

Sample B: (ZB or ZC to PC)

MTA Sample Ordinance to Establish a NEW Planning Commission and Transfer Zoning Authority *(Annotated)*

(To transfer from an existing zoning board or zoning commission to a new planning commission in a township that previously had no planning commission.)

[The MCL number of the applicable section of the MPEA is indicated in brackets to assist in finding the item in the Act, and should not be included in the actual ordinance text.]

Preamble

An ordinance to establish the _____ Township Planning Commission; provide for the composition of that planning commission; provide for the powers, duties and limitations of that planning commission; and repeal any ordinance or parts of ordinances or resolutions in conflict with this ordinance.

THE TOWNSHIP OF _____, _____ COUNTY, MICHIGAN, ORDAINS:

Section 1: Scope, Purpose and Intent

This ordinance is adopted pursuant to the authority granted the township board under the Michigan Planning Enabling Act, Public Act 33 of 2008, MCL 125.3801, *et seq.*, and the Michigan Zoning Enabling Act, Public Act 110 of 2006, MCL 125.3101, *et seq.*, to establish a planning commission with the powers, duties and limitations provided by those Acts and subject to the terms and conditions of this ordinance and any future amendments to this ordinance. **[MCLs 125.3811 and 125.3883]**

The purpose of this ordinance is to provide that the _____ Township Board shall hereby establish the _____ Township Planning Commission; to establish the appointments, terms, and membership of the planning commission; to identify the officers and the minimum number of meetings per year of the planning commission; to prescribe the authority, powers and duties of the planning commission; and to transfer all powers, duties, and responsibilities of the _____ Township (**Pick one: zoning board OR zoning commission**) to the planning commission. **[MCLs 125.3811 and MCL 125.3883]**

Section 2: Establishment

The township board hereby creates a township planning commission consisting of ____ (**Select one: 5, 7, or 9—select one**) members. The planning commission is formed under the authority of and subject to the powers, duties, and limitations provided in the Michigan Planning Enabling Act, Public Act 33 of 2008, MCL 125.3801, *et seq.*, and further subject to the terms and conditions of this ordinance and any future amendments to this ordinance. **[MCLs 125.3811 and 125.3815]**

Section 3: Appointments and Terms

The township supervisor, with the approval of the township board by a majority vote of the members elected and serving, shall appoint all planning commission members, including the ex officio member. **[MCL 125.3815]**

When the planning commission is first established, the members appointed, other than the ex officio member, shall be appointed to 1-year, 2-year or 3-year terms such that, as nearly as possible, the terms of one-third of all the planning commission members will expire each year. After that, all planning commission members, other than the ex officio member, shall serve for terms of 3 years each. **[MCL 125.3815]**

A planning commission member shall hold office until his or her successor is appointed. Vacancies shall be filled for the unexpired term in the same manner as the original appointment. **[MCL 125.3815]**

Planning commission members shall be qualified electors of the township (**NOTE: U.S. citizen, 18-years old, who has been a resident of the state for 6 months and a resident of the township for at least 30 days**), except that one planning commission member may be an individual who is not a qualified elector of the township. The membership of the planning commission shall be representative of important segments of the community, such as the economic, governmental, educational, and social development of the township, in accordance with the major interests as they exist in the township, such as agriculture, natural resources, recreation, education, public health, government, transportation, industry, and commerce. The membership shall also be representative of the entire geography of the township to the extent practicable. **[MCL 125.3815]**

One member of the township board shall be appointed to the planning commission as an ex officio member. An ex officio member has full voting rights. The ex officio member's term on the planning commission shall expire with his or her term on the township board. **[MCLs 125.3803 and 125.3815]**

No other elected officer or employee of the township is eligible to be a member of the planning commission. **[MCL 125.3815]**

Section 4: Removal

The township board may remove a member of the planning commission for misfeasance, malfeasance, or nonfeasance in office upon written charges and after a public hearing. **[MCL 125.3815]**

Section 5: Conflict of Interest (Optional section—Renumber sections if not included)

Before casting a vote on a matter on which a planning commission member may reasonably be considered to have a conflict of interest, the member shall disclose the potential conflict of interest to the planning commission. Failure of a member to disclose a potential conflict of interest as required by this ordinance constitutes malfeasance in office. **[MCL 125.3815]**

(NOTE: The MPEA requires conflict of interest to be defined by either the township board by ordinance or the planning commission in its bylaws (MCL 125.3815(9)): "Unless the legislative body, by ordinance, defines conflict of interest for the purposes of this subsection, the planning commission shall do so in its bylaws." So a definition of conflict of interest is required, but it is optional whether it is done by ordinance or in the planning commission bylaws.

If the township board defines conflict of interest by this ordinance, then that definition may be changed only if the township board amends the ordinance by a vote of the majority of the township board. If conflict of interest is defined in the planning commission bylaws, that definition may be changed by the planning commission amending its bylaws by simple majority vote. Bylaws are easier to change, so it is a more flexible approach, allowing the planning commission to adjust its conflict of interest definition, if needed. On the other hand, it is more difficult to change a conflict of interest definition in an ordinance, which may be viewed as providing less flexibility, or as a more stable approach.

This also raises the question of which body is more suited to define conflict of interest—and the answer may vary from township to township. Ideally, the township board and planning commission should work together and should consult the local legal counsel and planning consultants involved in the township's planning and zoning program to adopt a definition of conflict of interest.

The following sample definition of conflict of interest language may be adapted by an individual township and could be included in either this ordinance or the planning commission bylaws.)

When conflict of interest is defined in the planning commission bylaws:

For the purposes of this section, the planning commission shall define conflict of interest in its bylaws.

OR

When conflict of interest is defined in this ordinance (or this language may be used in the planning commission bylaws):

For the purposes of this section, conflict of interest is defined as, and a planning commission member shall declare a conflict of interest and abstain from participating in planning commission deliberations and voting on a request, when:

(a) An immediate family member is involved in any request for which the planning commission is asked to make a decision. "Immediate family member" is defined as (see note below);

(NOTE: There are definitions of "family member" and "immediate family member" in several statutes, or the township could develop its own definition of family member for the purposes of defining conflict of interest. Whatever the township decides, it should be done in consultation with the township's legal counsel, and the definition should be included in the ordinance or bylaws language.

Here are examples of some possible definitions that could be adopted or amended for the township's use, or the township may adopt another definition:

MCL 211.28: *A spouse, mother, father, sister, brother, son, or daughter, including an adopted child.*

MCL 168.2: *An individual's father, mother, son, daughter, brother, sister, and spouse and a relative of any degree residing in the same household as that individual.*

Example of a very restrictive approach: *The planning commission member's spouse, the member and member's spouse's children (including adopted) and their spouses, step-children and their spouses, grandchildren and their spouses, parents and step-parents, brothers and sisters and their spouses, grandparents, parents in-law, grandparents in-law, or any person residing in the planning commission member's household.)*

(b) The planning commission member has a business or financial interest in the property involved in the request or has a business or financial interest in the applicant's company, agency or association;

(c) The planning commission member owns or has a financial interest in neighboring property;

(NOTE: This is also an area open to discussion and definition. The township should consult with its local legal counsel and planning consultant to determine how "neighboring property" will be defined in the ordinance or bylaws.

Here is one possible definition: "For purposes of this section, a neighboring property shall include any property falling within the notification radius for the application or proposed development, as required by the zoning ordinance or other applicable ordinance." Another, less encompassing definition could be: "For the purposes of this section, a neighboring property shall include any property immediately adjoining the property involved in the request."

(d) There is a reasonable appearance of a conflict of interest, as determined by a majority vote of the remaining members of the planning commission.

Section 6: Compensation

The planning commission members may be compensated for their services as provided by township board resolution. The planning commission may adopt bylaws relative to compensation and expenses of its members for travel when engaged in the performance of activities authorized by the township board, including, but not limited to, attendance at conferences, workshops, educational and training programs and meetings. **[MCL 125.3823]**

(NOTE: MTA understands this to mean that the township board determines planning commission member compensation. The township board also determines the rates for any travel stipends or expense reimbursement for planning commission member activities authorized by the township board. The planning commission may adopt bylaws regarding how members must record, report and submit travel and reimbursement requests.)

Section 7: Officers and Committees

The planning commission shall elect a chairperson and a secretary from its members, and may create and fill other offices as it considers advisable. An ex officio member of the planning commission is not eligible to serve as chairperson. The term of each office shall be 1 year, with opportunity for reelection as specified in the planning commission bylaws. **[MCL 125.3817]**

The planning commission may also appoint advisory committees whose members are not members of the planning commission. **[MCL 125.3817]**

Section 8: Bylaws, Meetings and Records

The planning commission shall adopt bylaws for the transaction of business. **[MCL 125.3819]**

The planning commission shall hold at least 4 regular meetings each year, and shall by resolution determine the time and place of the meetings.

Unless otherwise provided in the planning commission's bylaws, a special meeting of the planning commission may be called by the chairperson or by 2 other members, upon written request to the secretary. Unless the bylaws otherwise provide, the secretary shall send written notice of a special meeting to planning commission members at least 48 hours before the meeting. **[MCL 125.3821]**

The business that the planning commission may perform shall be conducted at a public meeting held in compliance with the Open Meetings Act, Public Act 267 of 1976, MCL 15.261, et seq. **[MCL 125.3821]**

The planning commission shall keep a public record of its resolutions, transactions, findings, and determinations. A writing prepared, owned, used, in the possession of, or retained by a planning commission in the performance of an official function shall be made available to the public in compliance with the Freedom of Information Act, Public Act 442 of 1976, MCL 15.231, et seq. **[MCLs 125.3819 and 125.3821]**

Section 9: Annual Report

The planning commission shall make an annual written report to the township board concerning its operations and the status of the planning activities, including recommendations regarding actions by the township board related to planning and development. **[MCL 125.3819]**

Section 10: Authority to Make Master Plan

Under the authority of the Michigan Planning Enabling Act, Public Act 33 of 2008, MCL 125.3801, et seq., and other applicable planning statutes, the planning commission shall make a master plan as a guide for development within the township's planning jurisdiction. **[MCLs 125.3807 and 125.3831]**

Final authority to approve a master plan or any amendments thereto shall rest with the planning commission unless the township board passes a resolution asserting the right to approve or reject the master plan. **[MCL 125.3843]**

Unless rescinded by the township, any plan adopted or amended under the Township Planning Act, Public Act 168 of 1959, MCL 125.321, et seq., (**OR Municipal Planning Act, Public Act 285 of 1931, MCL 125.31, et seq.**) need not be readopted under the Michigan Planning Enabling Act, Public Act 33 of 2008, MCL 125.3801, et seq. **[MCL 125.3881]**

Section 11: Zoning Powers

All powers, duties, and responsibilities provided for zoning boards or zoning commissions by the Michigan Zoning Enabling Act, Public Act 110 of 2006, MCL 125.3101, et seq., or other applicable zoning statutes are transferred to the _____ Township Planning Commission. **[MCLs 125.3883]**

Any existing zoning ordinance shall remain in full force and effect except as otherwise amended or repealed by the township board.

Section 12: Capital Improvements Program (Optional section—Renumber sections if not included)

(Any township may prepare and adopt a capital improvements program. But it is only mandatory if the township, alone or jointly with 1 or more other local units of government, owns or operates a water supply or sewage disposal system. The following language should be included in this ordinance if the township board chooses to prepare a capital improvements program or if the township is required to prepare one. Unless the township board exempts the planning commission from the requirement, the planning commission prepares and adopts the capital improvement program. A planning commission may recommend, to the township board, programs for public structures and improvements and for financing those projects, regardless of whether the planning commission prepares the capital improvements program.) **[MCL 125.3865]**

(Default) Planning commission adopts capital improvements plans:

To further the desirable future development of the Township under the master plan, the Planning Commission, after the master plan is adopted, shall annually prepare a capital improvements program of public structures and improvements, showing those structures and improvements in general order of their priority, for the following 6-year period.

OR

(Option) Township Board designates capital improvements plan to board, supervisor or other official:

To further the desirable future development of the Township under the master plan, the Township Board, after the master plan is adopted, shall prepare or cause to be prepared by the Township Supervisor or by a designated nonelected administrative official, a capital improvements program of public structures and improvements, showing those structures and improvements in general order of their priority, for the following 6-year period. The prepared capital improvements program, if prepared by someone other than the Township Board, shall be subject to final approval by the Township Board. The planning commission is hereby exempted from preparing a capital improvements plan.

Section 13: Subdivision and Land Division Recommendations

The planning commission may recommend to the township board provisions of an ordinance or rules governing the subdivision of land. Before recommending such an ordinance or rule, the planning commission shall hold a public hearing on the proposed ordinance or rule. The planning commission

shall give notice of the time and place of the public hearing not less than 15 days before the hearing by publication in a newspaper of general circulation within the township.

The planning commission shall review and make recommendation on a proposed plat before action thereon by the township board under the Land Division Act, Public Act 288 of 1967, MCL 560.101, et seq. Before making its recommendation, the planning commission shall hold a public hearing on the proposed plat. A plat submitted to the planning commission shall contain the name and address of the proprietor or other person to whom notice of a hearing shall be sent. Not less than 15 days before the date of the hearing, notice of the date, time and place of the hearing shall be sent to that person at that address by mail and shall be published in a newspaper of general circulation in the township. Similar notice shall be mailed to the owners of land immediately adjoining the proposed platted land. **[MCL 125.3871]**

Section 14: Severability

The provisions of this ordinance are hereby declared to be severable, and if any part is declared invalid for any reason by a court of competent jurisdiction, it shall not affect the remainder of the ordinance, which shall continue in full force and effect.

Section 15: Repeal

All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed.

Section 16: Effective Date

This ordinance shall take effect 63 days after the ordinance is published by the township board in a newspaper of general circulation in the township. **[MCLs 125.3811, 125.3813 and 125.3881]**

CERTIFICATE

The undersigned, as the duly elected and acting clerk of the township, hereby certifies that this ordinance was duly adopted by the township board at a regular meeting of said board, at which a quorum was present, held on _____, and that copies of the ordinance were transmitted and published as directed.

Township Clerk

Township Supervisor

The purpose of this sample ordinance is to provide a suggested guideline for the types of items that should be included within an ordinance. Certainly, no sample ordinance should be used unless, after careful review, it is the professional judgment of your legal counsel that using the sample will accomplish the particular objectives and intentions of your township. Although these sample ordinances are the result of much thought and effort, neither the authors nor the Michigan Townships Association assumes any responsibility for the results of using these samples word-for-word in individual cases.