

FORMAL AGENDA

7/24/18.

INTERNAL
OPERATIONS
STANDING
COMMITTEE

July 20, 2018

TO: HONORABLE CITY COUNCIL

Re: Contracts and Purchase Orders Scheduled to be considered at the Formal Session for July 24, 2018.

Please be advised that the Contract listed was submitted on June 15, 2018 for the City Council Agenda for June 19, 2018 has been amended as follows:

1. The contractor's **department** was submitted incorrectly by the Office of Contracting and Procurement. Please see the correction(s) below:

Submitted as: Page 1

MAYORS OFFICE

6001561 100% City Funding – To Provide Lobbyist Services Needed to Represent the Interests of the City of Detroit in Matters Relating to the State of Michigan – Contractor: Governmental Consultant Services INC – Location: 120 N. Washington Square, Suite 110, Lansing MI, 48933 – Contract Period: September 1, 2018 through August 31, 2020 – Total Contract Amount: \$432,000.00.
Waiver of Reconsideration

Should read as: Page 1

LAW

6001561 100% City Funding – To Provide Lobbyist Services Needed to Represent the Interests of the City of Detroit in Matters Relating to the State of Michigan – Contractor: Governmental Consultant Services INC – Location: 120 N. Washington Square, Suite 110, Lansing MI, 48933 – Contract Period: September 1, 2018 through August 31, 2020 – Total Contract Amount: \$432,000.00.
Waiver of Reconsideration

Respectfully Submitted,

Lena Willis
Deputy Chief Procurement Officer
LW/CD

BY COUNCIL MEMBER: _____

RESOLVED, that **contract #6001561** referred to in the foregoing communication dated July 24, 2018 be hereby and is approved.

OFFICE OF CONTRACTING AND
PROCUREMENT

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July 19, 2018

HONORABLE CITY COUNCIL:

The Office of Contracting and Procurement recommends a Contract with the following firm(s) or person(s):

6001562 100% City Funding – To Provide Lobbyist Services needed to Represent the Interests of the City of Detroit in Matters Relating to the State of Michigan – Contractor: Kandler, Reed, Khoury, & Muchmore – Location: 124 W. Allegan, Suite 1700, Lansing MI, 48933 – Contract Period: September 1, 2018 through August 31, 2020 – Total Contract Amount: \$192,000.00. **FIRE**

Respectfully submitted,

Boysie Jackson, Chief Procurement Officer
Office of Contracting and Procurement

BY COUNCIL MEMBER _____ **MCCALISTER** _____

RESOLVED, that Contract No. 6001562 referred to in the foregoing communication dated July 19, 2018 be hereby and is approved.



CITY OF DETROIT
LAW DEPARTMENT

COLEMAN A. YOUNG MUNICIPAL CENTER
2 WOODWARD AVENUE, SUITE 500
DETROIT, MICHIGAN 48226-3437
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July 16, 2018

The Honorable Detroit City Council
2 Woodward Ave.
Suite 1340
Detroit, MI 48226

Re: Municipal Civil Infraction Report

Honorable Members of Council:

Your Honorable Body, through Council President Brenda Jones, requested an opinion regarding the use of municipal civil infractions as an enforcement tool, and analyzing the City's authority to convert misdemeanor violations into municipal civil infractions. In addition, Council President Jones sought details of the process for converting certain ordinance violations from criminal misdemeanors into municipal civil infractions, as well as an estimation of the fiscal impact of this conversion. Please consider this opinion as the formal response to that request.

SHORT ANSWER

The City of Detroit may designate the violation of an ordinance as a municipal civil infraction when there is no parallel state or federal violation that is treated as a criminal offense. The City of Detroit has the statutory infrastructure to convert certain ordinance violations from misdemeanors to municipal civil infractions by amending the underlying ordinances, but at present the City enforces no ordinances through municipal civil infractions. In order to enforce ordinance violations as municipal civil infractions the City would be required to create new tickets for enforcement officials to give to violators, as well as coordinate with the 36th District Court or the Department of Administrative Hearings to facilitate hearings and the collection of fines. The Law Department does not have the financial expertise necessary to speculate on the fiscal impact of the administrative changes associated with transitioning into municipal civil infraction enforcement. Consequently, this opinion will not discuss this concern.

BACKGROUND

The ability of a city to enforce its local laws and provide punishment for violations is a central tenet of home rule. The state constitution reserves the right of cities to enforce local laws,¹ and the Home Rule City Act. (HRCA), MCL 117.1 *et seq.*, permits a city's charter or code of ordinances to provide penalties for violating a charter provision or ordinance.² The HRCA limits cities to financial penalties of up five hundred dollars for most ordinance violations, with criminal penalties of up to ninety days in jail, or both,³ but gives leeway in the characterization of a violation and the

¹ Mich. Const. art. 7 § 22.

² See MCL 117.4i(k).

³ *Id.*



process for enforcing it. Depending upon the subject matter, the City of Detroit can make the violation of an ordinance a misdemeanor, a municipal civil infraction, or a blight violation.

Misdemeanor violations are criminal sanctions. In addition to the penalties discussed above, a public record of the violator's conviction will also attach and remain with the violator unless expunged by a court of competent jurisdiction.

In response to concerns of over-criminalization of minor local offenses, the state legislature enacted PA 12 of 1994, which amended the Revised Judicature Act to create municipal civil infractions.⁴ Municipal civil infractions are non-criminal citations for ordinance violations with financial penalties of up to five hundred dollars.

Several years after the creation of municipal civil infractions, municipalities complained that the five hundred dollar penalty for municipal civil infractions was too low to deter persistent violation of certain property offenses.⁵ In response, in 2003 the state legislature amended the HRCA to authorize the blight violations, a stronger non-criminal citation for serious property-related offenses. The amendment also allowed municipalities to create administrative hearings bureaus to process them.⁶

These legislative changes give the City a choice of how to characterize and penalize most ordinance violations. What the City of Detroit cannot do, however, is affix different penalties to the violation of a state or federal statute by ordinance, nor characterize a violation differently by ordinance than it is characterized by state or federal statute.

At one time the City of Detroit used misdemeanor violations, municipal civil infractions, and blight violations simultaneously, but currently only misdemeanors and blight violations are issued. Consistent with the authority found in MCL 117.4q of the HRCA, the City of Detroit has created a Department of Appeals and Hearings (DAH) to process non-criminal violations. The DAH specifically includes a bureau for the enforcement of municipal civil infraction violations. While the City has language in the Code giving authority to use municipal civil infraction violations, the City does not designate any ordinance violation as a municipal civil infraction, nor does it have a process in place to administer them.

APPLICABLE LAW

I. Power to Enforce Penalties for Ordinance Violations is Subject to State Law⁷

Ordinances must be subject to and in accordance with the State Constitution and the general laws of the state, and must not go beyond the authorization of the municipal charter. Article 7, Section 22, of the 1963 Michigan Constitution provides, in relevant part:

⁴ See MCL 600.8703.

⁵ See Attached Report: House Fiscal Agency Summary of Blight Violation Legislation.

⁶ See MCL 117.4l; MCL 117.4q.

⁷ This Subsection borrows nearly verbatim from part of a larger Opinion of the Corporation Counsel dated June 19, 2012, written by Dennis Mazurek. See Pages 3-5 of the June 19, 2012 Opinion RE: Whether The City of Detroit is Precluded From Enacting a Provision in Its Ethics Ordinance, Which Provides for Assessment of Administrative Fines and Sanctions By the Board of Ethics Against Public Servants and Contractors, When There is No Authority in State Law to Do so.



Each such city and village shall have the power to adopt resolutions and ordinances relating to its municipal concerns, property and government, subject to the constitution and law.

MCL 117.4j(3) of the Michigan Home Rule City Act states that each city may in its charter provide:

For the exercise of all municipal powers in the management and control of municipal property and in the administration of the municipal government, whether such powers be expressly enumerated or not; for any act to advance the interests of the city, the good government and prosperity of the municipality and its inhabitants and through its regularly constituted authority to pass all laws and ordinances related to its municipal concerns *subject to the constitution and general laws of this state*. (Emphasis added.)

Section 1-102 of the 2012 Detroit City Charter, *General Powers*, states:

The City has the comprehensive home rule power conferred upon it by the Michigan Constitution, *subject only to the limitations on the exercise of that power* contained in the Constitution or this Charter *or imposed by statute*. The City also has all other powers which a city may possess under the Constitution and laws of this state. (Emphasis added).

Further, Section 9-502 of the 2012 City Charter, *Enabling Legislation*, provides, “The City may enact any ordinance authorized by law or necessary to carry out the provisions of any section of this Charter.” Importantly, Section 9-505 of the 2012 Charter, *Penalties*, provides:

The City shall[,] by ordinance, provide punishment, *up to the extent permitted by law*, for violation of this Charter or any ordinance. (Emphasis added.)

All persons prosecuted for the violation of this Charter or any ordinance shall be afforded all rights of due process required by federal and state law.

These due process rights include: the right of an indigent defendant to an appointed attorney whenever the offense charged requires a minimum term in jail or the judge determines that the court might sentence the defendant to a term of incarceration even if the term is suspended; the right to have witnesses called at trial for the defendant’s defense; the right to cross-examine all witnesses called against the defendant; the right to testify or to remain silent without an inference being drawn from the silence, the right to the presumption of innocence, and the requirement that the defendant’s guilt be proven beyond a reasonable doubt.⁸

II. Misdemeanor Violations and the City of Detroit’s Home Rule

The Michigan Penal Code (MPC), PA 328 of 1931, codifies and classifies criminal acts in the State of Michigan. All crimes articulated in the MPC are characterized as either felonies or

⁸ See MCR 6.610.



misdemeanors.⁹ The MPC specifies that any violation of a state statute that does not have a specific penalty shall be treated as a misdemeanor.¹⁰

Section 4i(k) of the HRCA provides the general authority for the City of Detroit to designate violations of ordinances as misdemeanors. It states that the penalty for any misdemeanor designated by a home rule city:

[M]ust not exceed a fine of \$500.00 or imprisonment for 90 days, or both. However, unless otherwise provided by law, the ordinance may provide that a violation of the ordinance is punishable by imprisonment for not more than 93 days or a fine of not more than \$500.00, or both, if the violation substantially corresponds to a violation of state law that is a misdemeanor for which the maximum period of imprisonment is 93 days.¹¹

Section 1-1-9(a)(1) of the 1984 Detroit City Code establishes the violation of any ordinance as a misdemeanor when no specific penalty is provided:

Where no specific penalty is provided therefor, any person, upon conviction for the violation of any such provision of this Code, shall be punished by a fine of not more than five hundred dollars (\$500.00), or by imprisonment not to exceed ninety (90) days, or by both such fine and imprisonment in the discretion of the court, for each such offense.

III. Civil Infractions Authorized by Statute

Section 117.4l of the HRCA permits municipalities to adopt ordinances in direct conformity with the Motor Vehicle Code, the Uniform Traffic Code, and state parking statutes. Violations of these statutes are characterized as civil infractions.¹² These infractions are non-criminal in nature, and their underlying statutes indicate the potential financial penalties for their violation and processes for enforcement. They are devices of state law to be used by police officers of a municipality; any publication of them by ordinance or Charter only serves to put residents on notice of their legal effect.

IV. Municipal Civil Infraction Authority

Section 117.4l of the HRCA further permits a city to adopt ordinances that treat violations as municipal civil infractions, however. It states, in relevant part:

Whether or not authorized by the city charter, the legislative body of a city may adopt an ordinance that designates a violation of the ordinance as a municipal civil infraction and provides a civil fine for that violation...A statute may provide that a

⁹ See MCL 750.6.

¹⁰ See MCL 750.9.

¹¹ See MCL 117.4i(k).

¹² See MCL 117.4l(1).



violation of a specific type of ordinance is a municipal civil infraction whether or not the ordinance designates the violation as a municipal civil infraction.¹³

The section further states that certain ordinance violations cannot be deemed municipal civil infractions.¹⁴ Violations of the Michigan Vehicle Code, any criminal violation of the MPC, and “any law of this state under which the act or omission is punishable by imprisonment for more than 90 days” cannot be characterized as municipal civil infractions.¹⁵

The Revised Judicature Act (RJA), PA 236 of 1961, establishes the mechanisms for adjudicating civil cases or controversies. It governs municipal civil infraction violations because they do not carry with them a threat of a jail sentence. The RJA requires a political subdivision to issue a citation indicating an ordinance has been violated,¹⁶ as well as offer proper notice to a defendant of their options in response. Unlike a misdemeanor violation, a municipality is not required to provide for a formal hearing for every violation, however. The municipality may choose to provide an informal hearing by establishing a municipal ordinance violations bureau to accept responsibility for violations and collect fines, and can choose to schedule formal hearings only in the case where a defendant disagrees with the citation.¹⁷

Section 1-1-9(b) of the 2012 Detroit City Charter authorizes the City of Detroit to issue municipal civil infraction violations. The section provides, in pertinent part:

Notwithstanding Subsection (a) of this section and in accordance with Chapter 87 of the Michigan Revised Judicature Act, being MCL 600.8701 *et. seq.*, and as specifically authorized by this Code, the city may determine that a violation of this Code, or any rule or regulation promulgated pursuant thereto, be decriminalized, cease to be a misdemeanor, and be deemed a municipal civil infraction that is subject to the assessment of a civil monetary fine.

The City of Detroit had at one time codified several property-related ordinance violations as municipal civil infractions, including violations of Chapter 9, Article I of the 1984 Detroit City Code, *Property Maintenance Code*, as well as Chapter 22 of the 1984 Detroit City Code, *Handling of Solid Waste and Illegal Dumping*. These ordinances have since been amended to treat violations as a blight violation.

Chapter 8.5 of the 1984 Detroit City Code was recently amended to expand the jurisdiction of DAH and reorganize its structure. The ordinance establishes a municipal ordinance violations bureau to operate under the purview of the Department of Appeals and Hearings and adjudicate municipal civil infractions,¹⁸ but because there are currently no ordinance violations designated as municipal civil infractions in the Code, DAH has not staffed this bureau.

¹³ See MCL 117.41.

¹⁴ See MCL 117.41(2), (3).

¹⁵ *Id.*

¹⁶ See MCL 600.8703(1).

¹⁷ See MCL 600.8707(6).

¹⁸ 1984 Detroit City Code Sec. 8.5-3-41.



V. Blight Violation

Pursuant to the HRCA, municipalities are authorized to issue blight violations.¹⁹ A blight violation is a property-related civil offense that is specific to the eradication of “blighted properties” as defined in MCL 125.72(b). Municipalities of over 7,500 residents have options of enhanced civil penalties and more local control over the regulation and punishment of blight-related offenses, and can consider violations of the following ordinances as blight violations:

- (a) Zoning.
- (b) Building or property maintenance.
- (c) Solid waste and illegal dumping.
- (d) Disease and sanitation.
- (e) Noxious weeds.
- (f) Vehicle abandonment, inoperative vehicles, vehicle impoundment, and municipal vehicle licensing.
- (g) Right-of-way signage.²⁰

While limited in scope of subject matter for enforcement, blight violations have become incredibly important because of the pervasive nature of these types of violations in municipalities. To that end, the HRCA permits local governments to establish their own administrative hearings bureaus to quickly adjudicate and impose sanctions in cases of blight violations.²¹ Unlike misdemeanors and municipal civil infractions, the HRCA permits a municipality to impose civil fines of up to \$10,000 for violations, as well as permitting a municipality to place liens on property as a means of collection of fines or costs.²²

The City of Detroit has adopted an administrative hearings bureau to adjudicate and collect fines associated with blight violations in Chapter 8.5, Article II of the 1984 Detroit City Code. The City routinely adjudicates blight violations in the 36th District Court when an objection is raised and a formal hearing is necessary or when the collection of fines and costs is at issue.

ANALYSIS

Preemptive Effect of State Statutory Violation Scheme on Municipal Civil Infractions

The City of Detroit cannot set its own penalties for state or federal violations, and thus many illegal acts that occur in the City of Detroit cannot be decriminalized as municipal civil infractions. As indicated in section 1, all powers designated to a home rule city are subject to the general laws of the state. The MPC is part of the general laws of the state, and thus its language specifying that all violations of state statutes are considered either felonies or misdemeanors unless otherwise characterized is binding on the City despite any effort to characterize them differently. Further, the MPC’s mandate that any statutory violation without a specific penalty shall be treated as a misdemeanor limits the City of Detroit from decriminalizing conduct regulated by the state even if no penalty is defined in the statute. Finally, state statutes may designate purely local concerns

¹⁹ See MCL 117.4l(3) and (4); MCL 117.4q; and MCL 117.4r.

²⁰ MCL 117.4q(4).

²¹ See generally MCL 117.4q.

²² See generally MCL 117.4r.



as misdemeanors or municipal civil infractions pursuant to MCL 117.4i. Thus, even conduct of purely local character may or may not be designated as a municipal civil infraction by the City if otherwise characterized by state law.

Municipal Civil Infractions vs. Misdemeanors and Blight Violations

There is no legislative history detailing or describing the reasoning behind the policy shift away from using municipal civil infractions as an enforcement vehicle in the City of Detroit, but some assumptions can be made to explain the change. It is clear that the advantages of using municipal civil infraction violations instead of misdemeanor violations are limited, and that misdemeanor violations can be made flexible enough to avoid criminal stigma. It is also clear that the blight violation is a superior method of enforcement for the subject matter to which it applies.

The principal advantages of designating an ordinance violation as a municipal civil infraction as opposed to a misdemeanor violation are the removal of the threat of incarceration and the avoidance of imposing a criminal record upon a defendant. At present, the City of Detroit manages to avoid these outcomes even in misdemeanor prosecutions through judicial and prosecutorial discretion. For first-time offenders or minor offenses local prosecutors routinely offer a delayed sentence, meaning that the defendant will never be convicted of a misdemeanor so long as they avoid violating any laws during a specified period of time in the future and comply with any other stipulated conditions. Judges in the 36th District Court routinely accept these delayed sentences, and even in the case where a delayed sentence is not offered judges very rarely impose a jail sentence or maximum fines. By contrast, the disadvantage of a municipal civil infraction as opposed to a misdemeanor is that the threat of incarceration is not available to punish routine violators or prompt plea negotiations. Should the City of Detroit re-establish municipal civil infractions there would be no incentive for local prosecutors or city officials to do anything but seek the maximum fine for any particular violation and no method of combatting recidivism. In current practice, the misdemeanor violation is more flexible than a municipal civil infraction could be, and is not as punitive in practice as it is written in ordinances.

When originally used in the City of Detroit, the municipal civil infraction was primarily attached to property-related offenses, as these are outside of the purview of the MPC, and property regulation is chiefly a local concern. Since the amendment to the HRCA to authorize blight violations, the City decided to convert these municipal civil infractions to blight violations. Using the blight violation as its principal enforcement tool, the City has renewed its efforts to spur compliance with its zoning, building maintenance, and dumping regulations to great effect. Illegal dumping, vehicle abandonment, or neglect/improper maintenance of a building can cost the City and nearby residents substantial sums of money in terms of loss of property value, insurance costs, or potential for injury. The blight violation addresses these issues by permitting higher fines for more substantial violations, and by attaching liens upon property if collection or remediation is difficult or untimely. By contrast, the municipal civil infraction is hardly punitive for a great many local violations because, unless specifically permitted by state law, a municipality may only assess a maximum fine of \$500.00 for any one violation.

The Law Department has established a dedicated blight violation section of its prosecutorial practice to work with the DAH and the 36th District Court to manage blight violations. Without the threat of higher costs that follow violators by way of liens on property, prosecutors would have



much more difficulty incentivizing property owners to make their properties safe and free of blight. While the municipal civil infraction operates in a similar fashion as a blight violation, it does not come with the weight of penalties necessary to effectuate change or punish violators the way the blight violation can.

Current Administrative Challenges to Renewed Enforcement Utilizing Municipal Civil Infractions

Regardless of the advantages or disadvantages of utilizing municipal civil infractions instead of misdemeanor violations or blight violations, there are practical considerations that must be addressed if the City of Detroit decides to re-establish municipal civil infractions. While Articles III and IV of Chapter 8.5 of the 1984 Detroit City Code “establish” municipal civil infractions as options for ordinance violations and the 36th District Court or municipal ordinance violations bureau for their collection, these ordinances have no legal effect because they have not been applied. The City of Detroit must designate by ordinance the penalty of a particular violation as a municipal civil infraction in order to enforce one against a defendant pursuant to Section 8.5-3-3 of the Code. Further, the City must make available a place for violators to go to admit responsibility and pay the associated fines and costs or deny responsibility and be heard by a neutral arbiter to maintain a defendant’s due process rights.²³ This could be the 36th District Court or the municipal ordinance violations bureau pursuant to Section 8.5-3-42 of the Code. The DAH has not established this bureau, as it has not had any violations to process. Thus the City would have to ensure the 36th District Court would accept municipal civil infraction violations until the bureau was properly established.

Apart from the amendment of ordinances, the City of Detroit would have to expend what could be substantial resources for the administration of municipal civil infractions in practice. Physical tickets would have to be designed and printed to give violators proper notice of what they are being accused. Enforcement officials, prosecutors, and judges would have to be allocated and trained for the particular differences in fact-finding, burdens of proof, and sentencing/fine-setting of the municipal civil infraction violations vs. misdemeanor violations or blight violations. Finally, sufficient space would have to be dedicated by way of court rooms or bureau offices and space for prosecutors to make sure that municipal civil infraction collections or hearings are handled efficiently.

CONCLUSION

It is the opinion of the Law Department that the City of Detroit may re-establish municipal civil infractions regarding local concerns upon amending the penalties provisions of certain ordinances, but may not change a violation established or designated by federal or state law into a municipal civil infraction. The City of Detroit also must make sure to properly designate, acquire train, and administer all necessary staff and materials associated with the enforcement of municipal

²³ *Wortleboer v. Benzie Co*, 212 Mich.App 208, 218 (1995). “Due Process is satisfied when interested parties are given notice through a method that is reasonably calculated under the circumstances to apprise them of the proceedings that may directly and adversely affect their legally protected interests and afford them an opportunity to respond”.



Honorable Detroit City Council
Re: Municipal Civil Infraction Report.
July 16, 2018

civil infractions prior to formally issuing a municipal civil infraction violation to ensure that any alleged violator is given Due Process of law.

Respectfully Submitted,

Mark A. Toaz
Assistant Corporation Counsel

Concur:

Tonja R. Long
Supervising Assistant Corporation Counsel

Approved:

Lawrence T. Garcia
Corporation Counsel

Enclosure: House Fiscal Agency Report on Blight Violation Legislation



BLIGHT VIOLATIONS

House Bill 5216 as enrolled

Public Act 316 of 2003

Sponsor: Rep. Steve Tobocman

House Bill 5217 as enrolled

Public Act 317 of 2003

Sponsor: Rep. Bill McConico

House Bill 5218 as enrolled

Public Act 318 of 2003

Sponsor: Rep. Ken Daniels

House Bill 5219 as enrolled

Public Act 319 of 2003

Sponsor: Rep. Jim Howell

House Bill 5220 as enrolled

Public Act 320 of 2003

Sponsor: Rep. Edward Gaffney

House Bill 5224 as enrolled

Public Act 321 of 2003

Sponsor: Rep. Morris Hood III

House Committee: Judiciary

Senate Committee: Judiciary

Second Analysis (9-1-04)

BRIEF SUMMARY: The bills would amend various acts to allow some cities to adopt blight ordinances, provide civil fines and sanctions for blight violations, and establish an administrative hearings bureau to adjudicate and impose sanctions for those violations.

FISCAL IMPACT: The bills would have an indeterminate impact on local units of government and the judiciary; depending on how cities opted to utilize the legislation, the bills could reduce district court caseload burdens and increase municipal administrative costs and civil fine revenues. In addition, presumably, quality of life violations otherwise would be adjudicated as municipal civil infractions, and each municipal civil infraction is subject to a \$10 state assessment that, together with other civil infraction and civil filing fee revenues, supports a variety of justice-related programs through the state justice system fund. Thus, depending on the extent to which municipalities opted to adjudicate violations as quality of life violations, the legislation would affect revenues that otherwise would accrue to the state justice system fund.

THE APPARENT PROBLEM:

Legislation in the mid-1990s established a procedure for initiating, adjudicating, and imposing sanctions for ordinance violations designated by a city, village, township, or county as “municipal civil infractions”. Primarily, the types of infractions that may be designated as municipal civil infractions are related to zoning and building code violations, noxious weeds, and related ordinances. (The legislation specifically excluded certain violations relating to drunk driving, drug use, and other crimes from being designated as municipal civil infractions.) It was believed at the time that the municipal civil infraction system would enable local governments to expedite enforcement of building code violations and clean up properties with junked cars, tall weeds, and piles of rubbish.

Almost a decade later, some communities are still struggling with backlogs of months or years before an ordinance violation has a hearing in municipal or district court. With many district courts overwhelmed by serious criminal cases, municipal civil infractions often are given low priority. In Detroit, the 36th District Court has limited the amount of time set aside to hear such cases to one judge three afternoons a week. Further, the low civil penalties (\$500 maximum on fines) are not sufficient to stop chronic violators from illegal dumping that pollutes streams, lakes, groundwater, and property. More than eyesores, these dilapidated properties, buildings with code violations, and dump sites pose serious health threats to residents and wildlife and discourage new residents and businesses from relocating in the area.

As Detroit and other urban areas have struggled to clean up their communities, Chicago has initiated an intriguing approach that appears to be successful. In 1997 the city established the Department of Administrative Hearings, the first such system in the nation. According to information supplied on the department’s web site, the department hears cases “involving some form of public disorder, blight or nuisance that may directly impact the public health, safety, welfare and quality-of-life” in the community. Seen as a way to hear ordinance violation cases in a fair, expedient, and cost-effective manner, attorneys serving as administrative law officers preside over 400,000 cases a year.

Detroit is scheduled to host several upcoming national events such as the 2004 Ryder Cup, 2005 Major League Baseball All-Star Game, 2006 Superbowl, and 2009 Men’s NCAA Basketball Final Four, and has the opportunity to use such events to enhance its reputation and revitalize its economy (as well as the state’s) by attracting businesses, new residents, and tourists. However, the condition of many of Detroit’s neighborhoods currently acts as a disincentive for investors and families. Detroit, as well as many of Michigan’s other urban centers, would like to use the Chicago model to create administrative hearings bureaus that could more effectively deal with ordinance violations than the current system of municipal civil infraction violations that must be heard before a state court. Legislation has been introduced to allow those cities organized under the Home Rule City Act to establish administrative hearings bureaus that would have the authority to issue violations and impose sanctions for certain types of ordinance violations, mainly those infractions contributing to blight.

THE CONTENT OF THE BILLS:

The bills would amend various acts to allow some cities to adopt blight ordinances, provide civil fines and sanctions for blight violations, and establish an administrative hearings bureau to adjudicate and impose sanctions for those violations.

House Bill 5216 would amend the Home Rule City Act (MCL 117.4l and 117.4q) to allow the legislative body of a city whether or not authorized by the city charter, to adopt an ordinance designating a violation of the ordinance as a blight violation. A violation of any of the following types of ordinances could be designated as a blight violation: zoning; building or property maintenance; solid waste and illegal dumping; noxious weeds; disease and sanitation; and vehicle abandonment, inoperative vehicles, vehicle impoundment, and municipal vehicle licensing. However, an ordinance could not designate a violation as both a municipal civil infraction and a blight violation.

Exclusions. If an ordinance could be designated a civil infraction under the Michigan Vehicle Code, the uniform traffic code, or provisions that allow for control of traffic in parking areas, it could not be designated as a blight violation. Similarly, the act currently prohibits a city ordinance from making an act or omission a municipal civil infraction if such an act or omission constitutes a crime under several listed statutes. Under the bill, this provision would also apply to a blight violation.

Administrative hearings bureau. A city with a population of at least 7,500 (or a city with a population of 3,300 or more located in a county that has a population of at least 2 million) could establish an administrative hearings bureau to process blight violations. Under the bill, an administrative hearings bureau could adjudicate or impose sanctions for blight violations, as well as accept admissions of responsibility for blight violations and collect civil fines and costs; the specific jurisdiction to do these activities would have to be established by city ordinance. A bureau would not have jurisdiction over criminal offenses, traffic civil infractions, or municipal or state civil infractions. A bureau and its hearing officers could not impose a penalty of incarceration or a civil fine of more than \$10,000. The expense of operating an administrative hearings bureau would have to be borne by the city that established it.

Blight violation proceeding. Detailed provisions pertaining to a blight violation proceeding are contained in the bill, but, in general, the city would issue and serve a written violation notice signed by an authorized local official. The alleged violator could either pay the fine listed on the notice or appear before the administrative hearings bureau to admit responsibility, admit responsibility with explanation, or deny responsibility. Failure to admit responsibility, pay the fine and costs, and appear at a scheduled hearing would result in issuance of a final decision by the administrative hearings bureau. A city would have to establish rules and procedures to set aside the entry of a decision and order of default.

Further, some cities have a rental inspection program and require landlords to register in order to rent a premises for residential use; others have a program but do not require registration as a condition for renting, and some cities do not have a rental inspection program at all. Regardless of the status of a rental inspection program, a city could not issue a blight violation notice to a landlord of premises rented in that city for residential purposes during an inspection unless either of the following occurred:

- The landlord was given a written correction notice of the violation and a reasonable opportunity to correct the circumstances before a reinspection was conducted or before a date specified in the notice.

- The violation was a direct result of an action or inaction of the landlord which created an emergency presenting an immediate risk of harm to people or damage to property, including, but not limited to, a flooded basement or premises without heat.

Hearings and appeals. Details regarding hearings are contained in the bill, but, generally speaking, a party would have to be provided the opportunity for a hearing during which he or she could be represented by counsel, present witnesses, and cross-examine witnesses. The rules of evidence as applied in a nonjury civil case in circuit court would be allowed as far as practicable, but the hearing officer could admit and give probative effect

to evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs. Irrelevant, immaterial, or unduly repetitious evidence could be excluded. Effect would have to be given to the rules of privilege recognized by law. Objections to offers of evidence could be made and would have to be noted in the record. Under specified conditions, a hearing officer could provide for - in an administrative hearing or by rule - submission of all or part of the evidence in written form.

A final decision by a hearing officer would constitute a final decision and order for purposes of judicial review and could be enforced in the same manner as a judgment entered by a court of competent jurisdiction. A party could file an appeal with the circuit court within 28 days after entry of the decision and order. Such an appeal would be a review by the court of the certified record provided by the administrative hearings bureau. An alleged violator who appealed a final decision would have to post a bond equal to the fine and costs imposed, if payment of the fines and costs had not yet been made. Failure to comply with requirements for an appeal to the circuit court could result in the appeal being considered abandoned; the bureau could then dismiss the appeal with appropriate notice to the parties and the circuit court (which would have to dismiss the claim of appeal). Whether the appeal was dismissed or the decision and order affirmed, the bond could be applied to the fine and costs. An appeal by the city would have to be asserted by the city's attorney and a bond would not be required.

Pending appeal, the hearing officer could stay the order and any sanctions or costs imposed; after an appeal was filed, the court could do so. The court could affirm, reverse, or modify the decision or order, or could remand the matter for further proceedings. Under certain circumstances, the court would have to hold a hearing officer's decision or order unlawful and set it aside if substantial rights of an alleged violator had been prejudiced.

Hearing officers. The ordinance that established a city's administrative hearings bureau would have to provide that adjudicatory hearings be conducted by hearing officers. A hearing officer would have to be an attorney who had been licensed to practice law in the state for at least five years, be appointed according to a city's charter, and complete the training program prescribed in the bill. Duties would include hearing testimony and accepting relevant evidence; issuing subpoenas; preserving and authenticating the hearing record and all exhibits and evidence introduced at the hearing; issuing written determinations as to whether or not a blight violation existed; and imposing reasonable and proportionate sanctions consistent with applicable ordinance provisions and assessing costs upon persons determined to be responsible for a blight violation.

Justice system assessment. In addition to fines and costs imposed under the bill, the hearing officer would have to impose a justice system assessment of \$10 for each blight violation determination. The city would have to 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.

House Bill 5217 would add a new section to the Home Rule City Act (MCL 117.4r) to allow a city to obtain a lien against property involved in a quality of life violation if a defendant did not pay a civil fine or costs or an installment payment as ordered by a hearing officer under the provisions of House Bill 5216 within 30 days after the date on which payment was due. Procedures for instituting the lien are outlined in the bill. Though the lien could be enforced and discharged by a city according to its charter, the General Property Tax Act, or by a local ordinance, it would not be subject to sale for nonpayment of a civil fine or costs imposed under the provisions of House Bill 5216 unless the property was also subject to sale under statutory provisions for forfeiture, foreclosure, and sale for delinquent property taxes. With the exception of a few stated situations, the lien would have priority over any other liens on the property.

A city could institute court action to collect the judgment imposed under the bill for a quality of life violation; the lien would not be invalidated or waived by any attempt by the city to collect the judgment. A lien under the bill would be restricted to ten years after a copy of the order imposing a fine, costs, or both was recorded, unless within that time an action to enforce the lien had been commenced. Means authorized for the enforcement of a court judgment under Chapters 40 or 60 of the Revised Judicature Act could be utilized to collect on a default in the payment of costs or fines.

House Bill 5218 would also amend the Home Rule City Act (MCL 117.29). The bill would specify that, under the provisions of House Bill 5216, a city could provide for an administrative hearings bureau to adjudicate

alleged violations of ordinances and impose sanctions consistent with the act.

House Bill 5219 would amend the Revised Judicature Act (MCL 600.8313) to specify that Section 8313 would not apply to an ordinance violation designated a blight violation by a political subdivision that established an administrative hearings bureau under statutory provisions to adjudicate and impose sanctions for blight violations.

(Section 8313 specifies that violations of criminal law are to be prosecuted in the district court by the prosecuting attorney; violations of ordinances that are misdemeanors or not designated as civil infractions are to be prosecuted in the district court by the attorney for the municipality whose ordinance was violated; and, if the violation is a civil infraction, the prosecuting attorney or attorney for the municipality must appear in court only in those civil infraction actions that are contested before a judge of the district court in a formal hearing as provided in Section 8721 or 8821 of the act or Section 747 of the Michigan Vehicle Code.)

House Bill 5220 would amend the City and Village Zoning Act (MCL 125.587). Currently, a building erected, altered, razed, or converted, or a use carried on in violation of a local ordinance or regulation adopted under the act is a nuisance per se. A court has to order the nuisance abated, and the owner or agent in charge of the building or land is liable for maintaining a nuisance per se. The legislative body in the ordinance adopted under the act has to designate the proper officials whose duty it is to administer and enforce the ordinance. The officials must also impose a penalty for the violation or designate the violation as a municipal civil infraction and impose a civil fine for that violation.

Under the bill, the local officials would have to impose a penalty for the violation, designate it a municipal civil infraction and impose a civil fine, or, for cities only, designate the violation as a blight violation and impose a civil fine or other legal sanction if the city established an administrative hearings bureau under statutory provisions to adjudicate and impose sanctions for blight violations.

House Bill 5224 would amend Public Act 359 of 1941 (MCL 247.64), which regulates the control of noxious weeds, to allow a city that established an administrative hearings bureau to designate the refusal to destroy noxious weeds as a blight violation. Any fine imposed would be a civil fine. (Currently, under the act, a property owner who refuses to destroy noxious weeds is subject to a fine of not more than \$100. Revenue from such fines becomes a part of a municipality's "noxious weed control fund". A municipality can designate the refusal to destroy noxious weeds as a municipal civil infraction, in which case the fine is a civil fine. This provision would not be changed.)

ARGUMENTS:

For:

In essence, the bill package would allow some cities, those organized under the Home Rule City Act, to establish administrative hearings bureaus to adjudicate infractions relating to blight. Currently, such cases must be heard in state courts. Due to case overloads, these civil infractions are often deemed to be low priority, meaning that months or years may pass before a case gets adjudicated. The result is that many polluters are never held responsible for the blighted and unsanitary conditions they cause.

It is important to note that the bills would not create new infractions or penalties. Rather, the bills would create a new way to adjudicate certain types of civil infractions. The administrative hearings bureaus would only have authority over ordinance violations related to zoning, building or property maintenance, solid waste and illegal dumping (which can include hazardous waste materials), disease and sanitation, noxious weeds, and abandoned or junked vehicles. The belief is that bureaus staffed by specially trained attorneys will be more efficient at adjudicating these types of ordinance violations, collecting fines, and seeing that the properties are cleaned up. Though cities would bear the burden of funding the bureaus, the bills' provisions allowing the cities to retain any fines collected by the bureaus should help to offset these costs.

Swifter enforcement should result in cleaner, safer communities conducive to attracting businesses and new residents (indeed, Detroit was one of only three major metro areas experiencing a migration of young educated residents out of the city as reported by the latest U.S. census information). Welcomed by business leaders and residents alike, the bills should be a win-win for all large cities in the state experiencing difficulties in resolving blighted conditions.

Against:

Some have voiced concerns over a city's potential to use the authority granted to the administrative hearings bureaus to "pad" the city coffers when city funds run low by too aggressively seeking out so-called "violators". Perhaps if cities could be ordered to pay the costs for a party who prevailed on appeal, it would minimize or eliminate any incentive to institute violations proceedings without proper support.

Legislative Analyst: Susan Stutzky

Fiscal Analyst: Marilyn Peterson

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.



CITY OF DETROIT
LAW DEPARTMENT

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Date: July 18, 2018

To: Honorable City Council

From: Law Department

Re: Law Department Notification of Emergency Procurement of Legal Services Pursuant to
City Ordinance 18-5-21

The Law Department has submitted a privileged and confidential memorandum regarding the above referenced subject matter. Please submit this item for referral so that Council may consider any action that is necessary.

CITY CLERK 2018 JUL 18 AM 11:42



CITY OF DETROIT
LAW DEPARTMENT

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July 16, 2018

HONORABLE CITY COUNCIL

**RE: DARRELL FAVORS v CITY OF DETROIT
CASE NO. 18-140318-GC
FILE NO. L18-00034 (MA)**

We have reviewed the above-captioned lawsuit, the facts and particulars of which are set forth in a confidential memorandum that is being separately hand-delivered to each member of Your Honorable Body. From this review, it is our considered opinion that a settlement in the amount of **Seven Thousand Seven Hundred and Fifty Dollars and No Cents (\$7,750.00)** is in the best interest of the City of Detroit.

We, therefore, request authorization to settle this matter in the amount of **Seven Thousand Seven Hundred and Fifty Dollars and No Cents (\$7,750.00)** and that Your Honorable Body direct the Finance Director to issue a draft in favor of **Darrell Favors, and his attorneys Wigod and Falzon, P.C.**, in the amount of **Seven Thousand Seven Hundred and Fifty Dollars and No Cents (\$7,750.00)** to be delivered upon receipt of properly executed Release and Order of Dismissal entered in Case No. **18-140318-GC**, approved by the Law Department.

Respectfully submitted,

Michael L. Auten (P81884)
Assistant Corporation Counsel

APPROVED: JUL 16 2018

LAWRENCE T. GARCIA
Corporation Counsel

BY: _____

James D. Nosedo
Supervising Assistant Corporation Counsel

CITY CLERK 2018 JUL 19 AM 10:22

RESOLUTION

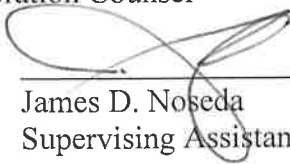
BY COUNCIL MEMBER _____:

RESOLVED, that settlement of the above matter be and is hereby authorized in the amount of **SEVEN THOUSAND SEVEN HUNDRED FIFTY DOLLARS and NO CENTS (\$7,750.00)**; and be it further

RESOLVED, that the Finance Director be and is hereby authorized and directed to draw a warrant upon the proper account in favor of **DARRELL FAVORS, and his attorneys Wigod and Falzon, P.C.**, in the amount of **SEVEN THOUSAND SEVEN HUNDRED FIFTY DOLLARS and NO CENTS (\$7,750.00)** in full payment for any and all claims which **DARRELL FAVORS** may have against the City of Detroit and any City of Detroit employees by reason of alleged injuries or property damage sustained by **DARRELL FAVORS** on or about February 9, 2017, as otherwise set forth in Case No. 18-140318-GC in the 36th District Court for the County of Wayne, and that said amount be paid upon receipt of properly executed Release and Order of Dismissal entered in Case No. 18-140318-GC, and, where it is deemed necessary or desirable by the Law Department, a properly executed Medicare Reporting and Indemnification Affidavit.

APPROVED:

LAWRENCE T. GARCIA
Corporation Counsel

BY: 

James D. Nosedo
Supervising Assistant Corporation Counsel

Approved by City Council: _____

Approved by Mayor: _____



CITY OF DETROIT
LAW DEPARTMENT

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July 6, 2018

HONORABLE CITY COUNCIL

**RE: WILLIE ADAMS, JR. vs CITY OF DETROIT
DEPARTMENT OF WATER AND SEWERAGE
FILE #: 14482 (PSB)**

We have reviewed the above-captioned lawsuit, the facts and particulars of which are set forth in a confidential attorney-client privileged memorandum that is being separately hand delivered to each member of your Honorable Body. From this review, it is our considered opinion that a settlement in the amount of **ONE HUNDRED TWENTY-SIX THOUSAND AND SEVENTY-EIGHT DOLLARS (\$126,078.00)** is in the best interests of the City of Detroit.

We, therefore, request authorization to settle this matter in the amount of **ONE HUNDRED TWENTY-SIX THOUSAND AND SEVENTY-EIGHT DOLLARS (\$126,078.00)** and that your Honorable Body authorize and direct the Finance Director to issue a draft in that amount payable to **Willie Adams, Jr. and his attorney, Alex Berman**, to be delivered upon receipt of properly executed releases and order of dismissal in Workers Compensation Claim #14482, approved by the Law Department.

Respectfully submitted,

Phillip S. Brown
Assistant Corporation Counsel

PSB/gs

Attachment(s)

cc: Budget Department

APPROVED: **EJUL 17 2018**

CHARLES RAIMI
Deputy Corporation Counsel

CITY CLERK 2018 JUL 19 04:10:22

RESOLUTION

BY COUNCILMEMBER: _____

RESOLVED, that settlement of the above matter be and hereby is authorized in the amount of **ONE HUNDRED TWENTY-SIX THOUSAND AND SEVENTY-EIGHT DOLLARS (\$126,078.00)**; and be it further

RESOLVED, that the Finance Director be and is authorized and directed to draw a warrant upon the proper fund in favor **Willie Adams, Jr. and his attorney, Alex Berman**, in the sum of **ONE HUNDRED TWENTY-SIX THOUSAND AND SEVENTY-EIGHT DOLLARS (\$126,078.00)** in full payment of any and all claims which they may have against the City of Detroit by reason of any injuries or occupational diseases and their resultant disabilities incurred or sustained as the result of his past employment with the City of Detroit and that said amount be paid upon presentation by the Law Department of a redemption order approved by the Workers Compensation Department of the State of Michigan.

APPROVED: *EJL 17 2018*



CHARLES RAIMI
Deputy Corporation Counsel



CITY OF DETROIT
LAW DEPARTMENT

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July 13, 2018

HONORABLE CITY COUNCIL

**RE: CAROL MOORE vs CITY OF DETROIT
DEPARTMENT OF TRANSPORTATION
FILE #: 14893 (CM)**

We have reviewed the above-captioned lawsuit, the facts and particulars of which are set forth in a confidential attorney-client privileged memorandum that is being separately hand delivered to each member of your Honorable Body. From this review, it is our considered opinion that a settlement in the amount of **SIXTY-NINE THOUSAND FIVE HUNDRED DOLLARS (\$69,500.00)** is in the best interests of the City of Detroit.

We, therefore, request authorization to settle this matter in the amount of **SIXTY-NINE THOUSAND FIVE HUNDRED DOLLARS (\$69,500.00)** and that your Honorable Body authorize and direct the Finance Director to issue a draft in that amount payable to **Carol Moore and her attorney, Richard Ehrlich**, to be delivered upon receipt of properly executed releases and order of dismissal in Workers Compensation Claim #14893, approved by the Law Department.

Respectfully submitted,

Charles Manion, Supervising
Assistant Corporation Counsel

CM/gs

Attachment(s)

cc: Budget Department

APPROVED: **JUL 17 2018**

CHARLES RAIMI
Deputy Corporation Counsel

CITY CLERK 2018 JUL 19 AM 10:22

RESOLUTION

BY COUNCILMEMBER: _____

RESOLVED, that settlement of the above matter be and hereby is authorized in the amount of **SIXTY-NINE THOUSAND FIVE HUNDRED DOLLARS (\$69,500.00)**; and be it further

RESOLVED, that the Finance Director be and is authorized and directed to draw a warrant upon the proper fund in favor **Carol Moore and her attorney, Richard Ehrlich**, in the sum of **SIXTY-NINE THOUSAND FIVE HUNDRED DOLLARS (\$69,500.00)** in full payment of any and all claims which they may have against the City of Detroit by reason of any injuries or occupational diseases and their resultant disabilities incurred or sustained as the result of her past employment with the City of Detroit and that said amount be paid upon presentation by the Law Department of a redemption order approved by the Workers Compensation Department of the State of Michigan.

APPROVED: **JUL 17 2018**



CHARLES RAIMI
Deputy Corporation Counsel