

HOUSE BILL No. 5216

October 30, 2003, Introduced by Reps. Tobocman, McConico, Daniels and Gaffney and referred to the Committee on Judiciary.

A bill to amend 1909 PA 279, entitled "The home rule city act," by amending section 4/ (MCL 117.4/), as amended by 1996 PA 44, and by adding section 4q.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 4/. (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 not
9 designate a violation as a municipal civil infraction if that
10 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 quality of life violation** if that
17 act or 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.

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 quality of life violation and
4 provides a civil fine and other sanctions for that violation
5 consistent with section 4q. An ordinance may not designate a
6 violation as a quality of life violation if that violation may be
7 designated a civil infraction under subsection (1).

8 Sec. 4q. (1) A city 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 quality of life violation. The bureau may accept
12 admissions of responsibility for quality of life violations.
13 Pursuant to a schedule of civil fines and costs, the bureau may
14 collect civil fines and costs for quality of life 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 quality of life
27 violations, making determinations of responsibility, and imposing

1 sanctions upon those found responsible for a violation. The city
2 may designate a violation of any of the following types of
3 ordinances as a quality of life violation:

4 (a) Zoning.

5 (b) Building or construction codes, including elevator,
6 escalator, electrical, mechanical, and plumbing codes.

7 (c) Building or property maintenance or conditions in
8 buildings or on premises related to the health and safety of
9 persons who reside or work in the building or on the premises.

10 (d) Fire prevention.

11 (e) Illegal dumping and the disposal of solid waste.

12 (f) Noxious weeds.

13 (g) Vehicle abandonment, inoperative vehicles, and vehicle
14 impoundment.

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

1 the statements above are true to the best of my information,
2 knowledge, and belief.".

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

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

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

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

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

27 (8) If an admission of responsibility is not made and the

1 civil fine and costs, if any, prescribed by charter or ordinance
2 for the violation are not paid at the administrative hearings
3 bureau, and the alleged violator fails to appear at a hearing
4 scheduled in accordance with this section, a final decision and
5 order of responsibility in the amount of the prescribed civil
6 fine and costs may be issued by the administrative hearings
7 bureau.

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

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

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

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

24 (c) Observation of administrative hearings.

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

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

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

1 ordinances and is not applicable to enforce the collection of any
2 tax imposed and collected by the city.

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

18 (13) The formal and technical rules of evidence do not apply
19 in the administrative hearing permitted under this section.
20 Evidence, including hearsay, may be admitted only if it is of a
21 type commonly relied upon by reasonably prudent persons in the
22 conduct of their affairs.

23 (14) Any final decision by a hearing officer that a quality
24 of life violation does or does not exist constitutes a final
25 decision and order for purposes of judicial review and may be
26 enforced in the same manner as a judgment entered by a court of
27 competent jurisdiction.

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

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

20 (17) An appeal to circuit court shall be a review by the
21 court of the certified record provided by the administrative
22 hearings bureau. Pending appeal, and subject to the bond
23 requirement under subsection (16), the hearing officer may stay
24 the order and any sanctions or costs imposed. Once an appeal is
25 filed, and subject to the bond requirement under subsection (16),
26 the court may stay the order and any sanctions or costs imposed.
27 The court, as appropriate, may affirm, reverse, or modify the

1 decision or order, or remand the matter for further proceedings.
2 The court shall hold unlawful and set aside a decision or order
3 of the hearing officer if substantial rights of an alleged
4 violator have been prejudiced because the decision or order is
5 any of the following:

6 (a) In violation of the constitution or a statute, charter,
7 or ordinance.

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

10 (c) Made upon unlawful procedure resulting in material
11 prejudice to a party.

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

14 (e) Arbitrary, capricious, or clearly an abuse or unwarranted
15 exercise of discretion.

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