

SUBSTITUTE FOR
HOUSE BILL NO. 5216

A bill to amend 1909 PA 279, entitled
"The home rule city act,"
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:

1 Sec. 4l. (1) Consistent with any of the following statutes
2 and whether or not authorized by the city charter, the
3 legislative body of a city may adopt an ordinance that designates
4 a violation of the ordinance as a civil infraction and provides a
5 civil fine for that violation:

6 (a) The Michigan vehicle code, ~~Act No. 300 of the Public~~
7 ~~Acts of 1949, being sections 257.1 to 257.923 of the Michigan~~
8 ~~Compiled Laws 1949 PA 300, MCL 257.1 to 257.923.~~

9 (b) ~~Act No. 235 of the Public Acts of 1969, being~~
10 ~~sections 257.941 to 257.943 of the Michigan Compiled Laws 1969~~

1 PA 235, MCL 257.941 to 257.943.

2 (c) ~~Act No. 62 of the Public Acts of 1956, being~~
3 ~~sections 257.951 to 257.954 of the Michigan Compiled Laws 1956~~
4 PA 62, MCL 257.951 to 257.955.

5 (2) Whether or not authorized by the city charter, the
6 legislative body of a city may adopt an ordinance that designates
7 a violation of the ordinance as a municipal civil infraction and
8 provides a civil fine for that violation. An ordinance ~~may~~
9 **shall** not designate a violation as a municipal civil infraction
10 if that violation may be designated as a civil infraction under
11 subsection (1). A statute may provide that a violation of a
12 specific type of ordinance is a municipal civil infraction
13 whether or not the ordinance designates the violation as a
14 municipal civil infraction.

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

18 (a) Article 7 ~~or section 17766a~~ of the public health code,
19 ~~Act No. 368 of the Public Acts of 1978, being sections 333.7101~~
20 ~~to 333.7545 and 333.17766a of the Michigan Compiled Laws 1978 PA~~
21 368, MCL 333.7101 to 333.7545.

22 (b) The Michigan penal code, ~~Act No. 328 of the Public Acts~~
23 ~~of 1931, being sections 750.1 to 750.568 of the Michigan Compiled~~
24 ~~Laws 1931 PA 328, MCL 750.1 to 750.568.~~

25 (c) ~~Act No. 300 of the Public Acts of 1949, being~~
26 ~~sections 257.1 to 257.923 of the Michigan Compiled Laws The~~
27 Michigan vehicle code, 1949 PA 300, MCL 257.1 to 257.923.

1 (d) The Michigan liquor control ~~act, Act No. 8 of the Public~~
2 ~~Acts of the Extra Session of 1933, being sections 436.1 to 436.58~~
3 ~~of the Michigan Compiled Laws~~ **code of 1998, 1998 PA 58, MCL**
4 **436.1101 to 436.2303.**

5 (e) Part 801 ~~(marine safety)~~ of the natural resources and
6 environmental protection act, ~~Act No. 451 of the Public Acts of~~
7 ~~1994, being sections 324.80101 to 324.80199 of the Michigan~~
8 ~~Compiled Laws~~ **1994 PA 451, MCL 324.80101 to 324.80199.**

9 (f) The aeronautics code of the state of Michigan, ~~Act~~
10 ~~No. 327 of the Public Acts of 1945, being sections 259.1 to~~
11 ~~259.208 of the Michigan Compiled Laws~~ **1945 PA 327, MCL 259.1 to**
12 **259.208.**

13 (g) Part 821 ~~(snowmobiles)~~ of ~~Act No. 451 of the Public~~
14 ~~Acts of 1994, being sections 324.82101 to 324.82159 of the~~
15 ~~Michigan Compiled Laws~~ **the natural resources and environmental**
16 **protection act, 1994 PA 451, MCL 324.82101 to 324.82160.**

17 (h) Part 811 ~~(off road recreation vehicles)~~ of ~~Act No. 451~~
18 ~~of the Public Acts of 1994, being sections 324.81101 to 324.81150~~
19 ~~of the Michigan Compiled Laws~~ **the natural resources and**
20 **environmental protection act, 1994 PA 451, MCL 324.81101 to**
21 **324.81150.**

22 (i) Sections 351 to 365 of the railroad code of 1993, ~~Act~~
23 ~~No. 354 of the Public Acts of 1993, being sections 462.351 to~~
24 ~~462.365 of the Michigan Compiled Laws~~ **1993 PA 354, MCL 462.351**
25 **to 462.365.**

26 (j) Any law of this state under which the act or omission is
27 punishable by imprisonment for more than 90 days.

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

8 Sec. 4q. (1) A city [having a population of 7,500 or more] may
establish an administrative
9 hearings bureau to adjudicate and impose sanctions for violations
10 of the charter or ordinances designated in the charter or
11 ordinance as a blight violation. The bureau may accept
12 admissions of responsibility for blight violations. Pursuant to
13 a schedule of civil fines and costs, the bureau may collect civil
14 fines and costs for blight violations.

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

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

24 (4) A city that establishes an administrative hearings bureau
25 under this section shall establish by ordinance the jurisdiction
26 of the bureau for adjudicating alleged blight violations, making
27 determinations of responsibility, and imposing sanctions upon

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1 those found responsible for a violation. The city may designate
2 only a violation of any of the following types of ordinances as a
3 blight violation:

4 (a) Zoning.

5 (b) Building or property maintenance.

6 (c) Solid waste and illegal dumping.

7 (d) Disease and sanitation.

8 (e) Noxious weeds.

9 (f) Vehicle abandonment, inoperative vehicles, [] vehicle
10 impoundment[, and municipal vehicle licensing].

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

1 blight violation and if the city attorney or an assistant city
2 attorney approves in writing the issuance of the violation
3 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 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.]

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

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

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

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

21 (8) If an admission of responsibility is not made and the
22 civil fine and costs, if any, prescribed by charter or ordinance
23 for the violation are not paid at the administrative hearings

24 bureau, and the alleged violator fails to appear at a hearing
25 scheduled in accordance with this section, a final decision and
26 order of responsibility in the amount of the prescribed civil
27 fine and costs may be issued by the administrative hearings

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1 bureau.

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

5 (10) The ordinance establishing the bureau shall provide for
6 adjudicatory hearings by hearing officers. Each hearing officer
7 shall be an attorney licensed to practice law in this state for
8 at least 5 years. Hearing officers shall be appointed in a
9 manner consistent with the charter of the city [for the appointment of
10 other municipal officers or employees] and shall only be
11 removed for reasonable cause. Before conducting administrative
12 adjudication proceedings, administrative hearing officers shall
13 successfully complete a formal training program which includes
14 all of the following:

15 (a) Instruction on the rules of procedure of the
16 administrative hearings that they will conduct.

17 (b) Orientation to each subject area of the ordinance
18 violations that they will adjudicate.

19 (c) Observation of administrative hearings.

20 (d) Participation in hypothetical cases, including ruling on
21 evidence and issuing final orders.

22 (e) The importance of impartiality in the conduct of the
23 administrative hearing and adjudication of the violation.

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

26 (a) Hearing testimony and accepting evidence that is relevant
27 to the existence of the blight violation.

(b) Issuing subpoenas directing witnesses to appear and give

1 relevant testimony at the hearing, upon request of a party or a
2 party's attorney.

3 (c) Preserving and authenticating the record of the hearing
4 and all exhibits and evidence introduced at the hearing.

5 (d) Issuing a determination, based upon the evidence
6 presented at the hearing, whether a blight violation exists. The
7 determination shall be in writing and shall include written
8 findings of fact, a decision, and an order. The city shall have
9 the burden of establishing the responsibility of the alleged
10 violator by a preponderance of the evidence. Unless the burden
11 is met, the matter shall be dismissed. A decision and an order
12 shall not be made except upon consideration of the record as a
13 whole or a portion of the record as may be cited by any party to
14 the proceeding and as supported by and in accordance with the
15 competent, material, and substantial evidence. A decision and
16 order finding the alleged violator responsible for the violation
17 shall include the civil fine, if any, or any action with which
18 the violator must comply, or both.

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

27 (12) A party shall be provided with the opportunity for a

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

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

1 of the evidence in written form.

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

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

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

26 (17) An appeal to circuit court shall be a review by the
27 court of the certified record provided by the administrative

1 hearings bureau. Pending appeal, and subject to the bond
2 requirement under subsection (16), the hearing officer may stay
3 the order and any sanctions or costs imposed. Once an appeal is
4 filed, and subject to the bond requirement under subsection (16),
5 the court may stay the order and any sanctions or costs imposed.
6 The court, as appropriate, may affirm, reverse, or modify the
7 decision or order, or remand the matter for further proceedings.
8 The court shall hold unlawful and set aside a decision or order
9 of the hearing officer if substantial rights of an alleged
10 violator have been prejudiced because the decision or order is
11 any of the following:

12 (a) In violation of the constitution or a statute, charter,
13 or ordinance.

14 (b) In excess of the authority or jurisdiction of the agency
15 as conferred by statute, charter, or ordinance.

16 (c) Made upon unlawful procedure resulting in material
17 prejudice to a party.

18 (d) Not supported by competent, material, and substantial
19 evidence on the whole record.

20 (e) Arbitrary, capricious, or clearly an abuse or unwarranted
21 exercise of discretion.

22 (f) Affected by other substantial and material error of law.