For more than a century, the predominant public policy in Michigan has embodied the principle that local governments—those closest to the people—must have broad authority to shape matters of local concern. McQuillin’s *Law of Municipal Corporations*, one of the most frequently cited national treatises on local government law, put it this way: “[L]ocal self-government has come to be regarded as the most important feature in our system. The American people have always acted upon the deep-seated conviction that local matters can be better regulated by the people of the locality than by the state or central authority...”¹

The public policy of local control has been prescribed in the state constitution for more than 100 years. It was well-represented in the 1908 constitution, and the current 1963 state constitution expanded that policy, expressing great faith and optimism in local control. Yet challenges to Michigan’s deep-rooted policy of local control have surfaced, with little public dialogue on why we would not benefit by retaining the longstanding principle that “local matters can be better regulated by the people of the locality than by the state or central authority.”²

**Michigan Constitution prescribes a policy of strong local control**

The 1908 Michigan Constitution articulated that governance of local affairs be maintained close to the governed. It provided broad autonomy for local government as part of a home rule arrangement under which cities and villages are delegated substantial authority to govern their own affairs.

The adoption of the 1963 constitution formally planted the roots of local governance even deeper. Two new provisions in...
At a Glance
The public policy of local control has been prescribed in the state constitution for more than 100 years and has been recognized in decisions of the court, inspiring many Michigan municipalities to creatively define their local character. The legislature has recently removed to state control important matters of local concern, raising the question of whether we will be able to maintain the benefits of local control.

Court decisions have affirmed the state's policy of local control

Three years after the 1963 constitution was approved, the Michigan Supreme Court in Brouwer v Bronkema reflected on the state's long history of local control, observing that "in Michigan, attention would have to be focused...upon our own traditions and historical regard for local self-government so ably expressed by the Justices of the Cooley Court" in opinions written in the 1870s.

The United States Supreme Court decided a 1974 zoning case in which Justice Thurgood Marshall, while dissenting with regard to the effect of a particular village zoning regulation, made the following affirmation of local control: “[Local zoning] is one of the primary means by which we protect that sometimes difficult to define concept of quality of life.”

As recently as 2016, the Michigan Supreme Court interpreted the state constitution as reflecting a strong policy of local control. In Associated Builders & Contractors v City of Lansing, the Court held that the 1963 constitution not only affirmed but, in fact, expanded the Michigan policy of local control. Without equivocation, the Court pointed out that the language added to the constitution in 1963 “expresses the people’s will to give municipalities even greater latitude to conduct their business.”

Local control in the balance

There is sincere concern on the part of local government interests that the policy of local control is not being implemented as intended in the 1963 constitution. Conversely, others argue that technology and other factors encourage greater centralized control.

The state legislature certainly has the raw power to determine the general bounds of local government authority. Nevertheless, on matters of local concern, the constitutional history outlined above reveals long adherence to the deep-rooted Michigan public policy in favor of local control for the state’s nearly 2,000 municipalities.

Under the state’s constitutional model of local control, each Michigan municipality has the opportunity to establish and promote its unique character. Michigan is blessed with natural beauty. Indeed, the state motto is: “If you seek a pleasant peninsula, look about you.” Local control has enabled and inspired many communities to creatively augment their natural assets and define their senses of “place,” in part by applying distinct land planning and zoning. Many people have been drawn to live, work, and play in the destinations created in this process. Would centralization of planning and zoning leave communities with sufficient control to maintain the features that attracted their residents and continue to enrich our “pleasant peninsula?” Or would monolithic regulation ultimately dilute the ability of municipalities to establish their own distinctive brands?
The United States Supreme Court has remarked that “regulation of land use is perhaps the quintessential state activity.” There is little doubt that zoning is the predominant authority for land use regulation, and this authority has consistently been delegated to local government. In Hess v West Bloomfield Township, the Michigan Supreme Court recognized the interrelationship between important uses of land, and that weakening the right of a municipality to regulate a particular type of land use could erode the efficacy of zoning in the balance of the community. More recently, the Court observed that “[a]ll property is held subject to the right of the government to regulate its use...so that it shall not be injurious to the rights of the community or that it may promote its health, morals, safety and welfare,” and that, accordingly, the local government “has a cognizable compelling interest to enforce its zoning laws.” The Court further recognized that “[r]eserving areas for commercial activity both protects residential areas from commercial intrusion and fosters economic stability and growth.” In other words, a single uncontrollable type of land use might have the effect of undermining a community’s growth, development, and quality of life.

Local zoning regulation for one particular type of use was weakened in 2011 when the Michigan legislature narrowed local discretion in the review of proposals for new gravel mining operations. This action can be examined as a case in point to illustrate the concern of local government interests in the chronicle of diminishing local control in Michigan.

The overarching structure for local zoning in Michigan is revealed in the state’s zoning enabling act (MZEA). In particular, the provision that organizes and provides the objectives of zoning in the state authorizes local governments to divide the community into land use districts “to meet the needs of the state’s citizens for food, fiber, energy, and other natural resources, places of residence, recreation, industry, trade, service, and other uses of land, to ensure that use of the land is situated in appropriate locations and relationships.” Implicit in this statutory authorization, even where a regulated land use has a business model that extends beyond local borders, such as industry and trade with broad markets, zoning for the physical use itself is recognized to be a matter of local concern. The MZEA further explains that “[a] zoning ordinance shall be made with reasonable consideration of the character of each district, [and] its peculiar suitability for particular uses.”

On a national basis, a challenge to the exercise zoning in the manner provided in the MZEA was resolved in a 1926 Ohio case. As part of its landmark decision, the United States Supreme Court held that local zoning authority could rightly be used to separate residential neighborhoods from heavy industrial uses. Similarly, in 1939, the Michigan Supreme Court expressed that local ordinances could regulate “municipal development, the security of home life, the preservation of a favorable environment in which to rear children...[and] the stabilization of the use and value of property...”
local government discretion on where gravel mining would be permitted in the local communities.

Silva was later overruled in the 2010 decision Kyser v Kasson Township, in which the Supreme Court affirmed that zoning is “a reasonable exercise of the police power that not only protects the integrity of a community’s current structure, but also plans and controls a community’s future development” and that “[b]ecause local governments have been invested with a broad grant of power to zone, ‘it should not be artificially limited.’”

Only a few months after the Kyser decision, a bill was introduced in the legislature to reestablish the Silva “very serious consequences” rule. The bill passed into law within 16 days following its introduction, again putting local zoning control in a weakened position in the review and approval of new sites for gravel operations. This new law made industrial gravel extraction possible in virtually any zoning district in a community, including residential, absent “very serious consequences” as defined by the statute.

The subject of local control over gravel mining has been placed in further and more serious jeopardy by a new legislative bill that seeks to nearly eliminate local control of zoning decisions on whether to allow gravel operations. If this bill were enacted, it would test the point raised in the Court’s Hess decision that weakening the right of a municipality to regulate a particular type of land use may erode the efficacy of zoning throughout the community.

Final thought

United States Supreme Court Justice Neil Gorsuch recently wrote a book that offers a reminder of what Ben Franklin is said to have uttered as he surveyed the newly minted U.S. Constitution: we were embarking on “a republic, if you can keep it.” As Michigan municipal law continues to unfold, we might consider that we have a century-old, deep-rooted public policy enshrined in the constitution that calls for local control, with matters of local concern being shaped by those closest to the people. To a significant degree, this is the formula prescribed in the Michigan Constitution...if we can keep it.

A version of this article was previously published in Laches, the magazine of the Oakland County Bar Association.

Gerald A. Fisher served as counsel for cities, villages, and townships for 30 years, followed by a full-time professorship at WMU-Cooley Law School. He is now an active municipal and land use law consultant. He is a member and past chair of the SBM Government Law Section and coauthor of two ICLE texts, Michigan Municipal Law and Michigan Zoning, Planning, and Land Use Law.

ENDNOTES

2. Id.
11. Id. at 404 (citations omitted).
12. Id.
14. MCL 125.3201(1).
15. MCL 125.3203(1).
18. 1921 PA 207.
21. MCL 125.3205(3)–(7).
22. 2019 SB 431.