

**BENZONIA and PLATTE TOWNSHIPS, MICHIGAN
WEST BENZIE JOINT ZONING ORDINANCE**

An Ordinance to establish zoning districts and regulations governing the unincorporated portions of Benzonia and Platte Township, Michigan, in accordance with the provisions of the Michigan Zoning Enabling Act , 2006 PA 110 of 2006, as amended [MCL 125.3101 et seq] (MZEA) to provide for regulations governing nonconforming uses and structures; to provide for a Board of Appeals and its duties and powers; to provide for land use and other permits and the collection of fees thereof; to provide for the administration of this Ordinance, including the official whose duty it shall be to enforce the provisions hereof; to provide for penalties for the violation of this Ordinance; and to provide for conflicts with other Ordinances or regulations.

**THE BOARDS OF TRUSTEES OF THE TOWNSHIPS OF BENZONIA and PLATTE,
STATE OF MICHIGAN, ORDAIN:**

**ARTICLE I
PREAMBLE**

Section 1.1 GENERAL PURPOSES

The districts and other provisions of this Ordinance are based upon the Zoning Plan and Future Land Use Map and policies contained within the Benzie County Comprehensive Plan. The Benzie County Comprehensive Plan and this Zoning Ordinance are adopted for the following purposes: 1) to promote the public health, safety, and general welfare; 2) to provide adequate light and air, and protect air and water quality; 3) to encourage the use of lands in accordance with their character and adaptability; 4) to limit the improper use of land, 5) to conserve natural resources and energy; 6) to meet the needs of the state's residents for food, fiber and other natural resources, places of residence, recreation, industry, trade, service and other uses of land; 7) to ensure that uses of land are situated in appropriate locations and relationships; 8) to avoid the overcrowding of population, 9) to lessen congestion on public streets and highways, 10) to reduce hazards to life and property due to fire, flooding, erosion, pollution, excessive dust, fumes, smoke, noise, vibration, noxious odors or other hazards, 11) to prevent the overburdening of existing or available public services and utilities, 12) to facilitate the adequate provision of a system of transportation, sewage disposal, solid waste disposal, drainage, public water supply, education, recreation and other public requirements, 13) to conserve the expenditure of funds for public improvements and services, 14) to conform with the most advantageous use of land, resources and properties, 15) to conserve land, community character and property values, and 16) to prevent nuisances.

Section 1.2 SPECIAL PURPOSES

The purpose and intent of the Sections of this Ordinance pertaining to the regulation of sexually oriented businesses is to regulate the location and operation of, but not to exclude, sexually oriented businesses within the portions of the Townships subject to this Ordinance, and to minimize their negative secondary effects. It is recognized that sexually oriented businesses, because of their very nature, have serious objectionable operational characteristics which cause negative secondary effects upon nearby residential, educational, religious and other similar public and private uses—especially if a concentration of such uses, and related uses were to occur. The regulation of sexually oriented businesses is necessary to ensure that their negative secondary effects will not contribute to the blighting or downgrading of surrounding areas and will not negatively impact the health, safety and general welfare of residents and businesses. The provisions of this Ordinance are not intended to offend the guarantees of the First Amendment to the United States Constitution or to deny adults access to sexually oriented businesses and their products, or to deny sexually oriented businesses access to their intended market. Neither is it the intent of this Ordinance to legitimize activities which are prohibited by local ordinance, state or federal law. If any portion of this Ordinance relating to the regulation of sexually oriented businesses or referenced in those Sections is found to be invalid or unconstitutional by a court of competent jurisdiction, the Townships intend said portion to be disregarded, reduced and/or revised so as to be recognized to the fullest extent possible by law. The Townships further state that it would have passed and adopted what remains of any portion of this Ordinance relating to regulation of sexually oriented businesses following the removal, reduction or revision of any portion so found to be invalid or unconstitutional.

The Benzie County Comprehensive Plan, including both its provisions of general application and, particularly, its provisions and recommendations relative to those lands within Benzonia and Platte Townships, is, for purposes of Section 203 of the MZEA [MCL 125.3203], the plan upon which this zoning ordinance is based.

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Section 1.3 VALIDITY AND SEVERABILITY

If any clause, sentence, sub-sentence, paragraph, section or part of this Ordinance be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, sub-sentence, paragraph, section, or part directly involved in the controversy in which said judgment shall have been rendered.

Section 1.4 VESTED RIGHTS

Nothing in this Ordinance shall be interpreted or construed to give permanent vested rights in the continuance of any particular use, district, zone classification, or any permissible activities therein, and all lands and uses subject to this Ordinance are hereby declared to be subject to subsequent amendment, change, or modification, as may be necessary for the preservation or protection of public health, safety, and welfare.

Section 1.5 REPEAL OF PRIOR ORDINANCES

All existing zoning ordinances of Benzonia and Platte Townships, if any, are hereby repealed except that a situation that was not a lawful, non-conforming situation under any prior Benzonia or Platte Township Zoning Ordinance and any County Zoning Ordinance does not achieve lawful nonconforming status under this Ordinance and a lot which was not a lot of record under any prior Zoning Ordinances does not achieve the status of a new lot of record herein.

Section 1.6 COMPUTATION OF TIME

Unless otherwise specifically provided, the time within which an act is to be done shall be computed by excluding the first and including the last day. If the last day is a Saturday, Sunday, or legal holiday, that day shall not be counted. A legal holiday includes; New Years Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving, Christmas Day, Martin Luther King Day, Lincoln's birthday, President's Day, Columbus Day, and Veterans Day.

Section 1.7 INTERPRETATIONS AND EFFECT OF ORDINANCE

- A. The following rules of construction apply to the text, tables and illustrations of this Ordinance:
1. The particular shall control the general.
 2. In the case of any difference of meaning or implication between the text of this Ordinance and any caption or illustration, the text shall control.
 3. Words used in the present tense include the future tense; and the singular includes the plural unless the context clearly indicates the contrary.
 4. The word "person" includes a corporation, partnership, association, trust, company, corporation, LLC or firm as well as an individual.
 5. The word "building" or "structure" includes any part thereof.
 6. The word "lot" includes the word "plot", "tract", or "parcel".
 7. The term "shall" is always mandatory and not discretionary; the word "may" is permissive.
 8. The word "used" or "occupied" as applied to any land or building shall be construed to include the words "intended, arranged, or designed to be used or occupied".
 9. Words in any gender shall be deemed to include the masculine, feminine, and neuter.
 10. Unless the context clearly indicates the contrary, where a regulation involves two or more items, conditions, provisions, or events connected by the conjunction "and," "or," or "either...or," the conjunction shall be interpreted as follows:
 - a. "And" indicates that all the connected items, conditions, provisions or events shall apply.
 - b. "Or" indicates that the connected items, conditions, provisions or events may apply singly or in any combination.
 - c. "Either...or" indicates that the connected items, conditions,

provisions or events shall apply singly but not in combination.

11. The words "this Ordinance" means the text of this Ordinance as well as all maps, tables, graphics, schedules as included or attached and as enacted or subsequently amended.
12. The "Township" includes the Townships of Benzonia and Platte, State of Michigan; the "Planning Commission" is the West Benzie Joint Planning Commission of the Townships of Benzonia and Platte, the "Board of Appeals" is the Board of Appeals of the Township of Benzonia or Platte and the "Township Board" is the Benzonia or Platte Township Board of Trustees.
13. All statutory citations are to statutes as amended, including codifications and repeals if a new statute is adopted with a similar scope and purpose. See also Section 1.9.
14. Any word or term not defined in this Article shall be given a meaning of common or standard acceptance. A dictionary may be consulted.

B. In interpreting and applying the provisions of this Ordinance, the provisions shall be held to be the minimum requirements for the promotion of the public safety, health, convenience, comfort, prosperity and general welfare.

1. It is not intended by this Ordinance to interfere with or abrogate or annul any ordinance, rule, regulation, or permits previously adopted or issued and not in conflict with any of the provisions of this Ordinance, or which shall be adopted or issued pursuant to law relating to the use of land, buildings, structures or premises, and not in conflict with this Ordinance.
2. It is not intended by this Ordinance to interfere with or abrogate or annul any easements, covenants, deed or other agreements between parties, provided however, that where this Ordinance imposes a greater restriction upon the use of land, buildings, structures or other premises, or upon height of buildings, or requires larger open spaces, or larger lots, or requires mitigating measures or other limitations on a property different from those imposed or required by an easement, covenant, deed or other agreement, then the provisions of this Ordinance shall control in addition to all nonconflicting requirements of an easement, covenant, deed or other agreement.
3. In the interpretation, application and enforcement of this Ordinance, whenever any of the provisions or limitations imposed or required herein are more stringent than any other law, rule, regulation or ordinance, then the provisions of this Ordinance shall govern. However, if the requirements of any other law, rule, regulation or ordinance impose more stringent requirements than are imposed or required by this Ordinance, then the provisions of such other law or ordinance shall govern.
4. In the event that the combined effect of the requirements of this Ordinance, and any easement, covenant, deed, private agreement, and/or any other law, rule, regulation or ordinance so severely limit the use of

property subject to this Ordinance that no economically viable use of the property remains and a well substantiated claim of taking under the 5th Amendment to the U.S. Constitution is made, then prior to seeking any redress in a court of law, the property owner shall either file a petition with the Board of Appeals for a variance under Section 29.5 of this Ordinance or with the Township Board of Trustees under Section 17.7. If either body finds merit to the taking claim, they shall take action under the relevant Sections of this Ordinance to eliminate the basis for the taking claim by permitting some economically viable use of land which does not unreasonably cause negative impacts on abutting lands and uses. If no redress under either Section 29.5 or Section 17.7 is possible without unreasonable negative impacts on abutting lands and uses, the Township Board of Trustees shall within thirty (30) days make a good faith offer to buy the properties subject to a taking petition at its market value using the procedure required for such offers under Michigan law. If agreement on the value of such property cannot be reached in thirty (30) days, the Township Board of Trustees may initiate condemnation proceeding pursuant to the Michigan Uniform Condemnation Procedures Act, Public Act 87 of 1980.

- C. Many words, terms and phrases within this Ordinance have a meaning that may be different from their everyday use. Article II, Definitions presents definitions of words, terms, and phrases used within this Ordinance.
- D. To the extent that there is any conflict between provisions contained in this Ordinance and the Michigan Zoning Enabling Act, Public Act 110 of 2006 (MZE), as amended, the provisions of the MZE shall take precedence.

Section 1.8 PROVISIONS NOT AFFECTED BY HEADING

Article and section headings contained herein shall not be deemed to govern, limit, modify or in any manner affect the scope, meaning or intent of any section hereof.

Section 1.9 AMENDED MICHIGAN STATUTES

Whenever any provision of this Ordinance refers to or cites a section of the Michigan Compiled Laws and that Michigan Statute is later amended or superseded, the Ordinance shall be deemed amended to refer to the amended Michigan Compiled Law section or the section thereof that most nearly corresponds to the superseded section.