

A PROPOSAL TO IMPLEMENT MANDATORY TRAINING REQUIREMENTS FOR HOME RULE ZONING OFFICIALS

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INTRODUCTION

State and local governments assume different roles when working together to implement and sustain effective governing policies.¹ Local governments tend to understand pressing issues affecting their communities and can therefore provide timely and narrowly tailored solutions. Such solutions, while often implemented to address particular local concerns, have a unique ability to extend across jurisdictional boundaries and ultimately impact the economic and social well-being of the state. Alternatively, states are better equipped to promote social equality and economic stability among their many citizens by passing expansive legislation to address statewide concerns.² Because states usually take a broader legislative approach while local governments often address issues more myopically, an unwavering power struggle between local autonomy and state regulation has persisted.³

1. See generally Robert M. Stein, *Devolution and Challenge for State and Local Governance*, in *AMERICAN STATE AND LOCAL POLITICS: DIRECTIONS FOR THE 21ST CENTURY* (Ronald E. Weber & Paul Brace eds., 1999) (discussing the proper role of state and local governments in the American federal system by reviewing various rationales for local governance).

2. See Omer Kimhi, *Reviving Cities: Legal Remedies to Municipal Finance Crises*, 88 B.U. L. REV. 633, 668 (2008) (“[T]he state has, a greater ability than municipal officials to address the socioeconomic causes at the heart of a municipal crisis.”); see also Richard Briffault, *Our Localism: Part I—The Structure of Local Government Law*, 90 COLUM. L. REV. 1, 6 (1990) (suggesting that state governments need to take a state-wide perspective on local problems). It must be noted that while states are well-equipped to provide social equality among their citizens, this by no means suggests that all states have made a concerted effort to do so.

3. See generally George D. Vaubel, *Toward Principles of State Restraint Upon the Exercise of Municipal Power in Home Rule*, 20 STETSON L. REV. 5 (1990) (providing a detailed discussion of the state-local power struggle in the context of home rule power). Mr. Vaubel suggests possible adjustments that can be made in current forms of state-local relations so that authority is more securely established at each level. *Id.* at 43-49.

The struggle between local autonomy and state regulation is evident in the context of Michigan home rule zoning authority.⁴ Home rule municipalities, or those that have adopted charters to govern local affairs, are generally delegated broad zoning powers from the state.⁵ The Michigan Constitution liberally construes home rule powers,⁶ and the Michigan Supreme Court has held that home rule municipalities possess expansive authority.⁷ While the legitimacy of broad home rule zoning power is generally incontestable, such powers are often delegated to inexperienced citizen volunteers who are responsible for making momentous land use decisions affecting local economic development and natural environment.⁸ Michigan has failed

4. For a discussion of the development and meaning of Michigan home rule, see *infra* Section I.A. No precise political definition of the term “home rule” exists because most definitions fail to specify the extent of local autonomy and the manner in which it is to be achieved. See Terrance Sandalow, *The Limits of Municipal Power Under Home Rule: A Role for the Courts*, 48 MINN. L. REV. 643, 645 (1964). However, as a legal concept, the home rule doctrine may be described as “a particular method for distributing power between state and local government, *i.e.*, a grant of power to the electorate of a local government unit to frame and adopt a charter of local government.” *Id.*

5. The term “municipalities” may include a variety of governmental entities. For purposes of this Comment, the term refers to Michigan cities, villages, and townships. The Michigan Constitution of 1963 grants cities and villages the authority to frame, adopt, and amend local charters. MICH. CONST. art. VII, § 22. Townships have the authority to do the same under the Township Charter Act. MICH. COMP. LAWS § 42.1 (2006). Home rule municipalities have constitutionally and statutorily mandated authority to establish a variety of zoning controls through their charters. MICH. COMP. LAWS §117.4(i) (home rule cities); MICH. COMP. LAWS § 78.24 (home rule villages); MICH. COMP. LAWS § 42.17 (home rule townships). Generally speaking, home rule municipalities have broad authority to govern local affairs. See *City of Detroit v. Walker*, 520 N.W.2d 135, 138 (Mich. 1994) (holding in part that home rule cities not only enjoy specifically granted powers, but may also exercise all powers not expressly denied); see also DAVID L. CALLIES, ROBERT H. FREILICH & THOMAS E. ROBERTS, *LAND USE* 45-46 (4th ed. 2004) [hereinafter *LAND USE*] (stating that “[m]any local governments derive substantial governmental authority. . . from home-rule provisions in state constitutions”).

6. MICH. CONST. art. VII, § 34 (“The provisions of this constitution and law concerning . . . townships, cities and villages shall be liberally construed in their favor.”); see also *City Comm’n of Jackson v. Hirschman*, 235 N.W. 265, 266 (Mich. 1931) (considering the purpose of home rule, it should be construed liberally and in a home rule spirit). Court decisions that cite the liberal construction provision invariably affirm home rule city ordinances. See John E. Beras, *Sources and Limitations of Municipal Authority in Home Rule Cities*, MUN. REP. (Mich. Mun. League, Ann Arbor, Mich.), Aug. 1994, at 2 (cataloguing decisions that cite the liberal construction provision).

7. See *Walker*, 520 N.W.2d at 135; see also *Alco Universal Inc. v. City of Flint*, 192 N.W.2d 247, 249 (Mich. 1971) (noting that Michigan is a strong home rule state).

8. See generally John R. Nolon, *The Quiet Revolution in Training Citizen Planners*, ZONING PRAC. (Am. Planning Assoc.) Apr. 2007, at 7 (cataloguing the recent movement in state-mandated training laws for local zoning officials). “[I]n most jurisdictions, the only legal requirements to be satisfied prior to running for office or seeking an appointment to a planning or zoning board is that individuals are of voting age (18 years) and that they reside in the jurisdiction where they seek to serve.” Patricia E. Salkin, *Zoning and Land Use Plan-*

to address this problem despite the significant responsibilities delegated to local zoning officials, and the increasing complexities associated with land use regulation. Until Michigan follows the lead of six other states that have recently passed mandatory training laws, local zoning officials will continue making significant and costly land use decisions despite their unfamiliarity with relevant zoning issues, current statutory law, and case law developments.⁹ Training inexperienced volunteers on these matters is necessary to ensure that zoning officials minimize municipal liability costs by properly applying and fully understanding their responsibilities and the environment in which they work.¹⁰

This Comment suggests that if Michigan is to continue acknowledging the broad scope of discretion allotted to home rule municipalities,¹¹ then the state should impose mandatory educational requirements for home rule zoning officials. These requirements may be imposed by revising the Michigan Planning Enabling Act¹² to implement mandatory training courses for current and prospective planning commissioners. The Michigan Zoning Enabling Act¹³ should also be amended to require similar requirements for zon-

ning, 35 REAL EST. L. J. 315, 315-16 (2006). More importantly, "members of local legislative bodies and land use boards often have no specific education or training in land use matters prior to their election or appointment." *Id.* at 315.

9. While Michigan has yet to address this problem, six states have passed laws requiring initial and continuing training courses for local zoning officials. See Nolon, *supra* note 8, at 2 (describing recently enacted mandatory training laws in Kentucky, Tennessee, South Carolina, Louisiana, New Jersey, and New York). For a discussion of these laws, see *infra* Part IV. While many training opportunities currently exist on planning and zoning topics across the country at meetings of national, statewide, regional, and locally-based organizations, these programs are permissive, and many local zoning officials do not routinely attend these workshops. See Salkin, *supra* note 8, at 316.

10. For a discussion of the mounting responsibilities and the increasingly complex land use environment making it difficult for local zoning officials to properly understand the scope of their authority, see *infra* Part III. See also CITIZENS RESEARCH COUNCIL OF MICH., A BIRD'S EYE VIEW OF MICHIGAN. LOCAL GOVERNMENT AT THE END OF THE TWENTIETH CENTURY 14 (1999), available at <http://www.crcmich.org/PUBLICAT/1990s/1999/rpt326.pdf> (explaining the difficulties that local government officials face when attempting to determine the scope of municipal power).

11. KENNETH VERBURG, A STUDY OF THE LEGAL POWERS OF MICHIGAN LOCAL GOVERNMENTS 19-20 (1960) (discussing the deferential treatment given to home rule municipalities).

12. Michigan Planning Enabling Act, 2008 Mich. Pub. Acts no. 33 (codified as amended in MICH. COMP. LAWS §§ 125.3801-.3885). The Michigan Planning Enabling Act (MPEA) consolidated three planning enabling statutes that previously authorized local planning for cities, villages, townships, and counties. The consolidation of the three planning enabling laws was the result of consensus involving many stakeholder groups, each of whom worked to create a unified structure for organizing and operating local planning commissions around the state. Interview with Mark Wyckoff, Dir., Planning & Zoning Ctr. at Mich. State Univ., in E. Lansing, Mich. (Jan. 17, 2008).

13. The recently enacted Michigan Zoning Enabling Act codified three former zoning enabling laws. The Michigan Zoning Enabling Act provides that a local unit of govern-

ing board of appeals members and alternates, as well as for zoning administrators.¹⁴ This proposal best eases the struggle between local autonomy and state regulation because it recognizes Michigan's commitment to home rule while acknowledging the state's authority to ensure that local zoning officials make educated land use decisions.

This Comment proceeds in five parts. Part I provides a history of Michigan home rule and an overview of the manner in which home rule municipalities exercise zoning power. It further discusses the meaning of zoning power within the context of state enabling acts and other significant land use legislation. Part II discusses the mounting responsibilities of local zoning officials and the increasing complexities associated with land use decisions. It also summarizes common criticisms that zoning officials encounter, particularly the accusation that local zoning officials often lack the necessary training to make informed land use decisions. Part III discloses both nationwide and Michigan-specific research that overwhelmingly supports mandatory training for local zoning officials. Part IV discusses the recent movement in state-mandated training for local zoning officials and examines the training statutes of six other states. Finally, Part V suggests that in order to administer zoning in the most efficient manner possible, the state should continue giving deferential treatment to municipal zoning power while amending the Michigan Zoning Enabling Act and the Michigan Planning Enabling Act to mandate initial and continuing training for local zoning officials. This Part also presents important factors to consider when drafting state-mandated training legislation, and further recommends ideal considerations for a Michigan training law by using other state laws as a framework.

I. MICHIGAN HOME RULE AND THE SCOPE OF LOCAL ZONING POWER

Before proposing a solution that would recognize Michigan's strong commitment to home rule while imposing state requirements to train local

ment may enact zoning ordinances for the regulation of land development and the establishment of districts within its zoning jurisdiction. MICH. COMP. LAWS § 125.3101(1). It is estimated that only three or four dozen zoning boards/zoning commissions are left in Michigan—most communities transferred the power of the zoning board/zoning commission to the planning commission long ago. See PLANNING & ZONING CTR., MICH. STATE UNIV., MICHIGAN ZONING GUIDEBOOK: FOR CITIZENS AND LOCAL OFFICIALS 2 (2006) [hereinafter PLANNING & ZONING CTR.]. In fact, the Michigan Zoning Enabling Act of 2006 contains a provision phasing out zoning commissions over the next five years, and zoning commissions will transfer all of their responsibilities to planning commissions by June 30, 2011. See discussion *infra* Subsection II.A.1.

14. While the power of zoning board/commissions has already been transferred to planning commissions, zoning boards of appeal continue to play an integral role in the zoning process, and are governed by the Michigan Zoning Enabling Act. MICH. COMP. LAWS §§ 125.3101-.3702; see discussion *infra* Subsection II.A.3.

zoning officials, it is important to discuss the development and meaning of Michigan home rule, zoning power, and the intersection between the two.

A. The Development and Meaning of Michigan Home Rule

A myriad of economic and social changes in the late nineteenth and early twentieth centuries prompted massive population increases in American cities.¹⁵ This influx, which consisted predominantly of individuals from rural areas seeking jobs during the industrial revolution, triggered a need for a variety of local services.¹⁶ The states' burden of managing this population growth would be ameliorated by adopting local charters to address the increasing demands of local residents.¹⁷ The Missouri Legislature was the first to respond to this explosive population growth by adopting the principle of "home rule" through a constitutional amendment in 1875.¹⁸ Missouri's adoption of home rule, which granted municipalities the power to adopt a charter to govern local affairs, quickly spread to other states, including Michigan.¹⁹

In tune with the demands of the time, Michigan attempted to dispose of Dillon's Rule,²⁰ the once prevailing theory of municipal power, by estab-

15. See DAVID MORRIS, CITIZENS RESEARCH COUNCIL OF MICH., DETROIT CITY CHARTER REVISION: THE NATURE AND PURPOSE OF A HOME RULE CITY CHARTER 2 (1971) (discussing how the population influx prompted the creation of home rule).

16. See MICH. MUN. LEAGUE, HOME RULE IN MICHIGAN—THEN AND NOW (2006), available at <http://www.mml.org/legislative/papers/homerule-paper.pdf> (last visited Feb. 17, 2008) (an issue paper discussing in part the origin of Michigan home rule); see also LAND USE, *supra* note 5, at 17 (noting that American cities had grown rapidly as the country industrialized in the late nineteenth and early twentieth centuries, but were not prepared to deal with the large influx of people).

17. A charter would "determine how best to secure representation on the city council, provide its own means for selecting the mayor and the administrators of the city activities, define the powers that might be exercised, and establish its own financial controls." See MORRIS, *supra* note 15, at 2.

18. MO. CONST. art. VI, § 18.

19. SUSAN B. HANNAH, CITIZENS RESEARCH COUNCIL OF MICH., DETROIT CITY CHARTER REVISION: PRINCIPLES AND HOME RULE CHARTERS 1 (1993) (comparing home rule charters to local government constitutions that describe the structure and powers of the city government).

20. Propagated by Iowa Supreme Court Justice John F. Dillon, Dillon's Rule suggested that a municipality possessed and could exercise only the powers granted in express words, those necessarily or fairly implied in or incident to the powers expressly granted, and those essential to the accomplishment of the declared objects and purposes of the municipality. J. DILLON, COMMENTARIES ON THE LAW OF MUNICIPAL CORPORATIONS 448-49 (5th ed. 1911). While Michigan attempted to dispose itself of Dillon's Rule, Michigan courts have occasionally applied it since the adoption of the 1908 Constitution. This discussion, however, is beyond the scope of this Comment.

lishing home rule in the 1908 state constitution.²¹ After voter approval of the constitution, Michigan passed the Home Rule City Act of 1909,²² enabling citizens to frame, adopt and amend their city charters so long as no provisions ran contrary to the constitution or any general statute.²³ Home rule cities received, and still continue to exercise, a broad scope of power despite this restriction.²⁴ The large measure of power granted to Michigan home rule cities and villages became especially apparent in the Michigan Constitution of 1963.²⁵ Despite some restrictions, these constitutional provisions and legislative acts essentially conferred power upon Michigan citizens to create a local government structure that would best respond to local needs.²⁶ Since the passage of the Home Rule City Act, both villages and townships

21. MICH. CONST. art. VII, § 22 (“Under such general laws, the electors of each city and village shall have power and authority to frame, adopt and amend its charter and to . . . pass all laws and ordinances relating to its municipal concerns, subject to the constitution and law.”).

22. MICH. COMP. LAWS §§ 117.1-38. The Home Rule City Act set forth the procedure by which a city could become incorporated; *see* Beras, *supra* note 6, at 1. Similarly, the Home Rule City Act required the adoption of a city charter, which must contain certain enumerated provisions and may contain certain permissive provisions. *Id.* § 117.3.

23. MICH. COMP. LAWS § 117.4(j); *see* Am. Fed’n of State, County & Mun. Employees v. City of Detroit, 662 N.W.2d 695, 707 (Mich. 2003) (stating that while home rule cities enjoy broad powers, the constitution provides that local ordinances are subject to state law).

24. Rental Prop. Owners Ass’n of Kent County v. City of Grand Rapids, 566 N.W.2d 514, 518 (Mich. 1997) (citing *Detroit v. Walker*, 520 N.W.2d 135 (1994)) (stating that the Home Rule City Act is intended to give cities expansive power but that such powers are subject to enumerated restrictions); *Gallup v. City of Saginaw*, 135 N.W. 1060, 1062 (Mich. 1912) (comparing the new system of the Home Rule City Act, which is one of general grant of rights and powers subject only to certain enumerated restrictions, with the former method, which only granted enumerated rights and powers definitely specified); *Vance v. Ananich*, 378 N.W.2d 616, 618 (Mich. Ct. App. 1985) (arguing that the Home Rule City Act intended to confer to home rule cities almost exclusive rights in the conduct of municipal affairs).

25. The Michigan Constitution of 1963 adopted verbatim many of the home rule provisions contained in the 1908 Constitution. In addition to these provisions, it provided that “[n]o enumeration of powers granted to cities and villages in this constitution shall limit or restrict the general grant of authority conferred by this section[,]” MICH. CONST. art. VII, § 22, and that “[t]he provisions of this constitution and the laws concerning . . . townships, cities and villages shall be liberally construed in their favor.” *Id.* § 34. The reason for the liberal construction provision stems from the general American planning policy, which is favorable toward localities. *See* RICHARDSON DILWORTH, *THE URBAN ORIGINS OF SUBURBAN AUTONOMY* (2005); *see also* Richard Briffault, *Our Localism: Part II—Localism and Legal Theory*, 90 COLUM. L. REV. 346, 361-62 (1990). This policy permits localities to determine what shall be built, what shall be included, and what shall be excluded. Vicki Been, *Comment on Professor Jerry Frug’s the Geography of the Community*, 48 STAN. L. REV. 1109, 1110 (1996).

26. *See* MORRIS, *supra* note 15, at 1 (recognizing the challenges of responding to local needs are in deciding which government structure will have authority and determining how the government can best respond to the citizens).

have received similar authority under respective statutes and constitutional provisions.

B. Zoning Power Under Michigan Home Rule

Absent expressed or implied powers to regulate a particular activity, home rule municipalities may rely on their police powers²⁷ to safeguard and promote public health, safety, morals, and general welfare.²⁸ Police powers allow home rule municipalities to exercise powers not granted to them by enumeration or implied necessity, and they therefore serve as an extension to home rule authority.²⁹ For example, in *People v. Sell*,³⁰ the Michigan Supreme Court recognized the importance of home rule authority and held that a Detroit ordinance making it an offense to sell a rationed commodity without taking the required coupons was reasonably related to the health, safety, morals, and general welfare of city residents.³¹

In 1926, the United States Supreme Court recognized the importance of land use controls in managing the population influx of the early twentieth century.³² One such control mechanism, zoning,³³ is a permissive exercise of a government's police power.³⁴ Zoning has been defined as a "way of controlling how land develops by dividing a community into certain areas

27. MICH. COMP. LAWS § 117.4(j)(3) (stating that municipalities may rely on police powers as a "regularly constituted authority").

28. *Tally v. City of Detroit*, 220 N.W.2d 778, 781-82 (Mich. Ct. App. 1974).

29. It should be noted that while the police power serves as an extension to enumerated home rule city authority, it may be limited by statute or by the Constitution. *People v. Sell*, 17 N.W.2d 193, 196 (Mich. 1945).

30. *Id.* ("[The police power] embraces all rules and regulations for the protection of life and the security of property.").

31. *Id.* at 197, 201.

32. *Vill. of Euclid v. Ambler Realty Co.*, 272 U.S. 365, 386-87 (1926) ("Until recent years, urban life was comparatively simple; but, with the great increase and concentration of population, problems have developed . . . which require, and will continue to require, additional restrictions in respect of the use and occupation of private lands in urban communities.").

33. *Square Lake Hills Condo. Ass'n v. Bloomfield Twp.*, 471 N.W.2d 321, 326 (Mich. 1991) (a zoning ordinance "regulates the use of land and buildings according to districts, areas, or locations."); *Jesus Ctr. v. Farmington Hills Zoning Bd. of Appeals*, 544 N.W.2d 698, 705 (Mich. Ct. App. 1996) ("zoning regulations are a legitimate means to protect important property interests and accommodate competing uses of property within a community.").

34. *Paragon Props. Co. v. City of Novi*, 550 N.W.2d 772, 773 (Mich. 1996); see Michael A. Lawrence, *A Proposal to Amend the Michigan Zoning Enabling Act to Allow Amortization of Nonconforming Uses*, 1998 DET. C.L. MICH. ST. U. L. REV. 653, 656 (stating that zoning is essentially a police power exercise that resides in the state, which then delegates the power to local governments through state enabling legislation).

and reserving each area for a specific purpose.”³⁵ In Michigan, zoning power rests primarily with the state, as a part of its police power, and can be delegated to home rule municipalities by express provisions within the home rule charter or by authorization of a zoning enabling act.³⁶

Zoning power, however, is subject to the enumerated restrictions of the relevant state enabling act.³⁷ The need for these enumerated restrictions was highlighted in the Michigan Supreme Court case *Clements v. McCabe*.³⁸

C. Mere Incorporation Does Not Create Inherent or Implied Zoning Power: Michigan’s Response to *Clements v. McCabe*

In *Clements*, a zoning ordinance enacted by the common council of the City of Detroit came under attack.³⁹ The Michigan Supreme Court held that home rule cities do not have an inherent or implied power to zone.⁴⁰ Instead, the power to zone must be expressly authorized by state enabling legislation.⁴¹ In response to the Michigan Supreme Court’s ruling in *Clements*, the Michigan Legislature passed two significant acts: Public Acts 207⁴² and 348⁴³ of 1921.⁴⁴ Public Act 207, the City or Village Zoning Enabling Act, prescribed the limits of municipal zoning power, and the procedures under which municipalities may exercise that power.⁴⁵ Public Act 348 amended the Home Rule City Act to give to home rule cities the power to zone.⁴⁶ Once governed by relatively simple legislation, home rule zoning power is currently governed by extremely complex state enabling laws,

35. THE INSTITUTE FOR PUBLIC POLICY AND SOCIAL RESEARCH, TO PLAN OR NOT TO PLAN: CURRENT ACTIVITY WITHIN MICHIGAN’S LOCAL GOVERNMENTS (2004), <http://www.ippsr.msu.edu/Publications/PBPlanZone.pdf> [hereinafter TO PLAN OR NOT TO PLAN].

36. See *supra* note 27.

37. *Adams Outdoor Adver. Inc. v. E. Lansing*, 483 N.W.2d 38, 42 (Mich. 1992) (home rule zoning authority is clearly subject to many enumerated restrictions prescribed by the state legislature in the zoning enabling act); *Elliott v. City of Clawson*, 175 N.W.2d 821 (Mich. Ct. App. 1970) (zoning power of a city is derived from the state enabling act, and power derived in a municipality by virtue of the Home Rule Act does not include zoning power).

38. 177 N.W. 722 (Mich. 1920).

39. *Id.*

40. *Id.* at 725.

41. *Id.*

42. 1921 Mich. Pub. Acts no. 207 (codified as amended at MICH. COMP. LAWS §§ 125.3101-.3702).

43. 1921 Mich. Pub. Acts no. 348 (codified as amended at MICH. COMP. LAWS § 117.4I).

44. See *Korash v. City of Livonia*, 202 N.W.2d 803, 805 (Mich. 1972) (describing the legislative response to *Clements*).

45. See source cited *supra* note 42.

46. See source cited *supra* note 43.

which outline a complex mix of advisory and administrative responsibilities for local zoning officials. Michigan's enabling laws have failed to address important issues like training home rule zoning officials, leaving uneducated volunteer citizens in charge of making momentous land use decisions.

II. BARRIERS TO EFFICIENT ZONING

The need for a mandatory training law in Michigan is evidenced by the mounting duties and responsibilities attributed to local zoning officials, and the increasingly complex environment in which they must perform their functions.

A. The Mounting Duties and Responsibilities of Local Zoning Officials

The mounting duties and responsibilities of local zoning officials necessitate initial and continuing training requirements. Among other things, local zoning officials need training on relevant planning, zoning, and economic development statutes. They need to learn how to stay out of court, conduct meetings, hold hearings, and process information from applicants and other agencies. Additionally, they need to better understand the importance of goal setting and working with the public, developers, realtors, and other units of government.

1. *A Recent Power Shift*

Zoning power in home rule municipalities is a permissive act that may be performed after incorporating zoning provisions in the local charter and/or adopting zoning pursuant to the Michigan Zoning Enabling Act.⁴⁷ If the home rule municipality chooses to zone, it must delegate the administration of zoning to designated commissions, boards, or officials pursuant to the requirements of the Michigan Zoning Enabling Act (MZEA) and the Michigan Planning Enabling Act (MPEA).⁴⁸ These bodies, for the purposes of this Comment, consist of the zoning or planning commission, the zoning board of appeals, and zoning administrators.

47. MICH. COMP. LAWS §§ 125.3101-.3702 (2006); MICH. COMP. LAWS. § 117.4i(c) (1999).

48. *Marathon Oil Co. v. Twp. of Plymouth*, 181 N.W.2d 668, 669-70 (Mich. Ct. App. 1970) ("Executing the policy of a zoning ordinance is an administrative function that may be delegated to administrative officials or boards." (quoting 8A MCQUILLIN MUN. CORP. § 25.215 (3d ed. 2001))). I emphasize the word "may" to indicate that zoning is a voluntary act. For a discussion as to why the voluntary nature of zoning is crucial when determining how to finance state-mandated training courses for local zoning officials, see *infra* Subsection V.C.2.

Virtually every Michigan municipality, including those that have adopted home rule charters, has either previously or recently transferred its zoning powers from zoning commissions to planning commissions pursuant to a provision in the recently enacted MPEA.⁴⁹ This transfer is important for two reasons: first, planning commissions already had many responsibilities other than zoning prior to the transfer requirement.⁵⁰ Second, every independent zoning commission *must* surrender its zoning power by June 30, 2011, pursuant to the MZEA.⁵¹ Thereafter, planning commissions will be wholly governed by the MPEA,⁵² which recently consolidated the three previous planning enabling acts.⁵³ However, the MZEA will continue to govern the responsibilities of planning commissions when exercising zoning responsibilities, as well as the creation and responsibilities of zoning board of appeals members and zoning administrators. Therefore, a discussion of the duties and responsibilities of each zoning official under its respective enabling act is warranted.

2. *Duties and Responsibilities of Planning Commissioners*

Planning commissioners, often comprised of citizen volunteers who have received no training on land use regulatory issues, are entrusted with carrying out a complex mix of advisory and administrative responsibilities.⁵⁴ Under the MPEA, planning commissioners' zoning responsibilities include: (1) preparing the draft text of the zoning ordinance and zoning map (often with assistance of professional planners and attorneys); (2) conducting public hearings; (3) advising the legislative body on proposed changes to the zoning ordinance and text; (4) advising the legislative body on various development applications for special land uses, site plans, and planned unit developments; and (5) in some jurisdictions, actually making the final decisions on these requests.⁵⁵ Additionally, the planning commission must ad-

49. Note that where the term "planning commission" is used in the remainder of this Comment in the context of zoning responsibilities, it means the planning commission has now assumed the responsibilities of the zoning commission unless the zoning powers have not yet been transferred.

50. See *infra* Subsection II.A.2.

51. See PLANNING & ZONING CTR., *supra* note 13, at 2. Most communities transferred the power of the zoning commission to the planning commission a long time ago. *Id.*

52. See legislation cited *supra* note 12.

53. *Id.*

54. DAVID J. ALLOR, THE PLANNING COMMISSIONERS GUIDE PROCESSES FOR REASONING TOGETHER 11 (1984) ("The role of a planning commission member is complex. On the one hand, it is a role partially defined in law On the other hand, the role of a member evolves from the actions of an individual having both understanding and conviction."). For a discussion of what constitute "administrative" responsibilities, see PLANNING & ZONING CTR., *supra* note 13, at 13.

55. See PLANNING & ZONING CTR., *supra* note 13, at 17.

wise and make recommendations to the legislative body concerning future amendments, changes, additions, or departures from the ordinance text or map.⁵⁶ With regard to planning responsibilities, the planning commission is required to prepare and adopt a land use plan to serve as a guide for future land use decisions throughout its jurisdiction.⁵⁷

According to the MZEA, the zoning commission (or the planning commission if the zoning power has been transferred) must submit various recommendations regarding local zoning to the legislative body.⁵⁸ These include:

- (a) A zoning plan for the areas subject to zoning of the local unit of government[;]
- (b) The establishment of zoning districts, including the boundaries of those districts[;]
- (c) The text of a zoning ordinance with the necessary maps and zoning regulations to be adopted for a zoning district or the zoning jurisdiction as a whole[; and]
- (d) The manner of administering and enforcing the zoning ordinance.⁵⁹

These responsibilities, which vest a significant amount of authority to volunteer citizens, suggest the high level of knowledge that is necessary to carry out these administrative and advisory responsibilities efficiently.

3. *Duties and Responsibilities of Zoning Boards of Appeals and Zoning Administrators*

Zoning board of appeals (ZBA) members and zoning administrators are also entrusted with important responsibilities.⁶⁰ The ZBA is the only local body to hear appeals on administrative zoning matters.⁶¹ It hears and decides appeals and reviews any order, requirement, decision or determination made by an administrative official or body charged with the enforcement of an ordinance.⁶² The ZBA may grant variances from the ordinance,

56. *Id.*

57. *See* legislation cited *supra* note 12.

58. MICH. COMP. LAWS § 125.3305 (2008).

59. *Id.*

60. It must be reemphasized that the responsibilities of zoning board of appeals members and zoning administrators are currently governed by the Michigan Zoning Enabling Act:

The administrative organization, both for the preparation and for the administration of zoning, has developed a certain commonness of pattern, typically including . . .

(2) zoning boards of adjustment, review or appeals to consider individual zoning cases relative to . . . variances, exceptions and nonconforming uses; and (3) administrative and enforcement officials to receive and file applications, issue permit, inspect premises, commence proceedings against violators and otherwise administer details of zoning administration.

25 MICH. CIV. JUR. *Zoning* § 42 (2001 Revision).

61. *See* PLANNING & ZONING CTR., *supra* note 13, at 19.

62. MICH. COMP. LAWS § 125.585(3) (repealed 2006).

interpret the provisions of a municipal zoning ordinance, and refuse a party permission to act inconsistently with the provisions of the ordinance.⁶³ However, the ZBA may not prohibit a use which is permitted by the ordinance⁶⁴ nor may it determine the validity of a zoning ordinance.⁶⁵

Zoning administrators, who are also governed by the MZEA, are the principal officials responsible for administering zoning ordinances.⁶⁶ “The zoning administrator’s primary responsibility is to administer the ordinance precisely as it is written,” and he or she may not deviate from the ordinance or modify its requirements.⁶⁷ Among the zoning administrator’s many responsibilities are assisting citizens in determining what forms and procedures apply to proposed zoning requests and land use changes; reviewing and investigating permit applications to determine compliance with the provisions of the zoning ordinance; and providing information on zoning to citizens, developers, realtors and public agencies upon request.⁶⁸ Zoning administrators are also the principal persons responsible for ordinance enforcement.⁶⁹

Like planning commissioners and zoning board of appeals members, zoning administrators are entrusted with a great deal of responsibility; yet, they often have no prior training or experience before accepting the position. State-required training courses thus seem essential for planning commissions, zoning boards of appeals and zoning administrators to perform their duties and responsibilities effectively.

B. The Increasingly Complex Land Use Environment

Efforts to promote land use regulations, particularly city planning and zoning, ultimately prevailed as one of society’s responses to urban and metropolitan growth during the twentieth century.⁷⁰ In *Village of Euclid v. Ambler Realty Co.*, the United States Supreme Court upheld the validity of zoning as a valid government interest.⁷¹ At that time, zoning was a relatively simple concept; complex land use controls like special exceptions and

63. *Sinelli v. Birmingham Bd. of Zoning Appeals*, 408 N.W.2d 412, 414-15 (Mich. Ct. App. 1987).

64. *Anchor Steel & Conveyor Co. v. City of Dearborn*, 70 N.W.2d 753 (Mich. 1955); *Teglund v. Dodge*, 25 N.W.2d 161 (Mich. 1946).

65. *Comer v. City of Dearborn*, 70 N.W.2d 813, 817 (Mich. 1955).

66. See *PLANNING & ZONING CTR.*, *supra* note 13, at 21. In some communities, the building inspector is delegated the responsibility for administering the zoning ordinance. *Id.*

67. *Id.* at 22 (emphasis omitted).

68. *Id.*

69. *Id.*

70. RUTHERFORD H. PLATT, *LAND USE AND SOCIETY: GEOGRAPHY, LAW, AND PUBLIC POLICY* 260 (2004) [hereinafter *LAND USE AND SOCIETY*] (providing an in-depth understanding of the geographic and legal context of land use disputes).

71. *Vill. of Euclid v. Ambler Realty Co.*, 272 U.S. 365, 387 (1926).

floating zones did not exist, and determining whether certain uses were permitted in particular zoning districts was easily answered.⁷² While zoning once regulated limited aspects of community life and was administered by relatively straightforward guidelines, it has since become an increasingly complex and multifaceted tool with which to guide rapid growth “toward better locational and design results through partnerships of environmentalists, builders, local officials, and design professionals.”⁷³ Municipal liability scholars and practitioners have acknowledged that “[t]he greater complexity of modern land-use regulations increases the likelihood that mistakes will be made in applying them.”⁷⁴ According to the Michigan Land Use Leadership Council, the complex nature of land use regulation has been emphasized by Michigan’s place “among the states with the largest number of appellate court decisions on local planning and zoning issues.”⁷⁵

Today, local zoning officials must perform their many duties and responsibilities while adapting to this intricate land use environment.⁷⁶ This double hurdle requires that local zoning officials be equipped with basic core competencies and an understanding of modern day progressive land use matters, such as Smart Growth and New Economy thinking.⁷⁷ Dr. Soji Adelaja, Director of the Land Policy Institute at Michigan State University, has stated that to achieve strategic growth, “communities need to be working cooperatively within their regions to think and plan smart.”⁷⁸ Zoning administrators cannot attain such knowledge by on-the-job experience; instead, they must acquire it by attending mandatory courses covering a variety of relevant land use issues.⁷⁹

Michigan land use scholars and local governments recognize the increasingly complex environment in which local zoning officials must make

72. MICHAEL A. ZIZKA ET AL., STATE AND LOCAL GOVERNMENT LAND USE LIABILITY § 5:2 (2007) [hereinafter LAND USE LIABILITY].

73. LAND USE AND SOCIETY, *supra* note 70, at 287.

74. LAND USE LIABILITY, *supra* note 72, at § 5:2.

75. MICHIGAN LAND USE LEADERSHIP COUNCIL, MICHIGAN’S LAND, MICHIGAN’S FUTURE: FINAL REPORT OF THE MICHIGAN LAND USE LEADERSHIP COUNCIL 53 (2003) [hereinafter FINAL REPORT].

76. WAYNE BEYEA, ANNE CULLEN, CHRISTINE GEITH, PATRICIA NORRIS & GERALD RHEAD, MICHIGAN AGRICULTURAL EXPERIMENT STATION, MICHIGAN STATE UNIVERSITY, EXPANDING EDUCATION AND TRAINING OPPORTUNITIES FOR MICHIGAN LOCAL GOVERNMENT LAND USE PLANNING OFFICIALS (2006), <http://www.maes.msu.edu/publications/researchreports/RR/RR574.pdf> [hereinafter EXPANDING EDUCATION AND TRAINING] (examining the potential for expanding the reach of educational programming for local land use officials). According to the authors, “[l]and use decision makers are becoming involved in increasingly complex issues.” *Id.* at 2.

77. See generally Mark Wyckoff, *Incorporating New Economy Thinking Into Local Planning & Zoning*, PLANNING AND ZONING NEWS, Jan. 2008, at 15.

78. Soji Adelaja, *Strategic Growth: The New Economy Prosperity Paradigm*, PLANNING AND ZONING NEWS, Jan. 2008, at 8, 10.

79. See *infra* Sections V.B-C.

highly skilled and informed decisions affecting everyday life in their communities. According to a number of Michigan scholars specializing in the field of land use regulation and development, “the dynamics of land use have been changing rapidly and dramatically,” and as rural and suburban areas face increasing development, “many communities have found themselves ill-equipped to deal with the new growth.”⁸⁰ The Michigan Local Planning and Zoning Survey of 2003, conducted by the Institute for Public Policy and Social Research’s Office for Survey Research, found that the number of local governments in the state—1,857—was an “overwhelming number with which to deal.”⁸¹ The Survey also revealed that “quite often communities were not aware of who was in charge of planning and zoning, or even whether or not the community had zoning in place.”⁸² These troublesome survey results emphasize the need for local zoning officials to better understand the broad scope of their responsibilities, as well as the leadership and knowledge to perform their duties more effectively. Until then, local zoning officials will continue to face criticism for their unpreparedness and inadequate understanding of core land use developments and concepts.

C. Common Criticisms of Local Zoning Officials

A number of criticisms of local zoning officials have developed over time.⁸³ Critics have suggested that local zoning officials operate with insufficient procedural guidelines and lack the appropriate expertise to implement effective zoning schemes.⁸⁴ Similarly, inadequate understanding of constitutional and statutory grants and restrictions, especially those in state enabling acts, has resulted in poorly administered zoning schemes.⁸⁵ Zoning officials often lack adequate knowledge of their respective zoning and planning enabling acts, leaving many provisions in local zoning ordinances open

80. EXPANDING EDUCATION AND TRAINING, *supra* note 76, at 2.

81. TO PLAN OR NOT TO PLAN, *supra* note 35, at 2.

82. *Id.*

83. See, e.g., Note, *Land Use Control in Metropolitan Areas: The Failure of Zoning and a Proposed Alternative*, 45 S. CAL. L. REV. 335, 338-50 (1972) [hereinafter *Land Use Control*] (discussing some of the various criticisms of zoning as a form of land use control).

84. See Bernard H. Siegan, *Conserving and Developing the Land*, 27 SAN DIEGO L. REV. 279, 299 (1990) (arguing that zoning is a political process that achieves principally that which is most desired politically); see also *Developments in the Law-Zoning*, 91 HARV. L. REV. 1427, 1431 (1978) (cataloguing various criticisms of land use control methods and the ineffective manner in which land use control methods are administered).

85. See discussion *infra* Section II.C. It must be noted that professional planners and municipal attorneys also play a significant role in drafting zoning ordinances and should therefore seek training in drafting issues and procedures. See discussion *infra* Section V.C. While professional planners should be subject to state mandated initial and continuing training, the argument as to whether municipal attorneys should be required to partake in training is beyond the scope of this Comment.

to serious question.⁸⁶ The Michigan Supreme Court has also emphasized the need for local zoning officials to have some degree of constitutional understanding when it stated that “[t]he statutory scheme specifically designed for amending city zoning ordinances properly emphasizes the high level of expertise required for the efficient administration of such complex legislation.”⁸⁷ Some states, including Kentucky, New York, Tennessee, New Jersey, Louisiana, and South Carolina, have already attempted to alleviate this problem by passing state legislation requiring that local zoning officials participate in initial and continuing training courses.⁸⁸

Another worrisome criticism of local zoning officials is that zoning is eminently political.⁸⁹ Zoning officials often succumb to political pressures by allowing outside influences to eclipse what could otherwise be a beneficial land use decision.⁹⁰ Some planning commissioners, zoning board of appeals members, and zoning administrators respond to outside political pressures without regard to fair and balanced land use planning.⁹¹ Critics have even suggested that the politicization of the land use process often

86. See CLAN CRAWFORD, JR., *STRATEGY AND TACTICS IN MUNICIPAL ZONING* 26 (Prentice-Hall, 2d ed., 1979) (emphasizing that very few zoning ordinances are prepared by lawyers, and the planners and other city officials who draft them frequently indulge in broad deviations from the models which they are attempting to implement).

87. *Elliott v. City of Clawson*, 175 N.W.2d 821, 828 (Mich. Ct. App. 1970). For a discussion of the high level of expertise required for drafting and administering zoning ordinances, see discussion *supra* Section II.A.

88. See discussion *infra* Part IV.

89. See WILLIAM A. FISCHER, *THE ECONOMICS OF ZONING LAWS* 32-33 (The Johns Hopkins Univ. Press ed., 1985) (recognizing that zoning is primarily a function of the local government, which consequently puts the zoning process in the local political arena); see also R. ROBERT LINOWES & DON T. ALLENSWORTH, *THE POLITICS OF LAND USE: PLANNING, ZONING, AND THE PRIVATE DEVELOPER* 33-35 (1973) (discussing the political nature of zoning and how zoning officials often succumb to political pressures).

90. See Dwight H. Meriam, *A Planner's View of Dolan*, in *TAKINGS: LAND-DEVELOPMENT CONDITIONS AND REGULATORY TAKINGS AFTER DOLAN AND LUCAS* 206, 210 (David L. Callies ed., 1996) (describing a first-hand encounter in 1996 in which the veteran chairperson of a local land use commission asked for a show of hands from the audience to indicate those who supported and those who objected to a project); see also Michael C. Spata, *Decision-makers and the Administrative Decision*, in *HOW TO LITIGATE A LAND USE CASE* 55, 65 (Larry J. Smith ed., 2000) (measuring the political climate can be the *sine qua non* to the favorable outcome of a particular development process).

91. See *Land Use Control*, *supra* note 83, at 342 (arguing that because zoning matters are legislative in nature, they are subject to the shifting winds of the political climate, often resulting in the subordination of planning principles to political necessities). It should be noted that political climates shift frequently and local government bodies, or any government body for that matter, must adapt accordingly. However, the electorate should be alarmed when local zoning officials take advantage of the political climate and allow political priorities to eclipse standard zoning principles.

makes it difficult to achieve the most appropriate land use solution even when it seems obvious.⁹²

There is a prominent debate over whether the politicization of the zoning process ultimately benefits local interests.⁹³ One scholar has argued that the politicization of the zoning process, whether involving the original drafting process or an amendment thereto, is in some respects a product of public participation.⁹⁴ Public participation in the zoning process, he argued, has led to the hiring of the so-called “right” legal or planning firms who will obtain desired zoning classifications.⁹⁵ Others have argued that public participation in the land use process demonstrates a level of engagement that represents a gateway toward political activism and may even lead to an increase in social capital.⁹⁶ Regardless of the viewpoint, it is clear that politics play a significant role in local zoning decisions. While elected officials make the final decision on all legislative matters and may be held accountable to the electorate, local zoning officials are often appointed without prior training, and are never directly accountable to the electorate for making consequential land use decisions.⁹⁷

92. Richard Peiser, *Who Plans America? Planners or Developers?*, 56 J. AM. PLAN. ASS'N 496, 500 (1990) (describing the politicization of land use as planning decisions as one of the most disheartening trends in recent years).

93. See Eric Damian Kelly & Barbara Becker, COMMUNITY PLANNING: AN INTRODUCTION TO THE COMPREHENSIVE PLAN 52 (2000) (“Thus, despite the best efforts of the government reformers, planning remains political with a small *p*. At its best, it transcends politics and builds consensus across political coalitions. At its worst, it can become so embroiled in local political issues that it loses its credibility and effectiveness.”); see also Daniel P. Selmi, *Reconsidering the Use of Direct Democracy in Making Land Use Decisions*, 19 UCLA J. ENVTL. L. & POL'Y 293, 315-16 (2002) (comparing two opposing viewpoints with respect to the effects of land use politicization).

94. BERNARD H. SIEGAN, LAND USE WITHOUT ZONING 9 (D.C. Health and Co. ed., 1972) (presenting alternative solutions to zoning schemes). Mr. Siegan stated that “[o]nce presented to the public, the proposed [zoning] ordinance will obviously be the subject of much public and private activity, and it is difficult to assess which is most effective, the public or private.” *Id.*

95. *Id.* (“Many property owners will quickly consult with *their* city planners, the political precinct workers; and it may happen that certain legal or planning firms become known as the ‘right’ ones to be hired to obtain desired zoning classifications.”).

96. See generally Mark Fenster, *Takings Formalism and Regulatory Formulas: Exactions and the Consequences of Clarity*, 92 CAL. L. REV. 611, 671-72 (2004) (discussing the broader external benefits of the politicization of land use regulation); ROBERT D. PUTNAM, BOWLING ALONE: THE COLLAPSE AND REVIVAL OF AMERICAN COMMUNITY 344-46 (Simon & Schuster 2000) (arguing that citizens’ civic engagement in land use disputes and responses by local government are likely to raise social capital).

97. See PLANNING & ZONING CTR., *supra* note 13, at 2.

III. RESEARCH AND FINDINGS IN SUPPORT OF MANDATORY TRAINING

There is a growing body of nationwide and Michigan-specific research that supports mandatory training for local zoning officials. Ample evidence exists to suggest that training requirements would reduce municipal liability, enhance local risk management, and lead to higher quality development through the knowledge and use of innovative land use techniques. More importantly, research in Michigan maintains that training is strongly supported by local zoning officials, the very group of individuals that would ultimately be regulated by a mandatory training law.⁹⁸ In a statewide survey of planning and zoning officials conducted by Michigan State University, nearly 80% indicated that continuing education is an appropriate requirement for continuing to serve as a planning official.⁹⁹ In addition, 73% indicated that they would be willing to partake in required continuing education to serve as a local zoning official.¹⁰⁰

The 2003 Michigan Land Use Leadership Council Report (Report) recognizes that training and continuing education for planning officials is an important factor to achieve effective land use planning.¹⁰¹ Generally speaking, the Report recommends that “[l]ocal government officials, citizens, property owners, and the development community [should] have a wide range of educational opportunities available to improve land use and related decisions.”¹⁰² Land use education, training, and continuing education were acknowledged as important needs within the Report, as the guiding principles and recommendations set forth by the Report reflect.¹⁰³ Additionally, the Report notes that the vast amount of local planning and zoning litigation in Michigan “results in significant delay, uncertainty in the outcome, and added expenses for local governments, planners, and citizens,”¹⁰⁴ thus justifying the need for mandatory training.

According to multiple practitioners who specialize in land use regulation and municipal liability, the most effective tool to minimize the risk of municipal liability “is to ensure that each regulator is provided with at least some basic instruction.”¹⁰⁵ The American Planning Association’s three-volume legislative guidebook, which contains model planning statutes, supports zoning official competency by including mandatory training as part of the model statute recommendations:

98. See *infra* Subsection V.C.1.

99. See EXPANDING EDUCATION AND TRAINING, *supra* note 76, at 8-13.

100. *Id.*

101. See FINAL REPORT, *supra* note 75, at 55.

102. *Id.*

103. *Id.* at 57.

104. FINAL REPORT, *supra* note 75, at 53.

105. LAND USE LIABILITY, *supra* note 72, at § 5:2.

The purpose of the program [training] is to familiarize members with the commission's procedures, applicable laws of the local government, state laws and administrative rules, plans and related technical aspects of planning. This will ensure that each commission member understands the broad policy and regulatory context in which the commission functions as well as follows appropriate procedures in conducting hearings and meetings and in decision making.¹⁰⁶

Despite the availability of multiple training programs conducted by various organizations throughout the state,¹⁰⁷ participation levels are lacking because of tight local budgets and the absence of mandatory training requirements.¹⁰⁸ According to Mark Wyckoff, Director of the Planning & Zoning Center at Michigan State University, when only one or two persons from a municipality attend a training program and subsequently share the information with others who did not attend, there is no real transformational thinking unless the others are unusually open to new information.¹⁰⁹ Transformational thinking can only occur if everyone within a municipal planning or zoning body is required to attend courses at roughly the same time.¹¹⁰ Six different states, Kentucky, Tennessee, South Carolina, New Jersey, and New York, have recently recognized the importance of educating local zoning officials by imposing mandatory training requirements, each of which vary depending on the particular needs and environment of each state.

IV. THE RECENT MOVEMENT IN STATE-MANDATED TRAINING LAWS

A state-mandated training law can be implemented for planning commissioners by amending the Michigan Planning Enabling Act and for zoning board of appeals members and administrators by amending the Michigan Zoning Enabling Act. To implement the most effective training courses possible, Michigan should refer to the legislation of other states that have mandated such training.¹¹¹ Since 2001, fifteen years after New Hampshire adopted a law stating that new members of local planning and zoning boards of appeals "may at the member's option complete at least [six] hours

106. AM. PLANNING ASSOC., *GROWING SMART LEGISLATIVE GUIDEBOOK: MODEL STATUTES FOR PLANNING AND THE MANAGEMENT OF CHANGE* 7-36 (Stuart Meck ed., vol. 1 2002).

107. Such programs are sponsored by the Michigan Association of Planning, local government associations such as the Michigan Municipal League, the Michigan Township Association, and the Michigan Association of Counties. Programs are also offered by units within Michigan State University, such as the Citizen Planner Program, the Planning & Zoning Center, and by the MSU Extension Regional Land Use Educators with support from various local sponsors.

108. Interview with Mark Wyckoff, Dir., Planning & Zoning Ctr. at Mich. State Univ., in E. Lansing, Mich. (Aug. 1, 2008).

109. *Id.*

110. *Id.*

111. *See supra* Part IV.

of training for that member's respective position[.]"¹¹² a sudden movement to train local zoning officials has gained considerable momentum.¹¹³ While the New Hampshire law permitted training laws, a wave of states subsequently passed mandatory training laws after recognizing the importance of educating inexperienced citizen volunteers.

A. The Kentucky Model

In 2001, Kentucky became the first state to require initial and continuing training courses for planning commissioners, zoning board of appeals members, zoning administrators, and other zoning officials.¹¹⁴ The Kentucky law requires planning commissioners and zoning board of appeals members to attend a minimum of four hours of initial training in one or more enumerated land use topics within the year prior to appointment or within 120 days of appointment to their positions.¹¹⁵ They are also required to participate in at least eight hours of continuing training every two years thereafter.¹¹⁶ Similarly, Kentucky requires that zoning administrators attend a minimum of eight hours of initial training¹¹⁷ and sixteen hours of continuing training every two years after their appointment.¹¹⁸ Municipal planning commissioners or board of appeals members in Kentucky who fail to complete the requisite number of training hours and fail to submit a written statement of completion to the secretary of the planning commission are subject to removal.¹¹⁹ The Kentucky law set the framework for state-mandated training, causing five other states to subsequently adopt similar legislation.

B. The Tennessee Model

Tennessee's 2002 law also requires initial and continuing training courses for planning commissions and zoning board of appeals members.¹²⁰ The Tennessee law, however, prescribes more lenient requirements than Kentucky's. For example, it requires each planning commissioner to attend a minimum of four hours of *both* initial training and continuing education as opposed to Kentucky's requirement that planning commissioners attend

112. N.H. REV. STAT. ANN. § 673:3-a (Supp. 2002).

113. See Nolon, *supra* note 8, at 2.

114. See KY. REV. STAT. § 147A.027 (2001).

115. *Id.* § 147A.027(1)(a).

116. *Id.* § 147A.027(2)(a).

117. *Id.* § 147A.027(1)(b).

118. *Id.* § 147A.027(2)(b).

119. *Id.* § 147A.027(7).

120. TENN. CODE ANN § 13-4-101 (2002).

four hours of orientation and eight hours of continuing education.¹²¹ Tennessee also allows municipalities to “opt-out” of the state requirements by adopting training programs of their own.¹²²

C. The South Carolina Model

South Carolina adopted legislation in 2003 that requires six hours of initial training for new zoning officials and no fewer than three hours of continuing education each year thereafter.¹²³ Like Kentucky and Tennessee, the legislation lists the possible subject matters of the training sessions¹²⁴ and creates an advisory committee to approve the program.¹²⁵ In South Carolina, appointed members can be exempt from initial training and continuing education requirements if the member is certified by the American Institute of Certified Planners, has a masters or doctorate degree in planning from an accredited college or university, has a masters or doctorate degree or specialized training or experience in a field related to planning as determined by the advisory committee, or has a license to practice law in South Carolina.¹²⁶

D. The Louisiana Model

In 2004, Louisiana passed a law that requires initial training courses for parish and municipal planning commissions as well as the boards that advise them, including zoning boards of appeals.¹²⁷ The members are required to partake in at least four hours of training in the duties, responsibilities, ethics, and substance of the positions held or to be held.¹²⁸ Local zoning officials in Louisiana are required to determine the manner in which the training programs will be administered,¹²⁹ and the determination must be approved by the parish or municipal planning commission or advisory board.¹³⁰

121. *Id.* § 13-4-101(c)(1)(2).

122. *Id.* § 13-4-101(c)(9).

123. S.C. CODE ANN. § 6-29-1340 (2003).

124. *Id.* § 6-29-1340(C).

125. *Id.* § 6-29-1340(D).

126. *Id.* § 6-29-1350(A).

127. LA. REV. STAT. ANN. § 33:103.1 (2004).

128. *Id.* § 33:103.1(A).

129. See Salkin, *supra* note 8, at 323, for a description of planning commissioner training sessions conducted by the Louisiana Chapter of the American Planning Association. These sessions generally end with a discussion about emerging and current issues within Louisiana, such as recent court cases or new types of land uses. *Id.*

130. LA. REV. STAT. ANN. § 33:103.1(A).

E. The New Jersey Model

New Jersey's 2005 law requires that the commissioner of the Department of Community Affairs prepare and offer a basic course in land use law and planning for current, prospective, and alternate members of planning commissions and zoning boards of appeals. The course is not to exceed five hours of scheduled instruction and it allows participants to satisfy the requirements within one day.¹³¹ The New Jersey law prevents first-term members from assuming responsibilities unless they agree to take the basic course within 18 months of assuming membership.¹³² However, members who fail to complete the course will be ineligible for further service.¹³³ The commissioner's rules also require that course participants take an examination developed by the commissioner in order to ensure that members attended and understood the course material.¹³⁴ While New Jersey municipalities are required to pay the costs of tuition for the land use law and planning course, they may establish fees to defray the costs of administering the examination and travel costs.¹³⁵

F. The New York Model

New York passed a law in 2006 that requires each member of the local planning and zoning board to complete a minimum of four hours of training each year.¹³⁶ Training received in excess of the required four hours in any given year may be carried over to succeeding year in order to meet next year's requirements.¹³⁷ The training requirements are to be approved by a municipal board and may include training by a variety of instructors, including municipalities, county planning federations, state agencies, statewide municipal associations, colleges or other similar entities.¹³⁸ The law is silent as to the content of the training courses, leaving such decisions to the local bodies.¹³⁹ However, as to participation requirements, New York zoning

131. N.J. STAT. ANN. § 40:55D-23.3 (West 2005).

132. *Id.* § 40:55D-23.3(b).

133. 38 N.J. Reg. 37(a) (Jan. 3, 2006).

134. *Id.* (describing the logistics of a ten-question multiple-choice exam that must be completed by local zoning officials at the conclusion of course instruction).

135. N.J. STAT. ANN. § 40:55D-8(b).

136. N.Y. TOWN LAW §§ 271(7)(a)-(d) (McKinney 2008); N.Y. VILLAGE LAW §§ 7-718(7)(a)-(d) (McKinney 2008); N.Y. GEN. CITY LAW §§ 27(7)(a)-(d) (McKinney 2008). To minimize repetition, the New York training law provisions described hereinafter will describe those required of local planning and zoning boards in New York towns. It should be noted that New York village and city training requirements are substantially similar.

137. N.Y. TOWN LAW § 271(7)(a).

138. *Id.*

139. *Id.*

officials *must* complete the required training in order to be reappointed.¹⁴⁰ Similar to Tennessee, the required training may be waived or modified by resolution of the municipality if it is in the best interest of the municipality to do so.¹⁴¹

V. MICHIGAN SHOULD REQUIRE TRAINING FOR HOME RULE ZONING OFFICIALS

If Michigan is to continue acknowledging the broad scope of discretion allotted to home rule municipalities,¹⁴² then the state should implement mandatory initial and continuing training courses for local zoning officials. Zoning officials would perform their duties more responsibly if trained, thereby avoiding costly municipal liability.¹⁴³ This solution helps to alleviate the struggle between local autonomy and state regulation because it recognizes Michigan's strong commitment to home rule¹⁴⁴ while acknowledging the state's authority to ensure that local zoning bodies are comprised of educated citizens.

Michigan can implement mandatory training courses for local zoning officials by amending the Planning Enabling Act and the Zoning Enabling Act to ensure that all those involved in making zoning decisions maintain a minimum level of training to better serve local and regional interests. When devising such programs, the state should refer to the laws of six other states that have already implemented mandatory training laws for local zoning officials.¹⁴⁵ It is also important to justify why home rule municipalities should continue to maintain broad zoning powers as well as why the existence of such broad powers reinforces the need for state-mandated training.

A. Home Rule Municipalities Should Continue Exercising Broad Zoning Powers

Expansive zoning powers are justified by a Michigan constitutional provision that requires the courts to construe home rule authority liberally.¹⁴⁶ In addition to state constitutional provisions that recognize broad home rule zoning power, courts have generally supported the virtues of local autonomy¹⁴⁷ and have recognized the responsibilities of home rule municipalities to protect the health, safety, morals, and general welfare of their communi-

140. *Id.* § 271 (7)(b).

141. *Id.* § 271 (7)(c).

142. *See supra* text accompanying note 5.

143. *See* discussion *supra* Part III.

144. *See supra* notes 24-25 and accompanying text.

145. *See supra* Part IV.

146. *See supra* note 6 and accompanying text.

147. *See* LAND USE, *supra* note 5, at 45; *see also supra* note 6.

ties.¹⁴⁸ In fact, Michigan courts, one of which has even used the phrase “home rule spirit” to emphasize the manner in which home rule authority should be construed, almost invariably rule for the home rule municipality when the liberal construction provision of the 1963 Michigan Constitution is cited in their opinions.¹⁴⁹

The liberal construction language of the 1963 Michigan Constitution reinforces the need for state-mandated training courses because absent proper educational safeguards, home rule zoning officials would continue exercising broad authority while making misinformed decisions that negatively impact their respective communities.¹⁵⁰ State-mandated initial and continuing training courses for local zoning officials would ameliorate this problem by imposing minimum requirements to which planning commissioners, zoning board of appeals members, and zoning administrators must adhere.¹⁵¹

B. Well-Trained Zoning Officials Would Aptly Respond to Land Use Regulation Complexities

Most local zoning officials are either elected or appointed citizens and often have limited, if any, formal experience or knowledge of the duties and responsibilities associated with the role of zoning officials. A mandatory training law would address these issues by training the citizen on the technical and administrative intricacies of the position while reducing the level of on-the-job training. By making decisions with informed aforethought, well-trained officials would reduce municipal liability expenses that arises from costly litigation.¹⁵² They would understand the complex dynamics of modern day land use regulation and would better perform their responsibilities as they relate to multi-jurisdictional cooperation.¹⁵³ More importantly, local zoning officials themselves recognize the importance of mandatory training and overwhelmingly support the idea.¹⁵⁴

Despite the benefits of mandatory training, home rule municipalities may perceive a state-mandated training law as an infringement on fundamental local rights.¹⁵⁵ One could argue that state-mandated training courses

148. See discussion *supra* Part I.B.

149. See Beras, *supra* note 6, at 1.

150. See discussion *supra* Part III.

151. See Nolon, *supra* note 8, at 4, for a statement by Robert Elliot, Executive Director of the New York Planning Federation, explaining why New York, a state strongly committed to home rule, chose to adopt mandatory training for local zoning officials.

152. See *supra* Part III.

153. See *supra* Section II.B.

154. See *supra* Part III.

155. Many localities value the concept of local autonomy and enjoy making decisions without state interference.

for local zoning officials would encroach upon local autonomy, thus depriving home rule municipalities of the right to local-self governance.¹⁵⁶ This argument, while reasonable from a myopic viewpoint, disregards undesired municipal liability expenses accrued as a consequence of misinformed decisions made by untrained local zoning officials.¹⁵⁷ Many land use regulation and municipal liability specialists recognize that if the intent is to decrease liability, at least some basic instruction is necessary.¹⁵⁸ Ultimately, the negatives associated with increased municipal liability must be balanced with the positives related to the right to local self-governance. Mandatory training would guarantee a comfortable balance by minimizing debilitating municipal liability costs while recognizing the right of home rule municipalities to retain broad zoning authority.

C. A Legislative Solution for Michigan

Michigan need not follow a particular formula when drafting a mandatory training law. Nonetheless, Michigan should make a concerted effort to implement legislation that would respect home rule autonomy while recognizing the state's regulatory authority.¹⁵⁹ This compromise can be accomplished, for example, by imposing strict attendance and time requirements on local zoning officials while granting home rule municipalities the flexibility to determine the content of the training courses. The Michigan Legislature should address a wide variety of other factors when drafting such a law, and legislators should not hesitate to refer to the other six states that have implemented state-mandated training laws.¹⁶⁰

1. *Important Considerations for a Mandatory Training Law*

First, Michigan should address which local zoning officials would be subject to the legislation. Planning commissioners, zoning board of appeals members, and zoning administrators each have significant responsibilities in the administration of zoning schemes¹⁶¹ and should thus be required to at-

156. See cases cited *supra* note 7 (home rule municipalities have expansive authority to make their own decisions).

157. See *supra* Part III; see also Salkin, *supra* note 8, at 337.

158. See *supra* note 105 and accompanying text.

159. See *supra* text accompanying notes 1-3.

160. See Salkin, *supra* note 8, at 333-37 (listing several factors states should take into consideration when drafting legislation that requires training for local zoning officials). It must be reemphasized that Michigan may address a wide variety of considerations when drafting a law requiring training for local zoning officials. The considerations I have chosen to discuss in this Comment are by no means exhaustive; instead, they cover only some of the issues that would ultimately need to be addressed.

161. See *supra* Subsections II.A.2-3.

tend training courses. Similarly, economic development professionals, community planning professionals, and municipal attorneys, who often play a role in drafting zoning ordinances, should be subject to state legislation requiring initial and continuing training courses.¹⁶² This provision would essentially echo the Kentucky law, which requires initial and continuing education programs for planning commissioners, zoning board of appeals members, zoning administrators, and other zoning officials.¹⁶³

Second, Michigan lawmakers should address time requirements for initial training (which would occur prior to assuming responsibilities) and continuing training (which would occur during years subsequent to assuming responsibilities).¹⁶⁴ Delineating strict time requirements for initial training would ensure that zoning officials better understand their many responsibilities and the complex environment in which they must perform them.¹⁶⁵ Similarly, continuing training is imperative so as to address changes made to state enabling acts,¹⁶⁶ to inform zoning officials of developing case law,¹⁶⁷ and to discuss any other issues that may be of concern to a given community. Michigan should follow South Carolina's strict time requirement provisions when determining the amount of time local zoning officials should commit to the training courses.¹⁶⁸ Requiring *at least* six hours of initial training for new zoning officials and *no fewer* than three hours of continuing education each year thereafter would likely be sufficient to cover the necessary topics while minimizing the time burden imposed on citizen volunteers. Stringent time requirements would also ensure that local zoning officials are adequately prepared to assume a wide range of responsibilities.¹⁶⁹

162. The role of economic development professionals, community planning professionals, and municipal attorneys in the zoning process is beyond the scope of this Comment. While the need to train these individuals is subject to debate, the substantial evidence presented in this Comment makes it clear that Michigan should, at the very least, require training for planning commissioners, zoning board of appeals members, and zoning administrators.

163. See legislation cited *supra* note 114-19 and accompanying text.

164. Every state that has adopted a mandatory training law addresses both initial and continuing training courses. See *supra* Parts IV.A-F.

165. See *supra* Sections II.A-B.

166. See *supra* notes 12-14 and accompanying text.

167. See *supra* Part III.

168. See *supra* Section IV.C.

169. See *supra* Section II.A. It should be noted that the MSU Citizen Planner Program Earning provides a certification program which involves the successful completion of seven core sessions. Citizen Planner, <http://citizenplanner.msu.edu/classroom.htm> (last visited Aug. 25, 2008). Courses are held for consecutive weeks at a local facility. *Id.* Each session is designed to be approximately two and one-half hours in length and includes hands-on learning and field trips as appropriate. *Id.* The first seven core sessions provide a basic skill set and are required for certification. *Id.* Participants with limited time may enroll in individual sessions of their choosing. *Id.* Many professionals of different disciplines were

Third, Michigan must specifically state the time frame within which local zoning officials must complete the required hours. Kentucky, Tennessee, South Carolina, and Louisiana allow local zoning officials a “grace period” to complete the required training after they assume their respective responsibilities.¹⁷⁰ Unfortunately, these provisions make it possible for members to assume their responsibilities without any prior training, thus legitimizing the criticisms often made of local zoning officials.¹⁷¹ The New York law contains a “carry over” provision that allows local zoning officials to save training received in excess of the required training hours for a given year and apply them towards subsequent continuing training requirements.¹⁷² This provision allows local zoning officials to frontload their hourly requirements, thus making it extremely difficult to ensure that each member is up-to-date on recent developments in statutory law¹⁷³ and case law.¹⁷⁴ Michigan should depart from other state models with regard to the timeframe requirements. Instead, the Michigan Legislature should require local zoning officials to complete initial training hours *prior* to assuming their responsibilities. It could provide a provision to give six months for existing planning commissioners to get necessary training. Similarly, it should refrain from including a “carry over” provision so as to avoid the frontloading problem.

Fourth, the state must determine whether the training topics should be laid out in the legislation, or whether it should remain silent on the issue and allow home rule municipalities to determine the subject matter of training courses. Like Louisiana and New York, Michigan should grant home rule municipalities wide latitude in determining what subject matters are most important to their communities.¹⁷⁵ Local officials tend to have an intimate understanding of city-specific problems and are well-equipped to identify the needs of their citizens. Furthermore, the concept of home rule recognizes the right of local self-governance.¹⁷⁶ As such, the Michigan law should remain silent as to the issue, or it should expressly state that home rule cities shall have the authority to determine training course topics. Similarly, Michigan should follow the New York Model and require local governments to pass resolutions approving training from trusted providers, such

involved in development materials and they are widely considered to be the *minimum* necessary for a planning commissioner to adequately function in his or her job. Interview with Mark Wyckoff, Dir., Planning & Zoning Ctr. at Mich. State Univ., in E. Lansing, Mich. (Aug. 22, 2008). In light of this, the minimum standards in other states are too low.

170. See *supra* Part IV.A-D.

171. See *supra* Part II.C.

172. See *supra* text accompanying note 137.

173. See *supra* notes 12-13 and accompanying text.

174. See *supra* Part III.

175. See *supra* text accompanying notes 129, 139.

176. See *supra* note 6 and accompanying text.

as their municipal attorney, a regional planning council, a county planning office or county planning federation, a state agency or association, or an accredited university.¹⁷⁷

Sixth, Michigan should incorporate a provision in the training law that addresses the certification process. Similar to the Kentucky requirement, Michigan zoning officials should be required to submit a certificate of compliance form to the state.¹⁷⁸ While the state would rather avoid responsibility for tracking hours and notifying zoning officials of impending deadlines,¹⁷⁹ state-issued certification of compliance forms would instill a degree of legitimacy and uniformity in the system so as to prevent zoning officials from evading the requirements. Michigan State University, which already tracks graduates of the Citizen Planner Program, could assist with the certification process. Additionally, the Michigan training law should incorporate a provision requiring the completion of a locally or university administered examination in order to ensure that local zoning officials adhere to a certain standard of competence.¹⁸⁰ Lastly, like the New York law, Michigan's law should include a provision stating that no zoning decision will be invalid because of one or more officials' failure to comply with the training requirements.¹⁸¹

Home rule municipalities may express concern with increased exposure to litigation due to zoning officials' failure to file a certification of compliance with the state. This concern would be addressed by a provision stating that the education requirements are merely regulatory, and that no zoning decision will be invalid because of one or more officials' failure to comply with the training requirements. For example, a planning commissioner's failure to file a certification of compliance with the state would not impose liability on the planning commission for a lawsuit based on non-compliance. Such a provision would ease the concern with increased exposure to litigation by providing a necessary degree of immunity to local officials.

Seventh, the Michigan Legislature should expressly prohibit exemptions for professional planners or others who have received prior land-use-

177. See *supra* text accompanying note 138; see also education providers cited *supra* note 107.

178. See *supra* text accompanying note 119.

179. See Salkin, *supra* note 8, at 336.

180. See *supra* notes 142-43 and accompanying text. This examination can be administered by means of a joint municipal effort. See *infra* text accompanying note 197. In order to relieve the financial burden of administering the examination, home rule municipalities can follow New Jersey's lead by establishing fees to defray the costs. See *supra* text accompanying note 135.

181. This provision would grant a degree of protection to zoning decisions. One or more officials' failure to comply with training requirements should not render zoning decisions invalid.

related training. Professional planners often play a vital role in drafting zoning ordinances and should remain informed on the development of case and statutory law alongside other zoning officials.¹⁸² While professional planners are often more educated than other zoning officials with regard to land use issues, states like South Carolina, which provide exemptions for various individuals, have failed to recognize the importance of maintaining currency with the development of case and statutory law.¹⁸³ Besides, more and more professional planners are already certified by education, experience, and testing, and have continuing education requirements imposed by the American Institute of Certified Planners (AICP). Perhaps the Michigan Legislature should require community and land use planners in Michigan to achieve AICP certification. Presently, Michigan has a permissive registration of title law in its occupational code that permits a planner who completes AICP certification and state professional community planner certification (following an examination) to use the letters PCP (for professional community planner) after their name.

Eighth, “opt-out” provisions, such as those incorporated in the Tennessee¹⁸⁴ and New York laws,¹⁸⁵ should not be included in Michigan’s mandatory training law because such provisions allow certain individuals, many of whom need training, to circumvent the crucial training requirements. Many municipalities in Tennessee have opted out of state requirements because zoning officials, particularly planning commissioners who have held the position for years, would rather not be bound by the strict state requirements.¹⁸⁶ This is problematic because under Tennessee law, failure to complete the requisite number of hours of initial and continuing training courses within the allotted time is *cause* for removal, but does not translate into an automatic dismissal.¹⁸⁷ Consequently, local zoning officials in Tennessee who choose to opt out may nonetheless continue to carry out their responsibilities without fulfilling training requirements. Michigan’s training law should expressly prohibit “opt-out” provisions so as to prevent consistent noncompliance on the part of home rule cities that want to avoid the “inconveniences” associated with mandatory training requirements.

Lastly, Michigan’s training law should address the consequences of non-compliance. Some training laws, like those of Kentucky, have flexible provisions that *may* subject zoning officials to removal for noncompli-

182. See *supra* text accompanying note 86 and accompanying text.

183. See *supra* text accompanying note 126.

184. See *supra* text accompanying note 122.

185. See *supra* text accompanying note 141.

186. See Salkin, *supra* note 8, at 336.

187. *Id.* at 320 (providing commentary on this problem by the President of the Tennessee Chapter of the American Planning Association).

ance.¹⁸⁸ Other state laws, like those of New Jersey and New York, have more stringent provisions that *require* compliance as a precondition to continuing service.¹⁸⁹ Michigan should follow the lead of New Jersey and New York by removing zoning officials from their positions for failure to complete state requirements. However, the Michigan law should also include an “escape hatch,” which would conditionally exempt zoning officials from a particular training course in the event of an emergency, illness, or other event defined in the statute. Zoning officials should be granted an extension to complete any missed hours by the end of the subsequent year.

While these are only a few of the many issues that must be addressed in a state-mandated training legislation, it is evident that the drafting process will require a variety of policy considerations. The most significant issue, however, will likely be how a mandatory training law will be financed. A discussion as to which governmental unit, if any, will incur the costs is essential so as to ameliorate the concern with an unfunded mandate.

2. *Financing Training through a Joint Municipal Effort*

Financing state-mandated training for local zoning officials requires a determination of whether the state, local units of government, or another public body should incur the costs. States are typically hesitant to impose unfunded mandates on local governments.¹⁹⁰ In the past five years, Michigan has endured one of the worst budget deficits in over fifty years.¹⁹¹ State revenue performance has worsened while spending pressures have increased, creating huge gaps between the cost of maintaining programs and the resources necessary to pay for them.¹⁹² There is no indication that Michigan will outgrow its deficit crisis anytime soon.¹⁹³ Therefore, it would be unwise to require the state to somehow acquire adequate financing for training courses amidst this unfortunate crisis. At the same time, local governments are reluctant to require zoning officials to pay training costs for a position to which they were appointed.¹⁹⁴ Home rule municipalities would likely express concerns with appointed and elected officials bearing the personal financial burden of state-mandated training courses, thereby char-

188. See *supra* text accompanying note 119.

189. See *supra* text accompanying notes 133, 140.

190. See Salkin, *supra* note 8, at 335.

191. *Michigan's Budget Crisis and the Prospects for the Future*, STATE BUDGET NOTES (Citizens Research Council of Mich., Livonia, Mich.) Mar. 2006, at 1, available at <http://www.crcmich.org/PUBLICAT/2000s/2006/sbn200601.pdf> (last visited Feb. 12, 2008).

192. *Id.*

193. *Id.*

194. See Salkin, *supra* note 8, at 335.

acterizing a mandatory training law as an unfunded mandate.¹⁹⁵ These opposing interests can be reconciled by offering no-cost local government-sponsored training courses taught by municipal attorneys or professional planners through a joint municipal effort.¹⁹⁶ This system would encourage volunteer citizens to accept appointments as local zoning officials, as they would not be required to pay for training costs associated with state-mandatory training courses.

In order for home rule municipalities to provide no-cost training through a joint municipal effort, a constitutional provision that may require the state to finance such programs must be addressed. In 1978, Michigan voters approved the so-called “Headlee Amendment” to the state constitution, which requires the state to finance any necessary increased costs associated with activities or services required of local governments by state law.¹⁹⁷ The Amendment triggers when the state passes a law requiring local governments to perform an activity that the state did not previously require local governments to perform.¹⁹⁸ The Headlee Amendment was intended to limit legislative expansion of requirements placed on local government spending, to prevent excessive government spending, and to lower taxes at both the state and the local level.¹⁹⁹ The Headlee Amendment could therefore impose a potential barrier on implementing mandatory training courses for local zoning officials, as it would require an economically depressed state to finance them.²⁰⁰ However, Michigan case law suggests a way to avoid this undesired result.

In particular, the Michigan Court of Appeals has held that costs associated with implementing state requirements operated by a home rule city are not subject to the Headlee Amendment when such costs are associated with a permissive, rather than mandatory, activity.²⁰¹ In *Kramer v. City of*

195. Associations representing New York local governments were concerned that a training mandate “would be too costly, that it would discourage volunteers from accepting appointments, and that it could expose communities to litigation of their board members failed to be certified as trained.” See Nolon, *supra* note 8, at 4.

196. If home rule municipalities are to provide no-cost government-sponsored training through a joint municipal effort, home rule municipalities will often have to agree on the content of the training sessions. A compromise, however, should not be made at the expense of jeopardizing the relative interests of each municipality. For example, if the legislative role of the planning commissioner was the primary concern for home rule municipality “A” and ethics violations were the primary concerns for home rule municipality “B,” local zoning officials from “A” and “B” should either (1) administer a multi-topic course or (2) refrain from engaging in a joint municipal effort and address the issues in separate training courses.

197. MICH. CONST. art. IX, § 29.

198. *Id.*

199. *Wayne County Bd. of Comm’rs v. Wayne County Airport Auth.*, 658 N.W.2d 804 (Mich. Ct. App. 2002).

200. See *supra* text accompanying notes 192-94.

201. *Kramer v. City of Dearborn Heights*, 496 N.W.2d 301 (Mich. Ct. App. 1992).

Dearborn Heights, the court held that costs associated with implementing state requirements relative to sewage disposal systems operated by a home rule city were not subject to the Headlee Amendment because sewage disposal was a permissive rather than a mandatory activity.²⁰² Like sewage disposal, zoning is a permissive activity.²⁰³ It seems likely that any cost associated with it, such as state-mandated training courses for local zoning officials, would circumvent the state financing requirement set forth by the Headlee Amendment.²⁰⁴ No-cost local government-sponsored training is a viable solution that avoids unneeded financial burdens to the state while making certain that local home rule zoning officials would not bear the personal costs for training courses.

CONCLUSION

In 1981, Justice Brennan asked a simple, yet profound question: if “a policeman must know the Constitution, then why not a planner?”²⁰⁵ This question begs a commonsensical solution: local zoning officials, many of whom lack the necessary education to make informed land use decisions, must be trained on core land use concepts and statutory and judicial developments. The mounting responsibilities of local zoning officials, which must be performed in an increasingly complex land use environment, substantially increase the likelihood that mistakes will be made when applying a complex mix of both advisory and administrative zoning functions. Unfortunately, these mistakes have incurred upon municipalities costly and often debilitating liability expenses. Michigan has yet to address this problem, allowing untrained citizen volunteers to continue making momentous land use decisions affecting the economic and social well-being of their respective localities.

The Michigan Legislature should pass a mandatory training law that recognizes the broad scope of discretion allotted to home rule municipalities while acknowledging the state’s authority to ensure that local zoning officials are equipped to fulfill their responsibilities effectively. The legislation should require home rule zoning officials to adhere to stringent guidelines while granting municipalities the flexibility to determine the content of the training courses. A mandatory training law would serve the interests of both the state and home rule municipalities, as carefully executed land use

202. *Id.*

203. *See supra* note 34 and accompanying text.

204. It must be noted that case law does not exist on this matter in the context of zoning. Therefore, it is by no means certain that the mandatory training law would circumvent the Headlee Amendment.

205. *S.D. Gas & Elec. Co. v. City of S.D.*, 450 U.S. 621, 661 (1981) (Brennan, J., dissenting).

decisions would guarantee the efficient implementation and administration of sound zoning ordinances while strengthening multi-jurisdictional cooperation. Such cooperation would help Michigan become a leader in embracing more progressive land use principles when making zoning decisions, and mandatory training requirements are essential to achieving this goal.