

HOUSE BILL NO. 6417

September 22, 2022, Introduced by Reps. Whitsett, Pepper and Cambensy and referred to the Committee on Government Operations.

A bill to amend 1909 PA 279, entitled
"The home rule city act,"
by amending section 4q (MCL 117.4q), as amended by 2013 PA 188.

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 1,500,000 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

1 violation. The bureau may accept admissions of responsibility for
2 blight violations. Pursuant to a schedule of civil fines and costs,
3 the bureau may collect civil fines and costs for blight violations.

4 (2) The expense of ~~the operation of~~ **operating** an
5 administrative hearings bureau ~~shall be~~ **is** borne by the city
6 establishing the bureau.

7 (3) An administrative hearings bureau ~~shall~~ **does** not have
8 jurisdiction over criminal offenses, traffic civil infractions,
9 municipal civil infractions, or state civil infractions. The bureau
10 and its hearing officers ~~shall~~ **do** not have the authority to impose
11 a penalty of incarceration and may not impose a civil fine in
12 excess of \$10,000.00. This section does not authorize a proceeding
13 against a foreclosing governmental unit as **that term is** defined
14 under section 78 of the general property tax act, 1893 PA 206, MCL
15 211.78, or an authority created under the land bank fast track act,
16 2003 PA 258, MCL 124.751 to 124.774. The city may waive a fine for
17 a blight violation at an owner-occupied dwelling for a first time
18 offender of a blight ordinance, if the offender has corrected the
19 circumstances for the violation.

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

- 27 (a) Zoning.
28 (b) Building or property maintenance.
29 (c) Solid waste and illegal dumping.

1 (d) Disease and sanitation.

2 (e) Noxious weeds.

3 (f) Vehicle abandonment, inoperative vehicles, vehicle
4 impoundment, and municipal vehicle licensing.

5 (g) Right-of-way signage. For purposes of this subdivision,
6 right-of-way signage violation means the placement of signage in a
7 right-of-way without a proper permit from the city.

8 (h) An ordinance that is substantially the same as sections
9 138 to 142 of the housing law of Michigan, 1917 PA 167, MCL 125.538
10 to 125.542.

11 (5) To initiate a proceeding for a blight violation, the city
12 shall issue and serve upon an alleged violator a written violation
13 notice on which an authorized local official records the occurrence
14 or existence of 1 or more blight violations by the person cited and
15 ~~which~~**that** directs the named person to pay a civil fine for the
16 violation or appear at the administrative hearings bureau as
17 provided in this section. A violation notice to appear at an
18 administrative hearings bureau ~~shall~~**must** be treated as made under
19 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.". An
25 authorized local official may issue a violation notice to appear
26 if, based upon investigation, the official has reasonable cause to
27 believe that the person is responsible for a blight violation and
28 if the city attorney or an assistant city attorney approves in
29 writing ~~the issuance of~~**issuing** the violation notice.

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

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

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

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

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

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

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

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

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

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

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

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

28 (11) The ordinance establishing the bureau ~~shall~~**must** provide
29 for adjudicatory hearings by hearing officers. Each hearing officer

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

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

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

13 (c) Observation of administrative hearings.

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

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

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

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

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

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

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

29 (d) Issuing a determination, based upon the evidence presented

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

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

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

29 (14) A party ~~shall-must~~ be provided with the opportunity for a

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

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

28 (16) Any final decision by a hearing officer that a blight
29 violation does or does not exist constitutes a final decision and

1 order for purposes of judicial review and may be enforced in the
2 same manner as a judgment entered by a court of competent
3 jurisdiction.

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

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

22 (19) An appeal to circuit court ~~shall~~**must** be a review by the
23 court of the certified record provided by the administrative
24 hearings bureau. Pending appeal, and subject to the bond
25 requirement under subsection (18), the hearing officer may stay the
26 order and any sanctions or costs imposed. Once an appeal is filed,
27 and subject to the bond requirement under subsection (18), the
28 court may stay the order and any sanctions or costs imposed. The
29 court, as appropriate, may affirm, reverse, or modify the decision

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

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

17 (20) Except as otherwise provided in subsection (21) or (22),
18 if the civil fine and costs imposed against a person under this
19 section are \$1,000.00 or more and the person does not pay the civil
20 fine and costs imposed within 30 days after a final decision and
21 order of the hearing officer or of the circuit court under this
22 section, the person is subject to the following:

23 (a) For a first violation, the person is responsible for a
24 state civil infraction and may be ordered to pay a civil fine of
25 not more than \$500.00.

26 (b) For a second violation, the person is guilty of a
27 misdemeanor punishable by imprisonment for not more than 93 days or
28 a fine of not more than \$500.00, or both.

29 (c) For a third or subsequent violation, the person is guilty

1 of a misdemeanor and may be imprisoned for not more than 1 year and
2 shall be fined \$500.00.

3 (21) ~~Subsection~~**Subsections** (20) ~~does~~**and (25) do** not apply to
4 any of the following that becomes the owner of a property after
5 foreclosure or after taking a deed in lieu of foreclosure:

6 (a) A government-sponsored enterprise. As used in this
7 subdivision, "government-sponsored enterprise" means that term as
8 defined in 2 USC 622(8), or the Michigan state housing development
9 authority created under the state housing development authority act
10 of 1966, 1966 PA 346, MCL 125.1401 to 125.1499c.

11 (b) A financial institution. As used in this subdivision,
12 "financial institution" means that term as defined in section 4(c)
13 of the Michigan strategic fund act, 1984 PA 270, MCL 125.2004.

14 (c) A mortgage servicer, as that term is defined in section 1a
15 of the mortgage brokers, lenders, and servicers licensing act, 1987
16 PA 173, MCL 445.1651a, that is subject to the mortgage brokers,
17 lenders, and servicers licensing act, 1987 PA 173, MCL 445.1651 to
18 445.1684.

19 (d) A credit union service organization that is organized
20 under the laws of this state or the United States.

21 (22) ~~Subsection~~**Subsections** (20) ~~does~~**and (25) do** not apply to
22 the owner of a property if, at the time the civil fine and costs
23 are imposed against the owner, the owner had filed a principal
24 residence exemption affidavit as provided under section 7cc of the
25 general property tax act, 1893 PA 206, MCL 211.7cc, certifying that
26 the property is owned and occupied as a principal residence by that
27 owner.

28 (23) An entity described in subsection (21) that becomes the
29 owner of a property after foreclosure or after taking a deed in

1 lieu of foreclosure shall adhere to all ordinances relating to
2 vacant property or blight violations adopted by the city that
3 established an administrative hearings bureau under this section.

4 (24) As used in ~~subsection~~**subsections** (20) **and (25)**, "person"
5 means an individual, partnership, corporation, limited liability
6 company, association, or other legal entity. Person includes the
7 partners or members of a firm, a partnership, or an association and
8 the officers of a corporation.

9 (25) **Except as otherwise provided in subsection (21) or (22),**
10 **if a hearing officer or circuit court grants a final decision and**
11 **order under this section finding a person in violation of a blight**
12 **ordinance under subsection (4) and the person fails to correct the**
13 **violation no later than 30 days after the final decision and order**
14 **is granted, the person is subject to the following:**

15 (a) For a second violation, the person is guilty of a
16 misdemeanor punishable by imprisonment for not more than 90 days, a
17 fine of not more than \$500.00, or both.

18 (b) For a third or subsequent violation, the person is guilty
19 of a misdemeanor and may be imprisoned for not more than 1 year and
20 shall be fined \$500.00.