

Zoning and police power ordinances are not the same, and should not be mixed together

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Updated from an original article written by Kurt H. Schindler.

There are three types of ordinances local government might adopt. Important to focus on the difference between police power ordinances and zoning ordinances.

An ordinance is a law adopted by a township, village, city, or county. There are distinct types of ordinances that a local government might adopt, and the process and procedures to adopt each are quite different. There are generally three types of ordinances:

- Police power ordinance (sometimes just called “an ordinance”)
- Zoning ordinance
- Budget or appropriations ordinance (also known by other names) (might also include personnel rules or addressing for 911.)

In Michigan, local governments do not have authority to do anything unless the state legislature delegates that authority. General police power ordinance authority is extended to Michigan’s municipalities (township, village, and city). By contrast, counties have extremely limited police power ordinance authority. All governments can adopt ordinances dealing with internal affairs, such as the annual budget. That ordinance would include the budget amounts for that government and may also include the rules and policies for management of the budget through the coming year.

A zoning ordinance can be adopted by a township, village, city, or county. The authority from the state for zoning comes from the [Michigan Zoning Enabling Act](#) (MZEA). Often, Michigan State University Extension educators explain the difference between a zoning



ordinance and a police power ordinance because there are significant differences.

It is important not to go too far in mixing elements of each together. This is because the process to create and adopt a zoning ordinance (hearings, notices, based on a plan, appeals, nonconformities and much more) is designed to place many legal due process and property rights protections on zoning. This is because zoning regulates the use of land, and as a nation we value private property rights. When the government regulates land use, there are many more hoops through which the regulators need to jump. Such a rigorous process is not applied to the creation and adoption of police power ordinances. As a result, if a government attempts to regulate land use, but adopts a police power ordinance to do it, courts are not likely to uphold it. The differences between police power and zoning ordinances do not stop there.

Another key difference is that a zoning ordinance must be based on a master plan. That master plan must be adopted pursuant to the Michigan Planning Enabling Act. Police power ordinances do not have such a requirement. The process of adopting a master plan also has those same safeguards: a process that involves public involvement, hearings, notices and much more. (See the article "Consider government planning at two levels: internal plans and plans for the entire community" to learn the difference between master plans and local government's internal plans.)

Local government has the authority to adopt police power ordinances regulating the public health, safety and general welfare of persons and property. For example, a "township board may, at a regular or special meeting by a majority of the members elect of the township board, adopt ordinances regulating the public health, safety, and general welfare of persons and property, including, but not limited to fire protection, licensing or use of bicycles, traffic and parking of vehicles . . ." (MCL 41.181).

A police power ordinance does not regulate the "**use of land**," rather; it regulates an "**activity**." Examples of "activity" include, among others, motor vehicle regulations, parking, health code, food safety, boats and marinas, blight, smoking, noise, and junk. But in these examples, the ordinances should not regulate where activities are located.

A zoning ordinance, on the other hand, regulates "**use of land**." It might also regulate "activity," but if an ordinance has regulation of land use, then it must be adopted as, and called, a zoning ordinance.

The Michigan Supreme Court said, in *Square Lake Condo Association v Bloomfield Twp*, 437 Mich 310 (1991), a zoning ordinance is defined as an ordinance which regulates the use of land and buildings according to districts, areas, or locations. The question of whether a particular ordinance is a zoning ordinance **may be determined by a consideration of the substance of its provisions and terms, and its relation to the general plan of zoning in the city**. Examples of "land use" regulation include, among other, setbacks, parcel size, maximum structure height, building form and principal and accessory use of the land or use within buildings allowed within particular locations.

Courts have also recognized that "use of land" and "activities" of persons or business entities are neither absolute nor mutually exclusive. That means there will be grey areas in between the two types of ordinances. For example, in one court case:

“Launching and docking boats on inland lakes are “activities,” and the number of boats that can be launched or docked is very much akin to a parking regulation on a residential street. It follows that since township parking regulations on residential streets are within the scope of a township’s regulatory police power, *Belanger v Chesterfield Twp, supra* at 541 [96 Mich App 539, 541; 293 NW2d 622 (1980)], a township regulation of docking and launching boats on its inland lake is within the same scope of regulatory police power.” (Brackets added)

Another aspect of zoning is the requirement that the regulation can never be retroactive. Existing land uses and activities must be allowed to continue. Those are called “nonconforming” uses, buildings or “parcels.” See MSU Extension articles:

- Understanding nonconformity: Are you 'grandfathered' in?
- Zoning decisions travel with the land and are not temporary
- Zoning runs with the land, except when it doesn't

Police power ordinances, however, can be retroactive. Everyone, not just those doing new construction, may have to comply with the regulations in a police power ordinance. If the regulation of activity is in a zoning ordinance, that regulation cannot be retroactive, as no regulations within a zoning ordinance can be retroactive. Remember, however, that the regulation of land use cannot be in a police power ordinance.

Further, in *Miller v Fabius Twp Bd*, 366 Mich 250 (1962) the court ruled a township cannot adopt a police power ordinance that conflicts with a county zoning ordinance. If that takes place, the county zoning ordinance has precedence. With any city, village, township, or county ordinance, the MZEA reads the zoning “ordinance adopted under this act shall be controlling in the case of any inconsistencies between the ordinance and an ordinance adopted under any other law” (MCL 125.3210). However, a township has the option to adopt its own zoning ordinance. If it does, the township has divested the county of the power to zone (MCL 125.3209). The MZEA reads “. . . a township that has enacted a zoning ordinance under this act is not subject to an ordinance, rule, regulation adopted by a county under this act.”

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