

SUBSTITUTE FOR
HOUSE BILL NO. 4868

A bill to amend 1909 PA 279, entitled
"The home rule city act,"
by amending sections 4q and 4r (MCL 117.4q and 117.4r), section 4q
as added by 2003 PA 316 and section 4r as added by 2003 PA 317.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 4q. (1) A city that has a population of 7,500 or more and
2 is located in any county, or a city that has a population of 3,300
3 or more and is located in a county that has a population of
4 2,000,000 or more, may establish an administrative hearings bureau
5 to adjudicate and impose sanctions for violations of the charter or
6 ordinances designated in the charter or ordinance as a blight
7 violation. The bureau may accept admissions of responsibility for
8 blight violations. Pursuant to a schedule of civil fines and costs,
9 the bureau may collect civil fines and costs for blight violations.

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

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

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

16 (a) Zoning.

17 (b) Building or property maintenance.

18 (c) Solid waste and illegal dumping.

19 (d) Disease and sanitation.

20 (e) Noxious weeds.

21 (f) Vehicle abandonment, inoperative vehicles, vehicle
22 impoundment, and municipal vehicle licensing.

23 **(G) RIGHT-OF-WAY SIGNAGE. FOR PURPOSES OF THIS SUBDIVISION,**
24 **RIGHT-OF-WAY SIGNAGE VIOLATION MEANS THE PLACEMENT OF SIGNAGE IN A**
25 **RIGHT-OF-WAY WITHOUT A PROPER PERMIT FROM THE CITY.**

26 **(H) AN ORDINANCE THAT IS SUBSTANTIALLY THE SAME AS SECTIONS**
27 **138 TO 142 OF THE HOUSING LAW OF MICHIGAN, 1917 PA 167, MCL 125.538**

1 TO 125.542.

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

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

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

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

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

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

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

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

26 (a) If the alleged violator wishes to admit responsibility for
27 the blight violation, the person may do so by appearing in person,

1 by representation, or by mail. If appearance is made by
2 representation or mail, the administrative hearings bureau may
3 accept the admission as though the person personally appeared. Upon
4 acceptance of the admission, a hearing officer may order any of the
5 sanctions permitted under this section.

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

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

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

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

23 (11) The ordinance establishing the bureau shall provide for
24 adjudicatory hearings by hearing officers. Each hearing officer
25 shall be an attorney licensed to practice law in this state for at
26 least 5 years. Hearing officers shall be appointed in a manner
27 consistent with the charter of the city for the appointment of

1 other municipal officers or employees and shall only be removed for
2 reasonable cause. Before conducting administrative adjudication
3 proceedings, administrative hearing officers shall successfully
4 complete a formal training program which includes all of the
5 following:

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

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

10 (c) Observation of administrative hearings.

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

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

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

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

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

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

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

26 (d) Issuing a determination, based upon the evidence presented
27 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.

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

15 (15) 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 may
23 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 administrative
27 hearing or by rule for submission of all or part of the evidence in

1 written form.

2 (16) 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 (17) 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 final
9 decision and order of an administrative hearing officer is to the
10 circuit court.

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

25 (19) An appeal to circuit court shall be a review by the court
26 of the certified record provided by the administrative hearings
27 bureau. Pending appeal, and subject to the bond requirement under

1 subsection (18), the hearing officer may stay the order and any
2 sanctions or costs imposed. Once an appeal is filed, and subject to
3 the bond requirement under subsection (18), the court may stay the
4 order and any sanctions or costs imposed. The court, as
5 appropriate, may affirm, reverse, or modify the decision or order,
6 or remand the matter for further proceedings. The court shall hold
7 unlawful and set aside a decision or order of the hearing officer
8 if substantial rights of an alleged violator have been prejudiced
9 because the decision or order is any of the following:

10 (a) In violation of the constitution or a statute, charter, or
11 ordinance.

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

14 (c) Made upon unlawful procedure resulting in material
15 prejudice to a party.

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

18 (e) Arbitrary, capricious, or clearly an abuse or unwarranted
19 exercise of discretion.

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

21 Sec. 4r. (1) If a defendant does not pay a civil fine or costs
22 or an installment payment ordered by a hearing officer under
23 section 4q within 30 days after the date on which payment is due
24 for a blight violation involving the use or occupation of land or a
25 building or other structure, the city may obtain a lien against the
26 land, building, or structure involved in the violation by recording
27 a copy of the final decision and order requiring payment of the

1 fines and costs with the register of deeds for the county in which
2 the land, building, or structure is located. The order shall not be
3 recorded unless a legal description of the property is incorporated
4 in or attached to the order. The lien is effective immediately upon
5 recording of the order with the register of deeds.

6 (2) The order recorded under subsection (1) with the register
7 of deeds shall constitute notice of the pendency of the lien. In
8 addition, a written notice of the lien shall be sent by the city by
9 first-class mail to the owner of record of the land, building, or
10 structure at the owner's last known address.

11 (3) The lien may be enforced and discharged by the city in the
12 manner prescribed by its charter, by the general property tax act,
13 1893 PA 206, MCL 211.1 to ~~211.157~~ **211.155**, or by an ordinance duly
14 passed by the governing body of the city. However, property is not
15 subject to forfeiture, foreclosure, and sale under sections 78 to
16 79a of the general property tax act, 1893 PA 206, MCL 211.78 to
17 211.79a, for nonpayment of a civil fine or costs or an installment
18 ordered under section 4q unless the property is also subject to
19 forfeiture, foreclosure, and sale under sections 78 to 79a of the
20 general property tax act, 1893 PA 206, MCL 211.78 to 211.79a, for
21 delinquent property taxes.

22 (4) A lien created under this section has priority over any
23 other lien unless 1 or more of the following apply:

24 (a) The other lien is a lien for taxes or special assessments.

25 (b) The other lien is created before May 1, 1994.

26 (c) Federal law provides that the other lien has priority.

27 (d) The other lien is recorded before the lien under this

1 section is recorded.

2 (5) The city may institute an action in ~~a court of competent~~
3 ~~jurisdiction~~ **CIRCUIT COURT** for the collection of the judgment
4 imposed by an order under section ~~4r-4Q~~ for a blight violation.
5 However, an attempt by the city to collect the judgment by any
6 process does not invalidate or waive the lien upon the land,
7 building, or structure.

8 (6) A lien provided for by this section shall not continue for
9 a period longer than 10 years after a copy of the order imposing a
10 fine or costs, or both, is recorded, unless within that time an
11 action to enforce the lien is commenced.

12 (7) A default in the payment of a civil fine or costs under
13 section 4q or an installment of the fine or costs may be collected
14 by a means authorized for the enforcement of a court judgment under
15 chapter 40 or 60 of the revised judicature act of 1961, 1961 PA
16 236, MCL 600.4001 to 600.4065, and MCL 600.6001 to 600.6098.