

SENATE 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). <<An ordinance shall not designate a
8 violation as both a municipal civil infraction and a blight violation.>>
9 Sec. 4q. (1) A city that has a population of 7,500 or more
10 and is located in any county, or a city that has a population of
11 3,300 or more and is located in a county that has a population of
12 2,000,000 or more, may establish an administrative hearings
13 bureau to adjudicate and impose sanctions for violations of the
14 charter or ordinances designated in the charter or ordinance as a
15 blight violation. The bureau may accept admissions of
16 responsibility for blight violations. Pursuant to a schedule of
17 civil fines and costs, the bureau may collect civil fines and
18 costs for blight violations.
- 19 (2) The expense of the operation of an administrative
20 hearings bureau shall be borne by the city establishing the
21 bureau.
- 22 (3) An administrative hearings bureau shall not have
23 jurisdiction over criminal offenses, traffic civil infractions,
24 municipal civil infractions, or state civil infractions. The
25 bureau and its hearing officers shall not have the authority to
26 impose a penalty of incarceration and may not impose a civil fine
27 in excess of \$10,000.00.
- (4) A city that establishes an administrative hearings bureau

1 under this section shall establish by ordinance the jurisdiction
2 of the bureau for adjudicating alleged blight violations, making
3 determinations of responsibility, and imposing sanctions upon
4 those found responsible for a violation. The city may designate
5 only a violation of any of the following types of ordinances as a
6 blight violation:

7 (a) Zoning.

8 (b) Building or property maintenance.

9 (c) Solid waste and illegal dumping.

10 (d) Disease and sanitation.

11 (e) Noxious weeds.

12 (f) Vehicle abandonment, inoperative vehicles, vehicle
13 impoundment, and municipal vehicle licensing.

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

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1 An authorized local official may issue a violation notice to
2 appear if, based upon investigation, the official has reasonable
3 cause to believe that the person is responsible for a blight
4 violation and if the city attorney or an assistant city attorney
5 approves in writing the issuance of the violation notice.

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

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

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

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

(a) The landlord is given a written correction notice of the
violation and a reasonable opportunity to correct the

1 circumstances before a reinspection of the premises or a date
2 specified in the notice.

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

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

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

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

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

24 (9) If an admission of responsibility is not made and the
25 civil fine and costs, if any, prescribed by charter or ordinance
26 for the violation are not paid at the administrative hearings
27 bureau, and the alleged violator fails to appear at a hearing

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1 scheduled in accordance with this section, a final decision and
2 order of responsibility in the amount of the prescribed civil
3 fine and costs may be issued by the administrative hearings
4 bureau.

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

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

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

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

22 (c) Observation of administrative hearings.

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

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

<<(f) Instructions on the preparation of a record that is adequate
for judicial review.>>

27 (12) The authority and duties of a hearing officer shall

1 include all of the following:

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

4 (b) Issuing subpoenas directing witnesses to appear and give
5 relevant testimony at the hearing, upon request of a party or a
6 party's attorney.

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

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

23 (e) Imposing reasonable and proportionate sanctions
24 consistent with applicable ordinance provisions and assessing
25 costs upon a finding that the alleged violator is responsible for
26 the alleged violation. The maximum monetary civil fine allowed
27 under this section excludes costs of enforcement or costs imposed

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1 to secure compliance with the city's ordinances and is not
2 applicable to enforce the collection of any tax imposed and
3 collected by the city.

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

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

26 (15) In an administrative hearing under this section, the
27 rules of evidence as applied in a nonjury civil case in circuit

1 court shall be followed as far as practicable, but the hearing
2 officer may admit and give probative effect to evidence of a type
3 commonly relied upon by reasonably prudent persons in the conduct
4 of their affairs. Irrelevant, immaterial, or unduly repetitious
5 evidence may be excluded. Effect shall be given to the rules of
6 privilege recognized by law. Objections to offers of evidence
7 may be made and shall be noted in the record. Subject to these
8 requirements, the hearing officer, for the purpose of expediting
9 hearings and when the interests of the parties will not be
10 substantially prejudiced thereby, may provide in an
11 administrative hearing or by rule for submission of all or part
12 of the evidence in written form.

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

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

22 (18) An alleged violator who appeals a final decision and
23 order to circuit court shall post with the administrative
24 hearings bureau, at the time the appeal is taken, a bond equal to
25 the fine and costs imposed. A party who has paid the fine and
26 costs is not required to post a bond. If a party who has posted
27 a bond fails to comply with the requirements of supreme court

1 rules for an appeal to the circuit court, the appeal may be
2 considered abandoned, and the bureau may dismiss the appeal on 7
3 days' notice to the parties. The administrative hearings bureau
4 must promptly notify the circuit court of a dismissal, and the
5 circuit court shall dismiss the claim of appeal. If the appeal
6 is dismissed or the decision and order are affirmed, the
7 administrative hearings bureau may apply the bond to the fine and
8 costs. An appeal by the city must be asserted by the city's
9 attorney and a bond is not required.

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

23 (a) In violation of the constitution or a statute, charter,
24 or ordinance.

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

27 (c) Made upon unlawful procedure resulting in material

1 prejudice to a party.

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

4 (e) Arbitrary, capricious, or clearly an abuse or unwarranted
5 exercise of discretion.

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