

QUALITY OF LIFE / ENFORCEMENT BUREAU

Act No. 316
Public Acts of 2003

Amending section 4l and 4q of P.A. 279 of 1909, as amended, being Home Rule City Act M.C.L. 117.0 *et. seq.*

Approved by the Governor
January 8, 2004
Filed with the Secretary of State
January 12, 2004
EFFECTIVE DATE: January 12, 2004

STATE OF MICHIGAN
92ND LEGISLATURE
REGULAR SESSION OF 2003
Introduced by Reps. Tobocman, McConico, Daniels and Gaffney
ENROLLED HOUSE BILL No. 5216

AN ACT to amend 1909 PA 279, entitled "An act to provide for the incorporation of cities and for revising and amending their charters; to provide for certain powers and duties; to provide for the levy and collection of taxes by cities, borrowing of money, and issuance of bonds or other evidences of indebtedness; to validate actions taken, bonds issued, and obligations heretofore incurred; to prescribe penalties and provide remedies; and to repeal acts and parts of acts on specific dates," by amending section 4l (MCL 117.4l), as amended by 1996 PA 44, and by adding section 4q.

The People of the State of Michigan enact:

Sec. 4l.

(1) Consistent with any of the following statutes and whether or not authorized by the city charter, the legislative body of a city may adopt an ordinance that designates a violation of the ordinance as a civil infraction and provides a civil fine for that violation:

- (a) The Michigan vehicle code, 1949 PA 300, MCL 257.1 to 257.923.
- (b) 1969 PA 235, MCL 257.941 to 257.943.
- (c) 1956 PA 62, MCL 257.951 to 257.955.

(2) Whether or not authorized by the city charter, the legislative body of a city may adopt an ordinance that designates a violation of the ordinance as a municipal civil infraction and provides a civil fine for that violation. An ordinance shall not designate a violation as a municipal civil infraction if that violation may be designated as a civil infraction under subsection (1). A statute

may provide that a violation of a specific type of ordinance is a municipal civil infraction whether or not the ordinance designates the violation as a municipal civil infraction.

(3) An ordinance shall not make an act or omission a municipal civil infraction or a blight violation if that act or omission constitutes a crime under any of the following:

- (a) Article 7 of the public health code, 1978 PA 368, MCL 333.7101 to 333.7545.
- (b) The Michigan penal code, 1931 PA 328, MCL 750.1 to 750.568.
- (c) The Michigan vehicle code, 1949 PA 300, MCL 257.1 to 257.923.
- (d) The Michigan liquor control code of 1998, 1998 PA 58, MCL 436.1101 to 436.2303.
- (e) Part 801 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.80101 to 324.80199.
- (f) The aeronautics code of the state of Michigan, 1945 PA 327, MCL 259.1 to 259.208.
- (g) Part 821 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.82101 to 324.82160.
- (h) Part 811 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.81101 to 324.81150.
- (i) Sections 351 to 365 of the railroad code of 1993, 1993 PA 354, MCL 462.351 to 462.365.
- (j) Any law of this state under which the act or omission is punishable by imprisonment for more than 90 days.

(4) Whether or not authorized by the city charter, the legislative body of a city may adopt an ordinance that designates a violation of the ordinance as a blight violation and provides a civil fine and other sanctions for that violation consistent with section 4q. An ordinance shall not designate a violation as a blight violation if that violation may be designated a civil infraction under subsection (1). An ordinance shall not designate a violation as both a municipal civil infraction and a blight violation.

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Sec. 4q.

(1) A city that has a population of 7,500 or more and is located in any county, or a city that has a population of 3,300 or more and is located in a county that has a population of 2,000,000 or more, may establish an administrative hearings bureau to adjudicate and impose sanctions for violations of the charter or ordinances designated in the charter or ordinance as a blight violation. The bureau may accept admissions of responsibility for blight violations. Pursuant to a schedule of civil fines and costs, the bureau may collect civil fines and costs for blight violations.

(2) The expense of the operation of an administrative hearings bureau shall be borne by the city establishing the bureau.

(3) An administrative hearings bureau shall not have jurisdiction over criminal offenses, traffic civil infractions, municipal civil infractions, or state civil infractions. The bureau and its hearing officers shall not have the authority to impose a penalty of incarceration and may not impose a civil fine in excess of \$10,000.00.

(4) A city that establishes an administrative hearings bureau under this section shall establish by ordinance the jurisdiction of the bureau for adjudicating alleged blight violations, making determinations of responsibility, and imposing sanctions upon those found responsible for a violation. The city may designate only a violation of any of the following types of ordinances as a blight violation:

- (a) Zoning.
- (b) Building or property maintenance.
- (c) Solid waste and illegal dumping.
- (d) Disease and sanitation.
- (e) Noxious weeds.
- (f) Vehicle abandonment, inoperative vehicles, vehicle impoundment, and municipal vehicle licensing.

(5) To initiate a proceeding for a blight violation, the city shall issue and serve upon an alleged violator a written violation notice on which an authorized local official records the occurrence or existence of 1 or more blight violations by the person cited and which directs the named person to pay a civil fine for the violation or appear at the administrative hearings bureau as provided in this section. A violation notice to appear at an administrative hearings bureau shall be treated as made under oath if the violation alleged in the notice occurred in the presence of the authorized local official signing the violation notice and if the notice contains the following statement immediately above the date and signature of the official: "I declare under the penalties of perjury that the statements above are true to the best of my information, knowledge, and belief." An authorized local official may issue a violation notice to appear if, based upon investigation, the official has reasonable cause to believe that the person is responsible for a blight violation and if the city attorney or an assistant city attorney approves in writing the issuance of the violation notice.

(6) If a city has a rental inspection program with which a landlord must register in order to rent premises for residential purposes and if a landlord of premises rented in the city for residential purposes is registered with the city's rental inspection program, the city shall not issue a blight violation notice during an inspection of the premises unless either of the following occurs:

- (a) The landlord is given a written correction notice of the violation and a reasonable opportunity to correct the circumstances before a reinspection of the premises or a date specified in the notice.
- (b) The violation is a direct result of the landlord's action or inaction and creates an

emergency that presents an immediate risk of harm to people or damage to property including, but not limited to, a flooded basement or premises without heat.

(7) A city that does not have a rental inspection program, or does not require a landlord to register as part of a rental inspection program, shall not issue a blight violation notice to a landlord of premises rented in the city for residential purposes during an inspection of the premises unless either of the following occurs:

(a) The landlord is given a written correction notice of the violation and a reasonable opportunity to correct the circumstances before a reinspection of the premises or a date specified in the notice.

(b) The violation is a direct result of the landlord's action or inaction and creates an emergency that presents an immediate risk of harm to people or damage to property, including, but not limited to, a flooded basement or premises without heat.

(8) The person named in the violation notice shall appear on or before the time specified in the violation notice and may respond to the allegations in the notice, as follows:

(a) If the alleged violator wishes to admit responsibility for the blight violation, the person may do so by appearing in person, by representation, or by mail. If appearance is made by representation or mail, the administrative hearings bureau may accept the admission as though the person personally appeared. Upon acceptance of the admission, a hearing officer may order any of the sanctions permitted under this section.

(b) If the alleged violator wishes to deny responsibility for the blight violation, or admit responsibility with an explanation, the person may do so by appearing in person on the date scheduled for the administrative hearing for the purpose of adjudicating the alleged violation.

(c) If the alleged violator fails to appear, a decision and order of default may be entered.

(9) If an admission of responsibility is not made and the civil fine and costs, if any, prescribed by charter or ordinance for the violation are not paid at the administrative hearings bureau, and the alleged violator fails to appear at a hearing scheduled in accordance with this section, a final decision and order of responsibility in the amount of the prescribed civil fine and costs may be issued by the administrative hearings bureau.

(10) The city establishing an administrative hearings bureau shall establish rules and procedures for an alleged violator to set aside the entry of a decision and order of default.

(11) The ordinance establishing the bureau shall provide for adjudicatory hearings by hearing

officers. Each hearing officer shall be an attorney licensed to practice law in this state for at least 5 years. Hearing officers shall be appointed in a manner consistent with the charter of the city for the appointment of other municipal officers or employees and shall only be removed for reasonable cause. Before conducting administrative adjudication proceedings, administrative hearing officers shall successfully complete a formal training program which includes all of the following:

- (a) Instruction on the rules of procedure of the administrative hearings that they will conduct.
- (b) Orientation to each subject area of the ordinance violations that they will adjudicate.
- (c) Observation of administrative hearings.
- (d) Participation in hypothetical cases, including ruling on evidence and issuing final orders.
- (e) The importance of impartiality in the conduct of the administrative hearing and adjudication of the violation.
- (f) Instructions on the preparation of a record that is adequate for judicial review.

(12) The authority and duties of a hearing officer shall include all of the following:

- (a) Hearing testimony and accepting evidence that is relevant to the existence of the blight violation.
- (b) Issuing subpoenas directing witnesses to appear and give relevant testimony at the hearing, upon request of a party or a party's attorney.
- (c) Preserving and authenticating the record of the hearing and all exhibits and evidence introduced at the hearing.
- (d) Issuing a determination, based upon the evidence presented at the hearing, whether a blight violation exists. The determination shall be in writing and shall include written findings of fact, a decision, and an order. The city shall have the burden of establishing the responsibility of the alleged violator by a preponderance of the evidence. Unless the burden is met, the matter shall be dismissed. A decision and an order shall not be made except upon consideration of the record as a whole or a portion of the record as may be cited by any party to the proceeding and as supported by and in accordance with the competent, material, and substantial evidence. A decision and order finding the alleged violator responsible for the violation shall include the civil fine, if any, or any action with which the violator must comply, or both.

(e) Imposing reasonable and proportionate sanctions consistent with applicable ordinance provisions and assessing costs upon a finding that the alleged violator is responsible for the alleged violation. The maximum monetary civil fine allowed under this section excludes costs of enforcement or costs imposed to secure compliance with the city's ordinances and is not applicable to enforce the collection of any tax imposed and collected by the city.

(13) In addition to fines and costs imposed under subsection (12), the hearing officer shall impose a justice system assessment of \$10.00 for each blight violation determination. Upon payment of the assessment, the city shall transmit the assessment collected to the state treasury to be deposited into the justice system fund created in section 181 of the revised judicature act of 1961, 1961 PA 236, MCL 600.181.

(14) A party shall be provided with the opportunity for a hearing during which they may be represented by counsel, present witnesses, and cross-examine witnesses. A party may request the hearing officer to issue subpoenas to direct the attendance and testimony of relevant witnesses and the production of relevant documents. Hearings shall be scheduled with reasonable promptness, except that for hearings scheduled in all nonemergency situations the alleged violator if he or she requests shall have at least 14 days after service of process to prepare for the hearing. For purposes of this subsection, "nonemergency situation" means any situation that does not reasonably constitute a threat to the public interest, safety, or welfare. If service is provided by first-class mail, the 14-day period begins to run on the day that the notice is deposited in the mail.

(15) In an administrative hearing under this section, the rules of evidence as applied in a nonjury civil case in circuit court shall be followed as far as practicable, but the hearing officer may admit and give probative effect to evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs. Irrelevant, immaterial, or unduly repetitious evidence may be excluded. Effect shall be given to the rules of privilege recognized by law. Objections to offers of evidence may be made and shall be noted in the record. Subject to these requirements, the hearing officer, for the purpose of expediting hearings and when the interests of the parties will not be substantially prejudiced thereby, may provide in an administrative hearing or by rule for submission of all or part of the evidence in written form.

(16) Any final decision by a hearing officer that a blight violation does or does not exist constitutes a final decision and order for purposes of judicial review and may be enforced in the same manner as a judgment entered by a court of competent jurisdiction.

(17) A party may file an appeal within 28 days after entry of the decision and order by the hearing officer. An appeal of a final decision and order of an administrative hearing officer is to the circuit court.

(18) An alleged violator who appeals a final decision and order to circuit court shall post with the administrative hearings bureau, at the time the appeal is taken, a bond equal to the fine and costs imposed. A party who has paid the fine and costs is not required to post a bond. If a party who has posted a bond fails to comply with the requirements of supreme court rules for an appeal to the circuit court, the appeal may be considered abandoned, and the bureau may dismiss the appeal on 7 days' notice to the parties. The administrative hearings bureau must promptly notify the circuit court of a dismissal, and the circuit court shall dismiss the claim of appeal. If the appeal is dismissed or the decision and order are affirmed, the administrative hearings bureau may apply the bond to the fine and costs. An appeal by the city must be asserted by the city's attorney and a bond is not required.

(19) An appeal to circuit court shall be a review by the court of the certified record provided by the administrative hearings bureau. Pending appeal, and subject to the bond requirement under subsection (18), the hearing officer may stay the order and any sanctions or costs imposed. Once an appeal is filed, and subject to the bond requirement under subsection (18), the court may stay the order and any sanctions or costs imposed. The court, as appropriate, may affirm, reverse, or modify the decision or order, or remand the matter for further proceedings. The court shall hold unlawful and set aside a decision or order of the hearing officer if substantial rights of an alleged violator have been prejudiced because the decision or order is any of the following:

- (a) In violation of the constitution or a statute, charter, or ordinance.
- (b) In excess of the authority or jurisdiction of the agency as conferred by statute, charter, or ordinance.
- (c) Made upon unlawful procedure resulting in material prejudice to a party.
- (d) Not supported by competent, material, and substantial evidence on the whole record.
- (e) Arbitrary, capricious, or clearly an abuse or unwarranted exercise of discretion.
- (f) Affected by other substantial and material error of law.

This act is ordered to take immediate effect.

Clerk of the House of Representatives
Secretary of the Senate
Approved
Governor