

March 15-16, 2022

Lansing Center

CAP CON 2022





VINCENT L. DUCKWORTH

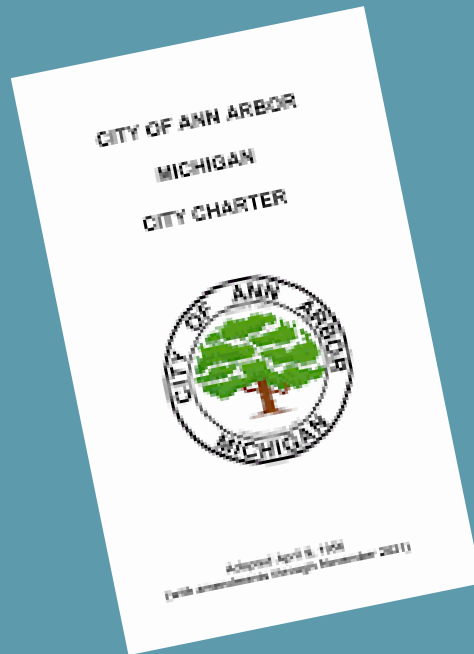
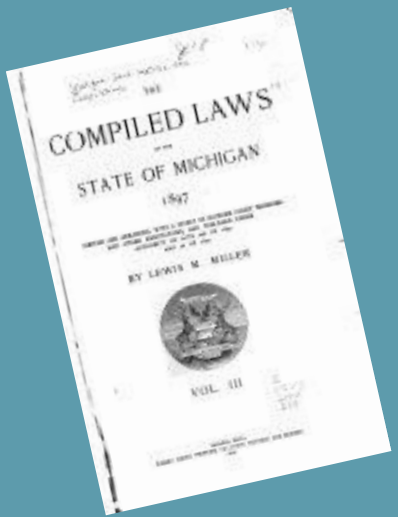
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Ordinances: Writing Local Laws

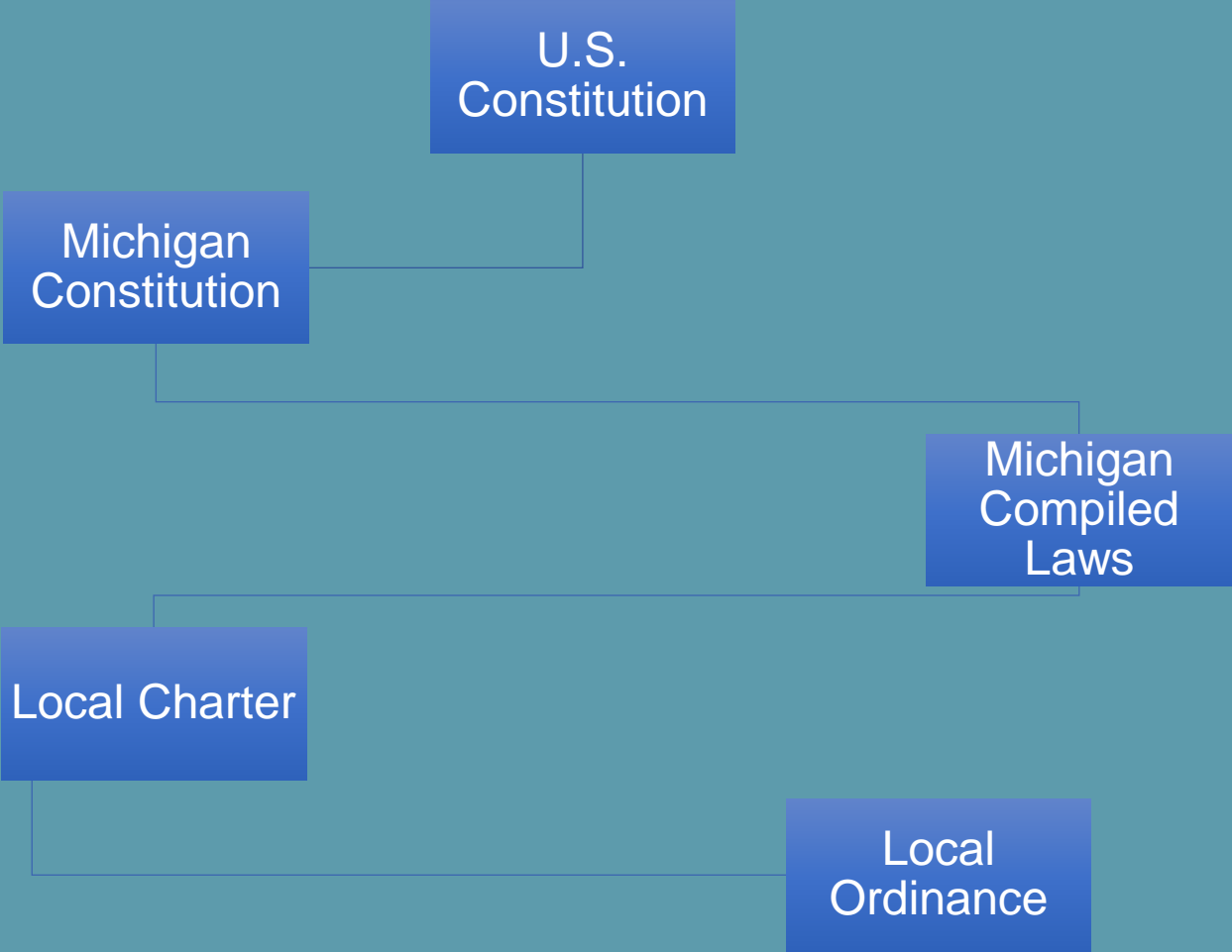
- Authority (constitutional and statutory)
- Serving a public purpose
- Reasonableness
- Choosing between Resolution and ordinance
- Adoption procedures (Notice; Vote requirements)
- Publication
- Printing
- Effective Date
- Penalties

Ordinances: Writing Local Laws

Authority



Authority



Serves a Public Purpose



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Serves a Public Purpose

Local
Concerns



Serves a Public Purpose

Local must
also be
Lawful

Public Purpose



Local Concerns



Lawful Purpose



Serves a Public Purpose
Lawful



Must be consistent with Federal and State law.

No discrimination against protected class of persons

Cannot PERMIT what State Forbids
Cannot FORBID what State Permits

Cannot regulate in a State Occupied Field of Regulation


Must be consistent with Local Charter

Must be consistent with existing ordinances


Example

Fireworks Safety Act

“ Except as provided in this act, a local unit of government shall not enact or enforce an ordinance, code, or regulation pertaining to or in any manner regulating the sale, display, storage, transportation, or distribution of fireworks regulated under this act.”
MCL 28.457

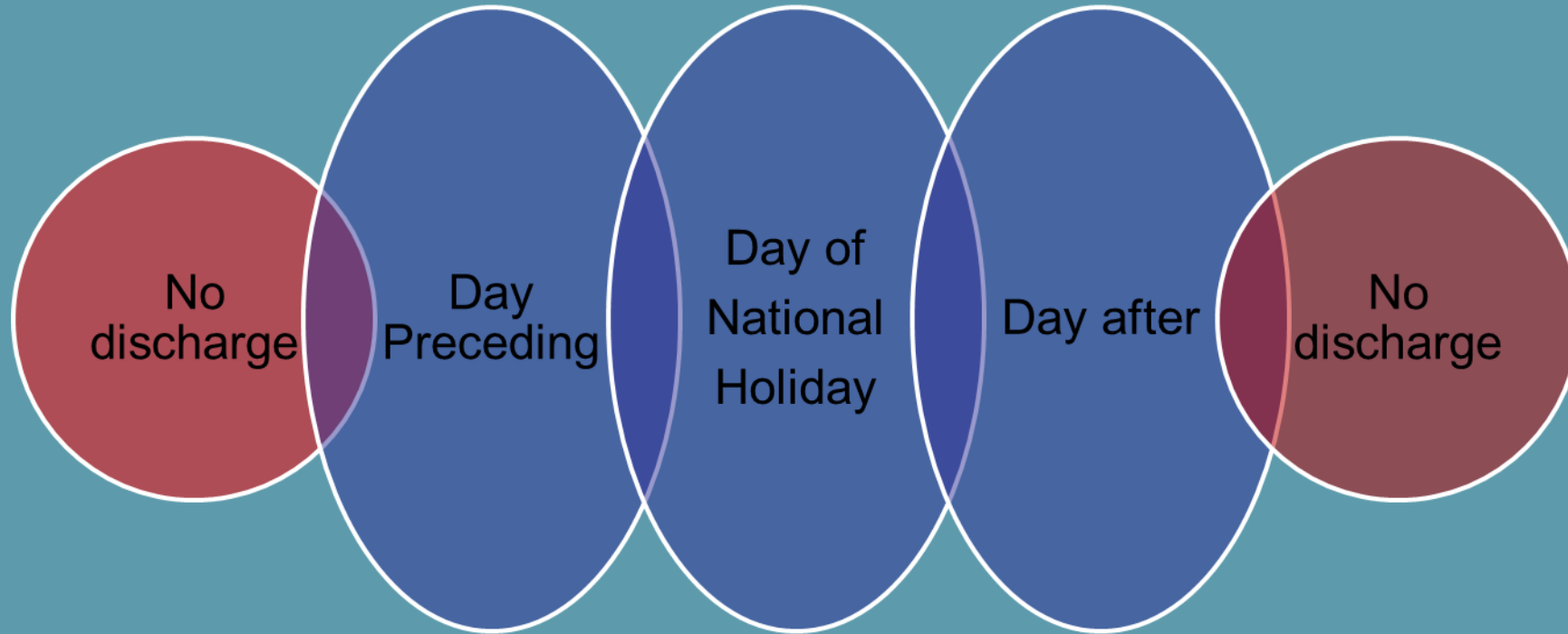


“A local unit of government may enact an ordinance regulating the ignition, discharge, and use of consumer fireworks. MCL 28.457(2)



However, an ordinance enacted under this subsection shall not regulate the use of consumer fireworks on the day preceding, the day of, or the day after a national holiday.” MCL 28.457

Cities could regulate consumer fireworks, but in only limited manner



Lawful

Ordinance language must be
clear and concise

Presumption of
constitutionality

An Ordinance too vague
will be considered void

When conduct is not
sufficiently proscribed,
enforcing agents are
given too much
discretion to determine
what is and what is not
prohibited

Reasonableness



Reasonableness

People v McKendrick, 188 Mich App 128, 468 NW2d 903 (1991).

City of Ferndale grass cutting ordinance



Reasonableness

“In determining the validity of an exercise of police power, a two-pronged analysis is applied:

- (1) whether the object of the ordinance is one for which police power may be properly invoked, and, if so,
- (2) whether there is a reasonable and substantial relationship between the exercise of the police power invoked and the object to be attained.”

People v McKendrick, 188 Mich App 128, 137; 468 NW2d 903 (1991).

“[o]rdinances having for their purpose regulated municipal development, the security of home life, the preservation of a favorable environment in which to rear children, the protection of morals and health, the safeguarding of the economic structure upon which the public good depends, the stabilization of the use and value of property, the attraction of desirable citizenship and fostering its permanency are within the proper ambit of the police power.”

Id. at 138.

“a community's desire to enhance the scenic beauty of its neighborhoods through a very specific enactment is clearly a legitimate feature of the public welfare and is enforceable through the exercise of police power.”

Id.

Adoption Procedures



Resolution or Ordinance

Taking Public Action, by Ordinance or Resolution

Where “. . . the substance of city action requires the adoption of an ordinance, a resolution cannot operate as a de facto ordinance. The attempt to legislate by resolution is simply a nullity.”

Rollingwood Homeowners Corp v Flint, 386 Mich 258, 267; 191 NW2d 325 (1971).

Review your Charter, Ordinance and State law.

Where silent:

Resolutions -- generally appropriate to implement ministerial functions for short-term purposes. These could include contract authorizations, appointment committee members, setting user fees

Ordinances -- generally used to exercise policy powers, zoning powers and actions regulating behavior for common good.

Resolution or Ordinance

Taking NO Public Action, by EITHER Ordinance or Resolution, is sometimes the best action.

A municipal electric franchise issued to a private company may expire without the municipality taking any action on a requested renewal. *Upper Peninsula Power Co v Village of L'Anse*, 334 Mich App 581, 602; 965 NW2d 658 (2020).



Adoption Procedures

Follow local Charter, Statute and Ordinances

DUE PROCESS = Notice and Opportunity to be heard

Notice – follow Charter, local ordinance and State requirements (OMA and Zoning Enabling Act)

Opportunity to be heard – follow Open Meeting Act (OMA) requirements and local ordinance

Voting Requirements

Ordinances must generally be adopted by a majority of elected members, special rules can apply depending on action being taken.

Careful with member abstentions, absences, conflicts of interest, use of alternates and attempts to participate remotely by elected members not clearly exempt under OMA

Publication

Once an ordinance is passed, it must be published.

Due Process requires Notice.

State law provisions address different community structures for publication requirements

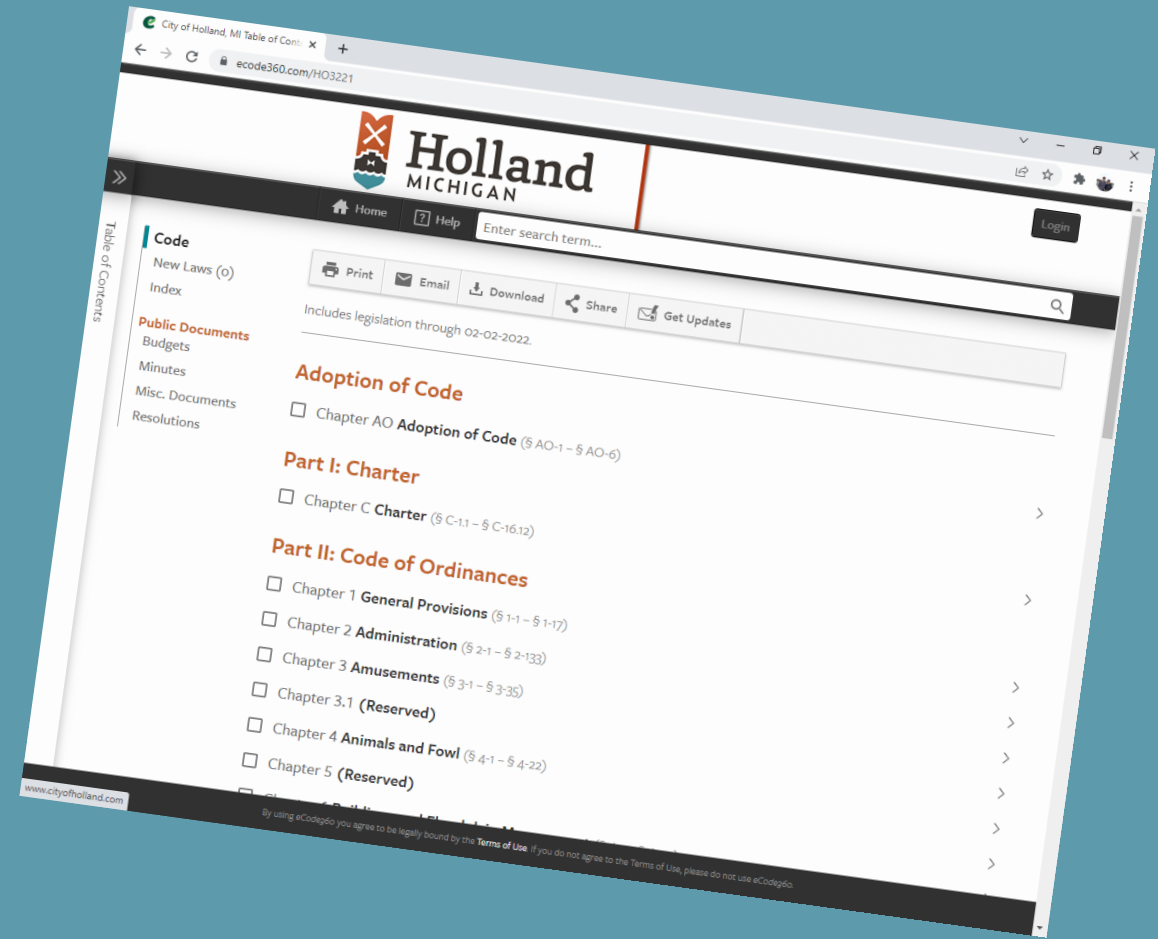
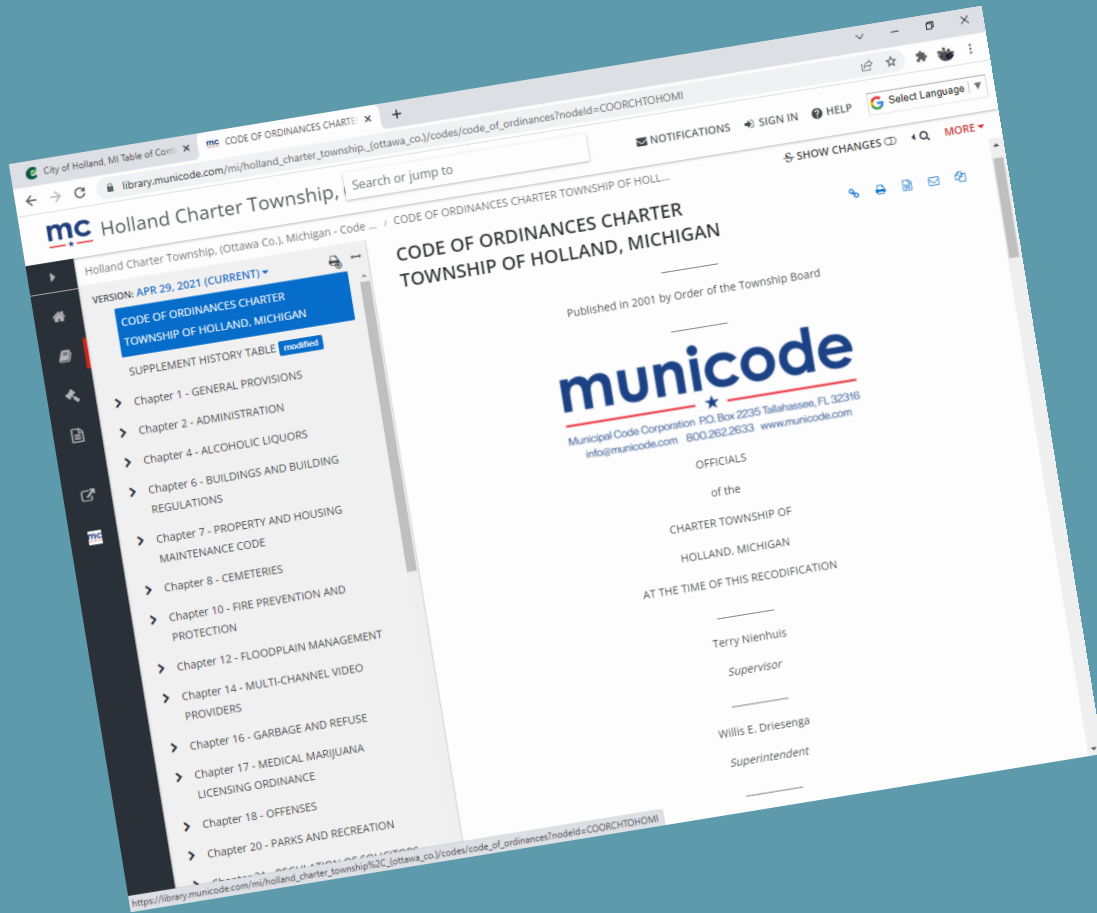
Summary publication possible, provided authorized by State law and local Charter/ordinance.

Allows summary of an ordinance to be published in a newspaper with direction on where a reader may go to review the entire ordinance.

Note: Michigan Zoning Enabling Act, MCL 125.3401 – has special publication rules - “The filing and publication requirements under this section supersede any other statutory or charter requirements relating to the filing and publication of county, township, city, or village ordinances.”

Printing

On-line is great, but review your Charter and State law requirements



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Effective Date

Vary based on the type of municipal corporation

Cities – Home Rule cities generally have effective date of ordinance stated in ordinance per Charter

Fourth Class Cities – Non-penal ordinances effective no sooner than 24 hours after passed, penal ordinance effective 20 days after passed

Charter Twp. - ordinances effective on date of publication or as stated in ordinance.

General Law Twp. – ordinance effective 30 days after publication, if penal in nature

Villages – General law and Home Rule villages must indicate effective date in ordinance. If penalty imposed, then 20 days after publication

Counties – No sooner than 60 days after adopted

Penalties

Criminal Misdemeanors

No more than \$500 fine

No more than 90 days jail

High BAC OWI - State law permits City Ordinance to punish up to 180 days and/or \$700 fine

Civil Infractions

May be up to a \$500 civil infraction fine

Nuisance abatement

May recover attorney fees incurred to prosecute nuisance abatement action

Disclaimer

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Thank you!



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