

Charter Township Zoning Ordinance Checklists

Updated for use with MZEA

The steps specified in these updated checklists are intended to reflect requirements of law.¹ However, in some instances the requirements of law are only applicable in certain circumstances. An example of such a step would be the mailing of zoning commission/planning commission public hearing notices to public utilities, railroads, etc; such mailings are only required where the designated entity has registered its name and address with the township clerk for the purpose of receiving zoning public hearing notices.

These updated checklists also reflect steps MTA Legal Counsel believe are required based on a reasonable interpretation of the applicable ZEA provision, but as to which other competent legal counsel could possibly interpret differently.

The checklists include steps that are not explicitly imposed by a statutory requirement, but are fairly implied by a statutory requirement and followed as a matter of good procedure. For example, although the ZEA does explicitly require the Township to mail public hearing notices to certain persons and entities in certain circumstances, the ZEA does not explicitly require the Township to document the occurrence of the required mailings. The checklists nevertheless include a step referencing the filing of appropriate affidavits of such required mailings in the township records, as the documentation of such mailings may be critical in the event of a legal challenge to the procedural validity of a rezoning or text amendment ordinance.

In all of these types of situations, the preparation of the updated checklists has been guided by the importance of following a cautious approach, where following a different but less defensible interpretation of the statute could facilitate a defect in the ordinance process. This approach is particularly appropriate considering the absence of any governing case law at this time on any aspect of the new ZEA.

Issues Related to Zoning Ordinance Filing Requirements

Four particular statutory interpretation issues flow from Section 401(10) of the ZEA, which states as follows:

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

This statutory language, while quite plainly worded, still requires some careful examination of whether other statutory requirements are "relating to the filing and publication of ...township ordinances," and are thus superseded.

¹ Section 202(1) of the ZEA authorizes each township to provide by ordinance for the "manner" in which the zoning ordinance shall be amended, supplemented or changed. In our April 20, 2006 memorandum on the ZEA we expressed the opinion that this language cannot be interpreted to authorize a township to give less notice than the ZEA requires; but does authorize a township to impose upon itself additional or greater publication, etc. requirements governing the manner in which proposed rezonings and zoning ordinance text amendments will be noticed to the public and considered by the township. The updated checklists are of course based on only the statutory requirements, and are not intended to reflect such additional or greater requirements as a township may choose to impose on itself.

First, in the context of a charter township, MTA Legal Counsel have concluded the requirement of Section 20(2) of the Charter Township Act (CTA) (MCL 42.20) prohibiting an ordinance from being "finally passed by the township board at the same meeting at which it is introduced" is not superseded by Section 401(10) of the ZEA.

This requirement of the CTA does not relate to the "filing and publication of ... township ordinances". It relates to whether a proposed ordinance can be adopted at the same meeting at which it is first introduced. Accordingly, the two checklists for charter townships continue to include steps requiring a proposed ordinance to be introduced at a Township Board meeting, and then publicized before adoption (at a subsequent meeting).

Second, on a closely related matter, also in the context of a charter township, MTA Legal Counsel have concluded the requirement of Section 20(2) of the CTA prohibiting an ordinance from being passed by the township board "before it is published in the form in which it is introduced" is also not superseded by Section 401(10) of the ZEA.

Section 401(10) of the ZEA only purports to supersede other statutory requirements relating to the filing and publication of township "ordinances". Although the pertinent language from Section 20(2) of the CTA does indeed relate to "publication," the subject of the publication requirement is the proposed ordinance "in the form in which it is introduced". The updated checklists for charter townships therefore continue to include steps relating to the publication of a proposed ordinance as required by Section 20(2) of the CTA.

Third, also in the context of a charter township, MTA Legal Counsel have concluded the requirements of Section 8 of the CTA relating to the publication of an adopted ordinance are superseded by Section 401 of the ZEA.

Since both Section 401 of the ZEA and Section 8 of the CTA impose requirements relating to the "publication" of adopted township "ordinances," the CTA requirements are superseded.

Accordingly, the updated checklists reflect a uniform post-adoption publication requirement for general law and charter townships pursuant to Section 401 of the ZEA (publish notice of ordinance adoption in newspaper, with either complete amendatory ordinance or legally proper summary of ordinance, within 15 days after adoption). **As of July 1, 2006 charter townships will no longer have the option, derived from Section 8 of the CTA, to comply with the post-adoption "publication" requirement by posting the complete text of the adopted ordinance and publishing a short newspaper notice describing the purpose or nature of the ordinance and identifying the locations in the township where the complete ordinance was posted.**

Fourth, with respect to both general and charter townships, MTA Legal Counsel have concluded the requirement imposed by MCL 41.185 regarding the filing of an attested copy of an ordinance with the county clerk (if the township does not maintain a township office open to the public during regular hours on each business day) is not superseded by Section 401(10) of the ZEA. That conclusion reflects a cautious approach that is more consistent with open government and access to public records.

There is no question the relevant aspect of MCL 41.185 does relate to the "filing...of...township...ordinances," which is the language used in ZEA Section 401(10). However, MTA Legal Counsel have nevertheless concluded this statutory requirement is not

superseded by the filing requirements under Section 401 of the ZEA, because that Section of the ZEA does not address in any manner the filing of a township ordinance with a county clerk. This is thus a different situation from the third item discussed above, where both Section 401 of the ZEA and Section 8 of the CTA address publication of an adopted ordinance. Where, as here, Section 401 of the ZEA does not impose any requirement relating to the filing of an adopted ordinance with a county clerk, MTA Legal Counsel are reluctant to conclude that provision supersedes the filing requirement imposed by MCL 41.185.

Prevailing Michigan Supreme Court precedent indicates that an unambiguous statute must be applied pursuant to its plain language, and need not be further interpreted. However, MTA Legal Counsel believe there is some uncertainty as to whether the Legislature intended Section 401(10) of the ZEA to supersede even types of ordinance "filing" requirements not addressed at all in said Section 401. The resulting conclusion---that the pertinent townships must continue to file an attested copy of adopted ordinances with the county clerk---facilitates openness in local government and easier access to the ordinances of a township which does not maintain a township office open to the public during regular hours on each business day.

Township Board Referral to Planning Commission

One other legal issue merits special comment. Section 401(3) of the ZEA allows but no longer requires the township board to refer the matter back to the planning commission if the township board considers changes to the recommendation to be necessary. In such a circumstance Section 401(5) of the ZEA allows the township board to consider and vote upon the adoption of a zoning ordinance (text amendment or rezoning) "with or without amendments". This language may give the township board considerably more latitude to avoid obligatory "refer back" situations, but it is also the subject of potential legal issues.

For example, if a five-acre parcel was noticed for public hearing and recommended for rezoning, in the opinion of MTA Legal Counsel the township board cannot also approve rezoning an additional adjacent three-acre parcel, as an "amendment" of the recommended rezoning of the five-acre parcel, without a further properly noticed public hearing by the planning commission on the proposed rezoning of the adjacent three-acre parcel). This is addressed in the updated checklists by referring to approving the proposed text amendment/rezoning, with or without "permissible" amendments/changes.

**CHECKLIST OF STEPS FOR ZONING ORDINANCE TEXT AMENDMENT
(Charter Township--MZEA)**

- I. STEPS TO BE TAKEN BY PLANNING COMMISSION (*Same steps apply where Township has a Zoning Commission, prior to July 1, 2011.*)
- ___ 1. TEXT AMENDMENT INITIATED by Planning Commission, Township Board, or citizen.
 - ___ 2. SCHEDULE PUBLIC HEARING on proposed amendment during any regular meeting or special meeting, if not scheduled for a regular meeting date.
 - ___ 3. PREPARE NOTICE of public hearing/meeting of Planning Commission on proposed amendment, for publication, mailing and posting. Notice is required to:
 - A. Describe nature of proposed amendment.
 - B. State time and place proposed amendment will be considered.
 - C. Indicate time and place written comments will be received.
 - D. State times and places tentative proposed text may be examined.
 - E. Include name of public body, with address and telephone number.
 - ___ 4. PUBLISH NOTICE of public hearing/meeting in newspaper of general circulation in Township at least 15 days before date of public hearing/meeting.
 - ___ 5. MAIL NOTICE of public hearing/meeting by regular first class mail to each electric/gas/pipeline public utility company, telecommunication service provider, and railroad operating within Township, and manager of each airport within Township, at least 15 days before date of public hearing/meeting. Note: This step only applies to extent designated entity has registered name and address with Clerk for purpose of receiving zoning public hearing notices.
 - ___ 6. POST NOTICE of public hearing/meeting at Township Hall at least 18 hours before scheduled time of public hearing/meeting, if not on regular meeting date.
 - ___ 7. FILE AFFIDAVITS of publication, mailing and posting of Notice in Township records.

- ___ 8. At a regular or special meeting, the PLANNING COMMISSION FORMALLY OPENS PUBLIC HEARING on proposed amendment:
 - A. Introductory comments on proposed amendment by Planning Commission or other initiating party.
 - B. Acknowledge written comments received on proposed amendment.
 - C. Receive comments on proposed amendment by persons attending hearing.
- ___ 9. Formally CLOSE PUBLIC HEARING and DISCUSS proposed amendment.
- ___ 10. APPROVE MOTION recommending approval or disapproval of proposed amendment.
- ___ 11. SUBMIT RECOMMENDATION TO COUNTY PLANNING COMMISSION for advisory review and recommendation. Note: This step is required unless County Board of Commissioners has passed a resolution waiving county right of review. Where submittal to County Planning Commission is required, right of review is also waived if County Planning Commission recommendation is not received by Township Board within 30 days from date of County Planning Commission receipt of Planning Commission recommendation.
- ___ 12. SUBMIT TO TOWNSHIP BOARD summary of comments received at Planning Commission public hearing/meeting and recommendation of Planning Commission on proposed amendment (and, where applicable, recommendation of County Planning Commission). Note: Matter is referred to Township Board regardless of whether Planning Commission and County Planning Commission recommend approval or disapproval of proposed amendment.

II. STEPS TO BE TAKEN BY CHARTER TOWNSHIP BOARD.

- ___ 1. Township Board may on its own initiative hold an additional public hearing regarding proposed amendment, and is required to hold public hearing upon request of any property owner by certified mail to Clerk. Notice of any such public hearing must be given in same manner as required for public hearing by Planning Commission. (See Part I, Steps 4-6).
- ___ 2. TOWNSHIP BOARD CONSIDERS PLANNING COMMISSION RECOMMENDATION at any regular meeting or at special meeting, and:
 - A. Disapproves proposed amendment, with no further action by Planning Commission.

- B. Approves proposed text, in ordinance form, with or without permissible amendments.
- C. Refers proposed text back to Planning Commission for further consideration and comment within time specified by Township Board.

PROCEED TO STEPS 3-14 ONLY IF TOWNSHIP BOARD DESIRES TO APPROVE TEXT AMENDMENT (Option B or C above).

- ___ 3. INTRODUCE complete text of proposed text amendment ordinance at Township Board meeting in written or printed form.
- ___ 4. PUBLISH or POST the complete text of the proposed ordinance as it was introduced, indicating when it will be considered for adoption.
 - A. For PUBLICATION option:
 - (1) Publish the complete text of the proposed ordinance as it was introduced at least one time in a newspaper circulating in the Township.
 - B. For POSTING option:
 - (1) Post the complete text of the proposed ordinance as it was introduced at the Township Clerk's office and at five other public places in the Township, or at the Township Clerk's office and on the Township's Web site;

and

 - (2) Publish a notice of the posting at least once in a newspaper circulating in the Township within seven days after the posting was done. The notice of posting must describe the purpose or nature of the proposed ordinance and identify the locations in the Township where the complete text of the proposed ordinance was posted.
- ___ 5. FILE AFFIDAVIT OF PUBLICATION from newspaper and/or affidavit of posting in Township ordinance records.
- ___ 6. ADOPT ORDINANCE (amending Zoning Ordinance) by motion approved by majority of Township Board membership, on roll call vote.
- ___ 7. FILE ORDINANCE with Township Clerk within 15 days after adoption.

- ___ 8. PUBLISH notice of ordinance adoption in required form in newspaper of general circulation in Township, with either complete text amendment ordinance, or legally proper summary of ordinance, within 15 days after adoption.
- ___ 9. FILE AFFIDAVITS OF PUBLICATION from newspaper and/or posting in township ordinance records.
- ___ 10. FILE ATTESTED COPY OF COMPLETE ORDINANCE WITH COUNTY CLERK (not required if township office is open to the public during regular hours on each business day).
- ___ 11. (Where applicable) MAIL COPY OF NOTICE OF ORDINANCE ADOPTION to manager of airport registered with Township Clerk to receive zoning notices.
- ___ 12. RECORD ORDINANCE in Township ordinance book within one week after publication of ordinance, with Certificate of Township Clerk recording date of adoption of ordinance, names of Board members voting thereon, how each member voted, date of publication and name of newspaper (and, where applicable, date of filing of ordinance with County Clerk, and date of mailing notice of ordinance adoption to airport manager).
- ___ 13. AUTHENTICATE THE RECORD by Supervisor and Township Clerk signing the ordinance Certificate.
- ___ 14. DISTRIBUTE copies of revised Zoning Ordinance pages to members of Township Board, Planning Commission, Zoning Board of Appeals, and other appropriate Township officials.

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**CHECKLIST OF STEPS FOR REZONING OF PROPERTY
(Charter Township--MZEA)**

I. STEPS TO BE TAKEN BY PLANNING COMMISSION (*Same steps apply where Township has a Zoning Commission, prior to July 1, 2011.*)

- ___ 1. RECEIVE APPLICATION with fee established by Township Board and information required to process application, including:
- A. Name and address of applicant and owner of land proposed to be rezoned.
 - B. Street number or other common description of land proposed to be rezoned.
 - C. Legal description of land proposed to be rezoned.
 - D. Present zoning classification and requested zoning classification of land proposed to be rezoned.

- ___ 2. SCHEDULE PUBLIC HEARING on rezoning request, during any regular meeting or special meeting, if not scheduled for a regular meeting date.

NOTE: If proposed rezoning is inconsistent with Township land use plan, consideration of amendment of land use plan may be necessary before or at the same time as approval of requested rezoning, and any such proposed amendment of land use plan must be processed in accordance with applicable legal requirements. Consult township attorney.

- ___ 3. PREPARE NOTICE of public hearing/meeting of Planning Commission on requested rezoning, for publication, mailing and posting. Notice is required to:
- A. Indicate property proposed for rezoning, including listing of all existing street addresses within the property if 1-10 parcels are proposed to be rezoned.
 - B. Indicate present zoning classification and requested zoning classification of land proposed to be rezoned.
 - C. State time and place rezoning request will be considered.
 - D. Indicate time and place written comments will be received concerning rezoning request.
 - E. State times and places zoning ordinance/zoning map/land use plan may be examined.

F. Include name of public body, with address and telephone number.

- ___ 4. PUBLISH NOTICE of public hearing/meeting in newspaper of general circulation in Township at least 15 days before public hearing/meeting.
- ___ 5. MAIL NOTICE of public hearing/meeting by regular first class mail to each electric/gas/pipeline public utility company, telecommunication service provider, and railroad operating within affected zoning district, and manager of each airport within Township, at least 15 days before date of public hearing/meeting. Note: This step only applies to extent designated entity has registered name and address with Clerk for purpose of receiving zoning public hearing notices.
- ___ 6. MAIL NOTICE of public hearing/meeting by regular first class mail (or personally deliver) at least 15 days before date of public hearing/meeting to:
 - A. Applicant(s).
 - B. Owner(s) of property proposed to be rezoned.
 - C. All persons to whom real property is assessed within 300 feet of boundaries of property proposed to be rezoned.
 - D. Occupants of all structures within 300 feet of property proposed to be rezoned; if name of an occupant is not known, address to "occupant."

Note: This set only applies if an individual property or ten or fewer adjacent properties are proposed to be rezoned. Where this step is required the 300-foot requirement applies to properties/occupants located within or outside Township boundaries.
- ___ 7. POST NOTICE of public hearing/meeting at Township Hall at least 18 hours before scheduled time of public hearing/meeting, if not on regular meeting date.
- ___ 8. FILE AFFIDAVITS of publication, mailing and posting of notice of public hearing/meeting in Township records.
- ___ 9. At a regular or special meeting, the PLANNING COMMISSION FORMALLY OPENS PUBLIC HEARING on requested rezoning:
 - A. Receive comments of applicant(s)/owner(s) on proposed rezoning.
 - B. Acknowledge written comments received on proposed rezoning.
 - C. Receive comments on proposed rezoning by persons attending hearing.

- ___ 10. Formally CLOSE PUBLIC HEARING and DISCUSS proposed rezoning:
 - A. Determine whether proposed rezoning is consistent with Township land use plan.
 - B. Review permitted uses and special exception uses which property could be used for if rezoning is approved.
 - C. Evaluate whether property is appropriate to be used for uses allowed in requested zoning district.
- ___ 11. APPROVE MOTION recommending approval or disapproval of proposed rezoning.
- ___ 12. SUBMIT RECOMMENDATION TO COUNTY PLANNING COMMISSION for advisory review and recommendation. Note: This step is required unless County Board of Commissioners has passed a resolution waiving county right of review. Where submittal to County Planning Commission is required, right of review is also waived if County P.C. recommendation is not received by Township Board within 30 days from date of County P.C. receipt of Planning Commission recommendation.
- ___ 13. SUBMIT TO TOWNSHIP BOARD summary of comments received at Planning Commission public hearing/meeting and recommendations of Planning Commission on proposed rezoning (and, where applicable, recommendation of County Planning Commission). Note: Matter is referred to Township Board regardless of whether Planning Commission and County P.C. recommend approval or disapproval of proposed rezoning.

II. STEPS TO BE TAKEN BY TOWNSHIP BOARD.

- ___ 1. Township Board may on its own initiative hold an additional public hearing regarding proposed rezoning, and is required to hold public hearing upon request of any property owner by certified mail to Clerk. Notice of any such public hearing must be given in same manner as required for public hearing by Planning Commission (See Part I, Steps 4-7).
- ___ 2. TOWNSHIP BOARD CONSIDERS PLANNING COMMISSION RECOMMENDATION at any regular meeting or at special meeting, and:
 - A. Disapproves proposed rezoning, with no further action by Planning Commission.
 - B. Approves proposed rezoning, in ordinance form, with or without permissible changes.

- C. Refers proposed rezoning back to Planning Commission for further consideration and comment within time specified by Township Board.

PROCEED TO STEPS 3-14 ONLY IF TOWNSHIP BOARD DESIRES TO APPROVE REZONING (Option B or C above).

- ___ 3. INTRODUCE complete text of the proposed ordinance at Township Board meeting in written or printed form.
- ___ 4. PUBLISH or POST the complete text of the proposed ordinance as it was introduced, indicating when it will be considered for adoption.
 - A. For PUBLICATION option:
 - (1) Publish the complete text of the proposed ordinance as it was introduced at least one time in a newspaper circulating in the Township.
 - B. For POSTING option:
 - (1) Post the complete text of the proposed ordinance as it was introduced at the Township Clerk's office and at five other public places in the Township, or at the Township Clerk's office and on the Township's Web site;
 - and
 - (2) Publish a notice of the posting at least once in a newspaper circulating in the Township within seven days after the posting was done. The notice of posting must describe the purpose or nature of the proposed ordinance and identify the locations in the Township where the complete text of the proposed ordinance was posted.
- ___ 5. FILE AFFIDAVIT OF PUBLICATION from newspaper and/or affidavit of posting in Township ordinance records.
- ___ 6. ADOPT ORDINANCE (amending zoning map/zoning ordinance) by motion approved by majority of township board members, on roll call vote.
- ___ 7. FILE ORDINANCE with Township Clerk within 15 days after adoption.
- ___ 8. PUBLISH notice of ordinance adoption in required form in newspaper of general circulation in Township, with either complete text amendment ordinance, or legally proper summary of ordinance, within 15 days after adoption.

- ___ 9. FILE AFFIDAVITS OF PUBLICATION from newspaper and/or posting in township ordinance records.
- ___ 10. FILE ATTESTED COPY OF ORDINANCE with County Clerk (not required if township office open regular hours on each business day).
- ___ 11. (Where applicable) MAIL COPY OF NOTICE OF ORDINANCE ADOPTION to manager of airport registered with Township Clerk to receive zoning notices.
- ___ 12. RECORD ORDINANCE in Township ordinance book within one week after publication of ordinance, with Certificate of Township Clerk recording date of adoption of ordinance, names of members voting thereon, how each member voted, date of publication and name of newspaper in which ordinance was published (and, where applicable, date of filing of ordinance with County Clerk, and date of mailing of notice of ordinance adoption to airport manager).
- ___ 13. AUTHENTICATE THE RECORD by Supervisor and Township Clerk signing the ordinance Certificate.
- ___ 14. CHANGE ZONING MAP and distribute copies of revised Zoning Ordinance pages (if any) to members of Township Board, Planning Commission, Zoning Board of Appeals, and other appropriate Township officials.

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