

# CITY OF FARMINGTON HILLS

CITY CLERK'S OFFICE

31555 W. 11 Mile Road, Farmington Hills, MI 48336-1165  
(248) 871-2410

R-108-06

## RESOLUTION

IT IS RESOLVED, that City Council hereby adopts the attached resolution opposing PA 110 of the Public Acts of 2006, known as the Michigan Zoning Enabling Act (MZEAA), which would have significant and negative impacts upon the City's current zoning procedures, administration, etc.; and further directs staff to forward copies of this resolution to the Governor of Michigan, the Attorney General of Michigan, State Senator Gilda Jacobs, State Representative Aldo Vagnozzi, Oakland County Commissioners Mike Rogers and Jim Nash, all Oakland County Mayors, the Michigan Municipal League and SEMCOG.

Motion by: BRICKNER  
Support by: MASSEY

Roll Call Vote:

Yeas: BARNETT, BATES, BRICKNER, BRUCE, MASSEY AND OLIVERIO

Nays: NONE

Absent: ELLIS

Abstentions: NONE

MOTION CARRIED 6-0.

I, Kathryn A. Dorman, the duly authorized City Clerk of the City of Farmington Hills, Oakland County, Michigan, do hereby certify that the foregoing is a true copy of a resolution adopted by the City Council of the City of Farmington Hills on July 10, 2006.

  
Kathryn A. Dorman, City Clerk

DATE: July 11, 2006

STATE OF MICHIGAN  
COUNTY OF OAKLAND  
CITY OF FARMINGTON HILLS

RESOLUTION

At a regular meeting of the City Council of the City of Farmington Hills, Oakland County, Michigan, held in the Farmington Hills City Council Chambers at 31555 Eleven Mile Road, Farmington Hills, Michigan, on July 10, 2006, at 7:30 P.M., with those present and absent being,

PRESENT: BARNETT, BATES, BRICKNER, BRUCE, MASSEY AND OLIVERIO

ABSENT: ELLIS

the following resolution was offered by Councilperson Brickner and supported by Councilperson Massey:

**WHEREAS**, Public Act 110 of 2006, known as the Michigan Zoning Enabling Act (MZEA), was signed into law in April of this year and became effective on July 1, 2006, and

**WHEREAS**, the stated primary objective of the MZEA was to repeal the City and Village Zoning Act, the Township Zoning Act, and the County Zoning Act, and consolidate them into a single zoning enabling act applicable to all municipalities, and

**WHEREAS**, the language of the MZEA, as enacted, does more than just consolidate the prior three enabling acts into one statute – it contains several substantive changes that have several significant and negative impacts upon the City's current zoning procedures and administration, appointed Planning Commissioners and ZBA members, fees charged to property owners, charter provisions adopted by the electorate, and zoning ordinance provisions enacted by City Council, and

**WHEREAS**, it is understood that these impacts from the MZEA may not have been foreseen or understood at the time of enactment, but that corrective legislation can remedy the issues, and

**WHEREAS**, the Farmington Hills City Council desires to communicate its concerns and issues with the MZEA, and urge the enactment of corrective legislation, and

**NOW, THEREFORE, IT IS HEREBY RESOLVED** that the City Council of the City of Farmington Hills hereby requests that the Michigan legislature enact and Governor Granholm signs appropriate legislation to address the concerns and issues described below with respect to PA 110 of the Public Acts of 2006, known as the Michigan Zoning Enabling Act (MZEA):

- **ZBA Membership.** The MZEA contains a new requirement that a Planning Commissioner must also serve on the Zoning Board of Appeals (ZBA). A joint

position of planning commissioner and ZBA member in most cities, including Farmington Hills, is likely to amount to 6-8 evening meetings a month. This is an unreasonable and unnecessary burden, and it may have a chilling effect on the willingness of residents to serve on the Planning Commission. Moreover, it will unnecessarily raise a possible conflict of interest in the many cases where the matter being appealed to the ZBA is an action of the planning commission — an action on which the planning commission member will no doubt have already participated as an initial decision maker in the decision being appealed to the ZBA.

Compounding the difficulties created by this new provision, the MZEA is silent on when the membership change must be completed. If it was to be completed by the July 1, 2006, effective date of the Act, then it would require removal of one of the currently sitting members of the ZBA in the middle of his/her term of office, but the MZEA does not allow for the removal of an existing ZBA member to make room for the new Planning Commission member. Instead, the MZEA only states that ZBA members can be removed for “misfeasance, malfeasance, or nonfeasance.” As such, the MZEA seems to have conflicting provisions -- i.e., implementation of one part of the MZEA effectively requires removal of a ZBA member to make room for the new PC member, but another section of PA 110 states that a ZBA member cannot be removed from office unless he/she has done something seriously wrong. Add to this, the fact that many city ordinances and charters (including Farmington Hills), adopted by the electorate of the city, also do not allow for removal of an official on these grounds. Based on the above, this new mandate should be eliminated for cities and villages, as it was before; or, at a minimum, it should be made optional for cities and villages.

- **ZBA Appointments upon Expired Terms.** Under the MZEA, upon the expiration of a ZBA member’s term, a successor must be appointed within 30 days. Previously, in cities and villages, there was no time limit for appointments of successors – it only existed for townships. There does not appear to be a reason or need for this requirement. Accordingly, instead of adding it as a new mandate for cities and villages, it should be eliminated altogether. If there is found to be a strong reason mandating such a provision in the MZEA, then 30 days is much too short for the whole process of application, qualification, deliberation and approval of a new appointee.
- **Appeal of ZBA Decisions.** The MZEA increases the time for filing an appeal of a ZBA decision from 21 to 30 days. The MZEA also now provides for an appeal as of right from the Circuit Court to the Michigan Court of Appeals. Previously, it was clear that further review by the Court of Appeals was by application to the Court. For many years, the foregoing matters have been successfully governed by Michigan’s Rules of Court, as applied by the courts in well settled case law. It appears that the MZEA changes have unnecessarily muddied these waters – for both municipal governments and the general public trying to navigate the procedures in this area of law. Accordingly, these changes should either be

eliminated, or adjusted to reflect the current law of 21-days to appeal and only an appeal by leave of the court.

- **Publication of Public Hearing Notices.** Under the MZEA, a notice of the public hearing must be published in a newspaper of general circulation in all instances where a public hearing is required. This publication procedure now also applies to applications for decisions by the ZBA. The ZBA currently holds public hearings on all appeals that come before it with a notice delivered to all residents within 300' of the subject property, but it was not previously required to also publish a notice for each such matter. The MZEA change in this regard will result in increased administrative burdens, expenses and fees.
- **Delivery of Notice of Public Hearing.** In addition to providing public hearing notifications to all owners of property within 300' feet, the MZEA now also requires notification to all occupants (e.g., tenants) of all structures within 300' of the property that is the subject of the application. The term "occupants" is not defined, and the MZEA is silent as to the method the City is to use in determining how many occupants exist in a given structure, what address to use for the notices, whether it includes only persons in homes or apartments, or tenants of commercial, office, industrial and assisted living buildings as well. The three prior enabling acts did contain some specifics in these regards, which has been removed and could be helpful if reinserted by way of corrective legislation.

Furthermore, the MZEA also now specifically provides that the 300' radius does not stop at the City boundaries, i.e., notice must be provided outside the City limits within the 300' radius, to all persons listed above. The MZEA does not specify how the City is to obtain reliable information about property in another community. It is also silent on addressing funding for any of the above enhanced notice requirements.

- **Effective Date of Zoning Ordinance Amendments.** Previously, the City and Village Zoning Act did not specifically identify an effective date for zoning ordinance amendments, presumably leaving it to home rule city charter authority. The MZEA now provides that a notice of zoning ordinance amendments must be published within 15 days after adoption and the ordinance becomes effective on the 8th day after such publication. This directly conflicts with city charter provisions adopted by vote of the electorate that require publication within 10 days and provide for all ordinances to "take effect 21 days after their enactment, or on such date thereafter as the Council shall declare." As a result of this conflict, it could be argued that every zoning ordinance adopted by the City will take effect 18 or less days after enactment (absent a referendum), which conflicts with the charter language quoted above and has the effect of reducing the number of days the public will have to get a referendum petition together. While this provision of the MZEA may be necessary for townships since they have no charter (other than the state charter for charter townships), there is no good reason to extend its applicability to cities without deference to their charters.

Accordingly, these provisions should be changed to apply only to townships, which will preserve the electorate's voted upon rights under their home rule charters (especially where, as in Farmington Hills, the referendum timing decided upon by the city electors in the charter is more liberal than under the statute).

**IT IS FURTHER RESOLVED** that copies of this resolution be directed to the Governor of Michigan, the Attorney General of Michigan, State Senator Gilda Jacobs, State Representative Aldo Vagnozzi, Oakland County Commissioners Mike Rogers and Jim Nash, all Oakland County Mayors, the Michigan Municipal League and SEMCOG.

AYES:                   BARNETT, BATES, BRICKNER, BRUCE, MASSEY AND OLIVERIO  
NAYS:                   NONE  
ABSENT:                ELLIS  
ABSTENTIONS:        NONE

The resolution was adopted.

STATE OF MICHIGAN    )  
                                  )ss.  
COUNTY OF OAKLAND  )

I, the undersigned, the duly qualified and appointed City Clerk of the City of Farmington Hills, Oakland County, Michigan do hereby certify that the foregoing is a true and complete copy of a resolution adopted at a regular meeting of the City Council held on July 11, 2006, the original of which is on file in my office.

IN WITNESS WHEREOF, I have hereunto affixed my official signature on this 11<sup>th</sup> day of July, 2006.

  
KATHRYN A. DORNAN, City Clerk  
City of Farmington Hills