

INTRODUCTION

State law changes in Michigan impact many provisions in the ordinance codes of Michigan municipalities and townships. This pamphlet is intended to assist municipal and township attorneys in the identification of provisions in ordinance codes that may require revision in light of state law. The information in this pamphlet is based upon the experience of the legal staff of Municipal Code Corporation in working with the ordinance codes of Michigan municipalities.

This pamphlet is current through the Michigan Compiled Laws complete through Public Act No. 340 of 2016.

Not all provisions of this pamphlet will apply to your Code, nor does this pamphlet purport to include all state laws that may somehow affect the language of your Code.

The provisions of this pamphlet are intended to assist municipal and township attorneys and are not intended to be a substitute for the advice of counsel.

It is not the intent of Municipal Code Corporation in publishing this pamphlet to provide legal advice. An attorney admitted to practice in Michigan must be consulted as to the applicability of a given statute or case to a particular situation.

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GENERAL PROVISIONS

1. *Municipal civil infractions.* Certain acts or commissions that are crimes under state law cannot be made municipal civil infractions. See MCL 41.183, 42.21, 66.2, 78.25a, 117.4l.

ADMINISTRATION

1. *Residency of public employees.* Residency requirements for public employees are restricted. See MCL 15.601 et seq.

2. *Minimum staffing requirements for governmental employees.* Charters or ordinances providing for minimum staffing requirements for local government employees are void. See MCL 41.3a, 42.1b, 61.1d, 78.26, 117.5.

ANIMALS

1. *Animal control ordinances.* Minimum requirements for animal control ordinances exist. See MCL 287.290.

2. *Animal control officers.* Having adopted an animal control ordinance, the minimum employment standards relative to the recruitment, selection and appointment of animal control officers by any municipality shall at least equal the minimum standards set forth in state law. See MCL 287.289c.

3. *Ferrets.* Minimum requirements for ordinances licensing ferrets exist. See MCL 287.898.

BUILDINGS AND BUILDING REGULATIONS

1. *State construction code.*
 - a. The state construction code is mandatory throughout the state. See MCL 125.1508a.
 - b. A municipality may choose not to enforce the state construction code. See MCL 125.1508b.
2. *Residential building contractor's license.* Licensing and regulation of residential builders are preempted by MCL 339.2401 et seq. See Op. Atty. Gen., March 27, 1979, No. 5466.
3. *Mechanical contractors.* Licensing of mechanical contractors is preempted. See MCL 338.979.
4. *Plumbers.* Licensing of plumbers is preempted. See MCL 338.3551.

BUSINESSES

1. *Mortgages.* The regulation and licensing of persons engaged in the brokering, making, servicing, or collecting of mortgage loans is preempted to the state. See MCL 445.1645.

EMERGENCY MANAGEMENT AND EMERGENCY SERVICES

1. *Civil emergencies.* Public Act No. 302 of 1945 (MCL 10.31 et seq.) preempts declaring civil emergencies to the Governor. See *Walsh v. City of River Rouge*, 385 Mich. 623, 180 N.W.2d 318 (1971).
2. *Travel restrictions.* Subject to certain restrictions, certain designated local officials may declare a local state of emergency and issue directives as to travel restrictions. See MCL 30.410.
3. *Emergency medical services.* Local government regulation of ambulance operations, nontransport prehospital life support operations or medical first response services is restricted. See MCL 333.20948.
4. *Security alarms.* Local regulation of security alarm providers is restricted. See MCL 338,2186.

ENVIRONMENT

1. *Environmental remediation.* The provisions of Natural Resources and Environmental Protection Act pt. 201 (MCL 324.20101 et seq.) preempt ordinances on cost recovery for hazardous material emergency responses. See *Howell Township v. Rooto Corp.*, 258 Mich. App. 470, 670 N.W.2d 713 (2004), *review denied*, 470 Mich. 877, 683 N.W.2d 140 (2004).
2. *Soil erosion and sedimentation control.* Minimum requirements for local soil erosion and sedimentation control ordinances exist. See MCL 324.9106.
3. *Wetlands protection.* Local ordinances regulating wetlands are restricted. See MCL 324.30307.
4. *Sport shooting ranges.* Sport shooting ranges are exempt from certain local requirements. See MCL 691.1541 et seq.
5. *Hazardous waste management (MCL 324.11101 et seq.).*
 - a. Subject to certain exceptions, a local ordinance, permit requirement or other requirement shall not prohibit the construction of a treatment, storage or disposal facility, except when incompatible with local zoning ordinances. See MCL 324.11121.
 - b. A municipality shall not prohibit the transportation of hazardous waste through the municipality or county or prevent the ingress into and egress from a licensed treatment, storage or disposal facility. See MCL 324.11134.

6. *Hazardous waste transportation.* Hazardous materials transportation registration or permitting programs are preempted to the state. See MCL 29.480.
7. *Dental amalgam.* Regulation of the use or removal of dental amalgam is preempted to the state. See MCL 333.16631.
8. *Sewage sludge.* Regulation of sewage sludge is preempted to the state. See MCL 324.3133.
9. *Pesticides.* The regulation of pesticides is preempted to the state. See MCL 324.8328.
10. *Fertilizers.* Regulation of fertilizers is preempted to the state. See MCL 324.8517.
11. *Farming.* Local regulation of farming is restricted. See MCL 286.474.

FIRE PREVENTION AND PROTECTION

1. *State fire prevention code.* Municipal ordinances must be consistent with the state fire prevention code. See MCL 29.31.
2. *Fireworks.* Fireworks are now regulated by the Michigan Fireworks Safety Act. See MCL 28.451 et seq.

HEALTH AND SANITATION

1. *Food service establishments.* Local regulation of food service establishments or food vending machines is restricted. See MCL 289.3113.

LAND DIVISIONS AND SUBDIVISIONS

1. *Land division act (MCL 560.101 et seq.).*
 - a. Public Act No. 591 of 1996 renamed the Subdivision Control Act of 1967 the land division act and provided for "land divisions" as an exception to the platting requirements of the act. Municipalities have little latitude except that granted in MCL 560.109. This act provides a comprehensive statutory scheme concerning the regulation of the subdivision of land. Any person dividing a tract of land which results in a subdivision must submit a plat to the applicable governing body for approval. See *CPW Inv. No. 2 v. City of Troy*, 156 Mich. App. 577 (1986).
 - b. The act contains minimum standards for platting a subdivision. A municipality may, by ordinance, impose stricter requirements. See MCL 560.259.
 - c. Further partition or division of property in a recorded plat is permitted when in conformity with the act and with the ordinances of a municipality. See MCL 560.263.
 - d. Fees based upon the number of lots in the subdivision are authorized to be established by ordinance. See MCL 560.246.

MANUFACTURED HOMES AND TRAILERS

1. *Local regulations.* Local regulation of mobile homes and mobile home parks is restricted. See MCL 125.2307; Op. Atty. Gen., September 26, 1989, No. 6599.

OFFENSES

1. *Firearms and ammunition.* Municipal regulation of firearms and ammunition is restricted. See MCL 123.1101 et seq.
2. *Public intoxication.* Ordinances punishing public intoxication must be consistent with MCL 750.167. See MCL 330.1286.
3. *Public nudity.* Ordinances regulating public nudity are restricted. See MCL 41.181, 67.1, 117.4i, 117.5h.

4. *Child sexually abusive activity or material.* Ordinances pertaining to child sexually abusive activity or material are preempted. See MCL 750.145c.

5. *Possession or dissemination of obscene material.* Subject to certain exceptions, ordinances pertaining to possession or dissemination of obscene material are preempted. See MCL 752.370.

6. *Distribution of obscene material to minor.* Ordinances pertaining to distribution of obscene material to minors are preempted. See title of Public Act No. 33 of 1978 (MCL 722.671 et seq.), as amended Public Act No. 108 of 2005.

7. *Tobacco products.* Starting March 15, 1994, new requirements or prohibitions regarding sale or licensure of tobacco products are prohibited. See MCL 205.434.

PEDDLERS

1. *Peddler's license.* The provisions of MCL 35.441 were amended in 2016.

PLANNING

1. *Generally.* The Michigan Planning Enabling Act (MCL 125.3801 et seq.) repeals and replaces prior acts relating to planning by municipalities, townships and counties.

SECONDHAND GOODS

1. *Pawnbrokers.* The amount that may be charged for the required pawnbroker's license is restricted. See MCL 446.202.

2. *Precious metal and gem dealers.* Subject to certain exceptions, regulation of precious metal and gem dealers is preempted. See MCL 445.483.

SPECIAL ASSESSMENTS

1. *Notices and hearings.* Mandatory notice and hearing requirements for special assessments exist. See MCL 211.741 et seq.

TELECOMMUNICATIONS

1. *Telecommunications rights-of-way act.* Fees charged by certain municipalities to telecommunication companies are limited. See MCL 484.3104.

TRAFFIC AND VEHICLES

1. *Uniform Traffic Code (MCL 257.951 et seq.).* The Uniform Traffic Code for Cities, Townships and Villages (found in Michigan Administrative Code R 28.1001 et seq.) may be adopted by reference. See MCL 257.951 et seq. The Uniform Traffic Code has been revised to eliminate conflicts with (and major duplications of) the Michigan Vehicle Code (MCL 257.1 et seq.), which act may now be adopted by reference. See MCL 41.184(4), 42.23, 66.4(2), 78.23(i), 117.3(k).

2. *Snowmobiles (MCL 324.82101 et seq.).* Ordinances regulating the operation of snowmobiles must meet certain minimum requirements and may not address certain subjects. See MCL 324.82124.

3. *Driving while intoxicated.* Section 625(1)(c) of the Michigan Vehicle Code (MCL 257.625(1)(c)), by reference but certain penalties must be provided. See MCL 41.181, 41.184, 42.21, 66.2, 66.4, 78.23, 78.24, 117.3, 117.4i.

ZONING

1. *Generally.* The Michigan Zoning Enabling Act (MCL 125.3101 et seq.) replaces prior acts pertaining to zoning.

2. *State licensed residential facilities and child care homes.* Zoning of certain state licensed residential facilities and child care homes is restricted. See MCL 125.3206.

3. *Home occupation for craft and fine art instruction.* Zoning of home occupations for craft and fine art is restricted. See MCL 125.3204.

4. *Open space preservation.* Zoning standards providing for open space preservation are required for certain municipalities. See MCL 125.3506.

5. *Biofuel production facilities.* Certain biofuel production facilities are permitted zoning uses and are not subject to special land use approval. See MCL 125.3513.

6. *Wireless communications equipment.* Wireless communications equipment are permitted zoning uses and are not subject to special land use approval. See MCL 125.3514.

7. *Total prohibition of specific use.* The power to totally prohibit a particular land use is restricted. See MCL 125.3207.