

## **SECTION 3**

# CHAPTER 21, PLANNING CODE OF ORDINANCES

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ORDINANCE NO. 1088

AN ORDINANCE TO AMEND CITY ORDINANCE CHAPTER 21, ARTICLE II CITY  
PLANNING COMMISSION, TO CONFORM TO STATE LAW

THE CITY OF ESCANABA ORDAINS:

CHAPTER I  
ORDINANCE TO  
CREATE A PLANNING COMMISSION

WHEREAS, The People of the City of Escanaba did establish the Planning Commission Ordinance provided for in Chapter 21, Article II in the city codified ordinances, and it is now desired to repeal the existing ordinance and adopt this ordinance to insure proper record of the action is created,

NOW, THEREFORE, THE PEOPLE OF THE CITY OF ESCANABA DO ORDAIN THAT SAID ORDINANCE SHALL READ AS FOLLOWS:

CHAPTER II  
ARTICLE II CITY PLANNING COMMISSION

Section 21.16 Creation

There shall be a City of Escanaba Planning Commission pursuant to P.A. 33 of 2008, as amended, being the Michigan Planning Enabling Act, M.C.L. 125.3801 *et. seq.*, hereinafter referred to as the Commission with the powers and duties as therein set forth and as hereinafter provided and staffed Planning Department. This ordinance shall be officially known and described as the "City of Escanaba Planning Commission Ordinance."

Section 21.17 Membership

A. The Commission shall consist of nine (9) members appointed by the City of Escanaba City Council. To be qualified to be a member and remain a member of the Commission, the individual shall meet the following qualifications:

1. shall be a qualified elector of the City of Escanaba, except one non-qualified elector may be a member of the commission;
2. shall not be a declared candidate for any political office, except this condition shall not apply to the City Council representative to the Commission;
3. shall meet the conditions provided for each individual member in sections 21.17 C, 21.17 D and 21.17 E of this Ordinance, except the geographical location of the individual's residency may be considered optional.

B. Members shall be appointed for three-year terms. However when first appointed, a number of members shall be appointed to one-year, two-year, or three-year terms such that, as nearly as possible, the terms of 1/3 of all commission members will expire each year. If a vacancy occurs, the vacancy shall be filled for the unexpired term in the same manner as provided for an original appointment such that, as nearly as possible, the terms of 1/3 of all commission members continue to expire each year.

C. Ex officio members shall include one member of the City Council. The terms of office of ex officio members shall coincide with their elected terms of office on the legislative body or the term of office of the chief elected official who appointed him or her.

D. The membership shall be representative of the important segments of the community, such as the economic, governmental, educational, and social development of

the City of Escanaba, in accordance with the major interests as they exist in the City of Escanaba, as follows:

1. Construction, Development;
2. Natural resources;
3. Recreation;
4. Education;
5. Public health;
6. Government;
7. Transportation;
8. Industry;
9. Commerce.

E. The membership shall also be representative of the entire geography of the City of Escanaba to the extent practicable, and as a secondary consideration to the representation of the major interests.

F. A member of the City Council of the City of Escanaba shall not be chair of the Commission.

#### **Section 21.18 Liaisons**

The Commission, in its Bylaws, may name "liaisons" to the Commission. The purpose of liaisons is to provide certain City of Escanaba and quasi-City of Escanaba officials' ability to participate in discussion with the Commission in addition to speaking in public participation, and nothing else. At a minimum, liaisons shall include:

1. Planning Department staff, and their agents and consultants.
2. City Manager

#### **Section 21.19 Removal from Office**

A. The City Council may remove a member of the Commission for misfeasance, malfeasance, or nonfeasance in office upon written charges and after a public hearing. Failure to disclose a potential conflict of interest shall be considered malfeasance in office. Failure to repeatedly attend Commission meetings shall be considered nonfeasance in office.

B. The secretary of the Planning Commission shall report any member who has missed three regular meetings in a row to the City Council.

#### **Section 21.20 Membership; Vacancies**

The City Council shall fill any vacancy in the membership of the Commission for the unexpired terms in the same manner as the initial appointment.

#### **Section 21.21 Membership; Transition**

A. The transition from the previous City of Escanaba Planning Commission and the Commission established in this ordinance shall be gradual and shall take place over the next three years. The City Council shall continue to make annual appointments, appointing approximately 1/3 of the membership of the Commission as specified in this Ordinance, so that three years from the effective date of this ordinance, the membership, membership representation, and number of members have completed the transition to fully comply with this Ordinance.

B. All other aspects of this ordinance shall have immediate effect.

Ordinance No 1088 – continued

**Section 21.22 Meetings**

A. The Commission shall meet at least four times each calendar year and a majority of the Commission shall constitute a quorum for the transaction of the ordinary business of said Commission and all questions which shall arise at their meetings shall be determined by a vote of the majority of the members of the Planning Commission.

B. The affirmative vote of 2/3 of the total number of seats for members of the Commission, regardless if vacancies or absences exist or not, shall be necessary for the adoption, or recommendation for adoption, of any plan or amendment to a plan.

**Section 21.23 Powers and Duties**

The Commission shall have their powers and duties as set forth in P.A. 33 of 2008, as amended, being the Michigan Planning Enabling Act, M.C.L. 125.3801 *et seq.*; and P.A. 110 of the Public Acts of 2006, as amended, being the Michigan Zoning Enabling Act, (M.C.L. 125.3101 *et seq.*).

**Section 21.24 Meetings; Records**

The Commission shall adopt Bylaws for the transaction of business and shall keep a record of its resolutions, transactions, findings, and determinations, which records shall be a public record.

**Section 21.25 Approval, Ratification, and Reconfirmation**

All official actions taken by the City of Escanaba Planning Commission preceding the Commission created by this ordinance are hereby approved, ratified and reconfirmed. Any project, review, or process taking place at the effective date of this Ordinance shall continue with the Commission created by this ordinance, subject to the requirements of this Ordinance, and shall be deemed a continuation of any previous City of Escanaba Planning Commission. This Ordinance shall be in full force and effect from and after its adoption and publication.

**CHAPTER III  
SAVINGS CLAUSE**

If any section, subsection, sentence, clause, or phrase of the within Ordinance is, for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed this Ordinance, section, subsection, sentence, clause, or phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, and phrases be declared unconstitutional.

**CHAPTER IV  
CONFLICTING ORDINANCES REPEALING CHAPTER**

All Ordinances or parts of Ordinances in conflict with the provisions of this Ordinance are hereby repealed.

**CHAPTER V  
EFFECTIVE DATE**

This Ordinance shall be in full force and in effect ten (10) days after its passage and publication.

Ordinance No 1088 – continued

APPROVED

APPROVED

\_\_\_\_\_  
Ralph B.K. Peterson  
City Attorney

\_\_\_\_\_  
Leo Evans  
Mayor

ATTEST

\_\_\_\_\_  
Robert S. Richards, CMC  
City Clerk

I hereby certify that the foregoing constitutes a true and complete copy of an Ordinance duly adopted by the City Council of the City of Escanaba, County of Delta, Michigan, at a Regular Meeting held on Thursday the 6th day of November 2008, and was published in the Daily Press, a newspaper of general circulation in the City of Escanaba on Tuesday, November 11th, 2008, and that said meeting was conducted and public notice of said meeting was given pursuant to and in full compliance with the Open Meetings Act, being Act 267, Public Acts of Michigan, 1976, and that the minutes of said meeting were kept and will be or have been made available as required by said Act.

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Robert S. Richards, CMC  
City Clerk

Melton E. Emph  
City Controller

MUNICIPAL PLANNING COMMISSION ACT

Act 285 of the Public Acts of 1931 as amended

AN ACT to provide for city, village and municipal planning; the creation, organization, powers and duties of planning commissions; the regulation and subdivision of land; and to provide penalties for violation of the provisions of this act.

Am. 1952, Act 25

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

125.31\* DEFINITIONS. SECTION 1. For the purpose of this act certain terms are defined as provided in this section. Wherever appropriate the singular includes the plural and the plural includes the singular. "Municipality" or "municipal" includes or relates to cities, villages, other incorporated political subdivisions, townships and chartered townships. "Mayor" means the chief executive of the municipality, whether the official designation of his office be mayor, city manager or otherwise. "Council" means the chief legislative body of the municipality. "Board of county auditors" or "county commissioners" means the chief administrative or legislative body or board of the county. The term "streets" includes streets, avenues, boulevards, roads, lanes, alleys, viaducts and other ways.

Am. 1952, Act 25

125.32 MUNICIPAL PLANNING COMMISSION: CREATION: EXISTING PLAN COMMISSION.

SECTION 2. Any municipality is hereby authorized and empowered to make, adopt, amend, extend, add to, or carry out a municipal plan as provided in this act and create by ordinance a planning commission with the powers and duties herein set forth. The planning commission of a city shall be designated city planning or city plan commission; of a village, village planning or village plan commission and of any other municipality, such designation as its council may specify. The legislative body of any city or village now or hereafter having a plan commission created by charter, may by ordinance extend the powers and duties of such commission in accordance with the terms of this act. Sections 3, 4 and 5 of this act shall not apply to such cities or villages. This act shall not in any way affect the powers and duties or organization of such planning commission under a charter except as they may be added to or enlarged by the terms of this act

Am. 1943, Act 163

\* Refers to the Section of the Compiled Laws of 1948, State of Michigan.

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125.33 SAME: MEMBERS: APPOINTMENT, COMPENSATION, TERM, REMOVAL, VACANCIES. SECTION 3. The commission shall except as provided in the following paragraph consist of nine members who shall represent insofar as is possible different professions or occupations who shall be appointed by the mayor, if the mayor be an elective officer, otherwise by such officer as council may in the ordinance creating the commission designate as the appointing power, but such appointment shall always be subject to the approval by a majority vote of the members elect of the legislative body of such municipality. All members of the commission shall serve as such without compensation and shall hold no other municipal office except that one of such members may be a member of the zoning board of adjustment or appeals. The term of each member shall be three years, except that three members of the first commission to be so appointed shall serve for the term of one year, three for a term of two years and three for a term of three years. All members shall hold office until their successors are appointed. Members may, after a public hearing, be removed by the mayor for inefficiency, neglect of duty or malfeasance in office. If deemed desirable by the council such commission may consist of the mayor, one of the administrative officials of the municipality selected by the mayor, one member of the council to be selected by it as members ex officio and six persons who shall be appointed by the mayor as is herein provided. All members of the commission shall serve as such without compensation and in this case also the appointed members shall hold no other municipal office except that one of such appointed members may be a member of the zoning board of adjustment or appeals. The terms of ex officio members shall correspond to their respective official tenures, except that the term of the administrative official selected by the mayor shall terminate with the term of the mayor selecting him. The term of each appointed member, where six are appointed shall be three years or until his successor takes office except that the respective terms of two of the members first appointed shall be for one year and two for two years. Members other than the member selected by council may, after public hearing, be removed by the mayor for inefficiency, neglect of duty, or malfeasance in office. Council may for like cause remove the member selected by it. Vacancies occurring otherwise than through the expiration of term shall be filled for the unexpired term by the mayor in the case of members selected or appointed by him, by council in the case of the councilmanic member, and by the appointing power designated by council in municipalities in which the mayor is not an elective officer.

125.34 SAME: CHAIRMAN, MEETINGS, RULES, RECORDS. SECTION 4. The commission shall elect its chairman from amongst the appointed members and create and fill such other of its offices as it may determine. The term of chairman shall be one year, with eligibility for reelection. The commission shall hold at least one regular meeting in each month. It shall adopt rules for transaction of business and shall keep a record of its resolutions, transactions, findings, and determinations, which record shall be a public record.

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125.35 SAME: EMPLOYEES, CONTRACTS FOR SERVICES, EXPENDITURES. SECTION 5  
The commission may appoint such employees as it may deem necessary for its work, whose appointment, promotion, demotion, and removal shall be subject to the same provisions of law as govern other corresponding civil employees of the municipality. The commission may also contract with city planners, engineers, architects, and other consultants for such services as it may require. The expenditures of the commission, exclusive of gifts, shall be within the amounts appropriated for the purpose by council, which shall provide the funds, equipment, and accommodations necessary for the commission's work.

125.36 SAME: ADOPTION OF MASTER PLAN, CONTENTS, AMENDMENT. SECTION 6.  
The commission shall make and adopt a master plan for the physical development of the municipality, including any areas outside of its boundaries which, in the commission's judgment, bear relation to the planning of the municipality. The plan, with the accompanying maps, plats, charts, and descriptive matter shall show the commission's recommendations for the development of the territory, including, among other things, the general location, character, and extent of streets, viaducts, subways, bridges, waterways, flood plains, water fronts, boulevards, parkways, playgrounds and open spaces, the general location of public buildings and other public property, and the general location and extent of public utilities and terminals, whether publicly or privately owned or operated, for water light, sanitation, transportation, communication, power, and other purposes; also the removal, relocation, widening, narrowing, vacating, abandonment, change of use or extension of any of the foregoing ways, grounds, open spaces, buildings, property, utilities or terminals; the general location, character, layout and extent of community centers and neighborhood units; and the general character, extent and layout of the replanning and redevelopment of blighted districts and slum areas; as well as a zoning plan for the control of the height, area, bulk, location, and use of buildings and premises. As the work of making the whole master plan progresses, the commission from time to time may adopt and publish parts thereof, any such part to cover 1 or more major sections or divisions of the municipality or 1 or more of the aforesaid or other . . . tional matters to be included in the plan. The commission from time to time may amend, extend, or add to the plan.

Amended 1962, Act 138

125.37 SAME: SURVEYS FOR BASIS, PURPOSE. SECTION 7. In the preparation of such plan the commission shall make careful and comprehensive surveys and studies of present conditions and future growth of the municipality and with due regard to its relation to the neighboring territory. The plan shall be made with the general purpose of guiding and accomplishing a coordinated, adjusted, and harmonious development of the municipality and its environs which will, in accordance with present and future needs, best promote health, safety, morals, order, convenience, prosperity, and general welfare, as well as efficiency and economy in the process of development; including, among other things, adequate provision for traffic, the promotion of safety from fire and other dangers, adequate provision for light and air, the promotion of the healthful and convenient distribution of population, the promotion of good civic design and arrangement, wise and efficient expenditure of public funds, and the adequate provision of public utilities and other public requirements.

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125.38 SAME: ADOPTION OF PART OR WHOLE OF PLAN: HEARING, NOTICE. SECTION 8. The commission may adopt the plan as a whole by a single resolution or may by successive resolutions adopt successive parts of the plan, said parts corresponding with major geographical sections or divisions of the municipality or with functional subdivisions of the subject matter of the plan, and may adopt any amendment or extension thereof or addition thereto. Before the adoption of the plan or any such part, amendment, extension, or addition the commission shall hold at least one public hearing thereon, notice of the time and place of which shall be given, not less than 15 days prior to such hearing, by one publication in a newspaper of general circulation in the municipality and in the official gazette, if any, of the municipality, and by registered United States mail to each public utility company and to each railroad company owning or operating any public utility or railroad within the geographical sections or divisions of the municipality affected. The adoption of the plan or of any such part or amendment or extension or addition shall be by resolution of the commission carried by the affirmative votes of not less than 6 members of the commission. The resolution shall refer expressly to the maps and descriptive and other matter intended by the commission to form the whole or part of the plan, and the action taken shall be recorded on the map and plan and descriptive matter by the identifying signature of the chairman and/or secretary of the commission. An attested copy of the plan or part thereof shall be certified to council and to the county register of deeds.

Am. 1941, Act 297

125.39 SAME: PUBLIC WORKS: POWERS OF COUNCIL: FAILURE TO ACT: PROGRAM. SECTION 9. Whenever the commission shall have adopted the master plan of the municipality or of one or more major sections or districts thereof no street, square, park, or other public way, ground, or open space, or public building or structure; shall be constructed or authorized in the municipality or in such planned section and district until the location, character, and extent thereof shall have been submitted to and approved by the commission: Provided, That in case of disapproval the commission shall communicate its reasons to council, which shall have the power to overrule such disapproval by a recorded vote of not less than two-thirds of its entire membership: Provided, however, That if the public way, ground, space, building, structure, or utility be one the authorization or financing of which does not under the law or charter provisions governing same, fall within the province of the municipal council then the submission to the planning commission shall be by the board, commission, or body having such jurisdiction, and the planning commission's disapproval may be overruled by said board, commission, or body by a vote of not less than two-thirds of its membership. The failure of the commission to act within 60 days from and after the date of official submission to the commission shall be deemed approval. For the purpose of furthering the desirable future development of the municipality under the master plan the city planning commission, after the commission shall have adopted a master plan, shall prepare coordinated and comprehensive programs of public structures and improvements. The commission shall annually prepare such a program for the ensuing 6 years, which program shall show those public structures and improvements, in the general order of their priority, which in the commission's judgment will be needed or desirable and can be undertaken within the 6 year

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period. The above comprehensive coordinated programs shall be based upon the requirements of the community for all types of public improvements, and, to that end, each agency or department of such municipality concerned with such improvements shall upon request furnish the commission with lists, plans and estimates of time and cost of public structures and improvements within the purview of such department.

Am. 1943, Act 163.

125.40 SAME: RESCISSION OF ACTION BY LEGISLATIVE BODY, PROCEDURE. SECTION 10. Whenever the council or legislative body of any municipality shall have ordered the opening, widening or extension of any street, avenue or boulevard, or whenever the council or other legislative body shall have ordered that proceedings be instituted for the acquisition or enlargement of any park, playground, playfield or other public open space, such resolution shall not be rescinded until after the matter has been referred back to the city planning commission for a report and until after a public hearing shall have been held. The council shall have power to overrule the recommendation of the city planning commission by a vote of not less than two-thirds of its entire membership.

125.41 SAME: PUBLICITY AND EDUCATION, GIFTS, COOPERATION FROM OFFICIALS, SECTION 11. The commission shall have the power to promote public interest in and understanding of the plan and to that end may publish and distribute copies of the plan or of any report and may employ such other means of publicity and education as it may determine. Members of the commission, when duly authorized by the commission, may attend city planning conferences or meetings of city planning institutes, or hearings upon pending city planning legislation, and the commission may, by resolution spread upon its minutes, pay the reasonable traveling expenses incident to such attendance. The commission shall, from time to time, recommend to the appropriate public officials programs for public structures and improvements and for the financing thereof. It shall be part of its duties to consult and advise with public officials and agencies, public utility companies, civic, educational, professional, and other organizations, and with citizens with relation to the protecting or carrying out the plan. The commission shall have the right to accept and use gifts for the exercise of its functions. All public officials shall, upon request, furnish to the commission, within a reasonable time, such available information as it may require for its work. The commission, its members, officers, and employees, in the performance of their functions, may enter upon any land and make examinations and surveys and place and maintain necessary monuments, and marks thereon. In general, the commission shall have such powers as may be necessary to enable it to fulfill its functions, promote municipal planning, or carry out the purposes of this act.

125.42 SAME: SUCCESSION TO ZONING COMMISSION. SECTION 12. The commission shall have all powers heretofore granted by law to the zoning commission of the municipality, and, from and after the creation of a planning commission in such municipality, all powers and records of the zoning commission shall be transferred to the planning commission: Provided, however, That in the event that

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the existing zoning commission shall be nearing the completion of its zoning plan, council may, by resolution, postpone the said transfer of the zoning commission's powers until the completion of such zoning plan; but such postponement shall not exceed a period of one year.

125.43 SAME: NECESSITY FOR APPROVAL OF PLATS: STREET SYSTEM. SECTION 13. Whenever planning commission shall have adopted that sort of a master plan relating to the major street system of the territory within its subdivision jurisdiction or part thereof, and shall have filed a certified copy of such plan in the office of the county register of deeds of the county in which such territory or part is located, then no plat of a subdivision of land within such territory or part shall be filed or recorded until it shall have been approved by such planning commission and such approval entered in writing on the plat by the chairman or secretary of the commission.

125.44 SAME: REGULATIONS GOVERNING SUBDIVISION OF LAND: BOND TO SECURE IMPROVEMENT: PUBLICATION OF REGULATIONS. SECTION 14. Before exercising the powers referred to in Section 13, the planning commission shall adopt regulations governing the subdivision of land within its jurisdiction. Such regulations may provide for the proper arrangement of streets in relation to other existing or planned streets and to the master plan, for adequate and convenient open spaces for traffic, utilities, access of fire-fighting apparatus, recreation, light and air, and for the avoidance of congestion of population, including minimum width and area of lots.

Such regulations may include provisions as to the extent to which streets and other ways shall be graded and improved and to which water and sewer and other utility mains, piping, or other facilities shall be installed as a condition precedent to the approval of the plat. The regulations or practice of the commission may provide for a tentative approval of the plat previous to such installation; but any such tentative approval shall be revocable and shall not be entered on the plat. In lieu of the completion of such improvements and utilities prior to the final approval of the plat, the commission may accept a bond with surety to secure to the municipality the actual construction and installation of such improvements or utilities at a time and according to specifications fixed by or in accordance with the regulations of the commission. The municipality is hereby granted the power to enforce such bond by all appropriate legal and equitable remedies.

All such regulations shall be published as provided by law for the publication of ordinances, and before adoption, a public hearing shall be held thereon. A copy thereof shall be certified by the commission to the recorders of the counties in which the municipality and territory are located.

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125.45 SAME: APPROVAL OR DISAPPROVAL OF PLATS, PROCEDURE, EFFECT. SECTION 15. The planning commission shall approve, modify or disapprove a plat within 60 days after the submission thereof to it; otherwise such plat shall be deemed to have been approved, and a certificate to that effect shall be issued by the commission on demand: Provided, however, That the applicant for the commission's approval may waive this requirement and consent to an extension of such period. The ground of disapproval of any plat shall be stated upon the records of the commission. Any plat submitted to the commission shall contain the name and address of a person to whom notice of a hearing shall be sent; and no plat shall be acted on by the commission without affording a hearing thereon. Notice shall be sent to the said address by registered mail of the time and place of such hearing not less than five days before the date fixed therefor. Similar notice shall be mailed to the owners of land immediately adjoining the platted land, as their names appear upon the plats in the county auditor's office and their addresses appear in the directory of the municipality or on the tax records of the municipality or county. Every plat approved by the commission shall, by virtue of such approval, be deemed to be an amendment of or an addition to or a detail of the municipal plan and a part thereof. Approval of a plat shall not be deemed to constitute or effect an acceptance by the public of any street or other open space shown upon the plat. The planning commission may, from time to time, recommend to council amendments of the zoning ordinance or map or additions thereto to conform to the commission's recommendations for the zoning regulation of the territory comprised within approved subdivisions. The commission shall have the power to agree with the applicant upon use, height, area or bulk requirements or restrictions governing buildings and premises within the subdivision, provided such requirements or restrictions do not authorize the violation of the then effective zoning ordinance of the municipality. Such requirements or restrictions shall be stated upon the plat prior to the approval and recording thereof and shall have the same force of law and be enforceable in the same manner and with the same sanctions and penalties and subject to the same power of amendment or repeal as though set out as a part of the zoning ordinance or map of the municipality.

Severing clause. Section 16. Repealed by Act 267, P.A. 1945, and now covered by a uniform severability clause applicable to all public acts under provisions of Act 119, P. A. 1945.

Revised to include all amendments to  
January 1, 1958.

RBH:jd

Community Development and Services  
Department  
Kellogg Center  
Michigan State University

CITY AND VILLAGE ZONING ACT  
Act 207, P.A. 1921

AN ACT to provide for the establishment in cities and villages of districts or zones within which the use of land and structures, the height, the area, the size and location of buildings may be regulated by ordinance, and within which districts regulations shall be established for the light and ventilation of such buildings, and within which districts or zones the density of population may be regulated by ordinance: to provide by ordinance for the acquisition by purchase, condemnation or otherwise of private property which does not conform to the regulations and restrictions of the various zones or districts so provided; to provide for the administering of this act; to provide for amendments, supplements or changes hereto; to provide for conflict with the state housing code or other acts, ordinances or regulations; to provide penalties for the violation of the terms hereof and to give immediate effect hereto.

The People of the State of Michigan enact:

(117) 125.581 Location of trades and buildings, use; regulation by local bodies. M.S.A. 5.2931

Sec. 1. The legislative body of cities and villages may regulate and restrict the location of trades and industries and the location of buildings designed for specified uses and for such purposes divide any city or village into districts of such number, shape and area as may be deemed best suited to carry out the provisions of this section. For each of such districts regulations may be imposed designating the uses for which buildings or structures shall or shall not be erected or altered, and designating the trades and industries that shall be permitted or excluded or subjected to special regulations. Such regulations shall be made in accordance with a plan designed to lessen congestion on the public streets, to promote public health, safety and general welfare, and shall be made with reasonable consideration, among other things, to the character of the district, its peculiar suitability for particular uses, the conservation of property values and the general trend and character of building and population development.

(118) 125.582 Regulation of buildings; authority to zone. M.S.A. 5.2932

Sec. 2. The legislative body of cities and villages may regulate and limit the height and bulk of buildings hereafter erected, and regulate and determine the area of yards, courts, and other open spaces, and for such purposes divide any city or village into districts of such number, shape and area as may be deemed best suited to carry out the purposes of this section. Such regulations shall be uniform for each class of buildings throughout each district, but the regulations in 1 district may differ from those in other districts. Such regulations shall be made in accordance with a plan designed to lessen congestion on the public streets, to promote public health, safety and general welfare, and shall be made with reasonable consideration, among other things to the character of the district, its peculiar suitability for particular uses, the

conservation of property values and the general trend and character of building and population development.

(119) 125.583 Regulation of congested areas. M.S.A. 5.2933

Sec. 3. The legislative body of cities and villages may limit and restrict the maximum number of families which may be housed in dwellings hereafter erected or altered, and for such purposes divide any city or village into districts of such number, shape and area as may be deemed best suited to carry out the purposes of this section. Such regulations shall be uniform throughout any specified district, but may differ from the regulations adopted for other districts. Such regulations shall be designed to limit the overcrowding of land, to avoid undue congestion of population, to facilitate adequate provision for a system of transportation, sewage disposal, water, education, recreation and other public requirements, and to promote public health, safety and general welfare.

(120) 125.583a Uses of land or structures not conforming to ordinances; powers of legislative bodies; acquisition of property. M.S.A. 5.2933(1)

Sec. 3a. The lawful use of land or a structure exactly as such existed at the time of the enactment of the ordinance affecting them, may be continued, except as hereinafter provided, although such use or structure does not conform with the provisions of such ordinance. The legislative body may in its discretion provide by ordinance for the resumption, restoration, reconstruction, extension or substitution of non-conforming uses or structures upon such terms and conditions as may be provided in the ordinance. In addition to the power granted in this section, cities and villages may acquire by purchase, condemnation or otherwise private property for the removal of non-conforming uses and structures: Provided, The property shall not be used for public housing. The legislative body may in its discretion provide that the cost and expense of acquiring such private property be paid from general funds, or the cost and expense or any portion thereof be assessed to a special district. The elimination of any such non-conforming uses and structures in a zoned district as herein provided is hereby declared to be for a public purpose and for a public use. The legislative body shall have authority to institute and prosecute proceedings for the condemnation of non-conforming uses and structures under the power of eminent domain in accordance with the laws of the state or provisions of any city or village charter relative to condemnation.

(121) 125.584 City zoning ordinances; public hearing, notice; report of planning commission; amendment; vote required. M.S.A. 5.2934

Sec. 4. The legislative body of any city or village may provide by ordinance for the manner in which such regulations and boundaries of districts or zones shall be determined and enforced, or from time to time amended, supplemented or changed: Provided, however, That a public hearing shall be held before any such regulations shall become effective: And provided further, That not less than 15 days' notice of the time and place of such public hearing shall first be published in an official paper or a

paper of general circulation in such city or village, and that not less than 15 days' notice of the time and place of such public hearing shall first be given by registered United States mail to each public utility company and to each railroad company owning or operating any public utility or railroad within the districts or zones affected, and a hearing be granted any person interested at the time and place specified. In cities having a population of 25,000 or more according to the last federal or state census, the legislative body may appoint a commission to recommend in the first instance the boundaries of districts and appropriate regulations to be enforced therein. Such commission shall thereupon make a tentative report and hold public hearings thereon at such times and places as the legislative body shall require before submitting its final report. In cities having a population of 25,000 or more according to the last federal or state census, said legislative body shall not in the first instance determine the boundaries of districts nor impose regulations until after the final report of a commission so appointed. In cities having a population of 25,000 or more according to the last federal or state census, the hearing as above provided before the legislative body shall not take place until such final report of such commission has been received, nor shall the ordinance or maps be amended after they are adopted in the first instance until the proposed amendment has been submitted to such commission and it has made report thereon. In either case the legislative body may adopt such ordinance and maps with or without amendments, or refer same again to the commission for a further report. Where a city has a city plan commission or corresponding commission the legislative body may appoint such commission to perform the duties above specified. After the ordinance and maps have in the first instance been approved by the legislative body of a city or village, amendments or supplements thereto may be made from time to time as above provided, but in case a protest against a proposed amendment, supplement or change be presented, duly signed by the owners of 20 per centum or more of the frontage proposed to be altered, or by the owners of 20 per centum or more of the frontage immediately in the rear thereof, or by the owners of 20 per centum of the frontage directly opposite the frontage proposed to be altered, such amendment shall not be passed except by the  $\frac{3}{4}$  vote of such legislative body.

(122) 125.585 City or village zoning, board of appeals; appointment; duties, procedures. H.S.A. 5.29357

Sec. 5. (a) The legislative body of any city or village may act as a board of appeals upon all questions arising under a zoning ordinance, and in such event the said legislative body may fix rules and regulations to govern its procedure sitting as such a board of appeals. In the event that the legislative body of any city or village so desires, it may appoint a board of appeals consisting of not less than 5 members, each to be appointed for a term of 3 years: Provided, That appointments for the first year shall be for a period of 1, 2 and 3 years respectively, so as nearly as may be to provide for the appointment of an equal number each year, depending on the number of members, thereafter each member to hold office for the full 3 year term. Such board of appeals shall hear and decide appeals from and review any order, requirements, decision or determination made by an administrative official charged with the enforcement

of any ordinance adopted pursuant to the provisions of this act. They shall also hear and decide all matters referred to them or upon which they are required to pass under any ordinance of the legislative body adopted pursuant to this act. The concurring vote of 2/3 of the members of the board shall be necessary to reverse any order, requirements, decision or determination of any such administrative official, or to decide in favor of the applicant any matter upon which they are required to pass under any such ordinance or to effect any variation in such ordinance. Such appeal may be taken by any person aggrieved or by any officer, department, board or bureau of the city or village. Wherever any city or village has created or may create a board of rules or board of building appeals, such board may be enlarged to consist of not less than 5 members, and these may be appointed as the board of appeals as herein provided.

#### Appeals, how taken

(b) Such appeal shall be taken within such time as shall be prescribed by the board of appeals by general rule, by the filing with the officer from whom the appeal is taken and with the board of appeals of a notice of appeal specifying the grounds thereof. The officer from whom the appeal is taken shall forthwith transmit to the board, all the papers constituting the record upon which the action appealed from was taken.

#### Stay.

(c) An appeal stays all proceedings in furtherance of the action appealed from unless the officer from whom the appeal is taken certifies to the board of appeals after the notice of appeal shall have been filed with him that by reason of facts stated in the certificate, a stay would in his opinion cause imminent peril to life or property, in which case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the board of appeals or by the circuit court, on application on notice to the officer from whom the appeal is taken and on due cause shown.

#### Hearing of and decision upon appeal; per diem of board members.

(d) The board of appeals shall fix a reasonable time for the hearing of the appeal and give due notice thereof to all persons to whom any real property within 300 feet of the premises in question shall be assessed, such notice to be delivered personally or by mail addressed to the respective owners at the address given in the last assessment roll, and shall decide the same within a reasonable time. Upon the hearing, any party may appear in person or by agent or by attorney. The board of appeals may reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from and shall make such order, requirement, decision or determination as in its opinion ought to be made in the premises, and to that end shall have all the powers of the officer from whom the appeal is taken. Where there are practical difficulties or unnecessary hardship in the way of carrying out the strict letter of such ordinance, the board of appeals shall have power in passing upon appeals to vary or modify any of its rules, regulations or provisions relating to the construction, structural changes in, equipment, or alteration of buildings or structures, or the use of land,

buildings or structures, so that the spirit of the ordinance shall be observed, public safety secured and substantial justice done. The decision of such board shall not become final until the expiration of 5 days from the date of entry of such order unless the board shall find the immediate effect of such order is necessary for the preservation of property or personal rights and shall so certify on the record. The legislative body of any city or village may authorize the payment of not to exceed \$5.00 per members for attendance at regular meetings of such boards: Provided, That the foregoing limitation on payments to members shall not apply in any city now or hereafter having a population of 90,000 or more as determined by the last federal decennial census, or by any federal decennial census, hereafter taken.

(123) 125.586 Conflicting laws; governing law. M.S.A. 5.2936

Sec. 6. Wherever the provision of any ordinance or regulations, adopted by the legislative body of any city or village under the provisions of this act, impose requirements for lower heights of buildings, or a less percentage of lot that may be occupied, or require wider or larger courts or deeper yards than are imposed or required by existing provisions of law or ordinance, the provisions of such local ordinance or regulation adopted under the provisions of this act shall govern. Where, however, the provisions of the state housing code or other ordinances or regulations of any city or village impose requirements for lower heights of buildings or less percentage of lot that may be occupied, or require wider or larger courts or deeper yards than are required by any ordinance or regulation which may be adopted by the legislative body of any city or village under the provisions of this act, the provisions of said state housing code, or other ordinance or regulations shall govern.

HOUSING LAW: SEE §125.401 et seq. C.L. 1948

(124) 125.587 Violation nuisance per se; abatement. M.S.A. 5.2937

Sec. 7. Buildings erected, altered, razed or converted, or uses carried on in violation of any provision of local ordinances or regulations made under the authority of this act are hereby declared to be a nuisance per se. The court shall order such nuisance abated and the owner and or agent in charge of such building or land shall be adjudged guilty of maintaining a nuisance per se. The legislative body shall in the ordinance enacted under the provisions of this act, designate the proper officials whose duty it shall be to enforce the provisions of such ordinance and provide penalties for the violation thereof.

Sec. 8. (This was a severing clause section)

(125) 125.589 Declaration of necessity. M.S.A. 5.2939

Sec. 9. The provisions of this act are hereby declared to be immediately necessary for the preservation of the public peace, health and safety and are hereby given immediate effect.

(126) 125.590 Review by circuit courts; appeals to supreme court;  
procedure M.S.A. 5.2940

Sec. 10. Any party aggrieved by any order, determination or decision of any officer, agency, board, commission, board of appeals or the legislative body of any city or village, made pursuant to the provisions of section 3a of this act may obtain a review thereof both on the facts and the law, in the circuit court for the county wherein the property involved or some part thereof, is situated: Provided, That application is made to the court within 30 days after delivery of a copy of such order, determination or decision, by certiorari or by any other method permissible under the rules and practices of the circuit courts of this state. On such review the courts shall have jurisdiction to make such further orders in respect thereto as justice may require. An appeal may be had from the decision of any circuit court or condemnation court to the supreme court in the same manner as provided by the laws of this state with respect to appeals from circuit courts; and in the event of such appeal, the issue of non-conformity may be reviewed as an issue of law in the supreme court.

RBH:jn  
June 4, 1959

Institute for Community Development & Services  
Michigan State University

Chapter 21

PLANNING\*

Art. I. In General, §§ 21-1—21-15

Art. II. City Planning Commission, §§ 21-16—21-19

ARTICLE I. IN GENERAL

Secs. 21-1—21-15. Reserved.

ARTICLE II. CITY PLANNING COMMISSION†

Sec. 21-16. Established; membership.

(a) A city planning commission is hereby established in the city under the provisions of Act 285 of the Public Acts of 1931 of the State of Michigan (MCL 125.31 et seq., MSA 5.2991 et seq.). The commission shall consist of nine (9) members, who shall represent in so far as possible different professions or occupations, who shall be appointed by the mayor, but such appointment shall always be subject to the approval of the majority vote of the members elect of the city council. All members of the commission shall serve as such without compensation, and shall hold no other municipal office, except that one of such members may be a member of the zoning board of appeals. The term of each member shall be for three (3) years. All members shall hold office until their successors are appointed.

(b) Members may, after a public hearing, be removed by the mayor for inefficiency, neglect of duty or malfeasance in office. Vacancies occurring otherwise than through the expiration of term shall be filled for the unexpired term by the mayor.

(Code 1969, § 32.01)

State law reference—Similar provisions, MCL 125.33, MSA 5.2993.

Sec. 21-17. Powers, authority and duties; exceptions.

(a) The city planning commission shall have the powers, authority and duties contained in Act 285 of the Public Acts of Michigan for 1931 (MCL 125.31 et seq., MSA 5.2991 et seq.), as

\*Charter reference—Adoption of city plan, Ch. V, § 19.

Cross references—Administration, Ch. 2; engineering department, § 2-30; advertising and signs, Ch. 3; buildings and building regulation Ch. 6; community development Ch. 9; fences and hedges, Ch. 11; flood damage prevention, Ch. 13; harbor and marina, Ch. 15; mobile homes and trailers, Ch. 16; streets, sidewalks and other public places, Ch. 24; subdivision regulations, Ch. 25; utilities, Ch. 28; zoning, App. A.

State law references—Authority to regulate land use, MCL 125.581 et seq., MSA 5.2932 et seq.; municipal planning, MCL 125.31 et seq., MSA 5.2991 et seq.

†Cross references—Administration, Ch. 2; boards, commissions and committees generally, § 2-51 et seq.

amended, Acts 163 (MCL 125.32, 125.36, 125.39; MSA 5.2992, 5.2996, 5.2999) and 222 (MCL 125.51 et seq., MSA 5.3007(1) et seq.), respectively, of the Public Acts of Michigan for 1943, as amended, with the exception of the following provision in Act 163 of the Public Acts of Michigan for 1943, as follows: Provided, that in case of disapproval, the commission shall communicate its reasons to the council, which shall have the power to over-rule such disapproval by a recorded vote of not less than a majority of its entire membership.

(b) If the public way, ground, space, building, structure or utility be one the authorization or financing of which does not, under the law or Charter provisions governing same, fall within the province of the municipal council, board, commission, or body having such jurisdiction, the planning commission's disapproval may be over-ruled by the board, commission or body by a vote of not less than two-thirds of its entire membership.  
(Code 1969, § 32.02)

**Sec. 21-18. Chairman; meetings.**

The city planning commission shall elect its chairman from amongst the appointed members and create and fill such other of its offices as it may determine. The term of chairman shall be one year, with eligibility for reelection. The commission shall hold at least one regular meeting in each month. It shall adopt rules for transaction of business and shall keep a record of its resolutions, transactions, findings and determinations, which record shall be a public record.

(Code 1969, § 32.03)

**State law reference**—Similar provisions, MCL 125.34, MSA 5.2994.

**Sec. 21-19. Appointment of employees; funds.**

The city planning commission may appoint such employees as it may deem necessary for its work, whose appointment, promotion, demotion, and removal shall be subject to the same provisions of law as govern other corresponding civil employees of the city. The commission may also contract with city planners, engineers, architects, and other consultants for such service as it may require. The expenditures of the commission, exclusive of gifts, shall be within the amounts appropriated for the purpose by council, which shall provide the funds, equipment, and accommodations necessary for the commission's work.

(Code 1969, § 32.04)

**State law reference**—Similar provisions, MCL 125.35, MSA 5.2995.