

SUBSTITUTE FOR  
HOUSE BILL NO. 5010

A bill to amend 1921 PA 207, entitled  
"City and village zoning act,"  
by amending sections 3b and 5 (MCL 125.583b and 125.585), section  
3b as amended by 1993 PA 210 and section 5 as amended by 1986 PA  
191.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1       Sec. 3b. (1) As used in this section, "state licensed resi-  
2       dential facility" means a structure constructed for residential  
3       purposes that is licensed by the state pursuant to the adult  
4       foster care facility licensing act, ~~Act No. 218 of the Public~~  
5       ~~Acts of 1979, being sections 400.701 to 400.737 of the Michigan~~  
6       ~~Compiled Laws, or Act No. 116 of the Public Acts of 1973, as~~  
7       ~~amended, being sections 722.111 to 722.128 of the Michigan~~  
8       ~~Compiled Laws~~ 1979 PA 218, MCL 400.701 TO 400.737, OR 1973 PA  
9       116, MCL 722.111 TO 722.128, that provides resident services or

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1 care for 6 or fewer persons under 24-hour supervision for persons  
2 in need of that supervision or care.

3       (2) In order to implement the policy of this state that per-  
4 sons in need of community residential care shall not be excluded  
5 by zoning from the benefits of normal residential surroundings, a  
6 state licensed residential facility providing supervision or  
7 care, or both, to 6 or less persons shall be considered a resi-  
8 dential use of property for the purposes of zoning and a permit-  
9 ted use in all residential zones, including those zoned for  
10 single family dwellings, and shall not be subject to a special  
11 use or conditional use permit or procedure different from those  
12 required for other dwellings of similar density in the same  
13 zone.

14       (3) This section does not apply to adult foster care facili-  
15 ties licensed by a state agency for care and treatment of persons  
16 released from or assigned to adult correctional institutions.

17       (4) At least 45 days before licensing a residential facili-  
18 ty, the state licensing agency shall notify the council of the  
19 city or village or the designated agency of the city or village  
20 where the proposed facility is to be located to review the number  
21 of existing or proposed similar state licensed residential facil-  
22 ities whose property lines are within a 1,500-foot radius of the  
23 property lines of the proposed facility. The council of a city  
24 or village or an agency of the city or village to which the  
25 authority is delegated, when a proposed facility is to be located  
26 within the city or village, shall give appropriate notification  
27 of the proposal to license the facility to those residents whose

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1 property lines are within a 1,500-foot radius of the property  
2 lines of the proposed facility. A state licensing agency shall  
3 not license a proposed residential facility if another state  
4 licensed residential facility exists within the 1,500-foot radius  
5 of the proposed location, unless permitted by local zoning ordi-  
6 nances or if the issuance of the license would substantially con-  
7 tribute to an excessive concentration of state licensed residen-  
8 tial facilities within the city or village. In a city with a  
9 population of ~~1,000,000~~ 750,000 or more, a state licensing  
10 agency shall not license a proposed residential facility if  
11 another state licensed residential facility exists within a  
12 3,000-foot radius of the proposed location unless permitted by  
13 local zoning ordinances. This subsection shall not apply to  
14 state licensed residential facilities caring for 4 or fewer  
15 minors.

16 (5) This section does not apply to a state licensed residen-  
17 tial facility licensed before March 31, 1977, or to a residential  
18 facility that was in the process of being developed and licensed  
19 before March 31, 1977 if approval was granted by the appropriate  
20 local governing body before that date.

21 Sec. 5. (1) The legislative body of a city or village may  
22 act as a board of appeals upon questions arising under a zoning  
23 ordinance. The legislative body may establish rules to govern  
24 its procedure as a board of appeals. In the alternative, if the  
25 legislative body of a city or village desires, the legislative  
26 body may appoint a board of appeals consisting of not less than 5  
27 members, each to be appointed for a term of 3 years.

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1 Appointments of the first members shall be for terms of 1, 2, and  
2 3 years, respectively, so as nearly as possible to provide for  
3 the appointment of an equal number of members each year. After  
4 the initial appointments, each member shall hold office for the  
5 full 3-year term.

6 (2) In accord with procedures specified in the zoning ordi-  
7 nance, the legislative body of a city or village may appoint not  
8 more than 2 alternate members for the same term as regular mem-  
9 bers of the board of appeals. The alternate members may be  
10 called on a rotating basis as specified in the zoning ordinance  
11 to sit as regular members of the board of appeals in the absence  
12 of a regular member. An alternate member may also be called to  
13 serve in the place of a regular member for the purpose of reach-  
14 ing a decision on a case in which the regular member has  
15 abstained for reasons of conflict of interest. The alternate  
16 member having been appointed shall serve in the case until a  
17 final decision has been made. The alternate member shall have  
18 the same voting rights as a regular member of the board of  
19 appeals.

20 (3) The board of appeals shall hear and decide appeals from  
21 and review any order, requirements, decision, or determination  
22 made by an administrative official or body charged with the  
23 enforcement of an ordinance adopted under this act. The board of  
24 appeals shall also hear and decide matters referred to the board  
25 or upon which the board is required to pass under an ordinance of  
26 the legislative body adopted under this act. For special land  
27 use and planned unit development decisions, an appeal may be

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1 taken to the board of appeals only if provided for in the zoning  
2 ordinance.

3       (4) In a city or village having a population of less than  
4 ~~1,000,000~~ 750,000, the concurring vote of a majority of the  
5 members of the board shall be necessary to reverse an order,  
6 requirement, decision, or determination of an administrative  
7 official or body, or to decide in favor of the applicant a matter  
8 upon which the board is required to pass under an ordinance, or  
9 to effect a variation in an ordinance except that a concurring  
10 vote of 2/3 of the members of the board shall be necessary to  
11 grant a variance from uses of land permitted in an ordinance. In  
12 a city having a population of ~~1,000,000~~ 750,000 or more, the  
13 concurring vote of 2/3 of the members of the board shall be nec-  
14 essary to reverse an order, requirement, decision, or determina-  
15 tion of an administrative official or body, or to decide in favor  
16 of the applicant a matter upon which the board is required to  
17 pass under an ordinance, or to effect a variation in an  
18 ordinance.

19       (5) An appeal may be taken by a person aggrieved, or by an  
20 officer, department, board, or bureau of the city or village. If  
21 a city or village has created or may create a board of rules or  
22 board of building appeals, that board may be enlarged to consist  
23 of not less than 5 members, and these may be appointed as the  
24 board of appeals as provided in this section.

25       (6) An appeal under this section shall be taken, within a  
26 time prescribed by the board of appeals by general rule, by the  
27 filing with the officer or body from whom the appeal is taken and

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1 with the board of appeals of a notice of appeal specifying the  
2 grounds for the appeal. The officer or body from whom the appeal  
3 is taken shall immediately transmit to the board all the papers  
4 constituting the record upon which the action appealed from was  
5 taken.

6 (7) An appeal under this section stays all proceedings in  
7 furtherance of the action appealed from unless the officer or  
8 body from whom the appeal is taken certifies to the board of  
9 appeals, after the notice of appeal is filed, that by reason of  
10 facts stated in the certificate, a stay would in the opinion of  
11 the officer or body cause imminent peril to life or property, in  
12 which case the proceedings shall not be stayed otherwise than by  
13 a restraining order which may be granted by the board of appeals  
14 or by the circuit court, on application, on notice to the officer  
15 or body from whom the appeal is taken and on due cause shown.

16 (8) The board of appeals shall fix a reasonable time for the  
17 hearing of the appeal and give due notice of the appeal to the  
18 persons to whom real property within 300 feet of the premises in  
19 question is assessed, and to the occupants of single and 2-family  
20 dwellings within 300 feet, the notice to be delivered personally  
21 or by mail addressed to the respective owners and tenants at the  
22 address given in the last assessment roll. The board of appeals  
23 shall decide the appeal within a reasonable time. If the  
24 tenant's name is not known, the term occupant may be used. Upon  
25 the hearing, a party may appear in person or by agent or by  
26 attorney.

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1 (9) The board of appeals may reverse or affirm, wholly or  
2 partly, or may modify the order, requirement, decision, or  
3 determination appealed from and shall make an order, requirement,  
4 decision, or determination as in the board's opinion ought to be  
5 made in the premises, and to that end shall have all the powers  
6 of the officer or body from whom the appeal is taken. If there  
7 are practical difficulties or unnecessary hardship in the way of  
8 carrying out the strict letter of the ordinance, the board of  
9 appeals may in passing upon appeals vary or modify any of its  
10 rules or provisions relating to the construction, or structural  
11 changes in, equipment, or alteration of buildings or structures,  
12 or the use of land, buildings, or structures, so that the spirit  
13 of the ordinance shall be observed, public safety secured, and  
14 substantial justice done.

15 (10) The board of appeals may impose conditions upon an  
16 affirmative decision, as provided in section 4c(2). The legisla-  
17 tive body of any city or village may authorize the remuneration  
18 of the members of the board for attendance at each meeting.

19 (11) The decision of the board of appeals shall be final.  
20 However, a person having an interest affected by the zoning ordi-  
21 nance may appeal to the circuit court. Upon appeal, the circuit  
22 court shall review the record and decision of the board of  
23 appeals to insure that the decision meets all of the following:

24 (a) Complies with the constitution and laws of this state.

25 (b) Is based upon proper procedure.

26 (c) Is supported by competent, material, and substantial  
27 evidence on the record.

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1 (d) Represents the reasonable exercise of discretion granted  
2 by law to the board of appeals.

3 (12) If the court finds the record of the board of appeals  
4 inadequate to make the review required by this section, or that  
5 additional evidence exists which is material and with good reason  
6 was not presented to the board of appeals, the court shall order  
7 further proceedings before the board of appeals on conditions  
8 which the court considers proper. The board of appeals may  
9 modify its findings and decision as a result of the new proceed-  
10 ings, or may affirm the original decision. The supplementary  
11 record and decision shall be filed with the court.

12 (13) As a result of the review required by this section, the  
13 court may affirm, reverse, or modify the decision of the board of  
14 appeals.