ground breaking, a grand opening or a private party for fewer than 100 people. Suggested restrictions would be that the tent will be erected for no more than five days, and the event cannot be repeated more than once in any six month period. The Building Official is authorized to determine whether the event will have a significant negative impact on surrounding properties, and may deny the permit if it fails to meet the standards now provided in Section 3.

Exemptions to the types of uses that are required to seek a permit are found in Section 6, which indicates that certain events do not need to obtain temporary use permits, such as City-sponsored events; athletic events held at approved sports facilities; temporary not-for-profit car washes; garage and yard sales; and private gatherings at private residences.

Section 7 now provides standards for portable on-site storage containers on residential properties. This section of the ordinance provides time limitations for these units, sometimes referred to as PODs, as well as limitations on the location on the residential properties where these units may be placed.

Part II of the proposed amendments provide changes brought about by the most recent changes to the Michigan Zoning Enabling Act. A copy of the adopted Act is attached as well, for reference.

This language has been prepared by the City Attorney's office and has been reviewed by the Community Development Department staff. The Planning Division respectfully requests that this matter be scheduled for a public hearing for the April 2, 2008 Planning Commission meeting. At that time, the Planning Commission will be asked to forward a recommendation to the City Council on the proposed ordinance changes.

If there are any questions about these text amendments, please contact the Community Development Department.

STATE OF MICHIGAN
COUNTY OF OAKLAND
CITY OF NOVI

ORDINANCE NO. _____

AN ORDINANCE TO AMEND ORDINANCE NO. 97-18, AS AMENDED, THE CITY OF NOVI ZONING ORDINANCE, ARTICLE 3004, "TEMPORARY SPECIAL EXCEPTION AND TEMPORARY SPECIAL LAND USE PERMITS," TO AMEND ADD PROVISIONS RELATING TO TEMPORARY TENTS FOR OUTDOOR USES, TO AMEND THE STANDARDS OF REVIEW FOR ADMINISTRATION BY THE BUILDING OFFICIAL, AND TO ADD PORTABLE ON-SITE STORAGE DEVICES, AND ALSO ARTICLE 3100, "BOARD OF APPEALS," AND ARTICLE 3006, "PUBLIC HEARING," TO ADDRESS RECENT AMENDMENTS TO THE MICHIGAN ZONING ENABLING ACT AND TO CLARIFY CERTAIN REVIEW STANDARDS .

THE CITY OF NOVI ORDAINS:

Part I. That Ordinance No. 97-18, the City of Novi Zoning Ordinance, as amended, Article 30, Administration and Enforcement, Section 3004, Temporary Special Exception and Temporary Special Land Use Permits, is hereby amended to read as follows:

Sec. 3004. Temporary Special Exception and Temporary Special Land Use Permits.

1. The Building Official shall have the power to grant permits authorizing temporary special exceptions for: Deleted: , or his designee,

a. Outdoor tent, sidewalk, or flower/plant sales, and seasonal sales of produce, firewood, or Christmas trees, under the following conditions: Deleted: T

(1) *Zoning Districts Where Permitted.* Temporary special exceptions for outdoor tent, sidewalk, or flower/plant sales that are accessory to a permitted principal retail use of a property, and seasonal sales of produce (i.e., fruits and vegetables), firewood, or Christmas trees, shall be permitted in OSC Office-Service-Commercial Districts, B-1 Local Business Districts, B-2 Community Business Districts, B-3 General Business Districts, I-1 Light Industrial Districts, I-2 General Industrial Districts and P-1 Vehicular Parking Districts. In addition, temporary special exceptions for seasonal sales of produce or of Christmas trees shall be permitted on parcels of three (3) acres or more in any residential district and temporary special exceptions for tent sales, sidewalk sales and

seasonal sales of Christmas trees shall be permitted in the RC Regional Center District.

- (2) *Application; Fee; Submission of Plot Plan.* Every person, firm, or corporation desiring to obtain a temporary special exception permit as required by this Ordinance shall file a written application with the Department of Building and Safety on a form approved by the Department, together with an application fee as is hereafter provided by resolution of City Council. An application, together with the required fee, shall be filed by the owner of the land. The individual or entity who will conduct the use, if different from the owner, shall also comply with the provisions of Chapter 8, Business Registration, of the City Code of the City of Novi.

The application for a temporary special exception permit shall be accompanied by plans and specifications including a plot plan, in triplicate, drawn to scale, showing the following:

- (i) The shape, location and dimensions of the lot, including the shape size and location of all buildings or other structures already on the lot, off-street parking layout, and the location of any designated fire lanes.
 - (ii) The materials to be utilized in and the shape, size, and location of all buildings and structures to be erected or moved onto the lot, including all tents, tables, stands, or display racks.
 - (iii) The anticipated automobile traffic flow to and from the lot and any adjacent thoroughfares, loss of off-street parking spaces, if any, as well as the anticipated flow of pedestrian traffic upon lot sidewalks.
 - (iv) For temporary tent, sidewalk, or flower/plant sales, an acknowledgement that outdoor sales shall be operated by and maintained under the same ownership as, or subject to the control of, the property owner and on the parcel as the principal use.
- (3) *Time Limitations.*
- (i) A temporary special exception permit for a tent, sidewalk, or flower/plant sale shall be effective for no longer than fifteen (15) days. No more than three (3) such sales shall be permitted in any calendar year. No more than fifteen (15) total days of such sales shall be permitted in any calendar year. A separate permit is required for each separate sale.
 - (ii) A temporary special exception permit for the sale of Christmas trees shall by its terms be effective for no longer than thirty (30) days. No more than one (1) temporary special exception permit for

the sale of Christmas trees shall be issued for any given location within a single calendar year.

- (iii) A temporary special exception permit for a vegetable, fruit or produce stand (other than flowers/plants) or for the sale of firewood, shall, by its terms, be effective for no longer than three (3) months. No more than one (1) temporary special exception permit for a vegetable, fruit or produce stand, or for the sale of firewood, shall be issued for any given location within a single calendar year.

(4) *Regulations.*

- (i) A temporary special exception permit shall only be granted if the Building Official or his designee determines that the proposed use, including the erection of any temporary building or structure, will:
 - (a) Provide adequate automobile and pedestrian traffic flow.
 - (b) Provide adequate off-street parking.
 - (c) Provide adequate lot access for fire protection purposes.
 - (d) Not adversely affect the stability and integrity of the zoning plan prescribed by this Ordinance or otherwise interfere with the protection of public health, safety and general welfare.
 - (e) Not be incompatible with or otherwise adversely affect the physical character of the community and, in particular, the surrounding area within a distance of one thousand (1,000) feet.
- (ii) The proposed temporary special exception shall comply with all applicable zoning regulations for the district in which the temporary special exception is to be located, including all requirements pertaining to lot size, height, setback, open space ratio, maximum percentage of covered lot area, and off-street parking.
- (iii) No temporary special exception shall be permitted if it reduces the parking by greater than twenty-five (25) percent.
- (iv) All temporary buildings and structures shall be constructed, used, occupied and maintained so as to be in compliance with the provisions of the State Construction Code and all applicable ordinances of the City of Novi.

- (5) *Deposit Required for Temporary Sale of Christmas Trees.* The Building Official or his designee shall require any person, firm, or corporation granted a temporary special exception permit for the sale of Christmas trees or firewood to deposit a sum of money in an amount as set by resolution of City Council with the Department of Building and Safety to guarantee the cleaning of the lot and any abutting private or public

property and the disposal of any remaining trees or firewood by an approved method within one (1) week after the permit expiration date.

b. Special events. The temporary erection of a tent or similar temporary structure that is not totally enclosed for a maximum of five (5) days in any six-month period for customarily accessory uses such as promotional events, ground-breakings, grand openings, private parties or other similar gatherings that reasonably may be expected to attract fewer than 100 persons and that are not expected to have significant negative impacts on surrounding properties.

c. The temporary location of a temporary or premanufactured building in connection with the development of a property or construction of buildings thereon, including in residential developments irrespective of the requirements of Section 302 of this Ordinance, provided:

Deleted: ¶
Deleted: b

- (1) The use shall be limited to construction offices or trailers and offices for the specific purpose of selling lots or new homes to be erected in a residential development or in connection with the construction of nonresidential building improvements if such separate offices are reasonably necessary.
- (2) All applicable building height, bulk and area requirements of the district are met.
- (3) If the structure is used for the purpose of selling lots or new homes it shall be removed from the subdivision upon completion of the first permanently built model home intended for display. If the structure is used for construction offices then it shall be removed within the time period provided for in the permit.

2. The Building Official shall have the power, upon application, to grant permits authorizing temporary special land uses for:

Deleted: . . . (4) . The building official shall impose such conditions on the manner and extent of the proposed use as are necessary to protect the health, safety and general welfare of the people.¶
Deleted: , or his designee,

- a. Temporary buildings and uses for periods not to exceed two (2) years on undeveloped parcels within the city and for periods not to exceed twelve (12) months on developed parcels, with the granting of a twelve (12) month extension being permissible, provided the conditions set forth in section 3004.3 below, are met.
- b. Temporary uses, not otherwise permitted in any district, not to exceed twelve (12) months with the granting of twelve (12) month extensions being permissible that do not require the erection of any capital improvements of a structural nature, provided the conditions set forth in section 3004.3 below, are met.
- c. Portable concrete batching plants, subject to the following conditions:

- (1) Review and approval of the request by a committee consisting of the Building Official, City Engineer, and Director of Public Works ("Committee"), who may grant approval upon finding that the presence of the batching plant is reasonably necessary for the development of the site where it is to be located. The supplying of concrete to other sites may be permitted by the Committee subject to limitations imposed to minimize adverse impacts upon adjacent and neighboring parcels of land.
- (2) Time limits shall be imposed by the Committee, both as to the hours of operation and the length of time the batch plant may remain at the site. In no instance shall the batch plant be permitted to remain on the site longer than reasonably necessary to complete the on-site paving work.
- (3) Limitations shall be imposed as to permitted haul routes for all vehicles associated with the batch plant operation.
- (4) The Committee shall impose any restrictions deemed necessary to insure the control of noise and dust at and around the batch plant site.
- (5) The Committee shall require the posting of a cash bond, with the City of Novi in an amount that will guarantee:
 - (i) The removal of the plant and restoration of the site to a satisfactory condition, including the removal of any washings or hardened concrete;
 - (ii) The providing of dust control at the site and on streets and roads utilized, so as to prevent any nuisance to the surrounding area;
 - (iii) The providing, when weather and site conditions necessitate, of daily street cleaning to remove dirt, mud and other debris from streets and roads;
 - (iv) That vehicles adhere to any limitations imposed as to haul routes; and
 - (v) The prevention of any damage to public streets and roads by vehicles associated with the batch plant operation.
- (6) Such cash bond shall be deemed forfeited upon the failure of the operator to comply with any of the conditions imposed by the Committee for operation of the batch plant. If a bond is forfeited, all operations shall cease until such time as an additional bond is set by the City and posted by the operator, and the operator has remedied the problem that resulted in the forfeiture of the bond.

3. The granting of permits for the above temporary special exceptions and special land uses in section 1 and 2 above, shall be under the following conditions:

- a. The granting of the temporary exception or use shall in no way constitute a change in the basic uses permitted in the district nor on the property wherein the temporary exception or use is permitted.
- b. The temporary use will be compatible with adjacent uses and will not adversely affect the surrounding neighborhood by means or odor, noise, dust or other nuisance.
- c. The additional parking required by the temporary use will be provided on-site, if applicable, or adequate street parking is available in the immediate area.
- d. Increased traffic caused by the temporary use will not adversely affect the surrounding neighborhood or City at large.
- e. Permanent alterations to the site are prohibited.
- f. Fire protection and access for fire vehicles shall be provided as specified by the Fire Chief.
- g. The site shall be completely cleared of all trash, debris, signs, sign supports, temporary structures, and electrical service within three days following the date specified for termination of the temporary use.
- h. ~~The granting of the temporary exception or use shall be granted in writing stipulating all conditions as to time, nature of development permitted and arrangements for removing the use at the termination of said temporary permit.~~
- i. ~~All setbacks, land coverage, off-street parking, lighting and other requirements of the district shall be met; and~~
- j. ~~In classifying uses as not requiring capital improvement, the Building Official or his designee shall determine that they are either demountable structures related to the permitted use of land; recreation developments, such as but not limited to golf driving ranges and outdoor archery courts; or structures which do not require foundations, heating systems or sanitary connections.~~
- k. ~~The Building Official may impose reasonable conditions necessary to assure compliance with the standards in this subsection, to ensure that operation and maintenance of the permitted use mitigate potential adverse impacts on existing uses on adjoining properties and in the surrounding area, and to protect the public health, safety and general welfare. Conditions may address, but are not limited to, provisions for adequate parking, storage, and lighting; provisions for security, traffic safety, fire and life safety; conditions limiting hours of operation; provision for adequate sewage disposal; and any other health and safety concerns the Building Official may deem necessary to comply with the standards above. In~~

Deleted: b

Deleted: c

Deleted: d

Formatted: Font: Not Bold

addition, the Building Official may require the posting of a bond to ensure timely removal of structures and materials and restoration of the area

4. Permit a residence in a nonresidential structure, where not otherwise permitted, providing the use is for the proprietor, a watchman or other security purposes. A residence permitted under this provision shall not be made available for general occupancy and shall be permitted for a one (1) year period. The permit shall be renewable with no charge to the petitioner.
5. For any temporary special land use permitted in section 2 above, notice of the request shall be sent out as required in Section 103 of Act 110 of the Public Acts of 2006, as amended. The notice shall indicate that a public hearing on the application may be requested by any property owner or the occupant of any structure located within 300 feet of the property being considered for the special land use, regardless of whether the property or occupant is located in the zoning jurisdiction.

6. Exemptions.

The following types of events do not need to obtain temporary use permits, but may be subject to the maximum allowable time frames, temporary signage requirements, and specific regulations as set forth in the city code:

- (a) City-sponsored events.
- (b) Athletic events held at approved sports facilities.
- (c) Garage and/or yard sales.
- (d) Private gatherings occurring entirely upon the grounds of a private residence or common area of a multi-family residential development.

7. Portable On-Site Storage Containers on Residential Properties

(a) General. A portable on-site storage unit may be placed on a residential property for seven (7) days in a 12-month period without a temporary special exception permit or temporary special land use permit. Only one portable on-site storage unit shall be permitted per dwelling unit. This provision is not intended to override or displace subdivision rules, deed restrictions, or other private covenants that might prohibit or restrict the placement of such storage units.

(b) Location. A portable on-site storage unit shall only be located as follows:

- i. Single-Family Residences. The permitted portable on-site storage unit shall be located in the side or rear yard at least 5 feet from any property line or in a driveway.
- ii. All Other Types of Residences. Temporary portable on-site storage units for all other residential housing types shall be kept in an on-site vehicular use area so long as the storage unit does not obstruct a drive aisle or block a required parking space.

(c) Extended placement permitted as temporary special land use. A portable on-site storage unit to be placed on a residential property for more than seven (7) days in one 12-month period shall require a temporary special exception permit; provided, however, that the Building Official shall not permit placement of a temporary portable on-site storage unit as a temporary special land use for more than 14 days in a 12-month period. A portable on-site storage unit may be permitted for up to six months for use on-site during substantial construction or renovation on the property as evidenced by active building permits and upon a finding by the Building Official that such outside storage is made necessary by the extent of the work being conducted and that no other area of the property that complies with the requirements of the zoning ordinance is reasonably available for use. Temporary use permits for this purpose may be renewed so long as the associated construction permits remain active

Part II. That Ordinance No. 97-18, the City of Novi Zoning Ordinance, as amended, Article 30, Administration and Enforcement, Section 3100, Board of Appeals, is hereby amended as follows:

PART A. Article 31, "Board of Appeals," Section 3104, "Jurisdiction," shall be amended to read as follows:

Sec. 3104. Jurisdiction.

1. [Unchanged]

a. Interpretation and Administrative Review. To hear and decide appeals where it is alleged by the appellant that there is an error in any order, requirement, permit, decision or refusal made by the Building Official or any other administrative official in carrying out or enforcing any provisions of this Ordinance, including all questions that arise in the administration of this Ordinance, including interpretation of the zoning map, and all decisions concerning site plan review, except as to special land uses, the Planned Development (PD) and Gateway Special Development (SDO) options, Planned Rezoning Overlays (PRO), and other optional forms of development.

The concurring vote of four (4) members of the Board shall be necessary to reverse any order, requirement, decision, or determination of the Building Inspector [Official], of the Planning Commission, or of any other administrative official charged with carrying out or enforcing any provisions of the Ordinance.

b. Variance. To authorize, upon an appeal, a variance from the strict application of the provisions of this Ordinance. The Appeals Board shall base its decision on variances from the strict requirements of this Ordinance so that the spirit of the Ordinance is observed, public safety secured, and substantial justice is done, based on the following standards:

- (1) For Non-Use or Dimensional Variances: A non-use or dimensional variance may be granted by the Zoning Board of Appeals only in cases

where the applicant demonstrates in the official record of the public hearing that a practical difficulty exists by showing all of the following:

- (a) That the need for the requested variance is due to unique circumstances or physical conditions of the property involved, such as narrowness, shallowness, shape, water, topography, or similar physical conditions and is not due to the applicants personal or economic difficulty.
- (b) That the need for the requested variance is not the result of actions of the property owner or previous property owners (i.e., is not self-created).
- (c) That strict compliance with regulations governing area, setback, frontage, height, bulk, density or other dimensional requirements will unreasonably prevent the property owner from using the property for a permitted purpose, or will render conformity with those regulations unnecessarily burdensome.
- (d) That the requested variance is the minimum variance necessary to do substantial justice to the applicant as well as to other property owners in the district.
- (e) That the requested variance will not cause an adverse impact on surrounding property, property values, or the use and enjoyment of property in the neighborhood or zoning district

(2). For Use Variances: A use variance may be granted by the Zoning Board of Appeals only in cases where the applicant demonstrates in the official record of the public hearing that undue hardship exists by showing all of the following:

- (a) The property cannot be reasonably used for any of the uses permitted by right or by special use permit in the zoning district in which it is located.
- (b) That the need for the requested variance is due to unique circumstances or physical conditions of the property involved, such as narrowness, shallowness, shape, water, topography, or similar physical conditions and is not due to the applicant's personal or economic hardship.
- (c) That the proposed use will not alter the essential character of the neighborhood.
- (d) That the need for the requested variance is not the result of actions of the property owner or previous property owners (i.e., is not self-created).

Deleted: building, structure, or land

In granting a variance, the Board may attach thereto such conditions regarding the location, character and other features of the proposed uses as it may deem reasonable in furtherance of the purpose of this Ordinance.

- (3) The concurring vote of four (4) members of the Board shall be necessary to grant a non-use or dimensional variance, and a 2/3 majority vote of the membership of the Board is necessary to grant a use variance. The decision shall be in writing and reflect the reasons for the decision. 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.
- (4) 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.

c. *Exceptions and Special Approvals.* To hear and decide in accordance with the provisions of this Ordinance, requests for exceptions, for interpretations of the Zoning Map, and for decisions on special approval situations on which this Ordinance specifically authorizes the Board to pass. Any exception or special approval shall be subject to such conditions as the Board may require to preserve and promote the character of the zone district in question and otherwise promote the purpose of this Ordinance, including the following:

(1) Interpret the provisions of this Ordinance in such a way as to carry out the intent and purpose of the plan, as shown upon the Zoning Map fixing the use districts, accompanying and made part of this Ordinance, where street layout actually on the ground varies from the street layout as shown on the map aforesaid.

(2) Permit the erection and use of a building or use of premises for public utility purposes, upon recommendation of the Planning Commission.

Before granting an exception or special approval under this subsection, the Board shall determine that the proposed exception or special approval will not impair an adequate supply of light and air to adjacent property, or unreasonably increase the congestion in public streets, or increase the danger of fire or endanger the public safety, or unreasonably diminish or impair established property values within the surrounding area, or in any other respect impair the public health, safety, comfort, morals or welfare of the inhabitants of the City of Novi. The concurring vote of four (4) members of the Board shall be necessary to grant an exception or special approval.

d. *Rehearing.* The Board may, in its discretion, grant rehearing of any decision to consider additional matters related to the relief requested within twenty (20) days of the Board's initial decision.

e. *Effect of Decision.* Nothing herein contained shall be construed to give or grant to the Board the power or authority to alter or change this Ordinance or the Zoning Map, such

Deleted: (3) . Permit the modification of the automobile parking space or loading space requirements where, in the particular instance, such modification will not be inconsistent with the purpose and intent of such requirements.¶

¶

(4) . Permit such modification of the height and area regulations as may be necessary to secure an appropriate improvement of a lot which is of such shape, or so located with relation to surrounding development or physical characteristics, that it cannot otherwise be appropriately improved without such modification.¶

power and authority being reserved to the City Council of the City of Novi, in the manner provided by law.

PART B. Article 31, "Board of Appeals," Section 3106, "Notice," shall be amended to read as follows:

Sec. 3106. Notice.

1. *Variance Requests, Exceptions, and Special Approvals.* The Board shall fix a reasonable time for the hearing of matters brought before the Board and shall publish notice of the request in a newspaper of general circulation in the City. The Board shall also give due notice thereof variance requests as set forth in Section 3006. If the Board receives a written request seeking an interpretation of the zoning ordinance or an appeal of an administrative decision, the board shall conduct a public hearing on the request, with notice given under Section 3006; however, if the request does not involve a specific parcel of property, notice need only be published as provided in Section 3006 and given to the person making the request as provided thereunder.

2. *Requests for Interpretations or Appeals from an Administrative Decision.* Upon receipt of a written request seeking an interpretation of the Zoning Ordinance or an appeal of an administrative decision, a notice stating the time, date, and place of the public hearing shall be published in a newspaper of general circulation within the township and shall be sent to the person requesting the interpretation not less than 15 days before the public hearing. In addition, if the request for an interpretation or appeal of an administrative decision involves a specific parcel, written notice stating the nature of the interpretation request and the time, date, and place of the public hearing on the interpretation request shall be sent by first-class mail or personal delivery to all persons to whom real property is assessed within 300 feet of the boundary of the property affected and to the occupants of all structures within 300 feet of the boundary of the property in question. If a tenant's name is not known, the term "occupant" may be used.

PART C. Article 31, "Board of Appeals," Section 3102, "Appeal," shall be amended to read as follows:

Sec. 3102. Appeal.

An appeal may be taken to the Zoning Board of Appeals by any person, firm, or corporation, or by any officer, department, board or bureau of the state or a local unit of government, aggrieved by a decision of the Building Official or of the Planning Commission or any other administrative official carrying out or enforcing any provisions of this Ordinance. Such appeal shall be taken within such time as shall be prescribed by the Board by general rule, by filing with the individual or body appealed from and with the Board of Appeals a notice of appeal, specifying the grounds thereof. The individual or body appealed from shall forthwith transmit to the Board all of the papers constituting the record upon which the action appealed from was taken. An appeal shall stay all proceedings in furtherance of the action appealed from. However, if individual or body appealed from certifies to the Board after notice of appeal has

Deleted: to the owners of the property for which approval is being considered, to the persons to whom real property within 300 feet of the premises in question is assessed, and to the occupants of single-family and two-family dwellings within 300 feet, regardless of whether the property or occupant is located within the City, the notice to be delivered personally or by mail addressed to the respective owners and tenants at the address given in the last assessment roll.

Deleted: The board of appeals shall decide the appeal within a reasonable time. If a tenant's name is not known, the term occupant may be used. The notice described above shall be given not less than 15 days before the date the application will be considered for approval. The notice shall do all of the following: ¶

- ¶ (a) . Describe the nature of the request.¶
- ¶ (b) . Indicate the property that is the subject of the request. The notice shall include a listing of all existing street addresses within the property. Street addresses do not need to be created and listed if no such addresses currently exist within the property. If there are no street addresses, other means of identification may be used.¶
- ¶ (c) . State when and where the request will be considered.¶
- ¶ (d) . Indicate when and where written comments will be received concerning the request.

Deleted: Building Official

Deleted: Building Official

Deleted: unless

Deleted: the Building Official

been filed that by reason of facts stated in the certificate, a stay would cause imminent peril to life or property, the proceedings may be stayed only by a restraining order issued by the zoning board of appeals or a circuit court.

- Deleted: with him
- Deleted: , in his opinion,
- Deleted: in which case
- Deleted: shall not
- Deleted: , otherwise than
- Deleted: , which may be granted by a court of record

The Board shall select a reasonable time and place for the hearing of the appeal and give due notice thereof to the parties and shall render a decision on the appeal without unreasonable delay. Any person may appear and testify at the hearing, either in person or by duly authorized agent or attorney.

Part III. That Ordinance No. 97-18, the City of Novi Zoning Ordinance, as amended, Article 30, "Administration and Enforcement," Section 3006, "Public Hearing," is hereby amended to read as follows:

Sec. 3006. Public Hearing.

(1) For all special land uses provided in this Ordinance, and for all other like uses where reference is made in this Ordinance to Section 3006, as a prerequisite to approval of the use there shall be a public hearing with notice as provided in this Section.

(2) All such public hearings shall be conducted by the Planning Commission, except where expressly assigned to another body of official.

(3) Except where specific language in this ordinance provides otherwise, if the City conducts a public hearing required under this Ordinance, the City shall publish notice of the hearing in a newspaper of general circulation in the City not less than 15 days before the date of the hearing. Notice required under the Ordinance shall be given as required hereunder to the owners of property that is the subject of the request. Notice shall also be given as provided hereunder to all persons to whom real property is assessed within 300 feet of the property that is the subject of the request and to the occupants of all structures within 300 feet of the subject property regardless of whether the property or structure is located in the City of Novi. Notification shall not be given to more than one occupant of a structure, except that if a structure contains more than one dwelling unit or spatial area owned or leased by different persons, one occupant or each unit or spatial area shall be given notice. If a single structure contains more than four dwelling units or other distinct spatial areas owned or leased by different persons, notice may be given to the manager or owner of the structure, who shall be requested to post the notice at the primary entrance to the structure. The notice is considered to be personally given when personally delivered or when deposited during normal business hours for delivery with the United States Postal Service or other public or private delivery service. The notice shall be given not less than 15 days before the date the request will be considered. If the name of the occupant is not known, the term "occupant" may be used for the intended recipient. A notice under this section shall do all of the following:

- Deleted: is required to provide notice and a public
- Deleted: request
- Deleted: shall also be sent by mail or personal delivery
- Deleted: for which approval is being considered
- Deleted: sent
- Deleted: occupant

Deleted: shall be

- Deleted: of the noticed public hearing where the application
- Deleted: for approval
- Deleted: in making notification under this subsection
- Deleted: The

- (a) Describe the nature of the request.
- (b) Indicate the property that is the subject of the request. The notice shall include a listing of all existing street addresses within the property. Street addresses do not need to be created and listed if no such addresses currently exist within the

property. If there are no street addresses, other means of identification may be used.

- (c) State when and where the public hearing on the request will be considered.
- (d) Indicate when and where written comments will be received concerning the request.

(4) Notice of a public hearing required for the amendment of, or to supplement, this Ordinance shall be given in the same manner as provided under this act for the adoption of the original ordinance, and the planning commission shall give a notice of the proposed rezoning in the same manner as required under paragraph (3), above, except that, for any group of adjacent properties numbering 11 or more that is, proposed for rezoning, the planning commission shall give a notice of the proposed rezoning in the same manner as required under paragraph (3), except that the requirements for mailing and the listing of street addresses do not apply to that group of adjacent properties.

Deleted: as follows
Deleted: ¶ ¶ (a) If an individual property or 10 or fewer adjacent properties are proposed for rezoning,
Deleted: ¶ (b) If
Deleted: 11 or more
Deleted: are
Deleted: no mailing shall be required and no individual addresses of properties are required to be listed.

Part III. Severability. Should any section, subdivision, clause, or phrase of this Ordinance be declared by the courts to be invalid, the validity of the Ordinance as a whole, or in part, shall not be affected other than the part invalidated.

Part IV. Savings. This amendment does not affect or impair any act done, offense committed, or right accruing, accrued, or acquired or liability, penalty, forfeiture, or punishment, pending or incurred prior to the amendment.

Part V. Repealer. All other Ordinances or parts of Ordinances in conflict herewith are hereby repealed only to the extent necessary to give this Ordinance full force and effect.

Part VI. Effective Date: Publication. Public hearing having been held hereon pursuant to the provisions of Section 103 of Act 110 of the Public Acts of 2006, as amended, the provisions of this Ordinance shall be published within fifteen (15) days of its adoption by publication of a brief notice in a newspaper circulated in the City of Novi stating the date of enactment and effective date, a brief statement as to its regulatory effect and that a complete copy of the Ordinance is available for public purchase, use and inspection at the office of the City Clerk during the hours of 8:00 A.M. to 5:00 P.M., Local Time. The provisions of this Ordinance shall become effective seven (7) days after its publication.

MADE, PASSED AND ADOPTED BY THE NOVI CITY COUNCIL THIS ____ DAY OF _____, 2008.

DAVID LANDRY -- MAYOR

MARYANNE CORNELIUS – CITY CLERK

1. Date of Public Hearing _____
2. Date of Adoption _____
3. Date of Publication of
Notice of Adoption _____

CERTIFICATE OF ADOPTION

I hereby certify that the foregoing is true and complete copy of the Ordinance passed at the _____ meeting of the Novi City Council held on the _____ day of _____, 2008.

MARYANNE CORNELIUS – CITY CLERK

1033881

Act No. 12

Public Acts of 2008

Approved by the Governor

February 29, 2008

Filed with the Secretary of State

February 29, 2008

EFFECTIVE DATE: February 29, 2008

STATE OF MICHIGAN

94TH LEGISLATURE

REGULAR SESSION OF 2008

Introduced by Reps. Byrum, Simpson, Miller, LeBlanc, Hood, Virgil Smith, Polidori, Brown and Pastor

ENROLLED HOUSE BILL No. 5032

AN ACT to amend 2006 PA 110, entitled "An act to codify the laws regarding local units of government regulating the development and use of land; to provide for the adoption of zoning ordinances; to provide for the establishment in counties, townships, cities, and villages of zoning districts; to prescribe the powers and duties of certain officials; to provide for the assessment and collection of fees; to authorize the issuance of bonds and notes; to prescribe penalties and provide remedies; and to repeal acts and parts of acts," by amending sections 102, 103, 202, 208, 301, 401, 407, 501, 601, 604, 606, and 702 (MCL 125.3102, 125.3103, 125.3202, 125.3208, 125.3301, 125.3401, 125.3407, 125.3501, 125.3601, 125.3604, 125.3606, and 125.3702), section 102 as amended by 2007 PA 219.

The People of the State of Michigan enact:

Sec. 102. As used in this act:

(a) "Agricultural land" means substantially undeveloped land devoted to the production of plants and animals useful to humans, including, but not limited to, forage and sod crops, grains, feed crops, field crops, dairy products, poultry and poultry products, livestock, herbs, flowers, seeds, grasses, nursery stock, fruits, vegetables, Christmas trees, and other similar uses and activities.

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

(c) "Airport approach plan" and "airport layout plan" mean a plan, or an amendment to a plan, filed with the zoning commission under section 151 of the aeronautics code of the state of Michigan, 1945 PA 327, MCL 259.151.

(d) "Airport manager" means that term as defined in section 2 of the aeronautics code of the state of Michigan, 1945 PA 327, MCL 259.2.

(e) "Airport zoning regulations" means airport zoning regulations under the airport zoning act, 1950 (Ex Sess) PA23, MCL

259.431 to 259.465, for an airport hazard area that lies in whole or part in the area affected by a zoning ordinance under this act.

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

(g) "Coordinating zoning committee" means a coordinating zoning committee as described under section 307.

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

(i) "Development rights ordinance" means an ordinance, which may comprise part of a zoning ordinance, adopted under section 507.

(j) "Family child care home" and "group child care home" mean those terms as defined in section 1 of 1973 PA 116, MCL 722.111, and only apply to the bona fide private residence of the operator of the family or group child care home.

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

(l) "Improvements" means those features and actions associated with a project that are considered necessary by the body or official granting zoning approval to protect natural resources or the health, safety, and welfare of the residents of a local unit of government and future users or inhabitants of the proposed project or project area, including roadways, lighting, utilities, sidewalks, screening, and drainage. Improvements do not include the entire project that is the subject of zoning approval.

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

(n) "Legislative body" means the county board of commissioners of a county, the board of trustees of a township, or the council or other similar elected governing body of a city or village.

(o) "Local unit of government" means a county, township, city, or village.

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

(q) "Person" means an individual, partnership, corporation, association, governmental entity, or other legal entity.

(r) "Population" means the population according to the most recent federal decennial census or according to a special census conducted under section 7 of the Glenn Steil state revenue sharing act of 1971, 1971 PA 140, MCL 141.907, whichever is the more recent.

(s) "Site plan" includes the documents and drawings required by the zoning ordinance to ensure that a proposed land use or activity is in compliance with local ordinances and state and federal statutes.

(t) "State licensed residential facility" means a structure constructed for residential purposes that is licensed by the state under the adult foster care facility licensing act, 1979 PA 218, MCL 400.701 to 400.737, or 1973 PA 116, MCL 722.111 to 722.128, and provides residential services for 6 or fewer individuals under 24-hour supervision or care.

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

(v) "Zoning commission" means a zoning commission as described under section 301.

(w) "Zoning jurisdiction" means the area encompassed by the legal boundaries of a city or village or the area encompassed by the legal boundaries of a county or township outside the limits of incorporated cities and villages. The zoning jurisdiction of a county does not include the areas subject to a township zoning ordinance.

Sec. 103. (1) Except as otherwise provided under this act, if a local unit of government conducts a public hearing required under this act, the local unit of government shall publish notice of the hearing in a newspaper of general circulation in the local unit of government not less than 15 days before the date of the hearing.

(2) Notice required under this act shall be given as provided under subsection (3) to the owners of property that is the subject of the request. Notice shall also be given as provided under subsection (3) to all persons to whom real property is assessed within 300 feet of the property that is the subject of the request and to the occupants of all structures within 300 feet of the subject property regardless of whether the property or structure is located in the zoning jurisdiction. Notification need not be given to more than 1 occupant of a structure, except that if a structure contains more than 1 dwelling unit or spatial area owned or leased by different persons, 1 occupant of each unit or spatial area shall be given notice. If a single structure contains more than 4 dwelling units or other distinct spatial areas owned or leased by different persons, notice may be given to the manager or owner of the structure, who shall be requested to post the notice at the primary entrance to the structure.

(3) The notice under subsection (2) is considered to be given when personally delivered or when deposited during normal business hours for delivery with the United States postal service or other public or private delivery service. The notice shall be given not less than 15 days before the date the request will be considered. If the name of the occupant is not known, the term "occupant" may be used for the intended recipient of the notice.

(4) A notice under this section shall do all of the following:

(a) Describe the nature of the request.

(b) Indicate the property that is the subject of the request. The notice shall include a listing of all existing street addresses within the property. Street addresses do not need to be created and listed if no such addresses currently exist within the property. If there are no street addresses, other means of identification may be used.

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

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

Sec. 202. (1) The legislative body of a local unit of government may provide by ordinance for the manner in which the regulations and boundaries of districts or zones shall be determined and enforced or amended or supplemented. Amendments or supplements to the zoning ordinance shall be adopted in the same manner as provided under this act for the adoption of the original ordinance.

(2) Except as provided in subsection (3), the zoning commission shall give a notice of a proposed rezoning in the same manner as required under section 103.

(3) For any group of adjacent properties numbering 11 or more that is proposed for rezoning, the requirements of section 103 (2) and the requirement of section 103(4)(b) that street addresses be listed do not apply to that group of adjacent properties.

(4) An amendment to a zoning ordinance by a city or village is subject to a protest petition under section 403.

(5) An amendment to conform a provision of the zoning ordinance to the decree of a court of competent jurisdiction as to any specific lands may be adopted by the legislative body and the notice of the adopted amendment published without referring the amendment to any other board or agency provided for under this act.

Sec. 208. (1) If the use of a dwelling, building, or structure or of the land is lawful at the time of enactment of a zoning

ordinance or an amendment to a zoning ordinance, then that use may be continued although the use does not conform to the zoning ordinance or amendment. This subsection is intended to codify the law as it existed before July 1, 2006 in section 216 (1) of the former county zoning act, 1943 PA 183, section 286(1) of the former township zoning act, 1943 PA 184, and section 583a(1) of the former city and village zoning act, 1921 PA 207, as they applied to counties, townships, and cities and villages, respectively, and shall be construed as a continuation of those laws and not as new enactments.

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

(3) The legislative body may acquire, by purchase, condemnation, or otherwise, private property or an interest in private property for the removal of nonconforming uses and structures. The legislative body may provide that the cost and expense of acquiring private property may be paid from general funds or assessed to a special district in accordance with the applicable statutory provisions relating to the creation and operation of special assessment districts for public improvements in local units of government. Property acquired under this subsection by a city or village shall not be used for public housing.

(4) The elimination of the nonconforming uses and structures in a zoning district is declared to be for a public purpose and for a public use. The legislative body may institute proceedings for condemnation of nonconforming uses and structures under 1911 PA 149, MCL 213.21 to 213.25.

Sec. 301. (1) Each local unit of government in which the legislative body exercises authority under this act shall create a zoning commission unless 1 of the following applies:

(a) A county zoning commission created under former 1943 PA 183, a township zoning board created under former 1943 PA 184, or a city or village zoning commission created under former 1921 PA 207 was in existence in the local unit of government as of June 30, 2006. Unless abolished by the legislative body, that existing board or commission shall continue as and exercise the powers and perform the duties of a zoning commission under this act, subject to a transfer of power under subsection (2).

(b) A planning commission was, as of June 30, 2006, in existence in the local unit of government and pursuant to the applicable planning enabling act exercising the powers and performing the duties of a county zoning commission created under former 1943 PA 185, of a township zoning board created under former 1943 PA 184, or of a city or village zoning commission created under former 1921 PA 207. Unless abolished by the legislative body, that existing planning commission shall continue and exercise the powers and perform the duties of a zoning commission under this act.

(c) The local unit of government has created a planning commission on or after July 1, 2006 and transferred the powers and duties of a zoning commission to the planning commission pursuant to the applicable planning enabling act.

(2) Except as otherwise provided under this subsection, if the powers and duties of the zoning commission have been transferred to the planning commission as provided by law, the planning commission shall function as the zoning commission of the local unit of government. By July 1, 2011, the legislative body shall transfer the powers and duties of the zoning commission to the planning commission. Except as provided under this subsection, beginning July 1, 2011, a zoning commission's powers or duties under this act or an ordinance adopted under this act shall only be exercised or performed by a planning commission.

(3) If a zoning commission is created on or after July 1, 2006, the zoning commission shall be created by resolution and be composed of not fewer than 5 or more than 11 members appointed by the legislative body. Not fewer than 2 of the members of a county zoning commission shall be recommended for membership by the legislative bodies of townships that are, or will be, subject to the county zoning ordinance. This requirement may be met as vacancies occur on a county zoning commission that existed on June 30, 2006.

(4) The members of a zoning commission shall be selected upon the basis of the members' qualifications and fitness to serve as members of a zoning commission.

- (5) The first zoning commission appointed under subsection (3) shall be divided as nearly as possible into 3 equal groups, with terms of each group as follows:
- (a) One group for 1 year.
 - (b) One group for 2 years.
 - (c) One group for 3 years.
- (6) Upon the expiration of the terms of the members first appointed, successors shall be appointed in the same manner for terms of 3 years each. A member of the zoning commission shall serve until a successor is appointed and has been qualified.
- (7) A vacancy on a zoning commission shall be filled for the remainder of the unexpired term in the same manner as the original appointment.
- (8) An elected officer of a local unit of government shall not serve simultaneously as a member or an employee of the zoning commission of that local unit of government, except that 1 member of the legislative body may be a member of the zoning commission.
- (9) 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.
- (10) A zoning commission shall elect from its members a chairperson, a secretary, and other officers and establish such committees it considers necessary and may engage any employees, including for technical assistance, it requires. The election of officers shall be held not less than once in every 2-year period.
- Sec. 401. (1) After receiving a zoning ordinance under section 308(1) or an amendment under sections 202 and 308(1), the legislative body may hold a public hearing if it considers it necessary or if otherwise required.
- (2) Notice of a public hearing to be held by the legislative body shall be given in the same manner as required under section 103(1) for the initial adoption of a zoning ordinance or section 202 for any zoning text or map amendments.
- (3) The legislative body may refer any proposed amendments to the zoning commission for consideration and comment within a time specified by the legislative body.
- (4) The legislative body shall grant a hearing on a proposed ordinance provision to an interested property owner who requests a hearing by certified mail, addressed to the clerk of the legislative body. A hearing under this subsection is not subject to the requirements of section 103, except that notice of the hearing shall be given to the interested property owner in the manner required in section 103(3) and (4).
- (5) After any proceedings under subsections (1) to (4), the legislative body shall consider and vote upon the adoption of a zoning ordinance, with or without amendments. A zoning ordinance and any amendments shall be approved by a majority vote of the members of the legislative body.
- (6) Except as otherwise provided under section 402, a zoning ordinance shall take effect upon the expiration of 7 days after publication as required by subsection (7) or at such later date after publication as may be specified by the legislative body or charter.
- (7) Following adoption of a zoning ordinance or any subsequent amendments by the legislative body, the zoning ordinance or subsequent amendments shall be filed with the clerk of the legislative body, and a notice of ordinance adoption shall be published in a newspaper of general circulation in the local unit of government within 15 days after adoption.
- (8) A copy of the notice required under subsection (7) shall be mailed to the airport manager of an airport entitled to notice

under section 306.

(9) The notice required under this section shall include all of the following information:

(a) In the case of a newly adopted zoning ordinance, the following statement: "A zoning ordinance regulating the development and use of land has been adopted by the legislative body of the [county, township, city, or village] of _____."

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

(c) The effective date of the ordinance or amendment.

(d) The place where and time when a copy of the ordinance or amendment may be purchased or inspected.

(10) The filing and publication requirements under this section supersede any other statutory or charter requirements relating to the filing and publication of county, township, city, or village ordinances.

Sec. 407. Except as otherwise provided by law, a use of land or a dwelling, building, or structure, including a tent or recreational vehicle, used, erected, altered, razed, or converted in violation of a zoning ordinance or regulation adopted under this act is a nuisance per se. The court shall order the nuisance abated, and the owner or agent in charge of the dwelling, building, structure, tent, recreational vehicle, or land is liable for maintaining a nuisance per se. The legislative body shall in the zoning ordinance enacted under this act designate the proper official or officials who shall administer and enforce the zoning ordinance and do 1 of the following for each violation of the zoning ordinance:

(a) Impose a penalty for the violation.

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

(c) Designate the violation as a blight violation and impose a civil fine or other sanction authorized by law. This subdivision applies only to a city that establishes an administrative hearings bureau pursuant to section 4q of the home rule city act, 1909 PA 279, MCL 117.4q.

Sec. 501. (1) The local unit of government may require the submission and approval of a site plan before authorization of a land use or activity regulated by a zoning ordinance. The zoning ordinance shall specify the body or official responsible for reviewing site plans and granting approval.

(2) If a zoning ordinance requires site plan approval, the site plan, as approved, shall become part of the record of approval, and subsequent actions relating to the activity authorized shall be consistent with the approved site plan, unless a change conforming to the zoning ordinance is agreed to by the landowner and the body or official that initially approved the site plan.

(3) The procedures and requirements for the submission and approval of site plans shall be specified in the zoning ordinance. Site plan submission, review, and approval shall be required for special land uses and planned unit developments.

(4) A decision rejecting, approving, or conditionally approving a site plan shall be based upon requirements and standards contained in the zoning ordinance, other statutorily authorized and properly adopted local unit of government planning documents, other applicable ordinances, and state and federal statutes.

(5) A site plan shall be approved if it contains the information required by the zoning ordinance and is in compliance with the conditions imposed under the zoning ordinance, other statutorily authorized and properly adopted local unit of government planning documents, other applicable ordinances, and state and federal statutes.

Sec. 601. (1) A zoning ordinance shall create a zoning board of appeals. A zoning board of appeals in existence on June 30, 2006 may continue to act as the zoning board of appeals subject to this act. Subject to subsection (2), members of a zoning board of appeals shall be appointed by majority vote of the members of the legislative body serving.

(2) The legislative body of a city or village may act as a zoning board of appeals and may establish rules to govern its procedure as a zoning board of appeals.

(3) A zoning board of appeals shall be composed of not fewer than 5 members if the local unit of government has a population of 5,000 or more or not fewer than 3 members if the local unit of government has a population of less than 5,000. The number of members of the zoning board of appeals shall be specified in the zoning ordinance.

(4) In a county or township, 1 of the regular members of the zoning board of appeals shall be a member of the zoning commission, or of the planning commission if the planning commission is functioning as the zoning commission. In a city or village, 1 of the regular members of the zoning board of appeals may be a member of the zoning commission, or of the planning commission if the planning commission is functioning as the zoning commission, unless the legislative body acts as the zoning board of appeals under subsection (2). A decision made by a city or village zoning board of appeals before the effective date of the 2007 amendatory act that amended this section is not invalidated by the failure of the zoning board of appeals to include a member of the city or village zoning commission or planning commission, as was required by this subsection before that amendatory act took effect.

(5) The remaining regular members of a zoning board of appeals, and any alternate members under subsection (7), shall be selected from the electors of the local unit of government residing within the zoning jurisdiction of that local unit of government or, in the case of a county, residing within the county but outside of any city or village. The members selected shall be representative of the population distribution and of the various interests present in the local unit of government.

(6) Subject to subsection (2), 1 regular or alternate member of a zoning board of appeals may be a member of the legislative body. Such a member shall not serve as chairperson of the zoning board of appeals. An employee or contractor of the legislative body may not serve as a member of the zoning board of appeals.

(7) The legislative body may appoint to the zoning board of appeals not more than 2 alternate members for the same term as regular members. An alternate member may be called as specified in the zoning ordinance to serve as a member of the zoning board of appeals in the absence of a regular member if the regular member will be unable to attend 1 or more meetings. An alternate member may also be called to serve as a member for the purpose of reaching a decision on a case in which the member has abstained for reasons of conflict of interest. The alternate member appointed shall serve in the case until a final decision is made. An alternate member serving on the zoning board of appeals has the same voting rights as a regular member.

(8) A member of the zoning board of appeals may be paid a reasonable per diem and reimbursed for expenses actually incurred in the discharge of his or her duties.

(9) A member of the zoning board of appeals may be removed by the legislative body for misfeasance, malfeasance, or nonfeasance in office upon written charges and after a public hearing. 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.

(10) The terms of office for members appointed to the zoning board of appeals shall be for 3 years, except for members serving because of their membership on the zoning commission or legislative body, whose terms shall be limited to the time they are members of those bodies. When members are first appointed, the appointments may be for less than 3 years to provide for staggered terms. A successor shall be appointed not more than 1 month after the term of the preceding member has expired.

(11) A vacancy on the zoning board of appeals shall be filled for the remainder of the unexpired term in the same manner as the original appointment.

(12) A zoning board of appeals shall not conduct business unless a majority of the regular members of the zoning board of appeals are present.

(13) A member of the zoning board of appeals who is also a member of the zoning commission, the planning commission, or the legislative body shall not participate in a public hearing on or vote on the same matter that the member voted on as a member of the zoning commission, the planning commission, or the legislative body. However, the member may consider and vote on other unrelated matters involving the same property.

Sec. 604. (1) An appeal to the zoning board of appeals may be taken by a person aggrieved or by an officer, department, board, or bureau of this state or the local unit of government. In addition, a variance in the zoning ordinance may be applied for and granted under section 4 of the uniform condemnation procedures act, 1980 PA 87, MCL 213.54, and as provided under this act. The zoning board of appeals shall state the grounds of any determination made by the board.

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

(3) An appeal to the zoning board of appeals stays all proceedings in furtherance of the action appealed. However, if the body or officer from whom the appeal is taken certifies to the zoning board of appeals after the notice of appeal is filed that, by reason of facts stated in the certificate, a stay would in the opinion of the body or officer cause imminent peril to life or property, proceedings may be stayed only by a restraining order issued by the zoning board of appeals or a circuit court.

(4) Following receipt of a written request for a variance, the zoning board of appeals shall fix a reasonable time for the hearing of the request and give notice as provided in section 103.

(5) If the zoning board of appeals receives a written request seeking an interpretation of the zoning ordinance or an appeal of an administrative decision, the zoning board of appeals shall conduct a public hearing on the request. Notice shall be given as required under section 103. However, if the request does not involve a specific parcel of property, notice need only be published as provided in section 103(1) and given to the person making the request as provided in section 103(3).

(6) At a hearing under subsection (5), a party may appear personally or by agent or attorney. The zoning board of appeals 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.

(7) If there are practical difficulties for nonuse variances as provided in subsection (8) or unnecessary hardship for use variances as provided in subsection (9) in the way of carrying out the strict letter of the zoning ordinance, the zoning board of appeals may grant a variance in accordance with this section, so that the spirit of the zoning ordinance is observed, public safety secured, and substantial justice done. The ordinance shall establish procedures for the review and standards for approval of all types of variances. The zoning board of appeals may impose conditions as otherwise allowed under this act.

(8) The zoning board of appeals of all local units of government shall have the authority to grant nonuse variances relating to the construction, structural changes, or alteration of buildings or structures related to dimensional requirements of the zoning ordinance or to any other nonuse-related standard in the ordinance.

(9) The authority to grant variances from uses of land is limited to the following:

(a) Cities and villages.

(b) Townships and counties that as of February 15, 2006 had an ordinance that uses the phrase "use variance" or "variances from uses of land" to expressly authorize the granting of use variances by the zoning board of appeals.

(c) Townships and counties that granted a use variance before February 15, 2006.

(10) The authority granted under subsection (9) is subject to the zoning ordinance of the local unit of government otherwise being in compliance with subsection (7) and having an ordinance provision that requires a vote of 2/3 of the members of the zoning board of appeals to approve a use variance.

(11) The authority to grant use variances under subsection (9) is permissive, and this section does not require a local unit of government to adopt ordinance provisions to allow for the granting of use variances.

Sec. 606. (1) Any party aggrieved by a decision of the zoning board of appeals may appeal to the circuit court for the county in which the property is located. The circuit court shall review the record and decision to ensure that the decision meets all of the following requirements:

(a) Complies with the constitution and laws of the state.

(b) Is based upon proper procedure.

(c) Is supported by competent, material, and substantial evidence on the record.

(d) Represents the reasonable exercise of discretion granted by law to the zoning board of appeals.

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

(3) An appeal from a decision of a zoning board of appeals shall be filed within 30 days after the zoning board of appeals issues its decision in writing signed by the chairperson, if there is a chairperson, or signed by the members of the zoning board of appeals, if there is no chairperson, or within 21 days after the zoning board of appeals approves the minutes of its decision. The court may affirm, reverse, or modify the decision of the zoning board of appeals. The court may make other orders as justice requires.

Sec. 702. (1) The following acts and parts of acts are repealed:

(a) The city and village zoning act, 1921 PA 207, MCL 125.581 to 125.600.

(b) The county zoning act, 1943 PA 183, MCL 125.201 to 125.240.

(c) The township zoning act, 1943 PA 184, MCL 125.271 to 125.310.

(2) This section does not alter, limit, void, affect, or abate any pending litigation, administrative proceeding, or appeal that existed on June 30, 2006 or any ordinance, order, permit, or decision that was based on the acts repealed under subsection (1). The zoning ordinance need not be readopted but is subject to the requirements of this act, including, but not limited to, the amendment procedures set forth in this act.

This act is ordered to take immediate effect.

Clerk of the House of Representatives

Secretary of the Senate

Approved

Governor