

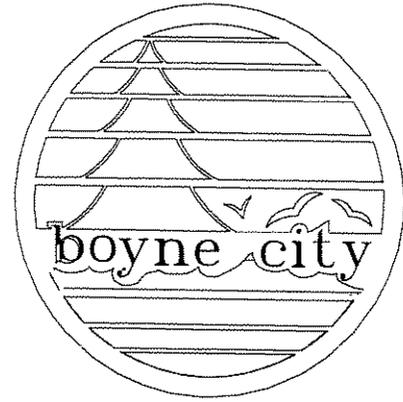
CITY OF BOYNE CITY

To: Michael Cain, City Manager 

From: Scott McPherson, Planning Director 

Date: January 26, 2012

Subject: Planning Commission Ordinance



Background

As requested by the City Commission I am providing the existing Planning Commission Ordinance (see attached, pages A-B) and the proposed ordinance (see attached, pages 1-5) and discuss the differences between the two.

Discussion

Because the proposed ordinance is a complete rewrite a line by line comparison of the two is not practical. While the new ordinance has been similarly numbered and formatted to be compatible with the existing code of ordinances, some additional sections have been added to the new ordinance and the topics of some of the existing sections has been changed. To compare the differences between the two ordinances I have provided the following section by section comparison of the two ordinances.

Section 2-256.

In the existing ordinance this section authorizes the creation of the Planning Commission.

In the proposed ordinance this section authorizes the creation of the Planning Commission and contains cites and references to the enabling act and the legal authority for the Ordinance and Planning Commission.

Section 2-257.

In the existing ordinance this section identifies the number of members, the length of terms and the method of appointment. The existing ordinance requires that a City Commission member be appointed to the Planning Commission and states that a member of the Zoning Board of Appeals may be appointed.

In the proposed ordinance this section provides for the same number of Planning Commission members (9) and the same 3 year staggered terms. The proposed ordinance would change the appointment of a City Commission member to the Planning Commission from mandatory to a discretionary appointment. The new ordinance does not provided for an appointment of a ZBA member to the Planning Commission. The proposed ordinance also requires that a person appointed to the Planning Commission is a resident and qualified elector of the City. This change was implemented because the new enabling act does have provisions that would allow non residents be appointed to the Planning Commission. The proposed ordinance identifies specific segments of the community that should be represented by the membership. This requirement is

mandated by the new act. The Planning Commission has previously changed it's by laws to reflect these requirements and the current membership is compliant with the enabling act representation requirements. This section of the new ordinance includes the method to fill vacancies and also stipulates the method of transition of the existing Planning Commission to the new Planning Commission which is being established by the new ordinance.

Section 2-258

In the existing ordinance this section covers the method and process to fill vacancies.

In the new ordinance this section covers training for Planning Commission members. Training is recommended but not required by the ordinance. While the enabling act does identify specific areas of expertise for Planning Commission members is does not require any specific certifications or training programs for Planning Commission members.

Section 2-259

This section covers the reasons and procedures for removal from office and is basically the same for the existing and proposed ordinances.

Section 2-260

In the existing ordinance this section stipulates that the Planning Commission shall annually elect a chairman and that the Planning Commission shall hold at least 1 meeting per month. This section also stipulates requirements for the keeping of records and the requirements for retention and inspection of public records.

In the proposed ordinance the meeting requirement is changed to a minimum of 4 meetings per year to be consistent with the enabling act requirements. The section also provides rules for conducting business and the keeping of public records. The section adds rules for disqualification from voting for a conflict of interest.

Section 2-261

In the existing ordinance this section details the authority of the Planning Commission to contract for services with prior approval of the City Commission.

In the new ordinance this section details the responsibility of the Planning Commission to develop a master plan.

Section 2-262

In the existing ordinance this section details the responsibilities of the Planning Commission including the development of a master plan, the review public of improvements, the development educational and publicity programs and the approval of plats.

In the proposed ordinance this section requires the adoption of bylaws and the requirement of providing an annual report to the City Commission.

Section 2-263

In the existing ordinance this section stipulates that the Planning Commission shall make reports and recommendations to the City Commission.

In the new ordinance this section details the requirement for the Planning Commission to annually review the capital improvement plan.

Section 2-264

This section is new and covers the review of plats by the Planning Commission.

Section 2-265

This section is new and stipulates that all actions previously approved by the Planning Commission continue to be in full force and effect.

Section 2-266

This section is new and defines the terms qualified elector and residence.

EXISTING PLANNING COMMISSION ORDINANCE

Sec. 2-256. – Creation

The city planning commission is hereby created

Sec. 2-257. - Membership

(a) The city planning commission shall consist of nine members who shall represent insofar as possible different professions or occupations. One of the nine shall be a member of the city commission, to be selected by resolution of the city commission to serve as a member ex officio. All ex officio members appointed shall have full motion making and voting rights. The remaining eight members shall be appointed by the mayor, subject to approval by majority vote of the city commission. An appointed member shall not hold another municipal office, except that one appointed member may be a member of the city zoning board of appeals. The term of each appointed member of the city planning commission shall be three years, except the members first appointed, which shall be staggered. The term of the ex officio member shall be determined by the city commission body and shall be stated in the resolution selecting the ex officio member, but the term shall not exceed the member's term of office as a member of the legislative body. Appointed members shall hold office until a successor has been appointed. The planning director or designee of the city manager shall attend all meetings of the city planning commission, may participate in all of its discussions, however, shall not have any voting rights.

(b) All members of the city planning commission shall serve as such without compensation, unless compensation is formally established and approved by the city commission.

Sec. 2-258. – Vacancies

A vacancy on the planning commission occurring other than through the expiration of term shall be filled for the unexpired term by the mayor in the case of a member selected or appointed by the mayor, by the city commission in the case of any member appointed by the city commission, with the appointed member to serve the remaining period of the unexpired term

Sec. 2-259. - Removal of member

Members of the city planning commission may, after public hearing, be removed by the mayor, with approval by the city commission, for inefficiency, neglect of duty, or malfeasance in office. The legislative body may, for like cause, remove the member selected by the legislative body

Sec. 2-260. - Election of chair, officers; meetings and records

EXISTING PLANNING COMMISSION ORDINANCE

(a) The city planning commission shall annually elect its chairman from amongst the appointed members and create and fill such other of its offices as it may determine

(b) The city planning 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 and open to inspection in the office of the city clerk

Sec. 2-261. - Contracts for services

The city planning commission may contract with city planners, engineers, architects, and other consultants for such specialized services as it may require. In addition, the services of regular city employees may be obtained as found necessary for its work; provided, however, the city planning commission shall not expend any funds or enter into any contracts or agreements for expenditures in excess of amounts appropriated for the purpose by the city commission.

Sec. 2-262. - Powers and duties.

The city planning commission shall have such powers concerning the preparation and adoption of a master plan or any part thereof, the making of surveys as a basis for such plan, the approval of public improvements, the carrying out of educational and publicity programs, the approval of plats and such other rights, powers, duties and responsibilities as are provided in sections 6 through 15 of Public Act No. 285 of 1931 (MCL 125.36—125.45).

Sec. 2-263. - Reports and recommendations

The city planning commission shall make reports and recommendations to the city commission; provided, however, that no such recommendation shall be binding upon the city commission.

PROPOSED PLANNING COMMISSION ORDINANCE

CITY OF BOYNE CITY COUNTY OF CHARLEVOIX

AN AMENDMENT TO THE BOYNE CITY CODE OF ORDINANCES

AN ORDINANCE to re-create a Planning Commission for the City of Boyne City as required and authorized by Act 33 of the Michigan Public Acts of 2008, as amended, being the Michigan Planning Enabling Act (M.C.L. 125.3801 *et. seq.*) for the purpose of having planning and zoning in the City of Boyne City, to create, organize, enumerate powers and duties, and to provide for the regulation and subdivision of land, coordinated and harmonious development of the City of Boyne City; and to function in cooperation with other constituted authorities of incorporated and unincorporated areas within the state where the City of Boyne City exists.

WHEREAS, The People of the City of Boyne City did establish the Boyne City Planning Commission under Article VI, Division 5 of the City of Boyne City Code of Ordinances, and it is now desired to repeal the existing ordinance under Division 5 and adopt this ordinance as a replacement to Division 5 to insure proper record of the action is created, NOW THEREFORE, THE CITY OF BOYNE CITY ORDAINS:

Section 1. Purpose.

An Ordinance Re-Creating the City Of Boyne City Planning Commission Under Act 33 Of The Michigan Public Acts Of 2008, As Amended, Being The Michigan Planning Enabling Act

Section 2. Division 5. Planning Commission of Article VI of the Boyne City Code of Ordinances is hereby changed as follows:

DIVISION 5. PLANNING COMMISSION

2-256. Creation: There shall be a City of Boyne City Planning Commission pursuant to Act 33 of the Michigan Public Acts 2008, as amended, being the Michigan Planning Enabling Act (M.C.L. 125.3801 *et. seq.*), hereinafter referred to as the Planning Commission with the powers and duties as therein set forth and as hereinafter provided. This ordinance shall be officially known and described as the "City of Boyne City Planning Commission Ordinance."

2-257. Membership

- A. The Planning Commission shall consist of nine (9) members appointed by the Mayor subject to approval by a majority vote of the City Commission. One of the members may be a member of the City Commission and serve as an ex-officio with full voting rights. To be qualified to be a member and remain a member of the Commission, the following qualifications must be met:
1. Shall be a qualified elector of the City of Boyne City, as defined in Section 2-266 of this Ordinance.
 2. Shall be a resident of the City of Boyne City, as defined in Section 2-266 of this Ordinance.
- B. Members shall be appointed for three-year terms. 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 the terms of, of all commission members continue to expire each year. A

PROPOSED PLANNING COMMISSION ORDINANCE

member shall hold office until his or her successor is appointed. The term of ex-officio member's appointed from the City Commission shall be concurrent with their elected term of office.

- C. 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 Boyne City, in accordance with the major interests as they exist in the City, such as agriculture, natural resources, recreation, education, public health, government, transportation, industry, commerce, healthcare, building trades, hospitality, retail, finance, insurance, real estate, cultural, historic, and recreational resources.
- D. The membership shall also be representative of the entire geography of the City of Boyne City to the extent practicable.
- E. The City Commission shall fill any vacancy in the membership of the Commission for the unexpired terms in the same manner as the initial appointment.
- F. The transition from the previous City of Boyne City Planning Commission and the Commission established in this ordinance shall be gradual and shall take place over the next three years. The City Commission shall continue to make annual appointments, appointing approximately $\frac{1}{4}$ 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. All other aspects of this ordinance shall have immediate effect.

2-258. Training

Appointed members of the Planning Commission should attend educational programs designed for training members of Michigan planning commissions if the adopted City of Boyne City budget for that fiscal year includes funds to pay for tuition, registration, and travel expenses for the training. Nothing in this paragraph shall prevent a member who has not had training from finishing his or her term of office unless the member resigns or is removed by action of the City Commission. The Planning Commission shall include in its bylaws what training programs qualify to meet this requirement.

2-259. Removal from Office

The City Commission may remove a member of the Planning Commission for misfeasance, malfeasance, or nonfeasance in office upon written charges and after a public hearing. Failure to disclose a potential conflict of interest as required by section 5d shall constitute malfeasance in office.

2-260. Meetings

- A. The Planning Commission shall hold not less than four (4) regular meetings each year, and by resolution shall determine the time and place of meetings. Unless the bylaws provide otherwise, a special meeting of the Commission may be called by the chairperson or by two (2) other members, upon written request to the secretary. Unless the bylaws provide otherwise, the secretary shall send written notice of a special meeting to Commission members not less than 48 hours before the meeting.

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- B. The business that the Planning Commission may perform shall be conducted at a public meeting of the Commission held in compliance with the open meetings act, Act 267 of the Michigan Public Acts of 1976 (MCL 15.261 to 15.275), Public notice of the time, date, and place of a regular or special meeting shall be given in the manner required by that act.
- C. A writing prepared, owned, used, in the possession of, or retained by the Planning Commission in the performance of an official function shall be made available to the public in compliance with the freedom of information act, Act 442 of the Michigan Public Acts of 1976 (MCL 15.231 to 15.246).
- D. Before casting a vote on a matter on which a member may reasonably be considered to have a conflict of interest, the member shall disclose the potential conflict of interest to the Planning Commission. The member is disqualified from voting on the matter if so provided by the bylaws or by a majority vote of the remaining members of the Planning Commission.

2-261. Powers and Duties

A. Master Plan:

- 1. The Planning Commission shall make and approve a master plan as a guide for development within its planning jurisdiction. The planning jurisdiction includes areas within the City and may also include any areas outside of the City that, in the judgment of the Commission, are related to planning for the City.
- 2. In preparation of the master plan, the Planning Commission shall do all of the following, as applicable:
 - (a) Make careful and comprehensive surveys and studies of present conditions and future growth within the planning jurisdiction with due regard to its relation to neighboring jurisdictions.
 - (b) Consult with representatives of adjacent local units of government in respect to their planning so that conflicts in master plans and zoning may be avoided.
 - (c) Cooperate with all departments of the state and federal governments and other public agencies concerned with programs for economic, social, and physical development within the planning jurisdiction and seek the maximum coordination of the local unit of government's programs with these agencies.
- 3. The master plan shall address land use and infrastructure issues. The plan shall include maps, plats, charts, and show the Commission recommendations for the physical development of the City. The master plan shall also include information pertinent to the future development of the planning jurisdiction as detailed in Act 33 of the Michigan Public Acts of 2008 (MCL 125.3833 (2)).
- 4. Preparation and adoption of and amendments to the master plan shall follow the procedures established in Act 33 of the Michigan Public Acts of 2008 (MCL 125.3839-125.3845).

2-262. Records

- A. The Planning Commission shall adopt bylaws for the transaction of business, and shall keep a public record of its resolutions, transactions, findings and determinations.
- B. The Planning Commission shall make an annual report to City Commission concerning its operations and the status of planning activities, including recommendations regarding actions by the City Commission related to planning and development.

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2-263. Capital Improvements Program.

Upon adoption of the master plan, the Planning Commission shall annually review and recommend a capital improvements program (CIP) of public structures and improvements, with the assistance of staff. The CIP shall show those public structures and improvements, in the general order of their priority for the ensuing 6-year period, based upon the requirements of the local unit of government for all types of public structures and improvements.

2-264. Review of Plats

Upon adoption of the master plan, the Planning Commission shall review and make recommendations on plats, after publishing and holding a public hearing.

2-265. Approval, Ratification, and Reconfirmation

All official actions taken by all the City of Boyne City Planning Commissions 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 Boyne City Planning Commission. This Ordinance shall be in full force and effect from and after its adoption and publication.

2-266. Definitions

For purposes of this Ordinance, the following words shall have the following meanings respectively ascribed to them, except where the content clearly indicates a different meaning:

- A. "Qualified Elector," as used in this Ordinance, intending to be consistent with Section 10 of the Michigan Election Law, being MCLA 168.10, means a United States citizen who has been a resident of the City of Boyne City for 1 year and is eighteen (18) years or older.
- B. "Residence," as used in this Ordinance, intending to be consistent with Section 11 of the Michigan Election Law, being MCLA 168.11, means that place at which a person habitually sleeps, keeps his or her personal effects and has a regular place of lodging. If a person has more than 1 residence, or if a wife has a residence separate from that of the husband, that place at which the person resides the greater part of the time shall be his or her official residence for the purposes of this act. This section shall not be construed to affect existing judicial interpretation of the term residence.
 - 1. An elector shall not be deemed to have gained or lost a residence by reason of being employed in the service of the United States or of this state, while engaged in the navigation of the waters of this state or of the United States or of the high seas, while a student at an institution of learning, while kept at any state facility or hospital at public expense, or while confined in a jail or prison. Honorably discharged members of the armed forces of the United States or of this state and who reside in the veterans' facility established by this state may acquire a residence where the facility is located. The residence of a person who is a patient receiving treatment at a hospital or other facility pursuant to Act No. 258 of the Public Acts of 1974, as amended, being sections 330.1001 to 330.2106 of the Michigan Compiled Laws, is the village, city, or township where the person resided immediately before admission to the hospital or other facility.

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2. A member of the armed forces of the United States shall not be deemed a resident of this state in consequence of being stationed in a military or naval place within the state.

Section 3. Conflicting Standards.

If any of the standards set forth in this amendment conflict with any other standards of previous or future ordinances or amendments, the stricter standards shall apply.

Section 4. Repeal; Savings Clause.

All ordinances, resolutions, or orders, or parts thereof, in conflict with the provisions of this ordinance are, to the extent of such conflict, repealed.

Section 5. Severability

The various parts, sections and clauses of this Ordinance are hereby declared to be severable. If any part, sentence, paragraph, section or clause is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of the Ordinance shall not be affected thereby.

Section 6. Effective Date

This Ordinance shall become effective fifteen (15) days from its enactment.