

AGENDA

Ad Hoc on Housing & Resident Safety AGENDA FOR FEBRUARY 25, 2022 AT 8:30 AM



Lansing City Hall, City Council Conference Room
124 W. Michigan Avenue, 10th Floor

To provide input or ask questions on any item that is listed on the agenda, members of the public may contact the City Council at city.council@lansingmi.gov or (517) 483-4177 prior to the meeting.

Based on the recommendations from the Centers for Disease Control (CDC), City Council is requesting members of the public, City Staff and Council Members wear face coverings at meetings of the City Council and their Committees.

Councilmember Spitzley, Chairperson
Councilmember Wood, Vice Chairperson
Councilmember Brown, Member

- 1. Call to Order**
- 2. Roll Call**
- 3. Minutes**
 - A. February 4, 2022
- 4. Public Comment on Agenda Items (Up to 3 Minutes)**
- 5. Presentations:**
 - B. Code Enforcement- Scott Sanford, City Lead Housing Inspector
- 6. Other**
 - C. Housing Code Enforcement Manual- Practices and Procedures (2019)
- 7. Adjourn**

Persons with disabilities who need an accommodation to fully participate in these meetings should contact the City Council Office at 517-483-4177 (TTY 711) 24 hour notice may be needed for certain accommodations. An attempt will be made to grant all reasonable accommodation requests.



MINUTES
Ad Hoc On Housing and Resident Safety
Friday, February 4, 2022 @ 9:00 a.m.
City Council Conference Room

CALL TO ORDER

The meeting was called to order at 9:00 a.m.

PRESENT

Council Member Patricia Spitzley, Chair
Council Member Carol Wood, Vice Chair
Council Member Jeffrey Brown, Member

OTHERS PRESENT

Sherrie Boak, Council Office Manager
Lisa Hagen, OCA
Joseph Abood, OCA
Barb Kimmel, EDP

Public Comment

No public comment at this time; no public present.

Discussion/Action:

DISCUSSION – 2022 Meeting Schedule

The Committee concurred on meeting the 2nd and 4th Friday's in 2022 at 8:30 a.m.

DISCUSSION – Committee Goals

Council Member Spitzley outlined her expectations from the Committee to address housing good enforcement and issues with multi-family buildings. This includes the timelines for Code Compliance, regulations and determine if policies or timelines need to be adjusted.

Council Member Wood outlined her perspective on what needs to be addressed including studies on housing stock, the number of rental certificates and the time it takes to inspection on those renewals. In addition she wanted to address the time it takes to locate a problem landlord and have them comply with the issues. There was also a brief discussion on properties similar to Autumn Ridge where it was pink tagged, and the owners still rented them out. These situations need to be addressed. A focus needs to be on the “tool box” of things that can be done and if they are being utilized.

Council Member Brown concurred with statements made by the other Committee members.

DRAFT

The Committee asked that Code Compliance be invited to the February 25, 2022 meeting to speak on:

- Number of Officers
- Average time from when the letter goes out to the inspection to the fee getting paid to the inspection occurring.
- How many registered SFR
- How many registered Multi Family
- How many are behind on their inspections
- Number of landlords the City is chasing on compliance with their properties
- # of Rental Certificates for SFR
- # of Rental Certificates for Multi Family
- # of Rental Certificates for Duplexes

Council Member Spitzley asked Ms. Hagen to look at other communities such as Jackson to see what they do. Council Member Brown inquired into why she was requesting Jackson, and Council Member Spitzley explained they have a code on the books already on red tags, landlords, etc. She then spoke briefly on 927 S Washington and the need to address landlords who do not pay the fee for the tag, do not fix, and then the tenants have to be removed for unsafe living conditions. Council Member Wood asked Ms. Hagen to also look at East Lansing ordinances.

Council Member Spitzley also asked that a discussion be held on repeat offenders.

The Committee concurred their research and decisions need to be done to report out by the Ad Hoc end date of 9/1/2022 and to put items in the Budget Priorities for the FY 2023/2024 Budget.

Council Member Spitzley recommended inviting the stakeholders such as the Relators Association and the Rental Association. This group would be invited to the March 11, 2022 meeting and Council Member Spitzley would provide the contact list to Council staff.

Council Member Wood asked that the Landbank be invited to a meeting to discuss the number of homes they have for sale, the number of rentals and the number of homes under improvement. The Committee should also receive details on when Brownfields have been created for the Landbank has any of those funds gone back into enhancing the neighborhood and if so what the amount is. The Committee asked that the Landbank be invited to the next meeting, February 11, 2022. At that time the Committee would also like to look at the mission of the Landbank, how they can get homes back on lots if existing homes are demolished and what the City can do.

Council Member Spitzley would provide a list of associations to invite to the meetings and a form letter would go out to formally invite them.

Council Member Spitzley asked law to look at an ordinance they can defend and not have issues or push back from the community on.

OTHER

No other discussion.

ADJOURN

Adjourned at 9:33 a.m.

Submitted by,

Sherrie Boak, Council Office Manager

DRAFT

Lansing City Council
Approved by the Committee _____

INFORMATION PROVIDED VIA EMAIL PRIOR TO THE MEETING BY

SCOTT SANFORD, CITY LEAD HOUSING MANAGER

DEPARTMENT ON ECONOMIC DEVELOPMENT & PLANNING

REQUESTED TIME LINE OF 1/1/2019-12-31-2021

Rental Certificates Issued:

SFR: 5,418

Multi: 495

Rental Certificates Expired:

SFR: 58

Multi: 302

of Code Officers: 10 (as of January 18, 2022)

The average time/time line from Letter to Owner/Fee Paid/Inspection

Broken down by SFT and Multi: System does not record this type of information

rental inspections behind on – SFR and Multi Don't understand what you are asking here.

of Landlords the City is "chasing": Currently have 4 cases in court: Woodside, Rivershell, Autumn Ridge, Capitol Village.

2/4/2022 EMAIL RESPONSE:

Several of these questions I wouldn't be able to answer dealing with average times etc.. our system doesn't track things like that. That type of information would have to be manually collected for each address.

I can give straight numbers, numbers sent, number complied etc.. based on date ranges.

We can provide the number of Single Family (1 to 2 Units) and number of Multi Family (3 units or more)

I can give you a number of expired certs based on a date range but that wouldn't be an accurate count as it will show expired on an old cert even If a new cert is issued on that address as they all have individual Cert #'s on them. Rental Certifications are issued by building not by unit.

BS&A works on status and filtered views. If I run a report on Monday and get a number I can run the same report on Friday and get a different number and it won't tell me what in the search changed it will just provide a number

I will be there. The numbers provided are rough numbers as I don't know what you are looking for. And realize that as I stated some of these numbers may not be accurate as for example the old Cert has expired but they are in the process of certifying for a new Cert it would only show what is expired and not

the renewal. Bills are sent out monthly, we just sent out 228 today for the month of February. Also, SF rentals are on a 3 year cycle and MF are on a 2 year cycle, so there may be overlap when looking at multiple years.

Code Enforcement Letters 01/01/2019 – 12/31/2021

DAMV:	2,551
Emergency Board Up:	1,306
Trash Debris Notice:	21,911
Grass & Weeds Notice:	21,794
Vendor Submittal DAMV:	226
Vendor Submittal Grass:	2,145
Vendor Submittal Trash:	2,347
Rental Inspections:	15,956
FTR Letters:	5,036
Safety Inspections:	2,738
Exterior Letters:	427
Failure to Comply:	5,191

Total: 77,910

****Total letters sent does not include Vendor Submittal Letters****

CODE ENFORCEMENT PRACTICE AND PROCEDURES

CITY ATTORNEY'S

OVERVIEW AND RECOMMENDATIONS

Practice

The cornerstone of the recommendations in this summary is a Code Compliance practice that includes the organized, periodic and scheduled inspections and reinspections of all City of Lansing rental properties as provided by ordinance. For efficiencies, the practice suggested includes a team approach with Code Compliance, Building Safety, Lansing Fire Department and OCA as participants. The team should agree on clear lines of enforcement responsibilities that provide for coordination of activities, creation of standardized forms and avoidance of duplication of services. As part of the coordination, it is suggested that there be frequent meetings and that Code Compliance maintain a database with established tickler dates for the timely inspections of all rental properties, as called for by ordinance, and reinspections of those properties found not to be in compliance, are vacant or that are suspected of being dangerous to human habitation or fire hazards.

If reinspection is refused, standardized administrative search warrants should be readily available and utilized. If, upon reinspection, the property is found not to have been brought up to code, the severity of the violations and the danger to health and safety of the occupants will dictate the recommendation to be followed.

RECOMMENDATIONS IN ORDER OF LOWEST TO HIGHEST VIOLATIONS SEVERITY

Recommendations

Recommendation #1

For failure to register rental property violations and some zoning use violations:

- Upon discovery of a violation, Code Compliance reports to the OCA, sufficient evidence of violation to establish the illegal activity and the identity of the proper accused.
- OCA seeks to obtain voluntary compliance through a letter threatening formal enforcement if compliance is not made by a date certain.
- If the letter fails to bring compliance, initiate district court proceedings under Recommendation #3.

Recommendation #2

For minor violations (ones for which a fine is expected to be sufficient to motivate correction):

- Reestablish the municipal ordinance violations bureau in the Treasurer's office to receive payment of fines.
- Review ordinance for possible separation of violation notice procedure from civil infraction citation procedure.

- Issue written specific correction notices with established compliance/reinspection dates.
- Use the municipal civil infraction violations notice procedure by Code Compliance, Public Service, Zoning, and LFD when appropriate for violations that remain uncorrected.
- Perform and follow up inspections for the imposition of progressive fining through violations notices as provided by the ordinance fine schedule.
- If violations notice procedure fails to bring about compliance, then use of the district court enforcement procedure in Recommendation #3.

Recommendation #3

For violations that need correction but do not present an immediate health or safety hazard, which make a dwelling dangerous for human habitation:

- Issue written specific correction notices with established compliance/reinspection dates.
- If upon reinspection a property shows partial compliance, either issue a written extension of the correction notice or institute district court action.
- If a property exhibits inadequate compliance efforts, institute district court action.
- Commence district court action by issuance of a municipal civil infraction citation or misdemeanor complaint and check the appropriate box or note on the complaint "court ordered compliance requested."
- The compliance officer should reinspect the property contemporaneous with the court ordered show cause hearing and appear at court with photographic evidence.
- At hearing or trial, present the court with photographic evidence to obtain court ordered fines and costs and injunctive orders for compliance, which includes times certain for reinspection and corrections.
- When a property owner willfully neglects or fails to bring the property into compliance, then with the OCA assistance seek additional district court action, including sanctions for contempt of court.¹

Recommendation #4

For property that presents a safety hazard such that the continuation of human habitation presents an immediate danger or hazard to life or health AND the estimated cost to bring the property into compliance appears to be too material high or prohibitive:

- Red Tag and vacate the property.
- Arrange for and conduct a team inspection and issue a comprehensive and specific notice of correction and dates. Obtain search warrants if needed.

¹ The OCA is advised that in 2018 there were 14 district court civil infraction cases issued and in 2019 YTD there have been 7 issued. Although the recommended procedure was not employed in exactly the manner recommended, archived notations indicate that in the OCA that in the 1990's the office was clearing an average of 250 district court cases per year for compliance.

- Immediately commence the make safe or demolish process under ordinance 1460.01 (l), (p) and (q) and the Housing Law of Michigan.
- If an owner commences corrections but only partially complies the property, determine whether the property has been converted from unsafe and dangerous to the condition that comes under Recommendation #2. If so, discontinue the demo process and commence an action to correct under Recommendation #3.
- If the owner fails to make the property safe, then proceed with demolition.

Recommendation #5

A CIRCUIT COURT ACTION TO ALLOW THE CITY TO REPAIR RED TAGGED PROPERTIES.; APPOINTMENT OF A RECEIVER; LIEN AND RECOUPMENT OF EXPENSES; REQUEST FOR COURT ORDERED LODGING OF DISPLACED TENANTS AND PAYMENT BY LANDLORD. (A part of this remedy is legally experimental)

When a red-tagged property notice to correct violations under the act is ignored, the City may bring a circuit court action. The City may ask the circuit court to include in its order that if the owner does not make the repairs, the City be permitted to do the repairs and be awarded its expenses.

For property described under Recommendation #4 except that the cost to bring the property to code does not appear prohibitive and for which the owner has failed or neglected to rehabilitate the property:

- Red Tag and vacate the property.
- Arrange for and conduct a team inspection and issue a comprehensive and specific notice of correction with or realistic correction time line. Obtain search warrants if needed.
- In appropriate cases, consult with the owner to establish a mutually agreeable correction time line. Memorialize the commitment in writing.
- NEW – Previously Unused Initiative – If the correction time line is not met or extended by mutual agreement, commence an injunctive enforcement action, and possibly a receivership request in Circuit Court under the Housing Law of Michigan MCL 125.534, a copy of this statute is attached.
- ALTERNATIVE to the City initiated Circuit Court procedure is use of the Housing Law of Michigan's demolish process that provides for summarily City demolition without court intervention.

Under Recommendation #5, it is noteworthy that the court action allows the City, as an enforcing agency, to be the moving party in seeking an injunctive court order for the owner to correct the violation. The statute also provides that upon the owner's failure to comply with the order, the City may still request the Court to order demolition or, subject to the availability of City's finances, allow the City to make the repairs. If the City ultimately would make the repairs, the practical problem of recoupment of the expended funds remains a concern. Therefore, there is a need for important policy decisions before initiating this as a possible remedy.

Finally, it should be noted that the Housing Law of Michigan also provides for the appointment of a court ordered private receiver, including the City, to bring such unsafe and

October 7, 2019

dangerous property into compliance with the act. The City can collect the rents if the property is put back into habitable condition even if all repairs are not made. Since the Circuit Court is an equity court and can fashion a remedy, when the City files the complaint with the Court the City can add a count for recoupment of the City's expenses, in addition to the lien authorized by law for such expenses. A request can also be made to the Court to order the landlord to find temporary housing for displaced tenants.

The real draw back to this apparent solution to rehab red-tagged property is that in the business world, this only appears to be a viable solution when the property can generate sufficient revenue that a receiver can both correct the property violations and be paid for his/her services. This drawback, of course, limits the possible use of this solution to only special circumstance cases.

DRAFT

HOUSING LAW OF MICHIGAN (EXCERPT) Act 167 of 1917

125.534 Noncompliance with notice of violation; actions; parties; motion for temporary relief; service of complaint and summons; filing notice of pendency of action; orders and determinations; repair or removal of structure; exception; costs; order approving expenses; lien; authority of municipality; "urban core cities" defined.

Sec. 134. (1) If the owner or occupant fails to comply with the order contained in the notice of violation, the enforcing agency may bring an action to enforce this act and to abate or enjoin the violation.

(2) An owner or occupant of the premises upon which a violation exists may bring an action to enforce this act in his or her own name. Upon application by the enforcing agency, or upon motion of the party filing the complaint, the local enforcing agency may be substituted for, or joined with, the complainant in the discretion of the court.

(3) If the violation is uncorrected and creates an imminent danger to the health and safety of the occupants of the premises, or if there are no occupants and the violation creates an imminent danger to the health and safety of the public, the enforcing agency shall file a motion for a preliminary injunction or other temporary relief appropriate to remove the danger during the pendency of the action.

(4) Owners and lienholders of record or owners and lienholders ascertained by the complainant with the exercise of reasonable diligence shall be served with a copy of the complaint and a summons. The complainant shall also file a notice of the pendency of the action with the appropriate county register of deeds office where the premises are located.

(5) The court of jurisdiction shall make orders and determinations consistent with the objectives of this act. The court may enjoin the maintenance of unsafe, unhealthy, or unsanitary conditions, or violations of this act, and may order the defendant to make repairs or corrections necessary to abate the conditions. The court may authorize the enforcing agency to repair or to remove the building or structure. If an occupant is not the cause of an unsafe, unhealthy, or unsanitary condition, or a violation of this act, and is the complainant, the court may authorize the occupant to correct the violation and deduct the cost from the rent upon terms the court determines just. If the court finds that the occupant is the cause of an unsafe, unhealthy, or unsanitary condition, or a violation of this act, the court may authorize the owner to correct the violation and assess the cost against the occupant or the occupant's security deposit.

(6) A building or structure shall not be removed unless the cost of repair of the building or structure will be greater than the state equalized value of the building or structure except in urban core cities or local units of government that are adjacent to or contiguous to an urban core city that have adopted stricter standards to expedite the rehabilitation or removal of a boarded or abandoned building or structure that remains either vacant or boarded, or both, and a significant attempt has not been made to rehabilitate the building or structure for a period of 24 consecutive months.

(7) If the expense of repair or removal is not provided for, the court may enter an order approving the expense and placing a lien on the real property for the payment of the expense. The order may establish and provide for the priority of the lien as a senior lien, except as to tax and assessment liens, and except as to a recorded mortgage of first priority, recorded prior to all other liens of record if, at the time of recording of that mortgage or at a time subsequent, a certificate of compliance as provided for in this act is in effect on the subject property. The order may also specify the time and manner for foreclosure of the lien if the lien is not satisfied. A true copy of the order shall be filed with the appropriate county register of deeds office where the real property is located within 10 days after entry of the order to perfect the lien granted in the order.

(8) This act does not preempt, preclude, or interfere with the authority of a municipality to protect the health, safety, and general welfare of the public through ordinance, charter, or other means.

(9) As used in this section, "urban core cities" means qualified local governmental units as that term is defined in section 2 of the obsolete property rehabilitation act, 2000 PA 146, MCL 125.2782.

History: Add. 1968, Act 286, Eff. Nov. 15, 1968;—Am. 1976, Act 116, Imd. Eff. May 14, 1976;—Am. 2003, Act 80, Imd. Eff. July 23, 2003.

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HOUSING LAW OF MICHIGAN (EXCERPT)

Act 167 of 1917

125.535 Receiver; appointment, termination; purpose; powers; expenses.

Sec. 135. (1) When a suit has been brought to enforce this act against the owner the court may appoint a receiver of the premises.

(2) When the court finds that there are adequate grounds for the appointment of a receiver, it shall appoint the municipality or a proper local agency or officer, or any competent person, as receiver. In the discretion of the court no bond need be required. The receivership shall terminate at the discretion of the court.

(3) The purpose of a receivership shall be to repair, renovate and rehabilitate the premises as needed to make the building comply with the provisions of this act, and where ordered by the court, to remove a building. The receiver shall promptly comply with the charge upon him in his official capacity and restore the premises to a safe, decent and sanitary condition, or remove the building.

(4) Subject to the control of the court the receiver shall have full and complete powers necessary to make the building comply with the provisions of this act. He may collect rents, and other revenue, hold them against the claim of prior assignees of such rents, and other revenue, and apply them to the expenses of making the building comply with the provisions of this act. He may manage and let rental units, issue receivership certificates, contract for all construction and rehabilitation as needed to make the building comply with the provisions of this act, and exercise other powers the court deems proper to the effective administration of the receivership.

(5) When expenses of the receivership are not otherwise provided for, the court may enter an order approving the expenses and providing that there shall be a lien on the real property for the payment thereof. The provisions of subsection (7) of section 134 as to the contents and filing of an order are applicable to the order herein provided for.

History: Add. 1968, Act 286, Eff. Nov. 15, 1968.

Overview

- I. Historically, the City has enforced our housing laws in one of two ways. This housing law enforcement is most typically in the context of rental properties.

1. District Court IPMC cases:

- a. District Court can fine the owner for violations, but also has injunctive powers limited to ordering the owner to bring the property into compliance.

N.B. – For properties with violations that do not make the property hazardous, a property owner previously was able to pay a fine across the counter at the “violations bureau.” These cases did not make it to district court unless Code Compliance put that injunctive relief was requested on the ticket.

- b. The problem with District Court requested compliance is not the result but that it takes a lot of time, and often show cause/progress hearings, to secure compliance.

2. The Demolition process under the Housing Law of Michigan:

- a. This is used typically for uninhabitable dwellings, including “red-tagged” houses. It also is not limited to rental property.

- b. This process involves a lot of time because it requires a Demo Hearing Officer, Council approval of the demolition, and time for compliance to make the property safe or be demolished. Because the demo results in the property building removal, and the City can have a lien on the real estate for the demo, this is often not too cost effective, because:

- i. The house is demoed

- ii. The assessment goes on the land

- iii. The owner lets the property go for taxes

- c. The demos are often appealed to circuit court, which then results in more delays, but often court orders with real deadline on the property rehab so that the properties are made habitable again or demoed.

- II. Alternatives to speed up the process

1. Under the Housing Law of Michigan, which provides for inspections of properties of 3 units or more, there is a process under the rental inspection portion of the act.

MCL 125.532 divides hazardous violations into those requiring the property to be vacated and those that don't.

2. Remedies for hazardous violations, which presumably include red-tagged properties.

- a. MCL 125.534 provides a circuit court proceeding under the act:

Subsection (2) City, “enforcing agency,” may file. This is for serious violations – “imminent danger to health and safety of the occupants of the premises”

Subsection (5) The court “may” enjoin the condition; “may” order defendant to correct or abate

Subsection (5) “May” authorize the enforcing agency to repair or remove the building

Subsection (7) If we do work, we can have a lien on the property, like real property tax, and can foreclose the lien. However, our lien would be subject to a first mortgage on the property.

The drawbacks of the City requesting the Circuit Court to issue an order to permit the City to bring the red-tagged property up to code are:

- i. We are still in circuit court for timing, motions and delays so it is not a quick process.
 - ii. We need money budgeted to do the work.
 - iii. We need City personnel with contracting abilities to administer the timely completion of the work.
 - iv. We may not get funds back.
 - v. We should have some priorities if we cannot do it for hazardous properties.
 - vi. We need OCA staff to handle the Circuit Court proceedings.
- b. MCL 125.535, which also requires circuit court action. This section:
- i. This lets the Court appoint a receiver.
 - ii. Also allows the receiver to collect rents and operate the property.
 - iii. Also, the receiver can collect under lien and foreclosure method in 134(7) – i.e. MCL 125.535(7).

N.B. This is an alternative we haven’t tried. We may want to be sure the properties do not have first mortgages, so the receiver can be assured of being paid.

NOTE: if not under this section, then receiver would have trouble collecting, as was the case in *Ypsilanti Fire Marshal v. Kircher* – see especially foot note 15 on page 25 of the case.

III. Some Practical Concerns

We may want to see if there are people who are willing and interested in being a receiver to do this.

Drawback is that the circuit court would have to be willing to order this as an alternative and would probably not order a receiver until the owner does not meet deadlines to correct.

Query: Are there CDBG funds/programs to do this?

Problem: The statute is not clear as to which properties the MCL 125.534 and .535 apply to. MCL 125.526 – Inspections applies to “multiple dwellings and other dwellings regulated by this act in accordance with this act.”

MCL 125.534 talks about the enforcing agency, which appears from placement in the act to refer to inspections under the act, i.e. 125.526, which applies under the statute only to 3 or more rental units.

Clearly it would apply to 3 units or more that are to be inspected under the Act, but the properties are unclear.

However, there is clearly an exception under the act for the single family or duplex is a health hazard nuisance under MCL 125.486. To be under this section requires the “hazard” to be determined by the health official.

Housing Law of Michigan (HLoFM)

NOTE: to have abatement and lien under Rental inspections –

A. It must be inspection of multiple dwellings or other dwellings regulated by this act. MCL

125.532, 125.534

B. REGULATED BY THIS ACT:

a. Could include health hazard under Nuisance section MCL 125.486

b. But unless under MCL 125.486, would need to find non-multiple dwelling section violation or else is limited to multiple dwellings.

i.e. would need a specific MCL section under HLoFM that includes: 1 and 2

family under City Code or cannot use MCL 125.534 fix with lien.

Also, question if/or how City makes corrections. HLoFM does not state court may order correction by someone who is not the municipality, i.e. like a 3rd party receiver under MCL 125.534(5), and then City getting order for lien and foreclosure.

C. Problem from case *Ypsilanti v. Kirchner* that remains, without use of general funds, how does person completing repairs get paid?

HOUSING LAW OF MICHIGAN (EXCERPT)
Act 167 of 1917

125.401 Short title; scope of act.

Sec. 1. (1) This act shall be known and may be cited as the "housing law of Michigan".

(2) This act applies to each city, village, and township that, according to the last regular or special federal census, has a population of 10,000 or more. However, this act does not apply to private dwellings and 2-family dwellings in any city, village, or township having a population of less than 100,000 unless the legislative body of the local governmental unit adopts the provisions by resolution passed by a majority vote of its members.

(3) This act applies to all dwellings within the classes defined in section 2, except that a reference to 1 or more specific classes of dwellings applies only to those classes to which specific reference is made.

History: 1917, Act 167, Eff. Aug. 10, 1917;—Am. 1919, Act 326, Imd. Eff. May 13, 1919;—CL 1929, 2487;—Am. 1939, Act 303, Eff. Sept. 29, 1939;—Am. 1941, Act 91, Imd. Eff. May 16, 1941;—CL 1948, 125.401;—Am. 1976, Act 137, Imd. Eff. June 2, 1976;—Am. 2008, Act 408, Imd. Eff. Jan. 6, 2009;—Am. 2016, Act 14, Eff. May 16, 2016.

Compiler's note: The catchlines following the act section numbers of this act were incorporated as a part of the act when enacted.

HOUSING LAW OF MICHIGAN (EXCERPT)
Act 167 of 1917

125.402 Housing law of Michigan; definitions.

Sec. 2. Definitions. Certain words in this act are defined for the purposes thereof as follows: Words used in the present tense include the future; words in the masculine gender include the feminine and neuter; the singular number includes the plural and the plural the singular; the word "person" includes a corporation as well as a natural person.

(1) Dwelling. A "dwelling" is any house, building, structure, tent, shelter, trailer or vehicle, or portion thereof, (except railroad cars, on tracks or rights-of-way) which is occupied in whole or in part as the home, residence, living or sleeping place of 1 or more human beings, either permanently or transiently. A house trailer or other vehicle, when occupied or used as a dwelling, shall be subject to all the provisions of this act, except that house trailers or other vehicles, duly licensed as vehicles, may be occupied or used as a dwelling for reasonable periods or lengths of time, without being otherwise subject to the provisions of this act for dwellings, when located in a park or place designated or licensed for the purpose by the corporate community within which they are located: Provided, That such parking sites are equipped with adequate safety and sanitary facilities.

(1a). "Sub-standard dwelling" is a dwelling of any class which is not so equipped as to have each of the following items: running water, inside toilets; or a dwelling which has either inadequate cellar drainage, defective plumbing, and inside room having no windows therein, improper exits or defective stairways so as to make such dwelling a fire hazard.

(2) Classes of dwellings. For the purposes of this act dwellings are divided into the following classes: (a) "private dwellings," (b) "2 family dwellings," and (c) "multiple dwellings."

(a) A "private dwelling" is a dwelling occupied by but 1 family, and so designed and arranged as to provide cooking and kitchen accommodations for 1 family only.

(b) A "2 family dwelling" is a dwelling occupied by but 2 families, and so designed and arranged as to provide cooking and kitchen accommodations for 2 families only.

(c) A "multiple dwelling" is a dwelling occupied otherwise than as a private dwelling or 2 family dwelling.

(3) Classes of multiple dwellings. All multiple dwellings are dwellings and for the purpose of this act are divided into 2 classes, viz.: class a and class b.

Class a. Multiple dwellings of class a are dwellings which are occupied more or less permanently for residence purposes by several families and in which the rooms are occupied in apartments, suites or groups, in which each combination of rooms is so arranged and designed as to provide for cooking accommodations and toilet and kitchen sink accommodations within the separate units. This class includes tenement houses, flats, apartment houses, apartment hotels, bachelor apartments, studio apartments, duplex apartments, kitchenette apartments, and all other dwellings similarly occupied whether specifically enumerated herein or not.

Class b. Multiple dwellings of class b are dwellings which are occupied, as a rule transiently, as the more or less temporary abiding place of individuals who are lodged, with or without meals, and in which as a rule the rooms are occupied singly and without any attempt to provide therein or therewith cooking or kitchen accommodations for the individual occupants. This class includes hotels, lodging houses, boarding houses, furnished room houses, club houses, convents, asylums, hospitals, jails and all other dwellings similarly occupied, whether specifically enumerated herein or not.

(3a) Rooming house. A "rooming house" under this act shall be construed to mean any dwelling occupied in such a manner that certain rooms, in excess of those used by the members of the immediate family and occupied as a home or family unit, are leased or rented to persons outside of the family, without any attempt to provide therein or therewith, cooking or kitchen accommodations for individuals leasing or renting rooms. In the case of single and 2 family dwellings the number of such bedrooms leased or rented to roomers shall not exceed 3, unless such dwellings be made to comply in all respects with the provisions of this act relating to multiple dwellings.

(4) Hotel. A "hotel" is a multiple-dwelling of class b in which persons are lodged for hire and in which there are more than 50 sleeping rooms, a public dining room for the accommodation of at least 50 guests, and a general kitchen.

(5) Mixed occupancy. In cases of mixed occupancy where a building is occupied in part as a dwelling, the part so occupied shall be deemed a dwelling for the purposes of this act and shall comply with the provisions thereof relative to dwellings.

(6) Yards. A "rear yard" is an unoccupied space on the same lot with a dwelling, between the extreme rear line of the dwelling and the rear lot line and extending from 1 side lot line to the other side lot line. A "side yard" is an unoccupied space on the same lot with a dwelling between the side lot line and the nearest side

line of the dwelling and extending from the extreme rear line of the dwelling to the front lot line. A "front yard" is an unoccupied space on the same lot with a dwelling between the extreme front line of the house and the front lot line and extending from 1 side yard to the other side yard.

(7) Courts. A "court" is an open unoccupied space on the same lot with a dwelling and bounded on 2 or more sides with the walls of the dwelling. A court not extending to the street or front or rear yard is an "inner court". A court extending to the street or front or rear yard is an "outer court".

(8) Corner and interior lots. A "corner lot" is a lot of which at least 2 adjacent sides abut for their full length upon a street. A lot other than a corner lot is an "interior lot."

(9) Front, rear and depth of lot. The front of a lot is that boundary line which borders on the street. In case of a corner lot the owner may elect by statement on his plans either street boundary line as the front. The rear of a lot is the side opposite to the front. In the case of a triangular or gore lot the rear is the boundary line not bordering on a street. The depth of a lot is the dimension measured from the front of the lot to the extreme rear line of the lot. In the case of irregular shaped lots the mean depth shall be taken.

(10) Public hall. A "public hall" is a hall, corridor or passageway not within the exclusive control of 1 family.

(11) Stair hall. A "stair hall" is a public hall and includes the stairs, stair landings and those portions of the building through which it is necessary to pass in going between the entrance floor and the roof.

(12) Basement, cellar, attic, penthouses.

(a) A "basement" is that portion of a building partly below grade but so located that the vertical distance from grade to the floor is not greater than the vertical distance from the grade to the ceiling: Provided, however, That if the vertical distance from the grade to the ceiling is 5 feet or more such basement shall be counted as a story.

(b) A "cellar" is that portion of a building partly below grade but so located that the vertical distance from the grade to the floor is greater than the vertical distance from the grade to the ceiling: Provided, however, That if the vertical distance from the grade to the ceiling is 5 feet or more such cellar shall be counted as a story. A cellar, except as provided above, shall not be counted as a story. If any portion of a building is in that part the equivalent of a basement or cellar, the provisions of this act relative to basements and cellars shall apply to such portion of the building.

(c) An attic is a portion of a building situated partly or wholly in the roof space. An attic which is used only as a portion of a single or 2 family dwelling shall be not counted as a story, unless there are more than 2 rooms suitable for living purposes on this floor. For the purpose of this paragraph, rooms of 160 square feet or more will be regarded as 2 or more rooms based on each 80 square feet being considered 1 room. Any attic which is occupied by a separate family shall be counted as a story. Any attic used for living purposes in a multiple dwelling shall be counted as a story.

(d) Penthouses. Penthouses are those portions of a building situated above the roof and housing mechanical equipment, service or recreational facilities or used for living purposes. A penthouse shall not be counted as a story if it houses only mechanical equipment or stairways and does not have an area in excess of 200 square feet; nor shall it be counted as a story, when occupied otherwise or when it has an area in excess of 200 square feet, if it complies with the following requirements:

(1) The building and penthouse shall be of fireproof construction if the penthouse houses other than mechanical equipment or stairways.

(2) The penthouse shall be not over 1 story in height.

(3) The exterior walls of the penthouse shall be set back from the exterior walls of the story immediately below by a distance not less than 2/3 of the height of the penthouse above the roof. However, it shall not be necessary to set back the exterior walls of a penthouse if the dimensions of yards and courts are sufficient to meet the requirements of this act for a building if the penthouse is counted as a story.

(4) There shall be access to 2 stairways leading from the roof to grade where penthouses are used for the purposes other than to house mechanical equipment.

(5) The combined area of all penthouses on a building shall not exceed 25 per cent of the gross area of the floor immediately below.

(13) Height. The "height" of a dwelling is the perpendicular distance measured in a straight line from grade to the highest point of the roof beams in the case of flat roofs, and to the average of the height of the gable in the case of pitched roofs.

(14) Grade. "Grade", for buildings adjoining 1 street only, shall be the elevation of the sidewalk at the center of that wall which adjoins the street, except that in case the average elevation of the ground (finished surface) adjacent to the exterior walls of the building is lower than the elevation of the sidewalk, "grade" shall be the average elevation of the ground.

"Grade", for buildings adjoining more than 1 street, shall be the elevation of the sidewalk at the center of

the wall adjoining the street having the lowest sidewalk elevation.

"Grade", for buildings having no wall adjoining the street, shall be the average level of the ground (finished surface) adjacent to the exterior walls of the building.

All walls approximately parallel to and not more than 5 feet from a street line shall be considered as adjoining the street. In alleys the surface of the paving shall be considered to be the sidewalk elevation. Where the elevation of the sidewalk or alley paving has not been established the city engineer shall determine such elevation for the purpose of this act.

(15) Occupied spaces. Outside stairways, fire escapes, fire towers, porches, platforms, balconies, boiler flues and other projections shall be considered as part of the building and not as a part of the yards or courts or unoccupied spaces. This provision shall not apply to 1 fireplace or 1 chimney projecting not more than 12 inches into side yard space and not more than 8 feet in length, nor to uninclosed outside porches not exceeding 1 story in height which do not extend into the front or rear yard a greater distance than 12 feet from the front or rear walls of the building, nor to 1 such porch which does not extend into the sideyard a greater distance than 6 feet from the side wall of the building nor exceed 12 feet in its other horizontal dimension, or to cornices not exceeding 16 inches in width including the gutter.

(16) Fireproof dwelling. A "fireproof dwelling" is one the exterior walls of which are constructed of brick, stone, concrete, iron or other hard incombustible material not less than 8 inches thick, and in which there are no wood beams or lintels and in which the floors, roofs, stair halls and public halls are built entirely of brick, stone, concrete, iron or other hard incombustible material, and in which no woodwork or other inflammable material is used in any of the partitions, furrings or ceilings. But this definition shall not be construed as prohibiting elsewhere than in the public halls the use of wooden flooring on top of the fireproof floors or the use of wooden sleepers, nor as prohibiting the use of wood, or any other material not more combustible or inflammable than wood, for handrails, doors, windows, and decorative treatment on incombustible surfaces.

All metallic structural members, except lintels unattached to structural frame work and less than 6 feet in span, shall be protected with not less than 2 inches of brick, concrete, gypsum, terra cotta, or any other material that has equivalent properties to resist the action of flame and heat. Steel in reinforced concrete construction shall be protected with a minimum of 3/4 of an inch of concrete unless additional protection is required by the enforcing official.

In dwellings not over 8 stories in height, steel joists may be used for roof and floor construction if protected on the underside with 3/4 of an inch of gypsum or portland cement plaster on metal lath, thickness of said plaster to be measured from the back of the metal lath, and protected on top with a slab of at least 2 inches of concrete in which wood sleepers may be embedded if there is at least 1 and 1/2 inches of concrete under the sleepers.

(17) Wooden buildings. "Wooden building" is a building of which the exterior walls or a portion thereof are of wood. Court walls are exterior walls.

(18) Nuisance. The word "nuisance" shall be held to embrace public nuisance as known at common law or in equity jurisprudence; and whatever is dangerous to human life or detrimental to health; whatever dwelling is overcrowded with occupants or is not provided with adequate ingress and egress to or from the same, or is not sufficiently supported, ventilated, sewered, drained, cleaned or lighted, in reference to its intended or actual use; and whatever renders the air or human food or drink unwholesome, are also severally, in contemplation of this act, nuisances; and all such nuisances are hereby declared illegal.

(19) Construction of certain words. The word "shall" is always mandatory and not directory, and denotes that the dwelling shall be maintained in all respects according to the mandate as long as it continues to be a dwelling. Wherever the words "charter," "ordinances," "regulations," "superintendent of buildings," "health department," "the board of health," "health officer," or such other appropriate public official as the mayor may designate "commissioner of public safety," "commissioner of public health," "department charged with the enforcement of this act," "corporation counsel," "mayor," "city treasury," or "fire limits" occur in this act they shall be construed as if followed by the words "of the city or village in which the dwelling is situated." Wherever the words "health department," "health officer," or such other appropriate public official as the mayor may designate, or "duly authorized assistant" or "board of health," "commissioner of public safety," or "commissioner of public health" are employed in this act, such words shall be deemed and construed to mean the official or officials in any city or village to whom is committed the charge of safeguarding the public health. The terms "superintendent of buildings," "building department," and "inspector of buildings" shall embrace the department and the executive head thereof specially charged with the execution of laws and ordinances relating to the construction of buildings. Wherever the terms "superintendent of buildings," "health officer," or such other appropriate public official as the mayor may designate are used in this act they shall be construed to mean the enforcement officials designated in section 111. Wherever the words "occupied" or "used" are employed in this act such words shall be construed as if followed by the words "or is intended,

arranged, designed, built, altered, converted to, rented, leased, let or hired out, to be occupied or used." Wherever the words "dwelling," "2 family dwelling," "multiple dwelling," "building," "house," "premises" or "lot" are used in this act, they shall be construed as if followed by the words "or any part thereof." Wherever the words "city water" are used in this act, they shall be construed as meaning any public supply of water through street mains; and wherever the words "public sewer" are used in this act they shall be construed as meaning any part of a system of sewers that is used by the public, whether or not such part was constructed at the public expense. Wherever the word "street" is used in this act it shall be construed as including any public alley 16 feet or more in width. "Approved fireproof material" means as set forth by ordinances, or if not so determined, as approved by the enforcing officer. Where a particular material, device, or type of construction is specified herein, there may be substituted therefor any other material, device or type of construction of a strength, durability, performance and fire resistive qualities, equivalent to the particular material, device or type of construction specified herein, or sufficient for the intended use, and approved as such by the enforcing officer. Perforated gypsum lath 3/8 of an inch thick, with 1/2 inch of gypsum plaster may be substituted wherever metal lath and gypsum or cement plaster is required in this act.

(20) Fire doors. A fire door is a movable fire resistive barrier placed on an opening in a masonry wall or shaft enclosure for the purpose of preventing the passage of fire through the opening. All fire doors, as installed and including frames and hardware shall be capable of passing a fire and water test as herein specified. The fire test shall consist of a flame applied over entire area of door which will gradually raise the temperature of the exposed side to 1400 degrees Fahrenheit during the first 20 minutes of test and which will gradually raise this temperature to 1700 degrees Fahrenheit during the next 40 minutes, concluding the fire test. Immediately thereafter and while the door is still hot, it shall be subjected to the impact of a stream of water under a nozzle pressure of 30 pounds per square inch through a 2 and 1/2 inch fire hose with a 1 and 1/8 inch smooth bore nozzle placed 20 feet from the door and played uniformly over surface of same for a period of at least 45 seconds. To pass this test, a fire door shall maintain its shape and integrity reasonably well so as to be capable of resisting the further application of flame and shall not develop serious structural weakness. The enforcing officer may require that the ability of all fire doors to pass these tests be demonstrated in a recognized testing laboratory, or that satisfactory evidence in the form of a label or certificate of test and inspection be submitted showing that the fire doors in question have successfully complied with these requirements.

All fire doors, except those on dumbwaiters and elevators, shall be of the swinging type and shall not be double acting and shall be equipped with an approved device capable of completely and effectually closing the door under all conditions.

Type "a" fire doors shall be solid without glass panels of any kind. Type "a" fire doors may be used wherever type "b" fire doors are required herein.

Type "b" fire doors may contain not over 720 square inches of wire-glass at least 1/4 inch in thickness.

Automatic fire doors, as specified herein, may be normally held in an open position by an apparatus which will automatically allow the door to close whenever the temperature of the air at the top of the door reaches 165 degrees Fahrenheit. Self-closing fire doors, as specified herein, shall be normally kept closed at all times.

All fire doors shall be equipped with an effective locking device which will hold the door in the closed position but which can be unlocked from either side of the door without the use of a key.

All fire doors shall be provided with an incombustible threshold and combustible floor construction or covering shall not extend through the door opening.

Frames for type "a" fire doors shall be made entirely of metal and no combustible material shall be used in their construction or installation.

Frames for type "b" fire doors may be made of metal or of wood covered with metal.

Self-closing equipment shall consist of standard door checks or other similar approved devices which will effectually close the door without slamming.

Self-closing fire door shall be labeled on both sides in a conspicuous manner with the following words: "fire door, keep closed".

History: 1917, Act 167, Eff. Aug. 10, 1917;—Am. 1921, Act 401, Eff. Aug. 18, 1921;—Am. 1925, Act 371, Eff. Aug. 27, 1925;—CL 1929, 2488;—Am. 1939, Act 303, Eff. Sept. 29, 1939;—CL 1948, 125.402.

HOUSING LAW OF MICHIGAN (EXCERPT)
Act 167 of 1917

125.486 Health order; repairs to buildings, other structures.

Sec. 86. Repairs to buildings, etc. Whenever any dwelling or any building, structure, excavation, business pursuit, matter or thing, in or about a dwelling, or the lot on which it is situated, or the plumbing, sewerage, drainage, light or ventilation thereof, is in the opinion of the health officer or such other appropriate public official as the mayor may designate in a condition or in effect dangerous or detrimental to life or health, the health officer or such other appropriate public official as the mayor may designate may declare that the same to the extent he may specify is a public nuisance, and may order the same to be removed, abated, suspended, altered or otherwise improved or purified as the order shall specify.

History: 1917, Act 167, Eff. Aug. 10, 1917;—CL 1929, 2574;—CL 1948, 125.486.

HOUSING LAW OF MICHIGAN (EXCERPT)
Act 167 of 1917

125.525 Registry of owners and premises.

Sec. 125. (1) The enforcing agency may maintain a registry of owners and premises regulated by this act.

(2) If the enforcing agency maintains a registry of owners and premises, the owner of a multiple dwelling or rooming house containing units which will be offered to let, or to hire, for more than 6 months of a calendar year shall register with the enforcing agency the owner's name, the address of the owner's residence or usual place of business, and the location of the multiple dwelling or rooming house. The owner shall register within 60 days following the day on which any part of the premises is offered for occupancy.

(3) If the premises are managed or operated by an agent, the agent's name and place of business shall be entered with the name of the owner in the registry under subsection (2).

History: Add. 1968, Act 286, Eff. Nov. 15, 1968;—Am. 2016, Act 14, Eff. May 16, 2016.

HOUSING LAW OF MICHIGAN (EXCERPT)
Act 167 of 1917

125.526 Inspection; inspection by federal government as substitute; basis; inspectors; consent to enter leasehold; duties of owner; access during reasonable hours; request by owner to enter leasehold; multiple lessees; discrimination prohibited; fees; report; dwelling with child residing; ordinance; "lease" defined.

Sec. 126. (1) A local governmental unit is not required to inspect a multiple dwelling or other dwelling unless the local governmental unit receives a complaint from a lessee of a violation of this act.

(2) Subject to subsection (1), the enforcing agency shall inspect multiple dwellings and other dwellings regulated by this act in accordance with this act. If a local governmental unit adopts an ordinance providing for inspections of multiple dwellings or other dwellings on a basis described in subsection (4)(a), (c), (d), or (e), both of the following apply:

(a) The period between inspections of a multiple dwelling or rooming house shall not be longer than 4 years, or 6 years if the most recent inspection of the premises found no violations of this act and the multiple dwelling or rooming house has not changed ownership during the 6-year period.

(b) All other dwellings regulated by this act may be inspected at reasonable intervals.

(3) Inspections of multiple dwellings or other dwellings conducted by the United States Department of Housing and Urban Development under the real estate assessment center inspection process or by other government agencies may be accepted by a local governmental unit and an enforcing agency as a substitute for inspections required by a local enforcing agency. To the extent permitted under applicable law, a local enforcing agency or its designee may exercise inspection authority delegated by law or agreement from other agencies or authorities that perform inspections required under other state law or federal law.

(4) An inspection shall be conducted in the manner best calculated to secure compliance with this act and appropriate to the needs of the community, including, but not limited to, on 1 or more of the following bases:

(a) An area basis, under which all the regulated premises in a predetermined geographical area are inspected simultaneously, or within a short period of time.

(b) A complaint basis, under which premises that are the subject of complaints of violations are inspected within a reasonable time.

(c) A recurrent violation basis, under which premises that have a high incidence of recurrent or uncorrected violations are inspected more frequently.

(d) A compliance basis, under which a premises brought into compliance before the expiration of a certificate of compliance or any requested repair order may be issued a certificate of compliance for the maximum renewal certification period authorized by the local governmental unit.

(e) A percentage basis, under which a local governmental unit establishes a percentage of units in a multiple dwelling to be inspected in order to issue a certificate of compliance for the multiple dwelling.

(5) An inspection shall be carried out by the enforcing agency, or by the enforcing agency and representatives of other agencies that form a team to undertake an inspection under this and other applicable acts.

(6) Except as provided in subsections (7) to (9) and (11), an inspector or team of inspectors must request and receive consent from the lessee to enter before entering a leasehold regulated by this act to undertake an inspection.

(7) The owner of a leasehold shall notify the lessee of the enforcing agency's request to inspect a leasehold, shall make a good-faith effort to obtain the lessee's consent for an inspection, and, if the owner obtains the lessee's consent for an inspection, shall arrange for the inspection by the enforcing agency.

(8) The owner of a leasehold shall provide the enforcing agency access to the leasehold for an inspection during reasonable hours if any of the following apply:

(a) The lease authorizes an enforcing agency inspector to enter the leasehold for an inspection.

(b) The lessee has made a complaint to the enforcing agency.

(c) The leasehold is vacant.

(d) The enforcing agency serves an administrative warrant ordering the owner to provide access.

(e) The lessee has consented to an inspection under subsection (7). If a lessee is not present during the inspection, the enforcing agency may rely on the owner's representation to the enforcing agency that the lessee has consented to the enforcing agency's inspection.

(9) The lessee shall provide the enforcing agency access to the leasehold for an inspection during reasonable hours if any of the following apply:

(a) The lease authorizes an enforcing agency inspector to enter the leasehold for an inspection.

(b) The lessee has made a complaint to the enforcing agency.

(c) The enforcing agency serves an administrative warrant ordering the lessee to provide access.

(d) The lessee has given consent.

(10) If a lessee who refused an inspection by the enforcing agency vacates a leasehold before an inspection by the enforcing agency, the owner of the leasehold shall notify the enforcing agency within 10 days after the leasehold is vacated.

(11) Before entering a leasehold regulated by this act, the owner of the leasehold shall request and obtain permission to enter the leasehold. However, in the case of an emergency, including, but not limited to, fire, flood, or other threat of serious injury or death, the owner may enter at any time.

(12) The owner of a leasehold shall provide access to the enforcing agency to areas of the multiple dwelling or other dwelling that are not part of the leasehold or that are open to public view.

(13) For multiple lessees in a leasehold, notifying at least 1 lessee and requesting and obtaining the consent of at least 1 lessee satisfies the notice and consent requirements of subsections (6) and (7).

(14) The enforcing agency or the owner shall not discriminate against a lessee on the basis of whether the lessee consents to or refuses entry to the leasehold for an inspection by the enforcing agency.

(15) The enforcing agency shall not discriminate against an owner who has met the requirements of subsection (7) because a lessee refuses the enforcing agency entry to a leasehold for an inspection under this act.

(16) The enforcing agency may establish and charge a reasonable fee for inspections conducted under this act. The fee shall not exceed the actual, reasonable cost of providing the inspection for which the fee is charged. An inspection fee is not required to be paid more than 6 months before the inspection is to take place. An owner or property manager is not liable for an inspection fee if the inspection is not performed and the enforcing agency is the direct cause of the failure to perform the inspection.

(17) If requested, an enforcing agency or a local governmental unit shall produce a report on the income and expenses of the inspection program for the preceding fiscal year. The report shall state the amount of the fees assessed by the enforcing agency, the costs incurred in performing inspections, and the number of units inspected. The report shall be provided to the requesting party within 90 days after the request is made. The enforcing agency or local governmental unit may produce the report electronically. If the enforcing agency does not have readily available access to the information required for the report, the enforcing agency may charge the requesting party a fee not greater than the actual reasonable cost of compiling and providing the information. If an enforcing agency charges a fee under this subsection, the enforcing agency shall include in the report the costs of compiling and providing the information.

(18) If a complaint identifies a multiple dwelling or other dwelling regulated under this act in which an individual under 18 years of age is residing, the dwelling shall be inspected before any inspection in response to a nonemergency complaint.

(19) Subject to section 8, a local governmental unit may adopt an ordinance to implement this section.

(20) When used in this act as a noun, "lease" means a written or unwritten agreement or contract that sets forth the terms and conditions, rights and obligations of each party with respect to a residential dwelling, dwelling unit, rooming unit, building, premises, or structure that is not occupied by the owner of record.

History: Add. 1968, Act 286, Eff. Nov. 15, 1968;—Am. 1997, Act 200, Imd. Eff. Jan. 2, 1998;—Am. 2000, Act 479, Imd. Eff. Jan. 11, 2001;—Am. 2008, Act 408, Imd. Eff. Jan. 6, 2009;—Am. 2016, Act 14, Eff. May 16, 2016;—Am. 2017, Act 169, Eff. Feb. 19, 2018.

HOUSING LAW OF MICHIGAN (EXCERPT)
Act 167 of 1917

125.532 Violations; recording; notice; order to correct, reasonable time; reinspection; notice to family independence agency.

Sec. 132. (1) If, upon inspection, the premises or any part of the premises are found to be in violation of any provision of this act, the enforcing agency shall record the violation in the registry of owners and premises.

(2) The owner, and, in the enforcing agency's discretion, the occupant, shall be notified in writing of the violation. The notice shall state the date of the inspection, the name of the inspector, the nature of the violation, and the time within which the correction shall be completed.

(3) If an inspector determines that a violation constitutes a hazard to the occupant's health or safety, under circumstances where the premises cannot be vacated, the enforcing agency shall order the violation corrected within the shortest reasonable time. The owner shall notify the enforcing agency of having begun compliance within 3 days. All other violations shall be corrected within a reasonable time.

(4) The enforcing agency shall reinspect after a reasonable time to ascertain whether the violation has been corrected.

(5) If an inspector determines that a violation constitutes a hazard to the health or safety of the occupants, the enforcing agency shall notify the family independence agency within 48 hours. The notice shall state the date of the inspection, the name of the inspector, the nature of the violation, and the time within which the correction shall be completed. The family independence agency shall check the address of the premises against the list of rent-vendored family independence program recipients.

History: Add. 1968, Act 286, Eff. Nov. 15, 1968;—Am. 2000, Act 479, Imd. Eff. Jan. 11, 2001.

HOUSING LAW OF MICHIGAN (EXCERPT)
Act 167 of 1917

125.533 Compliance by owner and occupant.

Sec. 133. (1) The owner of premises regulated by this act shall comply with all applicable provisions of the act.

(2) The occupant of premises regulated by this act shall comply with provisions of the act specifically applicable to him.

History: Add. 1968, Act 286, Eff. Nov. 15, 1968.

HOUSING LAW OF MICHIGAN (EXCERPT)

Act 167 of 1917

125.534 Noncompliance with notice of violation; actions; parties; motion for temporary relief; service of complaint and summons; filing notice of pendency of action; orders and determinations; repair or removal of structure; exception; costs; order approving expenses; lien; authority of municipality; "urban core cities" defined.

Sec. 134. (1) If the owner or occupant fails to comply with the order contained in the notice of violation, the enforcing agency may bring an action to enforce this act and to abate or enjoin the violation.

(2) An owner or occupant of the premises upon which a violation exists may bring an action to enforce this act in his or her own name. Upon application by the enforcing agency, or upon motion of the party filing the complaint, the local enforcing agency may be substituted for, or joined with, the complainant in the discretion of the court.

(3) If the violation is uncorrected and creates an imminent danger to the health and safety of the occupants of the premises, or if there are no occupants and the violation creates an imminent danger to the health and safety of the public, the enforcing agency shall file a motion for a preliminary injunction or other temporary relief appropriate to remove the danger during the pendency of the action.

(4) Owners and lienholders of record or owners and lienholders ascertained by the complainant with the exercise of reasonable diligence shall be served with a copy of the complaint and a summons. The complainant shall also file a notice of the pendency of the action with the appropriate county register of deeds office where the premises are located.

(5) The court of jurisdiction shall make orders and determinations consistent with the objectives of this act. The court may enjoin the maintenance of unsafe, unhealthy, or unsanitary conditions, or violations of this act, and may order the defendant to make repairs or corrections necessary to abate the conditions. The court may authorize the enforcing agency to repair or to remove the building or structure. If an occupant is not the cause of an unsafe, unhealthy, or unsanitary condition, or a violation of this act, and is the complainant, the court may authorize the occupant to correct the violation and deduct the cost from the rent upon terms the court determines just. If the court finds that the occupant is the cause of an unsafe, unhealthy, or unsanitary condition, or a violation of this act, the court may authorize the owner to correct the violation and assess the cost against the occupant or the occupant's security deposit.

(6) A building or structure shall not be removed unless the cost of repair of the building or structure will be greater than the state equalized value of the building or structure except in urban core cities or local units of government that are adjacent to or contiguous to an urban core city that have adopted stricter standards to expedite the rehabilitation or removal of a boarded or abandoned building or structure that remains either vacant or boarded, or both, and a significant attempt has not been made to rehabilitate the building or structure for a period of 24 consecutive months.

(7) If the expense of repair or removal is not provided for, the court may enter an order approving the expense and placing a lien on the real property for the payment of the expense. The order may establish and provide for the priority of the lien as a senior lien, except as to tax and assessment liens, and except as to a recorded mortgage of first priority, recorded prior to all other liens of record if, at the time of recording of that mortgage or at a time subsequent, a certificate of compliance as provided for in this act is in effect on the subject property. The order may also specify the time and manner for foreclosure of the lien if the lien is not satisfied. A true copy of the order shall be filed with the appropriate county register of deeds office where the real property is located within 10 days after entry of the order to perfect the lien granted in the order.

(8) This act does not preempt, preclude, or interfere with the authority of a municipality to protect the health, safety, and general welfare of the public through ordinance, charter, or other means.

(9) As used in this section, "urban core cities" means qualified local governmental units as that term is defined in section 2 of the obsolete property rehabilitation act, 2000 PA 146, MCL 125.2782.

History: Add. 1968, Act 286, Eff. Nov. 15, 1968;—Am. 1976, Act 116, Imd. Eff. May 14, 1976;—Am. 2003, Act 80, Imd. Eff. July 23, 2003.

HOUSING LAW OF MICHIGAN (EXCERPT)
Act 167 of 1917

125.535 Receiver; appointment, termination; purpose; powers; expenses.

Sec. 135. (1) When a suit has been brought to enforce this act against the owner the court may appoint a receiver of the premises.

(2) When the court finds that there are adequate grounds for the appointment of a receiver, it shall appoint the municipality or a proper local agency or officer, or any competent person, as receiver. In the discretion of the court no bond need be required. The receivership shall terminate at the discretion of the court.

(3) The purpose of a receivership shall be to repair, renovate and rehabilitate the premises as needed to make the building comply with the provisions of this act, and where ordered by the court, to remove a building. The receiver shall promptly comply with the charge upon him in his official capacity and restore the premises to a safe, decent and sanitary condition, or remove the building.

(4) Subject to the control of the court the receiver shall have full and complete powers necessary to make the building comply with the provisions of this act. He may collect rents, and other revenue, hold them against the claim of prior assignees of such rents, and other revenue, and apply them to the expenses of making the building comply with the provisions of this act. He may manage and let rental units, issue receivership certificates, contract for all construction and rehabilitation as needed to make the building comply with the provisions of this act, and exercise other powers the court deems proper to the effective administration of the receivership.

(5) When expenses of the receivership are not otherwise provided for, the court may enter an order approving the expenses and providing that there shall be a lien on the real property for the payment thereof. The provisions of subsection (7) of section 134 as to the contents and filing of an order are applicable to the order herein provided for.

History: Add. 1968, Act 286, Eff. Nov. 15, 1968.

HOUSING LAW OF MICHIGAN (EXCERPT)
Act 167 of 1917

125.535 Receiver; appointment, termination; purpose; powers; expenses.

Sec. 135. (1) When a suit has been brought to enforce this act against the owner the court may appoint a receiver of the premises.

(2) When the court finds that there are adequate grounds for the appointment of a receiver, it shall appoint the municipality or a proper local agency or officer, or any competent person, as receiver. In the discretion of the court no bond need be required. The receivership shall terminate at the discretion of the court.

(3) The purpose of a receivership shall be to repair, renovate and rehabilitate the premises as needed to make the building comply with the provisions of this act, and where ordered by the court, to remove a building. The receiver shall promptly comply with the charge upon him in his official capacity and restore the premises to a safe, decent and sanitary condition, or remove the building.

(4) Subject to the control of the court the receiver shall have full and complete powers necessary to make the building comply with the provisions of this act. He may collect rents, and other revenue, hold them against the claim of prior assignees of such rents, and other revenue, and apply them to the expenses of making the building comply with the provisions of this act. He may manage and let rental units, issue receivership certificates, contract for all construction and rehabilitation as needed to make the building comply with the provisions of this act, and exercise other powers the court deems proper to the effective administration of the receivership.

(5) When expenses of the receivership are not otherwise provided for, the court may enter an order approving the expenses and providing that there shall be a lien on the real property for the payment thereof. The provisions of subsection (7) of section 134 as to the contents and filing of an order are applicable to the order herein provided for.

History: Add. 1968, Act 286, Eff. Nov. 15, 1968.

HOUSING LAW OF MICHIGAN (EXCERPT)
Act 167 of 1917

125.536 Additional remedies; occupant's action; concurrent remedies.

Sec. 136. (1) When the owner of a dwelling regulated by this act permits unsafe, unsanitary or unhealthful conditions to exist unabated in any portion of the dwelling, whether a portion designated for the exclusive use and occupation of residents or a part of the common areas, where such condition exists in violation of this act, any occupant, after notice to the owner and a failure thereafter to make the necessary corrections, shall have an action against the owner for such damages he has actually suffered as a consequence of the condition. When the condition is a continuing interference with the use and occupation of the premises, the occupant shall also have injunctive and other relief appropriate to the abatement of the condition.

(2) Remedies under this section shall be in addition to such other relief as may be obtained by seeking enforcement of the section authorizing suits by a local enforcement agency. The remedies shall be concurrent. When several remedies are available hereunder, the court may order any relief not inconsistent with the objectives of this act, and calculated to achieve compliance with it.

History: Add. 1968, Act 286, Eff. Nov. 15, 1968.

HOUSING LAW OF MICHIGAN (EXCERPT)
Act 167 of 1917

125.537 Common law rights retained.

Sec. 137. The enumeration of rights of action under this article shall not limit or derogate rights of action at common law.

History: Add. 1968, Act 286, Eff. Nov. 15, 1968.

HOUSING LAW OF MICHIGAN (EXCERPT)
Act 167 of 1917

125.543 Adoption of housing law not required.

Sec. 143. Nothing herein contained shall require any city, village or township to adopt Act No. 167 of the Public Acts of 1917, as amended, being the housing law of Michigan.

History: Add. 1969, Act 61, Eff. Sept. 1, 1969.

Does Not deal with rehab - property
of another -
Act provides for City to become Owner.

BLIGHTED AREA REHABILITATION (EXCERPT)

Act 344 of 1945

125.71 Legislative findings and declaration.

Sec. 1. The legislature finds and declares that large areas in the municipalities of the state have become blighted and significant areas in the municipalities of the state are deteriorating in a manner which leads to severe blight, with the consequent impairment of taxable values upon which, in large part, municipal revenues depend; that those blighted areas are detrimental or inimical to the health, safety, morals, and general welfare of the citizens, and to the economic welfare of the municipality; that in order to improve and maintain the general character of the municipality, it is necessary to rehabilitate those blighted areas; that the conditions found in blighted areas cannot be remedied by the ordinary operations of private enterprise, with due regard to the general welfare of the public, without public participation in the planning, property acquisition or disposition, and related implementation and financing of the remedies; that the purposes of this act are to rehabilitate those areas by improving or acquiring and developing properties within the areas for the protection of the health, safety, morals and general welfare of the municipality, to preserve existing values of other properties within or adjacent to the areas, and to preserve the taxable value of the property within the areas; and that the necessity in the public interest for provisions enacted in this act is hereby declared as a matter of legislative determination to be a public purpose and a public use.

History: 1945, Act 344, Imd. Eff. May 31, 1945;—CL 1948, 125.71;—Am. 1986, Act 320, Imd. Eff. Dec. 26, 1986.

BLIGHTED AREA REHABILITATION (EXCERPT)

Act 344 of 1945

125.72 Definitions.

Sec. 2. As used in this act:

(a) "Blighted area" means a portion of a municipality, developed or undeveloped, improved or unimproved, with business or residential uses, marked by a demonstrated pattern of deterioration in physical, economic, or social conditions, and characterized by such conditions as functional or economic obsolescence of buildings or the area as a whole, physical deterioration of structures, substandard building or facility conditions, improper or inefficient division or arrangement of lots and ownerships and streets and other open spaces, inappropriate mixed character and uses of the structures, deterioration in the condition of public facilities or services, or any other similar characteristics which endanger the health, safety, morals, or general welfare of the municipality, and which may include any buildings or improvements not in themselves obsolescent, and any real property, residential or nonresidential, whether improved or unimproved, the acquisition of which is considered necessary for rehabilitation of the area. It is expressly recognized that blight is observable at different stages of severity, and that moderate blight unremedied creates a strong probability that severe blight will follow. Therefore, the conditions that constitute blight are to be broadly construed to permit a municipality to make an early identification of problems and to take early remedial action to correct a demonstrated pattern of deterioration and to prevent worsening of blight conditions.

(b) "Blighted property" means property that meets any of the following criteria:

(i) The property has been declared a public nuisance in accordance with a local housing, building, plumbing, fire, or other related code or ordinance.

(ii) The property is an attractive nuisance because of physical condition or use.

(iii) The property is a fire hazard or is otherwise dangerous to the safety of persons or property.

(iv) The property has had the utilities, plumbing, heating, or sewerage disconnected, destroyed, removed, or rendered ineffective for a period of 1 year or more so that the property is unfit for its intended use.

(v) The property is tax reverted property owned by a municipality, by a county, or by this state. The sale, lease, or transfer of tax reverted property by a municipality, a county, or this state shall not result in the loss to the property of eligibility for any project authorized under this act for the rehabilitation of a blighted area, platting authorized under this act, or tax relief or assistance, including financial assistance, authorized under this act or any other act.

(vi) The property is owned or is under the control of a land bank fast track authority under the land bank fast track act, 2003 PA 258, MCL 124.751 to 124.774. The sale, lease, or transfer of the property by a land bank fast track authority shall not result in the loss to the property of eligibility for any project authorized under this act for the rehabilitation of a blighted area, platting authorized under this act, or tax relief or assistance, including financial assistance, authorized under this act or any other act.

(vii) The property is improved real property that has remained vacant for 5 consecutive years and that is not maintained in accordance with applicable local housing or property maintenance codes or ordinances.

(viii) The property has code violations posing a severe and immediate health or safety threat and has not been substantially rehabilitated within 1 year after the receipt of notice to rehabilitate from the appropriate code enforcement agency or final determination of any appeal, whichever is later.

(c) "Municipality" means a county, city, village, or township in the state.

(d) "Development plan" means a plan for the rehabilitation of all or any part of a blighted area.

(e) "Development area" means that portion of a blighted area to which a development plan is applicable.

(f) "Real property" means land, buildings, improvements, land under water, waterfront property, and any and all easements, franchises and hereditaments, corporeal or incorporeal, and every estate, interest, privilege, easement, franchise and right therein, or appurtenant thereto, legal or equitable, including rights of way, terms for years, and liens, charges, or incumbrances by mortgage, judgment, or otherwise.

(g) "Local taxes" means state, county, city, village, township and school taxes, any special district taxes, and any other tax on real property, but does not include special assessment for local benefit improvements.

(h) "Public use" when used with reference to land reserved for public use means only such uses as are for the general use and benefit of the public as a whole, such as schools, libraries, public institutions, administration buildings, parks, boulevards, playgrounds, streets, alleys, or easements for sewers, public lighting, water, gas, or other similar utilities.

(i) "Project" means all of the undertakings authorized in this act for the rehabilitation of a blighted area.

History: 1945, Act 344, Imd. Eff. May 31, 1945;—Am. 1947, Act 237, Eff. Oct. 11, 1947;—CL 1948, 125.72;—Am. 1952, Act 222, Imd. Eff. May 2, 1952;—Am. 1957, Act 296, Eff. Sept. 27, 1957;—Am. 1965, Act 227, Imd. Eff. July 16, 1965;—Am. 1986, Act 320, Imd. Eff. Dec. 26, 1986;—Am. 2006, Act 677, Imd. Eff. Jan. 10, 2007.

Compiler's note: In subdivision (a) of this section, the word "obsolescence" evidently should read "obsolescence".

BLIGHTED AREA REHABILITATION (EXCERPT)

Act 344 of 1945

125.73 Powers of municipality.

Sec. 3. A municipality may bring about the rehabilitation of blighted areas and the prevention, reduction, or elimination of blight, blighting factors, or causes of blight, and for that purpose may do any of the following:

- (a) Acquire real property by purchase, gift, or exchange.
- (b) Acquire under this act blighted property by condemnation.
- (c) Lease, sell, renovate, improve, or exchange blighted property or other real property acquired by other means in accordance with the state constitution of 1963 and this act.

History: 1945, Act 344, Imd. Eff. May 31, 1945;—CL 1948, 125.73;—Am. 1986, Act 320, Imd. Eff. Dec. 26, 1986;—Am. 2006, Act 677, Imd. Eff. Jan. 10, 2007.

THE HOME RULE CITY ACT (EXCERPT)

Act 279 of 1909

117.4q Administrative hearings bureau; establishment; administrative hearings; procedures; appeal; effect of nonpayment of civil fine or costs; "person" defined.

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

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

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

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

- (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. For purposes of this subdivision, right-of-way signage violation means the placement of signage in a right-of-way without a proper permit from the city.
- (h) An ordinance that is substantially the same as sections 138 to 142 of the housing law of Michigan, 1917 PA 167, MCL 125.538 to 125.542.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) Observation of administrative hearings.

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

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

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

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

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

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

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

(d) Issuing a determination, based upon the evidence presented 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 judiciary act of 1961, 1961 PA 236, MCL 600.181.

(14) A party shall be provided with the opportunity for a hearing during which they may be represented by

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

(15) In an administrative hearing under this section, the rules of evidence as applied in a nonjury civil case in circuit court shall be followed as far as practicable, but the hearing officer may 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 may be excluded. Effect shall be given to the rules of privilege recognized by law. Objections to offers of evidence may be made and shall be noted in the record. Subject to these requirements, the hearing officer, for the purpose of expediting hearings and when the interests of the parties will not be substantially prejudiced thereby, may provide in an administrative hearing or by rule for submission of all or part of the evidence in written form.

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

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

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

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

- (a) In violation of the constitution or a statute, charter, or ordinance.
- (b) In excess of the authority or jurisdiction of the agency as conferred by statute, charter, or ordinance.
- (c) Made upon unlawful procedure resulting in material prejudice to a party.
- (d) Not supported by competent, material, and substantial evidence on the whole record.
- (e) Arbitrary, capricious, or clearly an abuse or unwarranted exercise of discretion.
- (f) Affected by other substantial and material error of law.

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

- (a) For a first violation, the person is responsible for a state civil infraction and may be ordered to pay a civil fine of not more than \$500.00.
- (b) For a second violation, the person is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than \$500.00, or both.
- (c) For a third or subsequent violation, the person is guilty of a misdemeanor and may be imprisoned for not more than 1 year and shall be fined \$500.00.

(21) Subsection (20) does not apply to any of the following that becomes the owner of a property after foreclosure or after taking a deed in lieu of foreclosure:

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

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

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

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

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

(23) An entity described in subsection (21) that becomes the owner of a property after foreclosure or after taking a deed in lieu of foreclosure shall adhere to all ordinances relating to vacant property or blight violations adopted by the city that established an administrative hearings bureau under this section.

(24) As used in subsection (20), "person" means an individual, partnership, corporation, limited liability company, association, or other legal entity. Person includes the partners or members of a firm, a partnership, or an association and the officers of a corporation.

History: Add. 2003, Act 316, Imd. Eff. Jan. 12, 2004;—Am. 2008, Act 51, Imd. Eff. Mar. 28, 2008;—Am. 2013, Act 188, Eff. Mar. 14, 2014.

THE HOME RULE CITY ACT (EXCERPT)
Act 279 of 1909

117.4r Nonpayment of civil fine or costs or installment payment by defendant; lien; recording; enforcement; priority; collection of judgment; duration of lien; default; limitation on commencement of enforcement action.

Sec. 4r. (1) If a defendant does not pay a civil fine or costs or an installment payment ordered by a hearing officer under section 4q within 30 days after the date on which payment is due for a blight violation involving the use or occupation of land or a building or other structure, the city may obtain a lien against the land, building, or structure involved in the violation by recording a copy of the final decision and order requiring payment of the fines or costs with the register of deeds for the county in which the land, building, or structure is located. The order shall not be recorded unless a legal description of the property is incorporated in or attached to the order. The lien is effective immediately upon recording of the order with the register of deeds.

(2) An order recorded with a register of deeds under subsection (1) constitutes notice of the pendency of the lien. In addition, the city shall send a written notice of the lien by first-class mail to the owner of record of the land, building, or structure at the owner's last known address.

(3) A lien under this section may be enforced and discharged by the city in the manner prescribed by its charter, in the same manner as are liens for delinquent taxes under the general property tax act, 1893 PA 206, MCL 211.1 to 211.155, or by an ordinance duly passed by the governing body of the city. However, property that is exempt as a principal residence under section 7cc of the general property tax act, 1893 PA 206, MCL 211.7cc, is not subject to forfeiture, foreclosure, and sale under sections 78 to 79a of the general property tax act, 1893 PA 206, MCL 211.78 to 211.79a, for nonpayment of a civil fine or costs or an installment ordered under section 4q unless the property is also subject to forfeiture, foreclosure, and sale under sections 78 to 79a of the general property tax act, 1893 PA 206, MCL 211.78 to 211.79a, for delinquent property taxes.

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

- (a) The other lien is a lien for taxes or special assessments.
- (b) The other lien is created before May 1, 1994.
- (c) Federal law provides that the other lien has priority.
- (d) The other lien is recorded before the lien under this section is recorded.

(5) A city may institute an action in circuit court for the collection of a judgment imposed by an order under section 4q for a blight violation. However, an attempt by the city to collect the judgment by any process does not invalidate or waive the lien upon the land, building, or structure.

(6) A lien under this section expires 10 years after a copy of the order imposing a fine or costs, or both, is recorded, unless within that time an action to enforce the lien is commenced.

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

(8) A city shall not commence an action to enforce a lien under this section if the city has commenced an action for a writ of garnishment with respect to the unpaid fine, costs, or payment under section 4027 of the revised judicature act of 1961, 1961 PA 236, MCL 600.4027.

History: Add. 2003, Act 317, Imd. Eff. Jan. 12, 2004;—Am. 2008, Act 51, Imd. Eff. Mar. 28, 2008;—Am. 2013, Act 192, Eff. Mar. 14, 2014.

CHAPTER 203. MUNICIPAL CIVIL INFRACTIONS*

203.01. Definitions.

As used in this chapter:

Act means Act No. 236 of the Public Acts of 1961, as amended.

Authorized city official means a police officer or other personnel of the City authorized by these Codified Ordinances or any other ordinance to issue Municipal civil infraction citations or Municipal civil infraction violation notices.

Bureau means the Municipal Ordinance Violations Bureau, as established by this chapter.

Municipal civil infraction action means a civil action in which the defendant is alleged to be responsible for a Municipal civil infraction.

Municipal civil infraction citation means a written complaint or notice prepared by an authorized City official, directing a person to appear in court regarding the occurrence or existence of a Municipal civil infraction violation by the person cited.

Municipal civil infraction violation notice means a written notice, prepared by an authorized City official, directing a person to appear at the Municipal Ordinance Violations Bureau and to pay the fine and costs, if any, prescribed for the violation by the schedule of civil fines adopted by the City, as authorized under Sections 8396 and 8707(6) of the Act.
(Ord. No. 930, 2-19-96)

203.02. Commencement of municipal civil infraction action.

A Municipal civil infraction action may be commenced upon the issuance by an authorized City official of a Municipal civil infraction citation directing the alleged violator to appear in court;

*Cross references—General Code penalty - see ADM. 1.99; Traffic Code penalties - see TRAF. 9.3, 9.3.5; Traffic citations - see TRAF. 2.10b et seq.

or a Municipal civil infraction violation notice directing the alleged violator to appear at the Municipal Ordinance Violations Bureau.
(Ord. No. 930, 2-19-96)

203.03. Issuance and service of municipal civil infraction citations.

Municipal civil infraction citations shall be issued and served by authorized City officials as follows:

- (a) The time for appearance specified in a citation shall be within a reasonable time after the citation is issued.
- (b) The place for appearance specified in a citation shall be the District Court.
- (c) Each citation shall be numbered consecutively and shall be in a form approved by the State Court Administrator. The original citation shall be filed with the District Court. Copies of the citation shall be retained by the City and issued to the alleged violator as provided by Section 8705 of the Act.
- (d) A citation for a Municipal civil infraction signed by an authorized City official shall be treated as if it were made under oath if the violation alleged in the citation occurred in the presence of the official signing the complaint and if the citation contains the following statement immediately above the date and signature of the official:
"I declare under the penalties of perjury that the statements above are true to the best of my information, knowledge and belief."
- (e) An authorized City official who witnesses a person commit a Municipal civil infraction shall prepare and subscribe, as soon as possible and as completely as possible, an original and required copies of a citation.
- (f) An authorized City official may issue a citation to a person if:
 - (1) Based upon investigation, the official has reasonable cause to believe that the person is responsible for a Municipal civil infraction; or

- (2) Based upon investigation of a complaint by someone who allegedly witnessed the person commit a Municipal civil infraction, the official has reasonable cause to believe that the person is responsible for an infraction, and the City Attorney approves in writing the issuance of the citation.
- (g) Municipal civil infraction citations shall be served by an authorized City official as follows:
 - (1) Except as provided in paragraph (g)(2) hereof, an authorized City official shall personally serve a copy of the citation upon the alleged violator.
 - (2) If the Municipal civil infraction involves the use or occupancy of land, a building or other structure, a copy of the citation does not need to be personally served upon the alleged violator, but may be served upon an owner or occupant of the land, building or structure by posting the copy on the land or attaching the copy to the building or structure. In addition, a copy of the citation shall be sent by first class mail to the owner of the land, building or structure at the owner's last known address.
- (2) Admit responsibility for the Municipal civil infraction "with explanation" by mail by the time specified for appearance or in person, or by representation.
- (3) Deny responsibility for the Municipal civil infraction by doing either of the following:
 - A. Appearing in person for an informal hearing before a judge or District Court magistrate, without the opportunity of being represented by an attorney, unless a formal hearing before a judge is requested by the City.
 - B. Appearing in court for a formal hearing before a judge with the opportunity of being represented by an attorney.
- (c) The citation shall also inform the alleged violator of all of the following:
 - (1) That if the alleged violator desires to admit responsibility "with explanation" in person or by representation, the alleged violator must apply to the court in person, by mail, by telephone or by representation within the time specified for appearance and obtain a scheduled date and time for an appearance.
 - (2) That if the alleged violator desires to deny responsibility, the alleged violator must apply to the court in person, by mail, by telephone or by representation within the time specified for appearance and obtain a scheduled date and time to appear for a hearing, unless a hearing date is specified on the citation.
 - (3) That a hearing shall be an informal hearing unless a formal hearing is requested by the alleged violator or the City.
 - (4) That at an informal hearing the alleged violator must appear in person before a judge or District Court magistrate, without the opportunity of being represented by an attorney.
 - (5) That at a formal hearing the alleged violator must appear in person before a judge

(Ord. No. 930, 2-19-96)

203.04. Contents of municipal civil infraction citations.

- (a) A Municipal civil infraction citation shall contain the name and address of the alleged violator, the Municipal civil infraction alleged, the place where the alleged violator shall appear in court, the telephone number of the court and the time at or by which the appearance shall be made.
- (b) Further, the citation shall inform the alleged violator that he or she may do one of the following:
 - (1) Admit responsibility for the Municipal civil infraction by mail, in person or by representation, at or by the time specified for appearance.

or District Court magistrate, with the opportunity of being represented by an attorney.

(d) The citation shall contain a notice in bold-faced type stating that the failure of the alleged violator to appear within the time specified in the citation or at the time scheduled for a hearing or appearance is a misdemeanor and will result in entry of a default judgment against the alleged violator on the Municipal civil infraction. (Ord. No. 930, 2-19-96)

203.05. Municipal ordinance violations bureau.

(a) *Establishment.* There is hereby established a Municipal Ordinance Violations Bureau (the Bureau), as authorized under Section 8396 of the Act, to accept admissions of responsibility for Municipal civil infractions in response to Municipal civil infraction violation notices issued and served by authorized City officials, and to collect and retain civil fines and costs as prescribed by these Codified Ordinances or any other ordinance.

(b) *Location; Supervision; Employees; Rules and Regulations.* The Bureau shall be located at City Hall and shall be under the supervision and control of the City Treasurer. The City Treasurer, subject to the approval of Council, shall adopt rules and regulations for the operation of the Bureau and appoint any necessary qualified City employees to administer the Bureau.

(c) *Disposition of Violations.* The Bureau may dispose only of Municipal civil infraction violations for which a fine has been scheduled and for which a Municipal civil infraction violation notice (as compared with a citation) has been issued. The fact alone that a fine has been scheduled for a particular violation shall not entitle any person to dispose of the violation at the Bureau. Nothing in this chapter shall prevent or restrict the City from issuing a Municipal civil infraction citation for any violation or from prosecuting any violation in a court of competent jurisdiction. No person shall be required to dispose of a Municipal civil infraction violation at the Bureau and may have the violation processed before a court of appropriate jurisdiction. The unwillingness of any person

to dispose of any violation at the Bureau shall not prejudice the person or in any way diminish the person's rights, privileges and protection accorded by law.

(d) *Scope of Authority.* The scope of the Bureau's authority shall be limited to accepting admissions of responsibility for Municipal civil infractions and collecting and retaining civil fines and costs as a result of those admissions. The Bureau shall not accept payment of a fine from any person who denies having committed the offense or who admits responsibility only with explanation, and in no event shall the Bureau determine, or attempt to determine, the truth or falsity of any fact or matter relating to an alleged violation.

(e) *Municipal Civil Infraction Violation Notices.* Municipal civil infraction violation notices shall be issued and served by authorized City officials under the same circumstances and upon the same persons as are provided for citations in Section 203.03(f) and (g). In addition to any other information required by these Codified Ordinances or any other ordinance, the notice of violation shall indicate the time by which the alleged violator must appear at the Bureau, the methods by which an appearance may be made, the address and telephone number of the Bureau, the hours during which the Bureau is open, the amount of the fine scheduled for the alleged violation and the consequences for failure to appear and pay the required fine within the required time.

(f) *Appearance; Payment of Fines and Costs.* An alleged violator receiving a Municipal civil infraction violation notice shall appear at the Bureau and pay the specified fine and costs at or by the time specified for appearance in the Municipal civil infraction violation notice. An appearance may be made by mail, in person or by representation.

(g) *Procedure Where Admission of Responsibility Not Made or Fine Not Paid.* If an authorized City official issues and serves a Municipal ordinance violation notice and if an admission of responsibility is not made and the civil fine and costs, if any, prescribed by the schedule of fines set forth in Section 203.06 for the violation, are not paid at the Bureau, a Municipal civil infrac-

tion citation may be filed with the District Court, and a copy of the citation may be served by first class mail upon the alleged violator at the alleged violator's last known address. The citation filed with the court does not need to comply in all particulars with the requirements for citations as

provided by Sections 8705 and 8709 of the Act, but shall consist of a sworn complaint containing the allegations stated in the Municipal ordinance violation notice and shall fairly inform the alleged violator how to respond to the citation.
(Ord. No. 930, 2-19-96)

203.06. Schedule of civil fines.

(a) A schedule of civil fines payable to the Municipal Ordinance Violations Bureau for admissions of responsibility served with Municipal ordinance violation notices is hereby established. The fines for the violations listed below shall be as follows:

(1) Chapter 1020. Streets and Sidewalks Generally:			
1020.03 Maintenance of Parkways			\$ 50.00
First repeat offense			100.00
Second (or any subsequent) repeat offense			150.00
		Tier 1	Tier 2
1020.06 Snow and Ice.	\$ 50.00		\$ 25.00
First repeat offense.	100.00		50.00
Second (or any subsequent) repeat offense.	200.00		100.00
(2) Chapter 1030. Numbering of Buildings:			
1030.05 Display of Numbers			\$20.00
First repeat offense			40.00
Second (or any subsequent) repeat offense			60.00
(3) Part Twelve, Title Two, Planning:			
Chapter 1218 Soil Erosion and Sedimentation Control.			\$500.00
First repeat offense			1,500.00
Second (or any subsequent) repeat offense)			2,500.00
(4) Part Twelve, Title Four, Subdivision Regulations:			
Chapters 1230—1238			\$150.00
First repeat offense			250.00
Second (or any subsequent) repeat offense			500.00
(5) Part Twelve, Title Six, Zoning Code:			
Chapters 1240—1296			\$150.00
First repeat offense			250.00
Second (or any subsequent) repeat offense			500.00
(6) Chapter 1420. Building Code:			
1420.01 et seq.			\$150.00
First repeat offense			250.00
Second (or any subsequent) repeat offense			500.00

(7) Chapter 1422. Plumbing Code:

1422.01 et seq.	\$150.00
First repeat offense	250.00
Second (or any subsequent) repeat offense	500.00

(8) Chapter 1424. Electrical Code:

1424.01 et seq.	\$150.00
First repeat offense	250.00
Second (or any subsequent) repeat offense	500.00

(9) Chapter 1426. Mechanical Code:

1426.01 et seq.	\$150.00
First repeat offense	250.00
Second (or any subsequent) repeat offense	500.00

(10) Chapter 1442. Sign Code:

1442.01 et seq.	\$150.00
First repeat offense	250.00
Second (or any subsequent) repeat offense	500.00

(11) Chapter 1460. Housing Code:

1460.01 et seq.	\$150.00
First repeat offense	250.00
Second (or any subsequent) repeat offense	500.00

(12) Chapter 1610. Fire Code:

1610.01 et seq.	\$150.00
First repeat offense	250.00
Second (or any subsequent) repeat offense	500.00

(b) A copy of the schedule, as amended from time to time, shall be posted at the Bureau.
(Ord. No. 930, 2-19-96; Ord. No. 1079, § 1, 10-11-04; Ord. No. 1119, § 1, 12-11-06)

CHAPTER 204. OFFICIAL STANDARDS*

204.01. Weights and measures.

That certain document or booklet accompanying original Ordinance 603, passed July 13, 1981, an official copy of which is on file in the office of the City Clerk of the City, and which is marked

*Cross references—State Seal - see Mich. Const. Art. 3, Sec. 3; M.C.L.A. Secs. 2.41 et seq.; Seal of municipal sewage disposal authority - see M.C.L.A. Sec. 124.284; Seal of municipal water supply authority - see M.C.L.A. Sec. 124.284; Weights and measures - see M.C.L.A. Secs. 290.601 et seq., 750.561 et seq.; Division of Sealer of Weights and Measures - P. & Z. 1210.01; Design standards - see P. & Z. 1218.18, Ch. 36, 1280.05.

and designated as the "Weights and Measures Act of 1964" (Public Act 283 of 1964, as amended) is hereby adopted.

The purpose of the Act is to regulate and provide standards for weights and measures and the packaging and advertising of certain commodities; to provide for a Sealer of Weights and Measures and other inspectors of weights and measures as may be required to provide a fee system for certain inspections and tests; and to provide penalties for fraud and deception in the use of false weights and measures and other violations.

(Ord. No. 603, 7-13-81)

Ypsilanti Fire Marshal v. Kircher – Some case highlights

Page 19 RECEIVER

- Circuit courts have broad powers to abate a nuisance.
 - If court is to find nuisance, it must clearly indicate under what law the nuisance exists.
 - The Circuit Court in the exercise of equitable powers may appoint receivers in all cases pending where appointment is allowed; see MCL 600.2926
 - Court must appoint the receiver and cannot delegate power to another, like the City.
-
- Receivership is an equitable remedy or last resort and should not be used where another less drastic remedy exists.
 - The court must provide proper judicial supervision and oversight of the receiver's activities and expenditures.
 - Here, it was important for the trial court to split out work to abate fire code from building code items. This is more for the purposes of enforcing payment of the receiver under the law of this case. See page 23 note below.

Page 23 LIEN AND FORECLOSURE

- Court should only approve costs necessary to abate specific nuisance violation(s).
- Footnote 15
 - Under Fire Prevention Code, liens imposed for expense of abating fire hazards – are liens that may be foreclosed – MCL 29.16(1)
 - Home Rule City Act allows city to impose lien for abatement of “blight violation” – MCL 117.4r. However, to do so, the city must first follow administrative hearing procedure under 117.4r. Lansing has not adopted this administrative process and procedure by ordinance.
 - Housing Law of Michigan imposes liens in limited situations, for municipal nuisance abatement activities, but not reviewed in this case.

Page 26 – Circuit Court may abate a nuisance at the expense of the property owner, MCL 600.2940(3), but collection is by execution on judgement, MCL 600.2940(4), and NOT by lien and foreclosure unless there is a specific law that provides for the lien.

Page 32 – There is no general statutory provision permitting municipalities to impose liens for the costs for the general nuisance abatement under city ordinance. Thus, the city may not impose a lien on real property without separate statutory authority.

STATE OF MICHIGAN
COURT OF APPEALS

YPSILANTI FIRE MARSHAL and CITY OF
YPSILANTI,

Plaintiffs-Appellees,

v

DAVID KIRCHER,

Defendant-Appellant.

ROBERT C. BARNES,

Plaintiff-Appellee,

v

DAVID KIRCHER,

Defendant-Appellant,

and

PATRICIA H. BROWN,

Defendant.

YPSILANTI FIRE MARSHAL and CITY OF
YPSILANTI,

Plaintiffs-Appellees,

and

BARNES & BARNES,

Plaintiff,

273 MA 496
FOR PUBLICATION
January 9, 2007
9:00 a.m.

No. 260970
Washtenaw Circuit Court
LC No. 02-000434-CH

ON RECONSIDERATION

No. 260971
Washtenaw Circuit Court
LC No. 03-001380-CH

v

DAVID KIRCHER,

Defendant-Appellant.

ROBERT C. BARNES,

Plaintiff-Appellee,

v

DAVID KIRCHER,

Defendant-Appellant,

and

CITIZENS BANK,

Defendant.

Before: Borrello, P.J., and Jansen and Cooper, JJ.

JANSEN, J.

These consolidated appeals are yet another step in the protracted litigation between property owner David Kircher ("Kircher"), and the city of Ypsilanti, the Ypsilanti fire marshal, and former court-appointed receiver Robert C. Barnes (collectively "Ypsilanti"). In Docket Nos. 260970 & 260971, Kircher appeals as of right the trial court's judgment of foreclosure regarding his property located at 400-412 River Street (hereinafter the "Thompson Building").¹ In Docket

¹ In Docket Nos. 260970 & 260971, Kircher also purports to appeal as of right certain separate orders pertaining to the Thompson Building, entered in Washtenaw Circuit Court Case No. 02-000434-CH. The claim of appeal in Docket Nos. 260970 & 260971 identified only the February 4, 2005 judgment of foreclosure, entered in Washtenaw Circuit Court Case No. 03-001380-CH, as the final order being appealed. However, when a party claims an appeal from a final order, it may raise on appeal all issues related to other orders entered in the case. *Bonner v Chicago Title Ins Co*, 194 Mich App 462, 472; 487 NW2d 807 (1992). Because Washtenaw Circuit Case Nos. 02-000434-CH and 03-001380-CH involved the same subject matter and common questions of fact, the cases could have been consolidated by the trial court. MCR 2.505(A)(2). Therefore, we will consider Kircher's claims concerning Washtenaw Circuit Case No. 02-000434-CH, even
(continued...)

Nos. 260972 & 260973, Kircher appeals as of right the trial court's separate judgment of foreclosure regarding his property located at 510 West Cross Street (hereinafter the "apartment building").² In Docket Nos. 260970 & 260971, we affirm in part, vacate in part, and remand for further proceedings. In Docket Nos. 260972 & 260973, we also affirm in part, vacate in part, and remand for further proceedings.

I. Basic Facts and Procedural History

A. The Thompson Building

These consolidated appeals have their genesis in a series of disputes between Kircher and Ypsilanti, which began in the late 1980s. Ypsilanti had previously filed Washtenaw Circuit Case Nos. 86-031555-CC and 94-002933-CZ to compel Kircher to make certain repairs and abate certain building and fire code violations at the Thompson Building. These prior actions resulted in entry of an agreed order between the parties on May 22, 1996, in which Ypsilanti's building supervisor was appointed receiver for the Thompson Building "for the purposes of bringing the exterior of the building into compliance with the building ordinances and the Historic District ordinance." The order dealt primarily with brickwork and façade repairs, roof repairs, and window and doorway repairs. The order provided that the Ypsilanti building supervisor "shall designate David Kircher as the contractor" to perform the specified repairs "so long as Mr. Kircher performs such duties in a timely fashion and according to" applicable Ypsilanti ordinances. In the event that Kircher failed to adhere to the order, the receiver was given the authority to replace him as contractor, as well as to take certain other actions to effectuate completion of the work. The order provided that all costs of repairs, replacements, and other work were to be paid by Kircher. The order specified that in the event Kircher failed to pay, "a lien shall be imposed upon the property which shall be collectible through property taxes."

At some point, it became apparent that Kircher had not complied with the May 22, 1996 order. A second agreed order was therefore entered by Washtenaw Circuit Judge Donald Shelton on July 14, 1997, directing Kircher to submit bids for the work listed in the prior agreed order, to submit applications for grants or other funding, and to "begin work on the building to complete the repairs and improvements listed in the May 22, 1996 order within 120 days." The

(...continued)

though no order from that case was specifically mentioned in the claim of appeal.

² In Docket Nos. 260972 & 260973, Kircher also purports to appeal as of right certain separate orders pertaining to the apartment building, entered in Washtenaw Circuit Court Case No. 01-000560-CH. The claim of appeal in Docket Nos. 260972 & 260973 identified only the February 4, 2005 judgment of foreclosure, entered in Washtenaw Circuit Court Case No. 03-001264-CH, as the final order being appealed. However, when a party claims an appeal from a final order, it may raise on appeal all issues related to other orders entered in the case. *Bonner, supra* at 472. Because Washtenaw Circuit Case Nos. 01-000560-CH and 03-001264-CH involved the same subject matter and common questions of fact, the cases could have been consolidated by the trial court. MCR 2.505(A)(2). Therefore, we will consider Kircher's claims concerning Washtenaw Circuit Case No. 01-000560-CH, even though no order from that case was specifically mentioned in the claim of appeal.

July 14, 1997 order was the final order entered in Washtenaw Circuit Case Nos. 86-031555-CC and 94-002933-CZ.

On April 10, 2002, Ypsilanti filed a complaint and commenced Washtenaw Circuit Case No. 02-000434-CH, alleging that the Thompson Building was in violation of the state Fire Prevention Code and certain local building and fire codes. The complaint asserted that Kircher had failed to comply with the May 22, 1996 and July 14, 1997 orders, and sought an order to show cause why a new receiver should not be appointed to complete the work required by the prior orders. As this Court previously explained in *Ypsilanti Fire Marshal v Kircher*, unpublished per curiam opinion of the Court of Appeals, issued April 27, 2004 (Docket Nos. 242697 & 242857), slip op at 2,

The trial court [then] entered an order to show cause why it should not order (1) that a receiver be appointed, (2) that a preliminary injunction and temporary restraining order be entered, and (3) that the receiver take care of the property with costs to [Kircher] and liens against the property. At the show cause hearing, . . . Jon Ichesco [the Ypsilanti fire marshal] testified that he procured a survey after receiving complaints about the building. He relied on an engineer's report that listed the repairs needed to make the building safe. Specifically, Ichesco discussed problems with the roof, the need for tuckpointing, and windowpanes falling into the street. [Kircher] offered only his own testimony about what he thought was required and what he did to repair the building. On cross-examination, [Kircher] asserted that it "would have been impossible" for him to complete the repairs listed in the July 14, 1997, order because he had not received the grant money referred to in a May 22, 1996, order.

The trial court found:

[Kircher] has not complied with the [c]ourt's May [22], 1996 order, or the July 14, 1997 order. Furthermore, I'm going to specifically find that the building is in dangerous condition and is a nuisance.

The trial court entered an order appointing Robert Barnes as receiver. The order further provided:

IT IS FURTHER ORDERED that the Receiver needs to make the building economically viable.

The trial court's order appointing Barnes as the receiver for the Thompson Building and authorizing Barnes to complete all necessary repairs was entered in Washtenaw Circuit Case No. 02-000434-CH on June 14, 2002. The order provided that the receiver was to maintain detailed records of the costs expended in repairing Kircher's property, that the receiver was to bill Kircher monthly for these costs, that Kircher was to pay all billed costs within 30 days, and that the receiver would have a lien on the property at the conclusion of the repairs for any costs Kircher had not paid. The order also provided that Kircher was to pay Ypsilanti's attorney fees incurred in conjunction with the enforcement and supervision of the order.

In Docket Nos. 242697 & 242857, Kircher appealed the trial court's June 14, 2002 order, asserting among other things that the trial court lacked jurisdiction to appoint a receiver and that the trial court's order allowed the receiver to undertake and charge defendant unlimited amounts of money for unspecified repairs. In an opinion issued April 27, 2004, this Court determined that the trial court did have jurisdiction to appoint the receiver pursuant to MCL 29.23. However, this Court agreed with Kircher that the order appointing the receiver was overbroad:

By giving the receiver the authority to make the Thompson building "economically viable," the order allows the receiver to make repairs beyond removing the hazards of which plaintiffs originally complained. [Ypsilanti's] reliance on the fire code does not support [its] argument that the broad scope of the order is appropriate. The quoted portion of the fire code only addresses hazards that endanger human life. It does not address the "economic viability" of the building. Accordingly, we reverse that portion of the June 14, 2002, order providing "that the Receiver needs to make the building economically viable and functional."

On remand, the trial court shall enter an order that more precisely defines the receiver's duties. The listed repairs shall be in keeping with the reasons that the receivership was sought, i.e., to repair the building so that it is no longer a hazard to human life, and also in keeping with the trial court's finding that:

[Kircher] has not complied with the [c]ourt's May [22], 1996 order, or the July 14, 1997 order. Furthermore, I'm going to specifically find that the building is in dangerous condition and is a nuisance.

The trial court's order must also comply with the provisions of MCL 600.2926 which provides: "In all cases in which a receiver is appointed the court shall provide for bond and shall define the receiver's power and duties where they are not otherwise spelled out by law." [*Ypsilanti Fire Marshal, supra*, slip op at 5-6.]

Kircher also argued that the trial court awarded too much compensation to the receiver and that the trial court erred in awarding Ypsilanti its attorney fees. This Court rejected those arguments.

Despite this Court's determination that the trial court had jurisdiction to appoint the receiver, Kircher filed a subsequent unsuccessful motion to dismiss for lack of subject matter jurisdiction. On May 19, 2004, the receiver filed a motion for summary disposition relating to the recovery of the costs of repairs performed to date. Kircher then filed a cross-motion to terminate the receivership. The trial court took these motions under advisement, reserving its ruling until after the conclusion of an evidentiary hearing.

On July 22, 2004, the trial court held an evidentiary hearing to determine the reasonableness of the repairs to the Thompson Building. At the beginning of that hearing, the trial court expressed its opinion that the hearing would "satisfy" this Court's remand instructions. Counsel for the receiver agreed, but counsel for Kircher disagreed. Kircher's counsel noted that

this Court had directed the trial court on remand to enter an order more precisely defining the receiver's duties in accordance with the original purpose of the receivership—to repair the building so that it was no longer a hazard to human life—and to provide for payment of a bond. Counsel for Kircher continued:

I respectfully submit, Your Honor, that we first ought to do what the Court [of Appeals] said. Specify what were the fire hazards that existed back in 2001 with specificity that justified the continuation of this action. Then we'd like to go in and see the property. Mr. Kircher has not been on that property for three years. We . . . aren't ready for an evidentiary hearing without ever seeing whether they actually did what they said they were going to do. So, I think we have to take this in steps. We have to do what the Court of Appeals first told us to do, then we have to have an opportunity to discover whether the fire hazards as listed in the revised order occurred. I think we also have to have evidence that Mr. Barnes [the receiver] has posted a bond. And, then we can, hopefully you'll let us in there to see the property. What's happened in the last three years. And we can then be prepared to respond intelligently to the revised order that's resulted from the remand.

The trial court heard testimony from the receiver's son, Robert M. Barnes (hereinafter "Barnes, Jr."), regarding the nature, extent, reason for, and cost for work performed on the Thompson Building. The court also heard from a licensed architect regarding her review of the building and her opinion concerning the reasonableness of certain repairs. Barnes, Jr. was cross-examined extensively by Kircher's counsel as to the purpose and nature of the repairs. Kircher then testified as to his opinion regarding the condition of the building and advised the court that the building had a working sprinkler system. He also offered a structural engineering report for the building. At the conclusion of the testimony, the trial court asked the parties to submit their closing arguments in writing.

On January 19, 2005, the trial court issued its opinion and order granting the receiver's motion for summary disposition and denying Kircher's counter-motion to terminate the receivership. The court noted that this Court had affirmed the prior order appointing the receiver, "with the exception of reversal as to the part which provided the receiver with the authority to make [the Thompson Building] 'economically viable.'" The trial court continued:

The Court of Appeals in its [opinion] dated April 27, 2004, remanded the cases and directed this [c]ourt to define the receiver's duties as to the Thompson Building. The duties could only include the authority to make repairs in keeping with the reason the receivership was sought which was to repair the building so that it was (1) no longer a hazard to human life (2) in compliance with the May 22, 1996 order and all subsequent orders and (3) no longer a danger or nuisance.

The trial court then found that the receiver was entitled to summary disposition, noting that the receiver had been properly appointed, that repairs had been made, that Kircher had been provided with invoices and given the opportunity to pay, and that Kircher had failed to pay. The trial court found that

all repairs were within the parameters of the ruling from the Court of Appeals. The testimony from the [r]eceiver was that repairs were made to remove any danger to human life, to correct code violations, to eliminate any nuisances and to bring the property into compliance with the May 22, 1996 order. There were no repairs solely made to make the building "economically viable." Furthermore, the [r]eceiver provided credible testimony as to the costs and the necessity of the repairs.

The trial court also allowed fees for engineering work performed in conjunction with the repairs, as well as a portion of architect fees incurred by the receiver. The trial court disallowed certain architect fees that were "incurred in creating a plan to make the building 'economically viable.'" The trial court entered a lien against the Thompson Building in the amount of \$187,686.38.

Meanwhile, on December 11, 2003, Barnes had commenced Washtenaw Circuit Case No. 03-001380-CH by filing a complaint to foreclose the lien against the Thompson Building property. On February 4, 2005, the trial court entered a judgment of foreclosure, ordering the sheriff to sell the Thompson Building.

On February 16, 2005, Ypsilanti and Barnes filed a joint motion for the appointment of a successor receiver, as Barnes wished to step down from his duties. Kircher opposed the appointment of a successor receiver, asserting that the trial court had never complied with this Court's remand instructions by entering an order more precisely defining the receiver's duties or by providing for a bond. Further, Kircher asserted that there was no showing that the grounds for the appointment of a receiver continued to exist. Kircher argued that there was no need for a successor receiver, and noted that further appeals were pending before this Court.³

The trial court held a hearing on the motion on March 16, 2005. At that hearing, Kircher reiterated his position that there were no grounds to justify the appointment of a successor receiver. Counsel for Kircher stated,

Your Honor, three years ago, the city came to Your Honor, cited the Fire Prevention Code, and on the basis of convincing Your Honor that there was a hazardous condition there of—that was very grave, of a fire nature. You appointed a receiver. That's three years ago.

That case was brought by the City of Ypsilanti. There was an appeal as you recall. Mr. Kircher didn't believe this was a case for receivership. He thought the legal remedies were adequate. And, Your Honor's order simply says, make the building economically viable.

The Court of Appeals reversed on that issue and said, the [c]ourt has to specify what repairs are necessary. That still has never been done.

³ Kircher filed his claims of appeal in the present consolidated cases on February 22, 2005.

I am submitting, Your Honor, that if [Barnes] doesn't want to be the receiver anymore that's fine. But, there is no allegation that there's any kind of nuisance over there that's a menace to the people now.

* * *

[The city has] not described any conditions there that would even remotely justify the harsh and extraordinary remedy of receivership.

I ask Your Honor—we don't care if Barnes quits. That's fine. But, we don't want a successor receiver appointed unless grounds are shown that brings this case within equity that would justify it. And we submit there are no grounds.

Certainly they're not saying that imminent danger that existed three years ago still exists. There is no imminent danger. The legal remedies are adequate now.

* * *

Your Honor, the long and short of it is there is not one thing before Your Honor to show that today . . . [t]here is anything there that would justify the . . . invocation of the harsh and extraordinary remedy of receivership.

The trial court did not address these assertions, instead merely inquiring as to whether there were any objections to the particular party nominated by Ypsilanti as successor. Counsel for Kircher identified several objections. Without further comment, the trial court then concluded that it would appoint the nominated entity as successor receiver. The following exchange concluded the hearing:

MR. WARD [Kircher's counsel]: Your Honor, the other thing is, may I remind you, on April 27, the Court [of Appeals] remanded with instructions that this Court more precisely define—

THE COURT: I heard what you said about that. What you said is not true, but that's alright. You've made your point on the record, thank you.

The trial court entered an order appointing Stuart Beal as the successor receiver on March 21, 2005. Barnes then apparently assigned his interest in the Thompson Building judgment of foreclosure to Beal or Beal's father.

A sheriff's sale was held on May 11, 2006, and successor receiver Beal purchased the Thompson Building for \$346,186.39.⁴

On April 20, 2005, Kircher filed in this Court an original action seeking a writ of superintending control. Kircher alleged that the trial court had "repeatedly failed and refused to comply with the Court of Appeals' mandate and to enter the amendatory orders that [it] was directed to enter." Kircher further alleged:

To make matters worse, after granting the [r]eceiver a judgment of foreclosure of lien . . . the [t]rial [c]ourt appointed a [s]uccessor [r]eceiver . . . without any showing by the City of Ypsilanti of present hazardous conditions within MCL 29.23 which would justify a successor receiver.

Kircher asserted that despite his objection to the appointment of the successor receiver, "the [t]rial [c]ourt simply refused to 'more precisely define the receiver's duties,' or to require a receiver's bond" as mandated by this Court's April 27, 2004 remand instructions in the prior appeal. Thus, Kircher asked this Court for a writ of superintending control to enforce the earlier remand instructions and direct Judge Shelton to (1) issue an order more precisely defining the receiver's duties in keeping with the reasons that the receivership was originally sought, and (2) provide for payment of a bond.

In response to Kircher's complaint for superintending control, Judge Shelton denied that he refused to comply with this Court's remand instructions, and asserted that his January 19, 2005 order complied fully with this Court's April 27, 2004 decision.

On June 3, 2005, this Court granted the complaint for superintending control and directed the parties to "proceed to a full hearing on the merits in the same manner as an appeal of right." Judge Shelton filed a response, indicating that he had "attempted to comply and felt that [he] had complied" with this Court's April 27, 2004 remand instructions, and that he would "follow any directives" from this Court in the future.

On July 12, 2005, the trial court finally entered two *nunc pro tunc* orders amending its prior orders to require the original receiver and successor receiver to each post bond in the amount of \$500.

On March 9, 2006, this Court issued an opinion dismissing the writ of superintending control as improvidently granted. *In re Kircher*, unpublished opinion per curiam of the Court of Appeals, issued March 9, 2006 (Docket No. 262153). This Court noted that Kircher had filed appeals in Docket Nos. 260970 & 260971, which remained pending. In light of Kircher's

⁴ The amount of the lien had increased substantially beyond \$187,686.38 by the time of the sheriff's sale. Between the date of the judgment of foreclosure and the date of the sheriff's sale, the trial court amended the judgment of foreclosure, significantly increasing the amount of the lien to \$346,186.39.

alternate avenue of relief by way of the pending appeals in Docket Nos. 260970 & 260971, this Court concluded that the extraordinary remedy of superintending control was not justified.

B. The Apartment Building

On May 14, 2001, Ypsilanti commenced Washtenaw Circuit Case No. 01-000560-CH by filing a complaint asserting that Kircher's apartment building at 510 West Cross Street was in violation of the state Fire Prevention Code and certain local building and fire codes. Ypsilanti contended that the alleged violations rendered the apartment building unsafe and a nuisance. As this Court explained in *Ypsilanti Fire Marshal, supra*, slip op at 3-4,

The trial court [then] entered an order to show cause why it should not order the property vacated and declared a nuisance and order [Kircher] to immediately comply with all applicable ordinances. It later entered another order providing:

1. That parties are to complete a list of repairs to be made to the property and that any dispute with regard to that list will be resolved at an evidentiary hearing scheduled for August 16, 2001 at 2:00 p.m.
2. The property is to be vacated immediately.
3. [Kircher] shall have 90 days from the date of the evidentiary hearing to effectuate all of the repairs.

After the show cause hearing, the trial court entered an order that: "materials, equipment and devices" could not be reused unless approved by the fire marshal, that [Kircher] obtain permits and inspections as repairs are made, that the city can make surprise inspections, that a certificate of occupancy be obtained and that the parties would try to resolve as many items as possible. A "Table of Repairs" was attached identifying 224 repairs.⁵

[Ypsilanti] filed a motion for immediate vacation of the premises and sought an order for contempt in which they argued that [Kircher] continued to occupy the building, had not yet obtained a certificate of occupancy and violated the court's previous orders. In response, the trial court entered an order to vacate the premises which also required a certificate of occupancy before further occupation and inspections.

At a subsequent evidentiary hearing, [Ypsilanti's] attorney and [Kircher] simply spoke on the record. [Ypsilanti] asserted that the parties were attempting to resolve the issues, but would litigate anything that was not resolved.

⁵ The repairs identified in the "Table of Repairs" were based on alleged violations of city building and fire codes, rather than on alleged violations of the state Fire Prevention Code.

[Ypsilanti] also indicated on the record that the parties agreed that [Kircher] would make repairs subject to a determination of workmanship by Harry Hutchinson, head of the city's building department. [Kircher] did not object.

The trial court entered an order stating that [Kircher] had ten days to make repairs. It further provided that city officials could inspect the building twenty-one days from entry of the order and that workmanship would be determined by Hutchinson. Code violations were to be presented to the court for review. On November 27, 2001, the parties stipulated to entry of an order providing that several repairs "shall be undertaken immediately to bring this property into compliance."

At another show cause hearing, [Ypsilanti's] counsel argued that because [Kircher] failed to comply with the trial court's previous orders, a receiver should be appointed to effect the repairs. [Kircher] asserted that some of the repairs were made and [then] discussed the particulars of his interaction with [Ypsilanti]. [Kircher] indicated that he made all the repairs ordered, but that [Ypsilanti had] not given him a certificate of occupancy. The trial court withheld its decision on [Ypsilanti's] motion to appoint a receiver until after an evidentiary hearing.

At that hearing, Hutchinson testified that the November 9, 2001, order indicated that all determinations of workmanship shall be made by him. Since the order was entered, Hutchinson had been to the property and was not pleased with the workmanship of the repairs. Ichesco [the Ypsilanti fire marshal] testified about the repairs that were listed in the complaint and subsequent orders. In particular, he testified that the condition of the chimney posed threats of collapse and carbon monoxide poisoning. [Kircher] testified about the repairs that he made and discussed his occupancy problems. The trial court entered an order giving the city the exclusive responsibility and right to make the repairs listed in the order.

The order was entered by Judge Shelton in Washtenaw Circuit Case No. 01-000560-CH on June 14, 2002. It authorized Ypsilanti to complete five particular repairs of the apartment building. The order directed Ypsilanti to complete specific, enumerated repairs to the garage, the roof, the second floor deck, the stairwell between apartment number three and apartment number four, and the building's chimney. Ypsilanti was given the authority to employ Barnes or any other contractor to complete the enumerated repairs and to "bring this property into compliance." The order provided that all costs were to be paid by Kircher. The order directed Ypsilanti or its contractors to send Kircher regular invoices for the expense of all repairs, and specified that in the event Kircher failed to pay, Ypsilanti would have a lien on the apartment building, which

would be subject to foreclosure. The order also provided that Kircher would be liable for any necessary attorney fees and costs incurred by Ypsilanti or its contractors.⁶

On November 21, 2002, Ypsilanti contracted with Barnes and his company, Barnes & Barnes, to perform the repairs to the apartment building as required by the trial court's June 14, 2002 order. As Ypsilanti's exclusive contractor,⁷ Barnes completed work at the apartment building and submitted invoices totaling \$54,376.74. Following an evidentiary hearing held on April 2, 2003, the trial court entered an April 8, 2003 order directing Kircher to pay \$54,376.74 within 30 days. The order provided that if Kircher paid the full amount, Ypsilanti's right to occupy and repair the apartment building would be terminated and the building would be fully returned to Kircher. The order provided that if Kircher failed to pay the amount due within 30 days, Ypsilanti would remain in possession of the apartment building and would be authorized to expend money to make further repairs necessary to bring the building into compliance with local building and fire ordinances. Finally, the order barred Kircher from being physically present at the apartment building "without the City Building Inspector and a representative of [Ypsilanti's] agent, Robert C. Barnes, being present also."⁸

Kircher did not pay the \$54,376.74 due under the trial court's April 8, 2003 order. On November 14, 2003, Barnes commenced Washtenaw Circuit Case No. 03-001264-CH, by filing a complaint to foreclose the lien against the apartment building. Barnes asserted that the \$54,376.74 due under the April 8, 2003 order had not been paid, and that interest was accruing at a rate of seven percent. Barnes also contended that several additional repairs had been performed at the apartment building since April 8, 2003, and that the total amount due was now therefore \$95,559.50. Barnes submitted an affidavit, in which he averred that \$95,559.50 worth of repairs had been performed at the apartment building, that Kircher had been sent timely invoices in this amount, and that this amount had not been paid. Kircher answered the complaint for foreclosure and filed a counterclaim, asserting that he had been damaged by the allegedly wrongful dispossession of his apartment building.

On December 17, 2003, Ypsilanti and Barnes filed a "Joint Motion for specific repairs and/or renovations" in Washtenaw Circuit Case No. 01-000560-CH. Ypsilanti and Barnes asserted in the motion that Kircher had never paid the amount due under the trial court's April 8, 2003 order. Accordingly, Ypsilanti and Barnes sought permission to remain in possession of the apartment building and to perform additional renovations to bring the building into compliance with Ypsilanti fire and building codes. Specifically, Ypsilanti and Barnes asserted that although

⁶ Kircher filed a claim of appeal of the June 14, 2002 order in this Court on July 22, 2002.

⁷ Although Barnes was not appointed receiver of the apartment building, as he had been with respect to the Thompson Building, Kircher argues that Barnes acted as a "de facto receiver" of the apartment building under the contract with Ypsilanti.

⁸ Kircher filed a claim of appeal of the April 8, 2003 order in this Court on May 12, 2003. This claim of appeal was dismissed by this Court because the April 8, 2003 order was "a postjudgment order that is not appealable as a matter of right."

the building was configured as a five-unit apartment complex, they should be permitted to completely "reconfigure the property into a . . . unit for use by a fraternity or sorority."

On February 11, 2004, the trial court held a hearing on the motion. Counsel for Barnes & Barnes stated that Barnes had demolished the interior of the apartment building and had discovered "hundreds" of defects that were in need of repair in order to bring the building into compliance with Ypsilanti city codes. Counsel continued:

[Barnes & Barnes] would like to convert it to a fraternity house. There's a demand for that and they've been approached for it.

Paragraph five of your [April 8, 2003] order basically says that [Barnes & Barnes] can bring the building up to code and make commercially reasonable arrangements to rent the premises.

We probably can do it without your permission, but we would like to err on the side of caution here and ask the [c]ourt to—to allow us to make this—this renovation.

Counsel for Ypsilanti concurred with Barnes, and joined in the request to reconfigure the apartment building as a fraternity or sorority house.

Kircher's attorney noted that Ypsilanti and Barnes had already spent more money than the originally approved amount of \$54,376.74, and seemed to wonder whether the trial court was intending to allow them to expend an unlimited amount of money on the apartment building. The following exchange then occurred:

MR. WARD [Kircher's counsel]: Well, Your Honor, all I'm saying is you gave them a lien [in the amount of \$54,376.74]. If they needed to get the [\$54,376.74], why didn't they foreclose their lien when it was at [\$54,376.74?]

* * *

THE COURT: Why didn't Mr. Kircher—if it's so valuable, pay the 54 to get his property back?

MR. WARD [Kircher's counsel]: —well, Your Honor, all I'm saying—at that point he wasn't able to see the property, and two wrongs don't make a right.

Kircher further explained that he had been unable to obtain financing in the amount of \$54,376.74 at the time.

The trial court then commented from the bench, all the while referring to Barnes as "the receiver," despite the fact that no receivership order had ever been entered regarding the apartment building:

What's being asked for today is to convert the property in to something that is, in the view of the receiver and probably in the view of the city, economically feasible. But, that's not the function of the [c]ourt. It isn't the function of the

[c]ourt to make property in to something that's economically feasible for one purpose or another. That's the function of the owner of the property, whoever that turns out—whoever that turns out to be.

They—it may be a good idea to make this in to a fraternity/sorority house, but that's not my role here, to decide whether it's a good idea or a bad idea, or whether that's the—the best approach from an economic viewpoint. It's not the [c]ourt's role to authorize or make—to authorize that sort of reconfiguration or make that sort of decision.

I think what has to happen here is that we now need to proceed to collect the funds that have been expended to repair this building. We've been unable to collect them because Mr. Kircher's been unwilling to pay them, and so now we are in a—in an action where the property will be foreclosed upon, it will be sold if that action prevails. And, then the highest bidder can then decide whether they want a fraternity house or a warehouse or whatever fits with code and whatever that owner decides is economically feasible for the property. That's not what I'm charged with here.

This was an action in part, at least, to abate a nuisance, and that's as far as the [c]ourt is going to extend its authority at this point.

I'm going to deny the motion to reconfigure as presently stated And, we will proceed with all dispatch on the—on the foreclosure action.

On February 23, 2004, the trial court entered an order effectuating its ruling from the bench and denying the motion to reconfigure the apartment building into a fraternity or sorority house.

On March 31, 2004, Barnes filed a motion for summary disposition in the foreclosure action, seeking the trial court's determination of the current amount of the lien. He contended that Kircher had failed to pay the \$54,376.74 due under the April 8, 2003 order, and that Kircher had also failed to pay for any of the repairs or renovations that had been performed since that time. Barnes also asserted that Kircher's counterclaim was insufficient to state a claim on which relief could be granted because Kircher had set forth no facts in support of the claim. Moreover, Barnes argued that he was entitled to governmental immunity on Kircher's counterclaim because he had been acting at all relevant times as an agent of the city of Ypsilanti. Barnes requested that the trial court determine the current amount owed by Kircher and enter a lien in that amount against the apartment building.

On April 14, 2004, Kircher answered Barnes' motion and filed a counter-motion for summary disposition on his counterclaim. Kircher contended that it was beyond dispute that he had been injured by Ypsilanti's and Barnes' actions. Kircher asserted that Barnes had exceeded his authority as Ypsilanti's contractor, and had "gutted" the entire inside of the apartment building. Moreover, Kircher asserted that he did not owe the amounts claimed by Barnes—particularly those costs incurred after the April 8, 2003 trial court order.

On May 6, 2004, the trial court entered an order granting summary disposition for Barnes pursuant to MCR 2.116(C)(10), and dismissing Kircher's counterclaim pursuant to, *inter alia*,

MCR 2.116(C)(8). The court found that there was no question of fact that Kircher owed money to Barnes for necessary repairs to the apartment building. The court indicated that it would determine the exact amount at a later time.

Meanwhile, In Docket Nos. 242697 & 242857, Kircher had appealed the trial court's June 14, 2002 order entered in Washtenaw Circuit Case No. 01-000560-CH. Kircher argued, as he did with respect to the order entered in Washtenaw Circuit Case No. 02-000434-CH, that the order was overbroad and conferred on Ypsilanti unlimited authority to make repairs and incur expenses. In the April 27, 2004 opinion, this Court disagreed with Kircher, finding that the June 14, 2002 order concerning the apartment building was narrower in scope than the June 14, 2002 order affecting the Thompson Building:

Defendant also argues, as he did [with respect to the Thompson Building], that the order does not put sufficient restraints on the city. But the order appealed in this case is significantly different from that in the case [of the Thompson Building]. First, in this case, neither Barnes nor the city was appointed receiver. Instead, the trial court granted the city the exclusive right to repair the building and fire code violations. The order merely permits the city to employ Barnes or other entities to accomplish this task. Additionally, the order is more specific with respect to the repairs to be completed. It lists the repairs that "shall be undertaken by the Plaintiff to bring this property into compliance." Accordingly, the trial court imposed sufficient restraints on the city. [*Ypsilanti Fire Marshal, supra*, slip op at 8.]

However, as in the case of the Thompson Building, this Court determined that the trial court's June 14, 2002 order did not sufficiently provide for proper judicial oversight and pre-approval of the expenses incurred in abating Fire Prevention Code and municipal code violations at the apartment building:

However, as [in the case of the Thompson Building], the order does not provide for the trial court's approval of the amount charged to [Kircher] for the repairs. In light of the harsh consequences of [Kircher's] failure to pay, the order must provide that charges to [Kircher] shall be reviewed by the trial court to determine whether they are appropriate and reasonable before [Kircher] is required to pay. [*Id.*]

On December 10, 2004 and December 13, 2004, the trial court held an evidentiary hearing for the purpose of determining the current amount owed by Kircher for repairs to the apartment building. Barnes, Jr. testified that Barnes & Barnes had initially received directions to proceed only with the five specific repairs listed in the trial court's June 14, 2002 order. He testified that Barnes & Barnes completed the five specific repairs and submitted invoices to Kircher, but that Kircher never paid. Barnes, Jr. testified that after these five initial repairs, Barnes & Barnes determined that additional repairs were necessary, moved forward with these additional repairs, and continued billing Kircher for the additional repair costs. Whereas the original five repairs had been related to the abatement of alleged Fire Prevention Code violations, Barnes, Jr. indicated that the additional repairs were completed to bring the apartment building into compliance with Ypsilanti city ordinances and to make the building economically viable. He indicated that although the trial court had denied the request to convert the property

into a fraternity or sorority house, the additional work done by Barnes & Barnes was intended to facilitate modification of the property into a fraternity or sorority house in the future in the event that Barnes ultimately received ownership of the building. He also testified that Barnes & Barnes had never asked the trial court for permission to go beyond the five specific repairs listed in the trial court's June 14, 2002 order, merely deciding on its own that these additional modifications and repairs were necessary. Barnes, Jr. admitted that Barnes & Barnes never approached the trial court or Kircher regarding any of the modifications that were made above and beyond those listed in the June 14, 2002 order, and conceded that Kircher had never received an opportunity to contest or object to any of these additional repairs and modifications.

A licensed architect testified that she believed all repairs and modifications to the apartment building had been reasonable and appropriate.

Kircher testified that following the initial five repairs listed in the trial court's June 14, 2002 order, he had not been able to arrange for financing to pay the \$54,000 owed to Barnes & Barnes. Kircher also testified that he believed the original five repairs could have been performed at a lower cost by another contractor. Kircher informed the court that approximately one month after Judge Shelton had denied Barnes' request to reconfigure the building into a fraternity or sorority house, Barnes had sought from Ypsilanti a special use permit to allow conversion of the apartment building into a fraternity or sorority house.

The trial court entered its final order in Washtenaw Circuit Case No. 01-000560-CH on January 19, 2005. The court determined that its original June 14, 2002 order had included not only the authority to make the five listed repairs pursuant to the Fire Prevention Code, but also the authority to abate violations of Ypsilanti's local building and fire codes. The trial court found that \$54,376.74 had come due on April 8, 2003 for the original five listed repairs, and that \$163,926.58 had been properly expended since that date. The trial court found that all of these costs were necessary and reasonable, and that Kircher therefore owed \$218,303.32.

On February 4, 2005, the trial court entered a judgment of foreclosure in Washtenaw Circuit Case No. 03-001264-CH. The trial court found that a lien had attached to the apartment building in the amount of \$218,303.32, and ordered the property sold.

At the sheriff's sale was held on April 28, 2005, and Barnes purchased the apartment building for \$244,535.09. Kircher objected to the judgment of foreclosure and sheriff's sale on the ground that statutorily prescribed procedures were allegedly not followed. Nonetheless, on July 6, 2005, the trial court entered an order confirming the sale to Barnes and finding that the sheriff's sale of the apartment building had been "regular in all respects."

II. Standard of Review

We review de novo a trial court's decision on a motion for summary disposition. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). Questions of statutory interpretation are likewise reviewed de novo. *Ayar v Foodland Distributors*, 472 Mich 713, 715-716; 698 NW2d 875 (2005). Clear and unambiguous statutory language is given its plain meaning and is enforced as written. *Id.* at 716.

Whether the law of the case doctrine applies is a question of law, which we review de novo. *Ashker v Ford Motor Co*, 245 Mich App 9, 13; 627 NW2d 1 (2001). The law of the case doctrine provides that, when an appellate court has made a ruling on a legal question and remanded the case for further proceedings, the legal question thus determined will not be differently determined on a subsequent appeal in the same case where the facts remain materially the same. *In re Cummin (After Remand)*, 267 Mich App 700, 704; 706 NW2d 34 (2005), rev'd in part on other grounds 474 Mich 1117 (2006). The law of the case applies "only to issues actually decided, either implicitly or explicitly, in the prior appeal." *Grievance Administrator v Lopatin*, 462 Mich 235, 260; 612 NW2d 120 (2000).

Foreclosure actions are equitable in nature. *Mitchell v Dahlberg*, 215 Mich App 718, 726; 547 NW2d 74 (1996). We review de novo a trial court's equitable decisions. *Id.* at 727. However, we review the findings of fact supporting those decisions for clear error. *Id.*

We review for an abuse of discretion the trial court's decision to appoint a receiver. *McBride v Wayne Circuit Judge*, 250 Mich 1, 4; 229 NW 493 (1930); *Band v Livonia Associates*, 176 Mich App 95, 104; 439 NW2d 285 (1989); *Wayne Co Jail Inmates v Wayne Co Chief Executive Officer*, 178 Mich App 634, 658-659; 444 NW2d 549 (1989). "The appointment of a receiver may be appropriate when other approaches have failed to bring about compliance with the court's orders." *Band, supra* at 105. We similarly review for an abuse of discretion a trial court's decision to discharge a receiver and to terminate the receivership. *Singer v Goff*, 334 Mich 163, 167; 54 NW2d 290 (1952).

III. Docket Nos. 260970 & 260971—The Thompson Building

A. The Trial Court's Jurisdiction

Kircher first argues that Ypsilanti was not entitled to maintain this nuisance-abatement action with respect to the Thompson Building because the necessary preconditions for commencing such an action under the Fire Prevention Code were never properly established, and the trial court therefore lacked jurisdiction. We disagree.

Ypsilanti filed its complaint in an attempt to abate and repair alleged unsafe and dangerous conditions at the Thompson Building. The complaint sought nuisance abatement under two separate and distinct theories. First, the complaint sought to abate certain alleged fire hazards pursuant to Michigan's Fire Prevention Code, MCL 29.1 *et seq.* The complaint also sought to abate certain alleged nuisances as violations of Ypsilanti's municipal building and fire codes.⁹

⁹ We admit that our prior decision in *Ypsilanti Fire Marshal, supra*, may have led to some confusion in this regard. In that decision, we discussed only Kircher's alleged violations of the Fire Prevention Code, and did not address the alleged violations of municipal building and fire codes. Nonetheless, it is clear from the record that Ypsilanti's original complaint was based on both alleged statutory violations and alleged municipal ordinance violations.

Kircher now contends that the trial court lacked jurisdiction to entertain this nuisance abatement action because “the necessary conditions precedent to invoking the jurisdiction of the circuit court in an action under MCL 29.23” were not met. Specifically, Kircher argues that while the Fire Prevention Code requires that nuisance abatement actions be commenced by the *state* fire marshal, the official who initiated the present action was merely a *local* fire marshal.

We previously determined in *Ypsilanti Fire Marshal, supra*, that the trial court had jurisdiction to entertain this nuisance-abatement action under the Fire Prevention Code. Therefore, Kircher’s instant argument is arguably barred by the law of the case doctrine. However, because our opinion in *Ypsilanti Fire Marshal* did not specifically address the particular argument raised here, we will briefly address the merits of Kircher’s instant claim.

We agree with Kircher that the Fire Prevention Code must be strictly construed and administered with caution. *Comm’r of State Police v Anderson*, 344 Mich 90, 95; 73 NW2d 280 (1955). We further agree that the enforcement provisions of the Fire Prevention Code may not be invoked unless and until the act’s jurisdictional preconditions are satisfied. See *Attorney General v Ankersen*, 148 Mich App 524, 550; 385 NW2d 658 (1986). Therefore, before a nuisance may be abated by way of proceedings under the Fire Prevention Code, the court must first determine that there is in fact a fire hazard that requires abatement, repair, or removal. *Id.*

However, we cannot agree with Kircher’s argument that no one other than the state fire marshal himself or herself may ever commence an action under MCL 29.23, which provides in pertinent part:

The existence of a fire hazard, of any nature, origin, or cause, is a nuisance and the nuisance may be abated, removed, corrected, and its continuance enjoined in the manner provided by law for the abatement of nuisances. If the *state fire marshal* determines that a fire hazard is imminently dangerous or menacing to human life and the public safety requires its immediate abatement, removal, correction, or discontinuance, the *state fire marshal* may bring, or cause to be brought, in the circuit court of the county in which the fire hazard is located, an action to abate, remove, correct, or discontinue the fire hazard. [Emphasis added.]

Because the instant nuisance abatement action was brought by the Ypsilanti fire marshal rather than by the *state* fire marshal, Kircher contends the circuit court was without jurisdiction to consider it.

Kircher’s argument is belied by the plain text of the Fire Prevention Code itself. The act clearly provides that the state fire marshal and the bureau of fire services “may delegate to 1 or more individuals employed as full-time fire inspectors by the organized fire department and certified under subsection (2) the authority to enforce 1 or more of the fire safety rules promulgated under this act.” MCL 29.2b(1). Ypsilanti fire marshal Jon Ichesco averred, in his affidavit which was presented to the trial court, that he contacted the state fire marshal’s office before commencing this action in an effort to obtain authority to proceed against Kircher under MCL 29.2b. While the state fire marshal’s office did not delegate absolute authority to Ichesco for all purposes, Ichesco averred that the office did specifically authorize him to “carry out . . . enforcement activities pursuant to MCL 29.2b,” and to perform “all other inspections not done

by the State Fire Marshal's office." Moreover, the lower court record also contains documentation, signed by the director of the Michigan Office of Fire Safety, certifying Ichesco as a "State Certified Fire Inspector."

Kircher has at no time offered evidence to contradict the contents of Ichesco's affidavit or the other documentary evidence pertaining to this matter. Nor has Kircher ever suggested that Ichesco was not authorized under MCL 29.2b to perform the delegated functions of the state fire marshal. Indeed, Kircher does not even mention on appeal the existence of MCL 29.2b, merely asserting that because Ichesco was not the "state fire marshal," he was not authorized to commence this action.

In light of the unrefuted documentary evidence, we conclude that Ichesco—the duly authorized Ypsilanti fire marshal with the delegated authority to "carry out . . . enforcement activities pursuant to MCL 29.2b"—was entitled to commence this nuisance-abatement action pursuant to the Fire Prevention Code. Kircher's argument that Ichesco's status as a municipal fire official deprived the circuit court of jurisdiction over this action is without merit. The Ypsilanti fire marshal was entitled to bring this action pursuant to MCL 29.23 on the basis of alleged Fire Prevention Code violations at the Thompson Building.¹⁰

B. Appointment of Receiver

Kircher next argues that the trial court's original order appointing the receiver for the Thompson Building was deficient for several reasons.

¹⁰ We hold that Ypsilanti was alternatively entitled to bring this action on the basis of Kircher's alleged violations of municipal building and fire ordinances. Home rule cities have broad power to act on behalf of municipal concerns. *Rental Property Owners Ass'n of Kent County v Grand Rapids*, 455 Mich 246, 270; 566 NW2d 514 (1997). Cities may proceed in the circuit court, under properly enacted ordinances, to abate and remove nuisances. *Saginaw v Budd*, 381 Mich 173, 178; 160 NW2d 906 (1968). The Legislature has conferred on the circuit courts broad equitable jurisdiction over nuisance-abatement proceedings, irrespective of the nature and extent of the particular alleged nuisance. MCL 600.2940(1). See also 58 Am Jur 2d, Nuisances, § 338, p 788 (a court sitting in equity "will take jurisdiction when a violation or threatened violation of [a municipal] ordinance amounts to a nuisance, not because the act is in violation of the ordinance, but because it is a nuisance"). However, we note that it is unclear from the record exactly which municipal ordinances Ypsilanti relied on in commencing this action. After searching the record, we are unable to locate the text of any provisions of the Ypsilanti building and fire codes, and we are disinclined to speculate concerning the substance of ordinances which have not been provided on appeal. On remand, it will be necessary for the trial court to specifically identify the municipal ordinances relied on in this matter, and to determine whether Kircher in fact violated those particular ordinances. The trial court must make such findings before moving forward to determine whether the costs of bringing the Thompson Building into compliance with these municipal building and fire ordinances were properly charged to Kircher.

First, Kircher contends that the order appointing the receiver was an improper delegation of the trial court's judicial authority to the city of Ypsilanti. We agree, but find that this error was harmless.

We determined in *Ypsilanti Fire Marshal, supra*, that the trial court had the jurisdiction to appoint a receiver for the Thompson Building pursuant to MCL 600.2926. That statute provides that "[c]ircuit court judges in the exercise of their equitable powers, may appoint receivers in all cases pending where appointment is allowed by law." MCL 600.2926. A court-appointed receiver is a ministerial officer of the court, charged with the task of preserving property and assets during ongoing litigation. *Cohen v Bologna*, 52 Mich App 149, 151; 216 NW2d 586 (1974). It is well settled that a receiver's possession of assets and property is tantamount to possession by the court itself. *Chronowski v Park Sproat Corp*, 306 Mich 676, 685; 11 NW2d 286 (1943). A receiver is not appointed as the agent of or for the benefit of one party or the other; rather he or she is appointed to protect and benefit both parties equally. *First Nat'l Bank v E T Barnum Wire & Iron Works*, 60 Mich 487, 499; 27 NW 657 (1886). Thus, as an officer of the court, a receiver should remain unbiased and impartial. *Id.* The position of receiver requires "exercise of [the] soundest judgment, and always the strictest impartiality[.]" *Id.*

In light of the forgoing authority, we conclude that the circuit court may not delegate the power to appoint a receiver to a private party. The power to appoint a receiver belongs exclusively to the circuit court. Therefore, to the extent that the trial court in this matter delegated to Ypsilanti the power to nominate, retain, and supervise a receiver of its own choosing, it acted improperly and exceeded its authority.

However, because Judge Shelton ratified Ypsilanti's nomination of the original receiver and the successor receiver by way of court order, we are convinced that any improper delegation of circuit court authority to Ypsilanti was cured by the trial court's subsequent orders. Accordingly, we conclude that any error in this respect was not decisive to the outcome, and we will not reverse on the basis of harmless error. *In re Gazella*, 264 Mich App 668, 675; 692 NW2d 708 (2005); see also MCR 2.613(A).

Next, Kircher contends that the trial court orders appointing the receiver and successor receiver should be set aside because the orders do not provide for the payment of a receiver's bond. We disagree.

The trial court's order appointing the original receiver did not provide for the payment of a receiver's bond. As we observed in *Ypsilanti Fire Marshal, supra*, MCL 600.2926 provides that "[i]n all cases in which a receiver is appointed the court shall provide for bond and shall define the receiver's power and duties where they are not otherwise spelled out by law." Therefore, we remanded with instructions that the trial court enter an order requiring the receiver to post a receiver's bond consistent with MCL 600.2926.

On remand, Judge Shelton did not immediately follow this Court's remand instructions. Further, at the time the initial receiver was replaced with a successor receiver, Judge Shelton again failed to provide for the posting of a receiver's bond. In fact, the trial court delayed its compliance with our explicit remand instruction for more than one year.

However, the trial court eventually complied, entering orders on July 12, 2005, which required both the original receiver and the successor receiver to post receiver's bonds consistent with the mandate of this Court and MCL 600.2926. Thus, we perceive no lasting error in this regard, and Kircher is entitled to no relief on this issue.

Kircher also contends that the trial court's receivership order constituted an abuse of discretion because the creation of a receivership is an extraordinary equitable remedy, and there existed "adequate legal remedies" in this matter. It is true that receivership is a remedy of last resort, and should not be used where another less drastic remedy exists. *Hofmeister v Randall*, 124 Mich App 443, 446; 335 NW2d 65 (1983). Because appointment of a receiver is an extraordinary remedy, a receiver will not be appointed when there exists an adequate remedy at law. *White v Fulton*, 260 Mich 346, 347; 244 NW 498 (1932). However, Kircher does not sufficiently brief this issue by explaining precisely what "adequate legal remedies" were available in this matter.¹¹ Nor does he provide citation to proper controlling legal authority. "An appellant may not merely announce his position and leave it to this Court to discover and rationalize the basis for his claims, . . . nor may he give issues cursory treatment with little or no citation of supporting authority." *Peterson Novelties, Inc v Berkley*, 259 Mich App 1, 14; 672 NW2d 351 (2003). In light of Kircher's failure to properly brief the merits of his argument, we consider this issue abandoned on appeal. *Prince v MacDonald*, 237 Mich App 186, 197; 602 NW2d 834 (1999).

Lastly, Kircher contends that the trial court's receivership order constituted an abuse of discretion because it failed to provide for proper judicial supervision and oversight of the receiver's activities and expenditures. We agree.

Kircher raised a similar argument in his previous appeal, asserting that the trial court's initial receivership order, as written and implemented, granted the receiver nearly unfettered authority to make repairs and renovations to the Thompson Building, and nearly unchecked power to charge Kircher for any such work. We agreed, and expressly directed the trial court on remand to narrow the scope of the receiver's powers and authority. As we stated in *Ypsilanti Fire Marshal, supra*, slip op at 5-6,

By giving the receiver the authority to make the Thompson building "economically viable," the order allows the receiver to make repairs beyond removing the hazards of which plaintiffs originally complained. [Ypsilanti's] reliance on the fire code does not support [its] argument that the broad scope of the order is appropriate. The quoted portion of the fire code only addresses hazards that endanger human life. It does not address the "economic viability" of the building. Accordingly, we reverse that portion of the June 14, 2002, order

¹¹ Kircher asserts that "fully adequate legal remedies" were available under Ypsilanti's "maintenance and fire prevention codes," but does not explain the precise nature of these purported remedies. This Court will not search the record in an effort to make and develop Kircher's argument for him.

providing “that the Receiver needs to make the building economically viable and functional.”

On remand, the trial court shall enter an order that more precisely defines the receiver’s duties. The listed repairs shall be in keeping with the reasons that the receivership was sought, i.e., to repair the building so that it is no longer a hazard to human life, and also in keeping with the trial court’s finding that:

[Kircher] has not complied with the [c]ourt’s May [22], 1996 order, or the July 14, 1997 order. Furthermore, I’m going to specifically find that the building is in dangerous condition and is a nuisance.

The trial court’s order must also comply with the provisions of MCL 600.2926 which provides: “In all cases in which a receiver is appointed the court shall provide for bond and shall define the receiver’s power and duties where they are not otherwise spelled out by law.”

Nonetheless, to date the trial court has never amended its original order or issued a new order to limit or otherwise narrow the scope of the receiver’s authority. To make matters worse, the trial court entered an order replacing the original receiver with a successor receiver on March 21, 2005—nearly eleven months after we issued our remand instructions in *Ypsilanti Fire Marshal*. The order appointing the successor receiver made no mention of this Court’s remand instructions, and in no way limited the authority or power of the successor receiver as required by this Court’s directive. Instead, the trial court left unchanged the framework under which the original receiver had operated, allowing the successor receiver to merely continue in the shoes of the original receiver and to carry on virtually unlimited repairs and renovations to the Thompson Building without first seeking judicial permission or approval.

“It is the duty of the lower court or tribunal, on remand, to comply strictly with the mandate of the appellate court.” *K & K Construction, Inc v Dep’t of Environmental Quality*, 267 Mich App 523, 544-545; 705 NW2d 365 (2005), quoting *Rodriguez v Gen Motors Corp (On Remand)*, 204 Mich App 509, 514; 516 NW2d 105 (1994). Despite this Court’s explicit instructions, the trial court permitted the receiver—and then the successor receiver—to continue unchecked and unsupervised, running up substantial costs and only seeking approval long after the charges were already incurred. Indeed, much of the confusion in these consolidated cases stems from the trial court’s failure to comply with our April 27, 2004 remand instructions. Our instructions were not intended as meaningless directives with no design, purpose, or reason. Instead, they were meant to bring the trial court’s existing orders into compliance with established legal rules and to effect the organized and systematic progress of this complex litigation.

Because the remand instructions were not followed, and the trial court did not approve the costs of repairs and renovations before they were incurred, Kircher necessarily received no meaningful opportunity to contest the individual costs incurred by the receiver and the successor receiver, or to offer evidence in response to the individual proposed projects at the Thompson Building. We recognize that Judge Shelton held after-the-fact evidentiary hearings in an attempt to comply with our remand instructions, and that after these hearings he ultimately approved

virtually all of the incurred costs.¹² However, we cannot determine whether Judge Shelton's findings were clearly erroneous because we are not sufficiently presented with competing evidence, which surely would have been offered by the parties had this matter proceeded as directed under our April 27, 2004 opinion. The trial court's after-the-fact approval of the numerous expenses incurred in this matter does not afford us the opportunity for meaningful review that would have followed from an organized cost-by-cost determination in the court below. Moreover, we cannot omit mention of the real possibility that by reserving review of all expenses until after the repairs and renovations were already completed, Judge Shelton in effect preordained his decision to allow or disallow each individual expenditure. It is much less subjective to evaluate the propriety of proposed repairs before they are begun than after the work is finished and the costs are already incurred.

Further, even assuming that all expenditures were properly made to abate nuisances at the Thompson Building, the trial court did not specifically separate the expenses incurred to abate violations of the Fire Prevention Code from those incurred to abate violations of Ypsilanti city ordinances. Because we do not know whether the costs were incurred to abate Fire Prevention Code violations, city code violations, or both, we necessarily have no basis from which to discern whether any individual cost fell within the parameters of our April 27, 2004 remand instructions.

After reviewing the extensive record in these consolidated cases, we are forced to conclude that the trial court abused its discretion in failing to more precisely define the receiver's and successor receiver's duties, and in failing to provide for proper judicial oversight and control of the receiver's and successor receiver's expenditures. Specifically, the trial court acted improperly by continuing to allow the receiver and successor receiver to incur costs with respect to the Thompson Building without first pre-approving the proposed expenses and separating the proposed repairs into those required to abate Fire Prevention Code violations and those required to abate local ordinance violations.

On remand, the trial court shall separate the individual costs incurred to abate violations of the Fire Prevention Code from the individual costs incurred to abate all other nuisances under the Ypsilanti building and fire codes. With respect to the latter category of expenses—those incurred to abate alleged violations of local ordinances—the trial court shall identify the specific Ypsilanti ordinance under which each repair and expense was authorized.

C. Lien and Foreclosure

Kircher claims several errors with respect to the trial court's calculation of the lien amount, the trial court's foreclosure of the lien, and the trial court's order directing that the property be sold.¹³ As an initial matter, we will not set aside a foreclosure sale in the absence of

¹² We express no opinion as to whether any individual expense was or was not appropriate. Indeed, all costs may have been proper. However, we simply do not have sufficient record evidence from which to assess Judge Shelton's findings with respect to each individual cost.

¹³ We reject Kircher's argument that the foreclosure action was not properly commenced and
(continued...)

fraud, accident, mistake, or significant irregularities. *Mitchell*, *supra* at 724-725; see also *Senters v Ottawa Savings Bank*, 443 Mich 45, 55-56; 503 NW2d 639 (1993); *Macklem v Warren Construction Co*, 343 Mich 334, 339; 72 NW2d 60 (1955). Thus, even if Kircher were correct in asserting that improper and unnecessary expenses were included in the lien, we would be disinclined to set aside the sheriff's sale.

Kircher argues that the lien against the Thompson Building was too high and should have been calculated at a lower amount. Kircher also contends that the period of redemption following the sheriff's sale should have been one year, rather than six months as the trial court ordered. We agree that the lien should have included only the costs necessarily incurred under the Fire Prevention Code. However, we find that those costs necessarily incurred to abate violations of the municipal building and fire codes are recoverable via an alternative method.

The trial court's failure to comply with our April 27, 2004 remand instructions makes complete appellate review in this matter nearly impossible. We are unable to meaningfully determine on appeal which costs should have been included in the original lien amount because the trial court never engaged in a searching cost-by-cost analysis to determine which expenses were necessary to properly abate nuisances and which expenses were not. As noted above, virtually all individual repairs to the Thompson Building were approved after-the-fact, and Kircher received essentially no opportunity to contest any of the costs before they were incurred. In light of the evident defects in the trial court's approval of the costs and expenses, we remand for a redetermination of the proper amount of the lien.

On remand, the trial court shall take evidence from the parties regarding the necessity and appropriateness of each incurred expense. MCR 7.216(5). We expressly direct the trial court to engage in a searching review of each individual cost. The trial court shall take additional evidence to determine whether each cost was in keeping with the original purpose for which the receiver was appointed—to abate the Fire Prevention Code violations and municipal code violations alleged in Ypsilanti's original complaint.¹⁴ Once the repair costs are categorized under either the Fire Prevention Code or an applicable Ypsilanti city ordinance, the court should proceed to determine whether each cost was in fact necessary to abate a violation of the act or ordinance in question.

If the trial court determines that any cost was unnecessary to abate an actual violation of the Fire Prevention Code or an applicable city ordinance, that cost must be *excluded* from the new lien amount. For instance, the trial court must exclude from the lien amount any expense that was incurred to make the property "economically viable."

(...continued)

was filed prematurely.

¹⁴ The trial court should remain cognizant of the fact that Ypsilanti's initial complaint cited both alleged Fire Prevention Code violations and alleged city ordinance violations. As noted above, the trial court must first determine whether each expense was incurred (1) to abate a violation of the Fire Prevention Code, or (2) to abate a violation of a specific Ypsilanti city ordinance. The trial court shall separate all costs into one of these categories.

If the trial court determines that any cost was necessarily incurred to properly abate a violation of the Fire Prevention Code, that cost shall be *included* in the new lien amount. The Legislature has specifically provided that costs incurred to abate violations of the Fire Prevention Code may be assessed as liens against real property. MCL 29.16(1); *Ankersen, supra* at 554.¹⁵

However, if the trial court determines that any cost was necessarily incurred to properly abate a nuisance under the Ypsilanti building or fire codes, that cost *must be excluded* from the new lien amount. This is because unlike the statutory provision allowing municipalities to impose liens for the cost of abating violations of the Fire Prevention Code, there is no general statutory provision permitting municipalities to impose liens for the cost of general nuisance abatement under city ordinance.¹⁶ In the absence of explicit statutory authorization, a city may not impose a lien on real property. *Home Owners' Loan Corp v Detroit*, 292 Mich 511, 516; 290 NW 888 (1940). Nor may the courts create or impose a lien on real property absent an express agreement by the parties or other legal authority. *Wiltse v Schaeffer*, 327 Mich 272, 282; 42 NW2d 91 (1950); *Whitehead v Barker*, 288 Mich 19, 27; 284 NW 629 (1939).

Accordingly, the costs of abating municipal-ordinance violations were not properly included in the lien amount as originally determined by the trial court. These costs were not collectible through the foreclosure proceedings held in this matter. Nonetheless, as discussed below, it does not necessarily follow that the necessary costs of abating municipal-ordinance violations are not recoverable via an alternative method.

After a new and proper lien amount is determined—which does not include the costs of nuisance abatement under the Ypsilanti building and fire codes—the trial court shall subtract that amount from the final amount of the original lien imposed against Thompson Building. The

¹⁵ Under the Fire Prevention Code, liens imposed for the expense of abating fire hazards are to be foreclosed in accordance with the procedures set forth in the construction lien act. MCL 570.1101 *et seq.* MCL 29.16(1). Under the construction lien act, the trial court may set a period of redemption, which must not exceed four months. MCL 570.1121(3). Therefore, the period of redemption following the foreclosure of any lien imposed under the Fire Prevention Code must not exceed four months. The trial court in this matter provided for a period of redemption of six months. However, this error was plainly harmless in light of the fact that it actually afforded Kircher more time to redeem than was statutorily authorized. In light of the plain language of the Fire Prevention Code, which adopts the procedures set forth in the construction lien act, Kircher's argument that the trial court should have provided for a one-year period of redemption is without merit.

¹⁶ We note that certain specific statutes allow municipalities to impose liens in limited situations. For instance, provisions of the Michigan Housing Law, MCL 125.401 *et seq.*, specifically allow liens against real property for costs related to municipal nuisance-abatement activities. MCL 125.534(7); MCL 125.541(6); MCL 125.541(7). However, neither party has argued that the Housing Law applies in this matter. Further, the Home Rule City Act, MCL 117.1 *et seq.*, allows a city to impose liens for the cost of abating a "blight violation." MCL 117.4r. However, before such liens may be imposed, a city must follow the administrative hearing procedures of MCL 117.4q. There is no indication that these statutory provisions apply in this matter, and none of these statutory provisions was raised by Ypsilanti below.

difference between the original final lien amount and the properly determined new lien amount will constitute a surplus, to be disposed of as described below.

As the fee holder and owner of the Thompson Building on the eve of foreclosure, Kircher would ordinarily be entitled to this surplus. At the same time, we note that successor receiver Beal is entitled to costs properly incurred in abating violations of the Ypsilanti building and fire codes. Indeed, in the case of any nuisance, the circuit court may abate the nuisance *at the expense of the property owner*. MCL 600.2940(3).

As noted, there exists no general statutory authority allowing municipalities to impose liens for the cost of nuisance abatement under city ordinances. However, costs incurred to abate nuisances may be collected in the same manner as debts are generally collected on execution. MCL 600.2940(4). The Legislature has provided that the expense of abating and removing nuisances in general

shall be collected . . . *in the same manner as damages and costs are collected upon execution*, excepting that the materials of any buildings, fences, or other things that may be removed as a nuisance, may be sold . . . in like manner as goods are sold on execution for the payment of debts. The [official collecting the costs] may apply the proceeds of such sale to defray the expenses of the removal, and shall pay over the balance thereof, if any, to the defendant upon demand. If the proceeds of the sale are not sufficient to defray the said expenses, he shall collect the residue thereof as before provided. [MCL 600.2940(4) (emphasis added).]

The procedure for collecting debts on execution is described in Chapter 60 of the Revised Judicature Act, MCL 600.6001 *et seq.* Accordingly, Beal may collect all costs properly incurred to abate violations of the Ypsilanti building and fire codes by way of the procedure set forth in MCL 600.6001 *et seq.*

Execution may be made against all personal property of a judgment debtor that is liable to execution at common law. MCL 600.6017. This includes United States currency or money. MCL 600.6017(6). While execution against personal property typically requires a judicial sale, execution against United States currency or money does not. Instead, currency or money may simply be "taken as money collected and paid." MCL 600.6017(6). While there exists a one-year redemption period following execution against a judgment debtor's real property, there is no statutory period of redemption following execution against a judgment debtor's personal property. MCL 600.6062; 27 Michigan Law & Practice, Remedies, § 46, p 229.

Although Kircher would ordinarily be entitled to the surplus left over after subtracting the newly calculated lien amount from the original final lien amount, we direct the trial court on remand to impound the surplus and use it to satisfy the necessary expenses incurred to properly abate violations of the Ypsilanti building and fire codes. MCL 600.2940(4); MCL 600.6017(6). After satisfying all expenses properly incurred to abate violations of the Ypsilanti building and fire codes at the Thompson Building, the trial court shall return any money remaining from the surplus to Kircher.

D. Discharge of the Receiver

Kircher also argues that the trial court abused its discretion in failing to discharge the initial receiver and in appointing a successor receiver. We conclude that the trial court abused its discretion in failing to terminate the successor receivership at the time of the sheriff's sale.

In general, a receiver should be discharged and the receivership should be terminated when the initial reasons for the receivership cease to exist. 65 Am Jur 2d, Receivers, § 141, p 756. In the context of mortgage foreclosures, a receiver should be discharged when the full amount of the judgment is received at sale, when the property is bid off for the full amount of the debt, interest, and costs, or when the applicable period of redemption has expired. 59A CJS, Mortgages, § 790, p 328. In no case should the receivership be continued beyond the time when title vests exclusively in the foreclosure-sale purchaser. 59A CJS, Mortgages, § 790, p 327.

We perceive no reason why these general rules should not be applied in the context of other lien foreclosure proceedings as well. When successor receiver Beal purchased the Thompson Building at the May 11, 2006, sheriff's sale, he took the property with full knowledge that further repairs and expenditures might be necessary to bring the property into complete compliance with Ypsilanti city codes. Having served as successor receiver of the property, Beal was clearly aware of the Thompson Building's physical condition at the time of sale. In short, when Beal purchased the property, the original reasons for the receivership ceased to exist. As record owner, Beal himself became responsible for any further necessary repairs.

We conclude that the trial court abused its discretion in failing to terminate the successor receivership at the time of the May 11, 2006, sheriff's sale of the Thompson Building. Upon Beal's purchase of the property, there remained no further need for a receiver. Beal was fully aware at the time of sale that further repairs might be necessary to abate additional code violations, but purchased the property notwithstanding this knowledge. Moreover, as purchaser and owner, Beal was able following the sale to personally effectuate any further necessary repairs without the assistance of a court-appointed receiver. On remand, the trial court shall enter an order terminating the receivership as of May 11, 2006. All costs incurred beyond that date by the successor receiver—with the exception of necessary interest, tax, and insurance costs incurred between the date of sale and the end of the redemption period—are the responsibility of Beal as record owner of the Thompson Building.

E. Propriety of Post-Appeal Expenditures

Kircher points out that the trial court amended its initial judgment of foreclosure after the claims of appeal were filed in this matter, approving several new expenses and substantially increasing the lien against the Thompson Building before the sheriff's sale was held. Kircher argues that this was erroneous. We disagree.

Because the lower court records were transmitted to this Court soon after the claims of appeal were filed, we were not initially aware of the exact extent to which the trial court amended the judgment of foreclosure after the filing of these appeals. We now know that between the filing of these appeals and the date of the sheriff's sale, the trial court amended its judgment to raise the amount of the lien against the Thompson Building to \$346,186.39.

In general, once a claim of appeal is filed with this Court, the trial court may not amend the judgment appealed from except pursuant to an order of this Court, by stipulation of the

parties, or as otherwise provided by law. MCR 7.208(A); *Admiral Ins Co v Columbia Casualty Ins Co*, 194 Mich App 300, 314; 486 NW2d 351 (1992). Indeed, the filing of a claim of appeal typically divests the circuit court of its jurisdiction to amend its final orders and judgments. *Wilson v Gen Motors Corp*, 183 Mich App 21, 41; 454 NW2d 405 (1990); *Vallance v Brewbaker*, 161 Mich App 642, 648; 411 NW2d 808 (1987).

However, an exception to these general rules exists when property is held by the trial court for conservation or management. MCR 7.208(D). In such cases, the trial court “retains jurisdiction over the property pending the outcome of the appeal, except as the Court of Appeals otherwise orders.” MCR 7.208(D).

Here, the Thompson Building was held in receivership for the express purposes of management and conservation. Accordingly, the trial court retained jurisdiction under MCR 7.208(D) to amend the judgment of foreclosure and increase the amount of the lien against the Thompson Building, even after Kircher filed the claims of appeal in this matter. We reject Kircher’s argument that the trial court lacked the authority to amend the judgment of foreclosure and raise the amount of the lien after the claims of appeal were filed.

F. Costs and Fees

Kircher next contends that the trial court erred in overcompensating the receiver, asserting that the percentage-based fees allowed to Barnes were excessive. Kircher also suggests that the trial court erred in granting attorney fees to the receiver. As an initial matter, we note that these arguments are barred by the law of the case doctrine. We ruled in *Ypsilanti Fire Marshal, supra*, that the broad order allowing receiver’s fees and attorney fees in relation to the Thompson Building had been properly entered by the trial court. However, even if these arguments had not been previously addressed, Kircher has abandoned the issues by failing to specifically raise them in his statement of questions presented. MCR 7.212(C)(5); *Caldwell v Chapman*, 240 Mich App 124, 132; 610 NW2d 264 (2000); *Grand Rapids Employees Independent Union v Grand Rapids*, 235 Mich App 398, 409-410; 597 NW2d 284 (1999); *Marx v Dep’t of Commerce*, 220 Mich App 66, 81; 558 NW2d 460 (1996). Although several of Kircher’s questions presented raise the general appropriateness of certain costs, none of the questions presented specifically identifies the matter of receiver’s fees or attorney fees. We decline to further address the merits of these arguments, which have not been properly presented.

G. Kircher’s Counterclaim

Kircher also argues that the trial court erred in dismissing his counterclaim in this matter. We disagree. It is axiomatic that conclusory statements unsupported by factual allegations are insufficient to state a cause of action. *Churella v Pioneer State Mut Ins Co*, 258 Mich App 260, 272; 671 NW2d 125 (2003); *ETT Ambulance Service Corp v Rockford Ambulance, Inc*, 204 Mich App 392, 395; 516 NW2d 498 (1994). In his counterclaim, Kircher put forth only conclusory assertions, contained in broad, generalized sentences and unsupported by factual allegations. He claimed only that Ypsilanti’s conduct had caused him to incur financial loss. He did not identify with any specificity the manner in which he had been harmed or the precise nature of his injuries. The counterclaim was therefore insufficient to state a claim upon which relief could be granted. MCR 2.116(C)(8); *Churella, supra* at 272.

IV. Docket Nos. 260972 & 260973—The Apartment Building

A. The Trial Court's Jurisdiction

Similar to the argument raised above with respect to the Thompson Building, Kircher argues that Ypsilanti was not entitled to maintain this action with respect to the apartment building because the necessary preconditions for commencing such an action under the Fire Prevention Code were never established. We disagree for the reasons stated in section III.A, above.

The unrefuted documentary evidence showed that Ypsilanti fire marshal John Ichescio was delegated the authority to “carry out . . . enforcement activities pursuant to MCL 29.2b.” Therefore, we hold that he was entitled to commence this action under MCL 29.23 on the basis of alleged Fire Prevention Code violations at Kircher’s apartment building.¹⁷

B. “After-Discovered” Municipal Code Violations

As in Washtenaw Circuit Case No. 02-000434-CH, Ypsilanti originally filed its complaint in Washtenaw Circuit Case No. 01-000560-CH to abate alleged violations of both the Fire Prevention Code and certain Ypsilanti municipal ordinances. At no time after the initial complaint was filed did Ypsilanti seek to narrow the scope of this action to alleged violations of the Fire Prevention Code alone, or to otherwise discontinue that portion of the action seeking to abate municipal code violations at the apartment building. As we noted above, some of the confusion in these consolidated appeals may stem from our April 27, 2004 opinion itself. There, with respect to the apartment building, we discussed only the five initial repairs under the Fire Prevention Code that were included in the trial court’s June 14, 2002 order. We did not discuss any alleged violations of Ypsilanti municipal ordinances.

However, in *Ypsilanti Fire Marshal, supra*, we in no way limited the scope of Ypsilanti’s authority to the five initial repairs originally listed by the trial court. Instead, we merely expressed our view that the trial court’s order with respect to the apartment building—which listed five specific necessary repairs—was narrower and therefore more defensible than the open-

¹⁷ Also as above, Ypsilanti was alternatively entitled to bring this action on the basis of alleged violations of municipal building and fire ordinances. As noted, cities may proceed in the circuit court, under properly enacted ordinances, to abate and remove nuisances. *Budd, supra* at 178. The Legislature has conferred on the circuit courts broad equitable jurisdiction over nuisance-abatement proceedings, irrespective of the nature and extent of the particular alleged nuisance. MCL 600.2940(1). See also 58 Am Jur 2d, Nuisances, § 338, p 788. However, we note that it is unclear from the record exactly which municipal ordinances Ypsilanti relied on in commencing this action. After searching the record, we are unable to locate the text of any provisions of the Ypsilanti building and fire codes, and we are disinclined to speculate concerning the substance of ordinances which have not been provided on appeal. As in the case of the Thompson Building, it will be necessary on remand for the trial court to specifically identify the municipal ordinances relied on in this matter, and to determine whether Kircher in fact violated those particular ordinances.

ended, broad order entered by the trial court with respect to the Thompson Building. Because the order concerning the apartment building was more precise in its description of the necessary repairs and modifications, we determined that less specific remand instructions were required in the case of the apartment building than in the case of the Thompson Building. We did not, however, decide that the trial court's June 14, 2002 order was in any way *limited* to the five repairs listed therein, or that the trial court was without authority to order the abatement of additional nuisances or violations at the apartment building.

Because we did not decide that the trial court's June 14, 2002 order limited the scope of Ypsilanti's authority to repair the apartment building, we must reject Kircher's claims to the contrary. The law of the case doctrine does not bar the trial court's finding that Ypsilanti was entitled to proceed with other nuisance-abatement projects at the apartment building beyond the original five listed repairs. Nor was it clearly erroneous for the trial court to determine that Ypsilanti had the authority to proceed with the abatement of municipal ordinance violations at the apartment building. Indeed, Kircher was at all times on notice that Ypsilanti was concerned not only about alleged Fire Prevention Code violations, but also numerous alleged municipal code violations as well.

Moreover, we find no record support for Kircher's contention that the code violations alleged by Ypsilanti were not within the original contemplation of the parties and were not included within the scope of the June 14, 2002 order. We reject Kircher's argument that the 178 code violations referred to by the trial court were "after-discovered," and find that those alleged violations were the same as the "178 various code violations" complained of in Ypsilanti's original complaint. In light of the fact that these 178 alleged municipal code violations were included in the original complaint, we conclude that the authority to abate these violations was necessarily included within the scope of the trial court's June 14, 2002 order and this Court's April 27, 2004 remand instructions.

C. Lien and Foreclosure

Kircher claims several errors with respect to the trial court's calculation of the lien amount, the trial court's foreclosure the lien, and the trial court's order directing that the apartment building be sold.¹⁸ As noted above, we will not set aside a foreclosure sale in the

¹⁸ We reject Kircher's argument that the foreclosure action was not properly commenced because it was filed prematurely. Because the lien was granted to Ypsilanti and the foreclosure action was brought by Barnes, we agree with Kircher that the foreclosure action was not brought by the real party in interest. MCL 600.2041; MCR 2.201(B). A real party in interest is one who is vested with the right of action on a given claim, although the beneficial interest may be in someone else. *Blue Cross & Blue Shield of Michigan v Eaton Rapids Comm Hospital*, 221 Mich App 301, 311; 561 NW2d 488 (1997). However, had this issue been properly raised, the trial court could have allowed substitution of the parties at any time during the pendency of this litigation. MCR 2.202(D). Therefore, this was harmless error, and we do not reverse on the basis of error that was not decisive to the outcome. *In re Gazella, supra* at 675; see also MCR 2.613(A).

absence of fraud, mistake, accident, or significant irregularities. *Mitchell, supra* at 724-725; see also *Senters, supra* at 55-56; *Macklem, supra* at 339. Thus, even if Kircher were correct in asserting that the trial court improperly included unnecessary expenses in the lien amount, we would not be inclined to vacate the sheriff's sale in this matter.

Like the assertions made with respect to the Thompson Building, Kircher asserts that the lien against the apartment building was too high and should have been calculated at a lower amount. However, as above, we are unable to meaningfully review the trial court's findings, and cannot determine whether the lien amount was correctly calculated. Virtually all individual repairs and renovations to the apartment building were approved after-the-fact, and Kircher received no meaningful opportunity to contest any of the costs before they were incurred. Therefore, we remand for a redetermination of the proper amount of the lien against the apartment building. As in the case of the Thompson Building, the trial court shall allow Kircher to separately contest each cost and shall take evidence from the parties regarding the necessity and appropriateness of each incurred expense. MCR 7.216(5). The trial court shall determine whether each cost was in keeping with the original purpose for which Ypsilanti's complaint was filed—to abate the alleged Fire Prevention Code violations and municipal code violations at the apartment building.

The trial court shall follow the same procedure as that outlined in section III.C, above. On remand, the trial court must first determine whether each expense was incurred (1) to abate a violation of the Fire Prevention Code, or (2) to abate a violation of an Ypsilanti municipal code. The trial court shall separate all costs into one of these two categories. Once all costs are categorized under either the Fire Prevention Code or an applicable Ypsilanti city ordinance, the court should proceed to determine whether each cost was in fact necessary to abate a violation of the act or ordinance in question.

If the trial court determines that any cost was unnecessary to abate an actual violation of the Fire Prevention Code or an applicable city ordinance, that cost must be *excluded* from the new lien amount. For instance, the trial court must exclude from the lien amount any expense that was incurred to make the property "economically viable."

If the trial court determines that any cost was necessarily incurred to properly abate a violation of the Fire Prevention Code, that cost shall be *included* in the new lien amount. The Legislature has specifically provided that costs incurred to abate violations of the Fire Prevention Code may be assessed as liens against real property. MCL 29.16(1); *Ankersen, supra* at 554.¹⁹

¹⁹ Under the Fire Prevention Code, liens imposed for the expense of abating fire hazards are to be foreclosed in accordance with the procedures set forth in the construction lien act. MCL 570.1101 *et seq.* MCL 29.16(1). Under the construction lien act, the trial court may set a period of redemption, which must not exceed four months. MCL 570.1121(3). Therefore, the period of redemption following the foreclosure of any lien imposed under the Fire Prevention Code must not exceed four months. The trial court in this matter provided for a period of redemption of six months. However, this error was plainly harmless, especially in light of the fact that it actually afforded Kircher two additional months to redeem. In light of the plain language of the Fire
(continued...)

However, if the trial court determines that any cost was necessarily incurred to properly abate a nuisance under the Ypsilanti building or fire codes, that cost *must be excluded* from the new lien amount. Unlike the statutory provision allowing municipalities to impose liens for the cost of abating violations of the Fire Prevention Code, there is no general statutory provision permitting municipalities to impose liens for the cost of general nuisance abatement under city ordinance. In the absence of explicit statutory authorization, a city may not impose a lien on real property. *Home Owners' Loan Corp., supra* at 516. Nor may the courts create or impose a lien on real property absent an express agreement by the parties or other legal authority. *Wiltse, supra* at 282; *Whitehead, supra* at 27.

Therefore, the costs of abating municipal-ordinance violations were not properly included in the lien amount as originally determined by the trial court, and these costs were not collectible through the foreclosure proceedings held in this matter. Nonetheless, it does not necessarily follow that Barnes may not recover the necessary costs of abating municipal-ordinance violations at the apartment building by way of an alternative method.

After a new and proper lien amount is determined—which does not include the costs of nuisance abatement under the Ypsilanti building and fire codes—the trial court shall subtract that amount from the final amount of the original lien imposed against apartment building. The difference between this original final lien amount and the properly determined new lien amount will constitute a surplus, to be disposed of as described below.

As the owner of the apartment building on the eve of foreclosure, Kircher would ordinarily be entitled to this surplus. However, Barnes—as purchaser of the apartment building at sheriff's sale—is entitled to recover from Kircher the costs properly incurred in abating violations of the Ypsilanti building and fire codes. MCL 600.2940(3).

Costs incurred to abate nuisances may be collected in the same manner as debts are generally collected on execution. MCL 600.2940(4). Accordingly, Barnes may collect all costs properly incurred to abate violations of the Ypsilanti building and fire codes by way of the procedure set forth in MCL 600.6001 *et seq.*

As discussed above, execution may generally be made against all personal property, including United States currency or money. MCL 600.6017(6). Execution against United States currency or money does not require a judicial sale. MCL 600.6017(6). Instead, currency or money may simply be “taken as money collected and paid.” MCL 600.6017(6). While there exists a one-year redemption period following execution against a judgment debtor's real property, there is no statutory period of redemption following execution against personal property. MCL 600.6062; 27 Michigan Law & Practice, Remedies, § 46, p 229.

Although Kircher would ordinarily be entitled to the surplus left over after subtracting the new lien amount from the originally calculated final lien amount, we direct the trial court on

(...continued)

Prevention Code, which adopts the procedures set forth in the construction lien act, Kircher's argument that the trial court should have provided for a one-year period of redemption is without merit.

remand to impound the surplus and use it to satisfy any necessary expenses properly incurred to abate violations of the Ypsilanti building and fire codes at the apartment building. MCL 600.2940(4); MCL 600.6017(6). After satisfying all expenses properly incurred to abate violations of the Ypsilanti building and fire codes at the apartment building, the trial court shall return any money remaining from the surplus to Kircher.

D. Discharge of the “De Facto” Receiver

Unlike in the case of the Thompson Building, no receiver was ever appointed in the case of the apartment building. As we noted in *Ypsilanti Fire Marshal, supra*, slip op at 8,

[T]he order appealed in [the case of the apartment building] is significantly different from that in the case [of the Thompson Building]. First, in this case, neither Barnes nor the city was appointed receiver. Instead, the trial court granted the city the exclusive right to repair the building and fire code violations. The order merely permits the city to employ Barnes or other entities to accomplish this task.

However, as noted above, Barnes was appointed as Ypsilanti’s exclusive agent to perform repairs and renovations at the apartment building. Further, Barnes was given nearly carte blanche authority by Ypsilanti to determine the necessity of repairs and to decide how to proceed with the work. Therefore, we agree with Kircher that Barnes essentially acted as a “de facto” receiver of the apartment building.

When Barnes acquired the apartment building at sheriff’s sale, paying the full amount of the lien, he took the property with full knowledge of the fact that further expenses were likely necessary to bring the property into compliance with Ypsilanti city codes. Barnes had served as Ypsilanti’s exclusive contractor at that property, and was clearly aware of the apartment building’s physical condition. Thus, when Barnes purchased the property, the necessity of Ypsilanti’s exclusive authority to possess and repair the apartment building necessarily ceased to exist.

We conclude that the trial court abused its discretion in failing to terminate Ypsilanti’s authority to possess and repair the apartment building at the time of the sheriff’s sale to Barnes. Upon Barnes’ purchase of the property, there remained no further need for court oversight of necessary repairs and nuisance-abatement activities. Barnes was fully aware at the time of sale that further repairs were necessary to abate municipal code violations, but purchased the property anyway. As purchaser and owner, Barnes was then able to effectuate any further necessary repairs without the assistance of Ypsilanti or the trial court. On remand, the trial court shall enter an order terminating Ypsilanti’s authority over the apartment building as of the date of the sheriff’s sale. All costs incurred by Ypsilanti or its contractors beyond that date—with the exception of necessary interest, tax, and insurance costs incurred between the date of sale and the end of the redemption period—are the responsibility of Barnes, as record owner of the property.

E. Costs and Fees

Kircher suggests that the trial court erred in overcompensating Ypsilanti’s contractor, asserting that the percentage-based fee allowed to Barnes in this matter was “excessive, and no

authority was cited for a court of equity allowing a mark-up of this magnitude.” Kircher also suggests that the trial court erred in granting attorney fees in this matter. However, Kircher has abandoned these issues by failing to specifically raise them in his statement of questions presented. MCR 7.212(C)(5); *Caldwell, supra* at 132; *Grand Rapids Employees, supra* at 409-410; *Marx, supra* at 81. As above, although several of Kircher’s questions presented broadly raise the general appropriateness of costs and expenditures, none of the questions presented identifies the particular matter of contractor’s fees or attorney fees. We decline to address these arguments, which have not been properly presented for our review.

F. Kircher’s Counterclaim

Kircher also argues that the trial court erred in dismissing his counterclaim in this matter. We disagree. Conclusory statements unsupported by factual allegations are insufficient to state a cause of action. *Churella, supra* at 272; *ETT Ambulance, supra* at 395. In his counterclaim, Kircher put forth only conclusory assertions, contained in broad, generalized sentences and unsupported by factual allegations. He claimed that Ypsilanti’s conduct had caused him to incur financial loss, but did not allege with any specificity the manner in which he had been harmed or the precise nature of his injuries. Kircher’s counterclaim was legally insufficient to state a claim. MCR 2.116(C)(8); *Churella, supra* at 272.

IV. Remand to Different Trial Judge

In both Docket Nos. 260970 & 260971, and Docket Nos. 260972 & 260973, Kircher argues that proceedings on remand should be assigned to a different trial judge, to be determined by the state court administrative office. We disagree.

We recognize that if proper procedures had been followed in this matter from the outset, these consolidated appeals may not have been necessary. However, we are also cognizant of the strong probability that any judge would have grown weary of this protracted and oft-irksome matter.

Kircher has failed to demonstrate that the trial judge was in any way actually prejudiced or biased. *Armstrong v Ypsilanti Twp.* 248 Mich App 573, 597; 640 NW2d 321 (2001). At most, Kircher has shown an understandable frustration with the protracted proceedings involved in this matter. The mere fact that a judge rules against a litigant, even if the rulings are determined to be erroneous, is not sufficient to require disqualification or reassignment. *Id.* at 597-598. We decline Kircher’s request to involve the state court administrative office or to reassign this matter on remand to a different trial judge. Reassignment to a different judge at this time would necessarily entail a further waste of time and judicial resources. *People v Evans*, 156 Mich App 68, 72; 401 NW2d 312 (1986).

V. Conclusion

In light of our resolution of these consolidated appeals, we decline to address the constitutional issues raised by Kircher in these cases.²⁰

In Docket Nos. 260970 & 260971, we affirm the trial court's order appointing the receiver. We also affirm the trial court's order granting receiver's fees, attorney fees, and costs. We affirm the foreclosure proceedings and judgment of foreclosure to the extent that they involved the lien imposed for expenses properly incurred under the state Fire Prevention Code. Finally, we affirm the dismissal of Kircher's counterclaim pursuant to MCR 2.116(C)(8).

We vacate the judgment of foreclosure and foreclosure proceedings to the extent that they involved the collection of expenses incurred solely under the municipal building and fire codes. We remand for entry of an order terminating the successor receivership at the time of the sheriff's sale, and for the following further proceedings.

On remand, the trial court shall determine whether each expense was incurred (1) to abate a violation of the Fire Prevention Code, or (2) to abate a violation of the Ypsilanti building and fire codes. For expenses falling into the second category, the court shall state with specificity which provision of the city codes authorized the charges. The trial court shall determine which of the individual expenses were properly incurred to abate violations of the Fire Prevention Code, and shall include these expenses in the amount of the foreclosed lien. The trial court shall then determine which of the individual expenses were properly incurred to abate violations of the Ypsilanti building and fire codes, and shall exclude these expenses from the lien amount as surplus. All costs properly incurred to abate violations of the Ypsilanti building and fire codes shall be paid out of this surplus, and any remainder left after payment of these expenses shall be disbursed to Kircher.

²⁰ Relying on *Wayne Co v Hathcock*, 471 Mich 445; 684 NW2d 765 (2004), Kircher cursorily suggests that his properties have been taken by Ypsilanti without just compensation. Even assuming the requisite state action could be demonstrated, we disagree with Kircher's contention, which disregards the well-established nuisance exception to the prohibition on governmental takings. The federal and state constitutions both proscribe the taking of private property for public use without just compensation. US Const, Am V; Const 1963, art 10, § 2; *Adams Outdoor Advertising v East Lansing (After Remand)*, 463 Mich 17, 23; 614 NW2d 634 (2000); *Oakland Co Bd of Rd Comm'rs v JBD Rochester, LLC*, 271 Mich App 113, 114; 718 NW2d 845 (2006). The Taking Clause of the Fifth Amendment is substantially similar to the Taking Clause of the Michigan Constitution, *Tolksdorf v Griffith*, 464 Mich 1, 2; 626 NW2d 163 (2001), and the two provisions should generally be interpreted coextensively, see *Peterman v Dep't of Natural Resources*, 446 Mich 177, 184 n 10; 521 NW2d 499 (1994). The nuisance exception to the prohibition on unconstitutional takings provides that because no individual has the right to use his or her property so as to create a nuisance, "the [s]tate has not 'taken' anything when it asserts its power to enjoin [a] nuisance-like activity." *Keystone Bituminous Coal Ass'n v DeBenedictis*, 480 US 470, 491 n 20; 107 S Ct 1232; 94 L Ed 2d 472 (1987). Indeed, "[c]ourts have consistently held that a [s]tate need not provide compensation when it diminishes or destroys the value of property by stopping illegal activity or abating a public nuisance." *Id.* at 492 n 22. Because Ypsilanti was exercising its legitimate police power to abate the alleged nuisances on Kircher's property, no unconstitutional takings occurred.

In Docket Nos. 260970 & 260971, we affirm the trial court's order authorizing Ypsilanti to take possession of and make necessary repairs to the apartment building. We also affirm the trial court's order granting contractor's fees, attorney fees, and costs. We affirm the foreclosure proceedings and judgment of foreclosure to the extent that they involved the lien imposed for expenses properly incurred under the state Fire Prevention Code. Finally, we affirm the dismissal of Kircher's counterclaim pursuant to MCR 2.116(C)(8).

We vacate the judgment of foreclosure and foreclosure proceedings to the extent that they involved the collection of expenses incurred solely under the municipal building and fire codes. We remand for entry of an order terminating Ypsilanti's right to possession and to make necessary repairs at the time of the sheriff's sale, and for the following further proceedings.

On remand, the trial court shall determine whether each expense was incurred (1) to abate a violation of the Fire Prevention Code, or (2) to abate a violation of the Ypsilanti building and fire codes. For expenses falling into the second category, the court shall state with specificity which provision of the city codes authorized the charges. The trial court shall determine which of the individual expenses were properly incurred to abate violations of the Fire Prevention Code, and shall include these expenses in the amount of the foreclosed lien. The trial court shall then determine which of the individual expenses were properly incurred to abate violations of the Ypsilanti building and fire codes, and shall exclude these expenses from the lien amount as surplus. All costs properly incurred to abate violations of the Ypsilanti building and fire codes shall be paid out of this surplus, and any remainder left after payment of these expenses shall be disbursed to Kircher.

In Docket Nos. 260970 & 260971, we affirm in part, vacate in part, and remand for further proceedings. In Docket Nos. 260972 & 260973, we also affirm in part, vacate in part, and remand for further proceedings. We do not retain jurisdiction.

/s/ Kathleen Jansen
/s/ Stephen L. Borrello
/s/ Jessica R. Cooper

1460.01. - Property Maintenance Code.

For the purpose of regulating and governing the conditions and maintenance of all premises and any structures thereon; providing standards for supplied utilities and facilities, other physical aspects of structures, and conditions essential to ensure that structures are safe, sanitary, and fit for occupation and use; and providing a mechanism for condemnation of structures unfit for occupancy and use and the demolition of such structures, the 2009 International Property Maintenance Code ("IPMC") is hereby adopted as if fully set forth herein, with the following additions, deletions, and alterations:

- (a) When used in the IPMC:
 - (1) "[Name of jurisdiction]" and "the jurisdiction" are replaced with "Lansing" or "the City."
 - (2) "International Building Code" is replaced with "the Building Code, as adopted in Chapter 1420 of the Lansing Codified Ordinances."
 - (3) "International Mechanical Code" is replaced with "the Mechanical Code, as adopted in Chapter 1426 of the Lansing Codified Ordinances."
 - (4) "ICC Electrical Code" is replaced with "the Electrical Code, as adopted in Chapter 1424 of the Lansing Codified Ordinances."
 - (5) "International Zoning Code" is replaced with "the Zoning Code, Title Six of Part Twelve of the Lansing Codified Ordinances."
 - (6) "International Fire Code" is replaced with "the Fire Code, as adopted in Chapter 1610 of the Lansing Codified Ordinances."
 - (7) "International Plumbing Code" is replaced with "the Plumbing Code, as adopted in Chapter 1422 of the Lansing Codified Ordinances."
 - (8) "Department of Property Maintenance Inspection" and "Department" are replaced with "Office of Code Compliance."
 - (9) "Legal representative of the jurisdiction," "legal officer of the jurisdiction," and "legal counsel of the jurisdiction" are replaced with "City Attorney."
 - (10) "Appointing authority" is replaced with "Mayor."
 - (11) "Appeals Board" is replaced with "Building Board of Appeals."
- (b) The following language is added to Section 102.6 after the word "designated": By the Federal, State, or local government.
- (c) Section 103.2 is deleted.
- (d) The text of Section 103.3 is replaced with the following: The Code Official has the authority to appoint Code Compliance Officers and to delegate to any of them any of his or her duties or functions under this Code.
- (e) The text of Section 103.5 is replaced with the following: The fees for services performed

by the Office of Code Compliance under this Code shall be established by Council Resolution.

- (f) The following language is added to the end of Section 104.1: The Office of Code Compliance is responsible for enforcing this Code and acts as the Local Health Department under Part 24 of the Public Health Code, PA 368 of 1978. The Office of Code Compliance may also enforce any provision of the Housing Law of Michigan, PA 167 of 1917.
- (g) The following language is added to the end of Section 106.1: Unless otherwise provided, a property's owner is responsible for violations of this Code occurring on the property, even where this Code imposes an additional duty on the occupant or where the owner has imposed responsibility on the occupant by agreement.
- (h) The text of Section 106.3 is replaced with the following: The Code Official and all Code Compliance Officers are hereby designated as authorized City Officials for the purpose of issuing municipal civil infraction notices directing alleged violators to appear at the City of Lansing Municipal Ordinance Violations Bureau or a local court of competent jurisdiction. Unless otherwise provided in this Code or by State law, any person in violation of any provision of this Code is responsible for a municipal civil infraction and subject to a \$500.00 fine and all other penalties and remedies allowed by law. Any person in violation of Section 108.4.1 or Section 108.5 is responsible for a misdemeanor and subject to the penalties provided in Section 202.99(b) of the Lansing Codified Ordinances and all other penalties and remedies allowed by law. If a violation of this Code is not corrected as required by the notice of violation given pursuant to Section 107, the Code Official may institute the appropriate proceeding at law or in equity to restrain, correct, or abate such violation; or to require the removal or termination of any unlawful occupancy of the structure. With the exception of the 30 days within which a vacant structure must be closed pursuant to Section 108.2, the Code Official has the authority to grant an extension of the time specified in the notice of violation, upon request by the person responsible for the violation, provided that the person agrees to correct the violation within the extended time period to be granted and the Code Official determines that a condition dangerous to life or property will not be created or perpetuated by granting such extension. No such extension of time for the correction of a violation will extend the time for filing an appeal.
- (i) Section 106.6 is added, to read as follows: Violations of Section 302.4 and violations of Section 308 are hereby declared to be nuisances and may be abated by the City if not corrected within the time provided in the notice given pursuant to Section 107. Any expense incurred in abating a nuisance pursuant to this section, including an administrative service fee, shall be paid by the owner or party in interest whose name appears on the City's real property tax assessment records. The owner or party in

interest whose name appears on the City's real property tax assessment records shall be notified of the amount owed by first class mail at the address shown on the City's real property tax assessment records. After 30 days, any unpaid amount shall be reported to the City Assessor for placement on the next tax roll of the City and imposition of a lien against the property on which the nuisance was located, as permitted by State law.

- (j) When used in Section 107.1, "person" is replaced with "persons."
- (k) In Section 107.2:
 - (1) The following language is added to the end of number 4: For violations of Section 302.4, the notice shall require correction within 7 days.
 - (2) The text of number 6 is replaced with the following: Inform the property owner that, when permitted by law, a lien may be imposed upon the property.
- (l) The following language is added to the end of Section 108.1.1: Any structure that is a "dangerous building" as defined in the Housing Law of Michigan, PA 167 of 1917, is also an unsafe structure.
- (m) The text of Section 108.5 is replaced with the following: Any structure condemned and placarded by the Code Official shall be vacated. No person shall occupy any such structure or allow any domestic animal to occupy any such structure. No person shall operate equipment condemned and placarded by the Code Official. Repairs required by a correction order may be made during the hours of 8 am and 5 pm on Mondays through Fridays or at other times for which the Code Compliance Office has granted permission. The Code Compliance Office shall grant permission for repairs to be made at other reasonable times set by Department policy if the person seeking permission has obtained all permits necessary for the work to be done and provides documentation indicating that the work cannot be performed between 8 am and 5 pm on Mondays through Fridays.
- (n) Section 108.8 is added, to read as follows: The owner of any structure placarded pursuant to Section 108.4 is responsible for paying a monthly, non-refundable administrative fee while the placard remains on the structure. The administrative fee shall be established by Council resolution in an amount sufficient to defray the cost incurred by the City to monitor the structure for the purpose of preventing public safety hazards. The owner or party in interest whose name appears on the City's real property tax assessment records shall be notified of the amount owed by first class mail at the address shown on the City's real property tax assessment records. After 30 days, any unpaid amount shall be reported to the City Assessor for placement on the next tax roll of the City and imposition of a lien against the property, as permitted by State law.
- (o) Section 108.9 is added, to read as follows: The Code Official may request permission to

inspect any structure intended to be used as a dwelling when that structure has remained vacant for 180 days. If permission to inspect is denied, the Code Official may seek a warrant from a court of competent jurisdiction.

- (p) Section 110 is deleted. In its place, MCL 125.538-125.542, with the exception of MCL 125.541c, from Article VII of the Housing Law of Michigan, PA 167 of 1917, are hereby adopted by reference. Pursuant to MCL 125.534(6), regardless of whether or not the cost of repair of a structure exceeds its state equalized value, the Code Official may bring a court action to remove or rehabilitate it if (1) it is an unsafe structure pursuant to Section 108.1.1, (2) it remains vacant or boarded, and (3) a significant attempt has not been made to rehabilitate it for a period of 24 consecutive months.
- (q) Section 111.1 is replaced with the following: Appeal of a decision that a structure is a dangerous building pursuant to MCL 125.542 shall follow the procedures described in the Housing Law of Michigan, PA 167 of 1917, and adopted in subsection (p). Any person directly affected by any other decision of the Code Official or notice or order issued under this Code may appeal to the Building Board of Appeals. The Code Official shall be an ex-officio member of the Building Board of Appeals when it hears appeals brought under this Code, but the Code Official shall have no vote on any matter before the Board. Written application for an appeal must be filed within 20 days of service of the decision, notice, or order being appealed. An application for appeal must be based on a claim that the true intent of this Code or the rules legally adopted thereunder have been incorrectly interpreted, the provisions of this Code do not apply, or the purposes of this Code's requirements are adequately fulfilled by other means.

(r) Sections 111.2-111.7 are deleted.

(s) The following definitions replaces those provided in Section 202:

Person. Any legal entity.

(t) The definitions of "inoperable motor vehicle" and "operator" are deleted.

(u) The following definitions are added to Section 202:

Absentee landlord. Any owner of rental property whose principal residence is located more than forty miles from the corporate limits of the City.

Code Compliance Officer. Any duly authorized representative of the Code Official.

Dwelling. Any "dwelling," as defined in the Housing Law of Michigan, PA 167 of 1917.

Leasehold. Any "leasehold" as defined in the Housing Law of Michigan, PA 167 of 1917.

Motor vehicle. Any "motor vehicle" as defined in the Michigan Vehicle Code, PA 300 of 1949.

Rental property. Any premises, dwelling, dwelling unit, or rooming unit which is not occupied on a daily basis by the owner(s), and which is offered to let, to hire, or to assign for a period of more than 30 days to any person(s) for any or no consideration.

- (v) The following language is added to the end of Section 302.4: no mattresses or indoor furniture shall be kept on exterior property or premises.
- (w) The first paragraph of Section 302.4 is replaced with the following: All premises shall be maintained free of weeds and of grass eight inches or more in height.
- (x) The text of Section 302.8 is replaced with the following: No motor vehicle that is inoperative, stripped, dismantled, or in a state of major disassembly or disrepair may be kept on any exterior premises. Motor vehicles may be removed from private property in accordance with the towing regulations established by the State as the "special anti-theft laws" sections of Division II of the Michigan Vehicle Code, MCL 257.252–MCL 257.254.
- (y) When used in Section 304.14, "during the period from [date] to [date]" is replaced with "between May and October."
- (z) In Sections 602.3 and 602.4, "during the period from [date] to [date]" is deleted.

(Ord. No. 1181, § 1, 11-19-12)

HOUSING LAW OF MICHIGAN (EXCERPT)
Act 167 of 1917

125.538 Dangerous building prohibited.

Sec. 138. It is unlawful for any owner or agent thereof to keep or maintain any dwelling or part thereof which is a dangerous building as defined in section 139.

History: Add. 1969, Act 61, Eff. Sept. 1, 1969.

HOUSING LAW OF MICHIGAN (EXCERPT)
Act 167 of 1917

125.539 "Dangerous building" defined.

Sec. 139. As used in sections 138 to 142, "dangerous building" means a building or structure that has 1 or more of the following defects or is in 1 or more of the following conditions:

(a) A door, aisle, passageway, stairway, or other means of exit does not conform to the approved fire code of the city, village, or township in which the building or structure is located.

(b) A portion of the building or structure is damaged by fire, wind, flood, deterioration, neglect, abandonment, vandalism, or other cause so that the structural strength or stability of the building or structure is appreciably less than it was before the damage and does not meet the minimum requirements of this act or a building code of the city, village, or township in which the building or structure is located for a new building or structure, purpose, or location.

(c) A part of the building or structure is likely to fall, become detached or dislodged, or collapse and injure persons or damage property.

(d) A portion of the building or structure has settled to an extent that walls or other structural portions of the building or structure have materially less resistance to wind than is required in the case of new construction by this act or a building code of the city, village, or township in which the building or structure is located.

(e) The building or structure, or a part of the building or structure, because of dilapidation, deterioration, decay, faulty construction, the removal or movement of some portion of the ground necessary for the support, or for other reason, is likely to partially or completely collapse, or some portion of the foundation or underpinning of the building or structure is likely to fall or give way.

(f) The building, structure, or a part of the building or structure is manifestly unsafe for the purpose for which it is used.

(g) The building or structure is damaged by fire, wind, or flood, is dilapidated or deteriorated and becomes an attractive nuisance to children who might play in the building or structure to their danger, becomes a harbor for vagrants, criminals, or immoral persons, or enables persons to resort to the building or structure for committing a nuisance or an unlawful or immoral act.

(h) A building or structure used or intended to be used for dwelling purposes, including the adjoining grounds, because of dilapidation, decay, damage, faulty construction or arrangement, or for other reason, is unsanitary or unfit for human habitation, is in a condition that the health officer determines is likely to cause sickness or disease, or is likely to injure the health, safety, or general welfare of people living in the dwelling.

(i) A building or structure is vacant, dilapidated, and open at door or window, leaving the interior of the building exposed to the elements or accessible to entrance by trespassers.

(j) A building or structure remains unoccupied for a period of 180 consecutive days or longer, and is not listed as being available for sale, lease, or rent with a real estate broker licensed under article 25 of the occupational code, 1980 PA 299, MCL 339.2401 to 339.2518. For purposes of this subdivision, "building or structure" includes, but is not limited to, a commercial building or structure. This subdivision does not apply to either of the following:

(i) A building or structure if the owner or agent does both of the following:

(A) Notifies a local law enforcement agency in whose jurisdiction the building or structure is located that the building or structure will remain unoccupied for a period of 180 consecutive days. The notice shall be given to the local law enforcement agency by the owner or agent not more than 30 days after the building or structure becomes unoccupied.

(B) Maintains the exterior of the building or structure and adjoining grounds in accordance with this act or a building code of the city, village, or township in which the building or structure is located.

(ii) A secondary dwelling of the owner that is regularly unoccupied for a period of 180 days or longer each year, if the owner notifies a local law enforcement agency in whose jurisdiction the dwelling is located that the dwelling will remain unoccupied for a period of 180 consecutive days or more each year. An owner who has given the notice prescribed by this subparagraph shall notify the law enforcement agency not more than 30 days after the dwelling no longer qualifies for this exception. As used in this subparagraph, "secondary dwelling" means a dwelling, including, but not limited to, a vacation home, hunting cabin, or summer home, that is occupied by the owner or a member of the owner's family during part of a year.

History: Add. 1969, Act 61, Eff. Sept. 1, 1969;—Am. 1992, Act 113, Eff. Mar. 31, 1993;—Am. 1992, Act 144, Eff. Mar. 31, 1993;—Am. 2003, Act 55, Imd. Eff. July 14, 2003.

HOUSING LAW OF MICHIGAN (EXCERPT)
Act 167 of 1917

125.540 Notice of dangerous building; contents; hearing officer; service.

Sec. 140. (1) Notwithstanding any other provision of this act, if a building or structure is found to be a dangerous building, the enforcing agency shall issue a notice that the building or structure is a dangerous building.

(2) The notice shall be served on the owner, agent, or lessee that is registered with the enforcing agency under section 125. If an owner, agent, or lessee is not registered under section 125, the notice shall be served on each owner or party in interest in the building or structure in whose name the property appears on the last local tax assessment records.

(3) The notice shall specify the time and place of a hearing on whether the building or structure is a dangerous building. The person to whom the notice is directed shall have the opportunity to show cause at the hearing why the hearing officer should not order the building or structure to be demolished, otherwise made safe, or properly maintained.

(4) The hearing officer shall be appointed by the mayor, village president, or township supervisor to serve at his or her pleasure. The hearing officer shall be a person who has expertise in housing matters including, but not limited to, an engineer, architect, building contractor, building inspector, or member of a community housing organization. An employee of the enforcing agency shall not be appointed as hearing officer. The enforcing agency shall file a copy of the notice that the building or structure is a dangerous building with the hearing officer.

(5) The notice shall be in writing and shall be served upon the person to whom the notice is directed either personally or by certified mail, return receipt requested, addressed to the owner or party in interest at the address shown on the tax records. If a notice is served on a person by certified mail, a copy of the notice shall also be posted upon a conspicuous part of the building or structure. The notice shall be served upon the owner or party in interest at least 10 days before the date of the hearing included in the notice.

History: Add. 1969, Act 61, Eff. Sept. 1, 1969;—Am. 1992, Act 144, Eff. Mar. 31, 1993.

HOUSING LAW OF MICHIGAN (EXCERPT)
Act 167 of 1917

125.541 Hearing; testimony; determination to close proceedings or order building or structure demolished, made safe, or properly maintained; failure to appear or noncompliance with order; hearing; enforcement; reimbursement and notice of cost; lien; remedies.

Sec. 141. (1) At a hearing prescribed by section 140, the hearing officer shall take testimony of the enforcing agency, the owner of the property, and any interested party. Not more than 5 days after completion of the hearing, the hearing officer shall render a decision either closing the proceedings or ordering the building or structure demolished, otherwise made safe, or properly maintained.

(2) If the hearing officer determines that the building or structure should be demolished, otherwise made safe, or properly maintained, the hearing officer shall enter an order that specifies what action the owner, agent, or lessee shall take and sets a date by which the owner, agent, or lessee shall comply with the order. If the building is a dangerous building under section 139(j), the order may require the owner or agent to maintain the exterior of the building and adjoining grounds owned by the owner of the building including, but not limited to, the maintenance of lawns, trees, and shrubs.

(3) If the owner, agent, or lessee fails to appear or neglects or refuses to comply with the order issued under subsection (2), the hearing officer shall file a report of the findings and a copy of the order with the legislative body of the city, village, or township not more than 5 days after the date for compliance set in the order and request that necessary action be taken to enforce the order. If the legislative body of the city, village, or township has established a board of appeals under section 141c, the hearing officer shall file the report of the findings and a copy of the order with the board of appeals and request that necessary action be taken to enforce the order. A copy of the findings and order of the hearing officer shall be served on the owner, agent, or lessee in the manner prescribed in section 140.

(4) The legislative body or the board of appeals of the city, village, or township, as applicable, shall set a date not less than 30 days after the hearing prescribed in section 140 for a hearing on the findings and order of the hearing officer. The legislative body or the board of appeals shall give notice to the owner, agent, or lessee in the manner prescribed in section 140 of the time and place of the hearing. At the hearing, the owner, agent, or lessee shall be given the opportunity to show cause why the order should not be enforced. The legislative body or the board of appeals of the city, village, or township shall either approve, disapprove, or modify the order. If the legislative body or board of appeals approves or modifies the order, the legislative body shall take all necessary action to enforce the order. If the order is approved or modified, the owner, agent, or lessee shall comply with the order within 60 days after the date of the hearing under this subsection. For an order of demolition, if the legislative body or the board of appeals of the city, village, or township determines that the building or structure has been substantially destroyed by fire, wind, flood, deterioration, neglect, abandonment, vandalism, or other cause, and the cost of repair of the building or structure will be greater than the state equalized value of the building or structure, the owner, agent, or lessee shall comply with the order of demolition within 21 days after the date of the hearing under this subsection. If the estimated cost of repair exceeds the state equalized value of the building or structure to be repaired, a rebuttable presumption that the building or structure requires immediate demolition exists.

(5) The cost of demolition includes, but is not limited to, fees paid to hearing officers, costs of title searches or commitments used to determine the parties in interest, recording fees for notices and liens filed with the county register of deeds, demolition and dumping charges, court reporter attendance fees, and costs of the collection of the charges authorized under this act. The cost of the demolition, of making the building safe, or of maintaining the exterior of the building or structure or grounds adjoining the building or structure incurred by the city, village, or township to bring the property into conformance with this act shall be reimbursed to the city, village, or township by the owner or party in interest in whose name the property appears.

(6) The owner or party in interest in whose name the property appears upon the last local tax assessment records shall be notified by the assessor of the amount of the cost of the demolition, of making the building safe, or of maintaining the exterior of the building or structure or grounds adjoining the building or structure by first class mail at the address shown on the records. If the owner or party in interest fails to pay the cost within 30 days after mailing by the assessor of the notice of the amount of the cost, the city, village, or township shall have a lien for the cost incurred by the city, village, or township to bring the property into conformance with this act. The lien shall not take effect until notice of the lien has been filed or recorded as provided by law. A lien provided for in this subsection does not have priority over previously filed or recorded liens and encumbrances. The lien for the cost shall be collected and treated in the same manner as

provided for property tax liens under the general property tax act, 1893 PA 206, MCL 211.1 to 211.157.

(7) In addition to other remedies under this act, the city, village, or township may bring an action against the owner of the building or structure for the full cost of the demolition, of making the building safe, or of maintaining the exterior of the building or structure or grounds adjoining the building or structure. A city, village, or township shall have a lien on the property for the amount of a judgment obtained under this subsection. The lien provided for in this subsection shall not take effect until notice of the lien is filed or recorded as provided by law. The lien does not have priority over prior filed or recorded liens and encumbrances.

History: Add. 1969, Act 61, Eff. Sept. 1, 1969;—Am. 1992, Act 113, Eff. Mar. 31, 1993;—Am. 1992, Act 144, Eff. Mar. 31, 1993;—Am. 2003, Act 55, Imd. Eff. July 14, 2003.

HOUSING LAW OF MICHIGAN (EXCERPT)
Act 167 of 1917

125.541a Enforcement of judgment against other assets; lien; effectiveness; priority.

Sec. 141a. (1) A judgment in an action brought pursuant to section 141(7) may be enforced against assets of the owner other than the building or structure.

(2) A city, village, or township shall have a lien for the amount of a judgment obtained pursuant to section 141(7) against the owner's interest in all real property located in this state that is owned in whole or in part by the owner of the building or structure against whom the judgment is obtained. A lien provided for in this section does not take effect until notice of the lien is filed or recorded as provided by law, and the lien does not have priority over prior filed or recorded liens and encumbrances.

History: Add. 1992, Act 109, Eff. Mar. 31, 1993.

HOUSING LAW OF MICHIGAN (EXCERPT)
Act 167 of 1917

125.541b Noncompliance with order as misdemeanor; penalties; designation of blight violation by municipality.

Sec. 141b. (1) Except as otherwise provided under subsection (2), a person who fails or refuses to comply with an order approved or modified by the legislative body or board of appeals under section 141 within the time prescribed by that section is guilty of a misdemeanor punishable by imprisonment for not more than 120 days or a fine of not more than \$1,000.00, or both.

(2) If a legislative body of a municipality formed under the home rule city act, 1909 PA 279, MCL 117.1 to 117.38, has enacted an ordinance that is substantially the same as sections 138 to 142, the municipality may designate the violation of its ordinance as a blight violation in accordance with section 4q of the home rule city act, 1909 PA 279, MCL 117.4q.

History: Add. 1992, Act 144, Eff. Mar. 31, 1993;—Am. 2008, Act 50, Imd. Eff. Mar. 28, 2008.

HOUSING LAW OF MICHIGAN (EXCERPT)
Act 167 of 1917

125.541c Board of appeals; establishment; appointment and terms of members; vacancy; election of officers; quorum; compensation; expenses; meetings; writings.

Sec. 141c. (1) The legislative body of a city, village, or township may establish a board of appeals to hear all of the cases and carry out all of the duties of the legislative body described in section 141(3) and (4).

(2) A board of appeals shall consist of the following members, appointed by the legislative body of the city, village, or township:

(a) A building contractor.

(b) An architect or professional engineer who is licensed under article 20 of the occupational code, 1980 PA 299, MCL 339.2001 to 339.2014.

(c) Two members of the general public.

(d) An individual registered as a building official, plan reviewer, or inspector under article 10 of the skilled trades regulation act, MCL 339.6001 to 339.6023. The individual may be an employee of the enforcing agency.

(3) Board of appeals members shall be appointed for 3 years, except that of the members first appointed, 2 members shall serve for 1 year, 2 members shall serve for 2 years, and 1 member shall serve for 3 years. A vacancy created other than by expiration of a term shall be filled for the balance of the unexpired term in the same manner as the original appointment. A member may be reappointed for additional terms.

(4) A board of appeals annually shall elect a chairperson, vice-chairperson, and other officers that the board considers necessary.

(5) A majority of the members of the board of appeals members who are appointed and serving constitute a quorum. Final action of a board of appeals shall be only by affirmative vote of a majority of the board members who are appointed and serving.

(6) The legislative body of the city, village, or township shall establish the amount of any per diem compensation provided to the members of its board of appeals. The expenses of a member of the board of appeals incurred in the performance of his or her official duties may be reimbursed as provided by law for employees of the legislative body of the city, village, or township.

(7) A meeting of a board of appeals shall comply with the open meetings act, 1976 PA 267, MCL 15.261 to 15.275. Public notice of the time, date, and place of a meeting of a board of appeals shall be given in the manner required under that act.

(8) A writing prepared, owned, used, in the possession of, or retained by a board of appeals in the performance of an official function is subject to the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

History: Add. 1992, Act 144, Eff. Mar. 31, 1993;—Am. 2016, Act 408, Eff. Apr. 4, 2017.

HOUSING LAW OF MICHIGAN (EXCERPT)
Act 167 of 1917

125.542 Appeal to circuit court.

Sec. 142. An owner aggrieved by a final decision or order of the legislative body or the board of appeals under section 141 may appeal the decision or order to the circuit court by filing a petition for an order of superintending control within 20 days from the date of the decision.

History: Add. 1969, Act 61, Eff. Sept. 1, 1969;—Am. 1992, Act 144, Eff. Mar. 31, 1993;—Am. 2003, Act 55, Imd. Eff. July 14, 2003.

HOUSING LAW OF MICHIGAN (EXCERPT)
Act 167 of 1917

125.543 Adoption of housing law not required.

Sec. 143. Nothing herein contained shall require any city, village or township to adopt Act No. 167 of the Public Acts of 1917, as amended, being the housing law of Michigan.

History: Add. 1969, Act 61, Eff. Sept. 1, 1969.

NUISANCE ABATEMENT

REVISED JUDICATURE ACT OF 1961 (EXCERPT) Act 236 of 1961

600.2940 Nuisance; abatement; circuit court; injunction; private nuisance; damages; warrant to abate and remove nuisance; expense; actions.

Sec. 2940. (1) All claims based on or to abate nuisance may be brought in the circuit court. The circuit court may grant injunctions to stay and prevent nuisance.

(2) When the plaintiff prevails on a claim based on a private nuisance, he may have judgment for damages and may have judgment that the nuisance be abated and removed unless the judge finds that the abatement of the nuisance is unnecessary.

(3) If the judgment is that the nuisance shall be abated, the court may issue a warrant to the proper officer, requiring him to abate and remove the nuisance at the expense of the defendant, in the manner that public nuisances are abated and removed. The court may stay the warrant for as long as 6 months to give the defendant an opportunity to remove the nuisance, upon the defendant giving satisfactory security to do so.

(4) The expense of abating and removing the nuisance pursuant to such warrant, shall be collected by the officer in the same manner as damages and costs are collected upon execution, excepting that the materials of any buildings, fences, or other things that may be removed as a nuisance, may be sold by the officer, in like manner as goods are sold on execution for the payment of debts. The officer may apply the proceeds of such sale to defray the expenses of the removal, and shall pay over the balance thereof, if any, to the defendant upon demand. If the proceeds of the sale are not sufficient to defray the said expenses, he shall collect the residue thereof as before provided.

(5) Actions under this section are equitable in nature unless only money damages are claimed.

History: 1961, Act 236, Eff. Jan. 1, 1963.

DISTRICT COURT JURISDICTION - EQUITY

REVISED JUDICATURE ACT OF 1961 (EXCERPT)
Act 236 of 1961

600.8302 Equitable jurisdiction and authority; injunctive order; order rescinding or reforming contract; equitable claims; judgment or order; jurisdiction and authority of district and circuit courts.

Sec. 8302. (1) In addition to the civil jurisdiction provided in sections 5704 and 8301, the district court has equitable jurisdiction and authority concurrent with that of the circuit court in the matters and to the extent provided by this section.

(2) In cases brought under chapter 84, the district court may issue and enforce an injunctive order or an order rescinding or reforming a contract.

(3) In an action under chapter 57, the district court may hear and determine an equitable claim relating to or arising under chapter 31, 33, or 38 or involving a right, interest, obligation, or title in land. The court may issue and enforce a judgment or order necessary to effectuate the court's equitable jurisdiction as provided in this subsection, including the establishment of escrow accounts and receiverships.

(4) In an action under chapter 87, the district court may issue and enforce any judgment, writ, or order necessary to enforce the ordinance. The grant of equitable jurisdiction and authority to the district court under this subsection does not affect the jurisdiction of the circuit court to do either of the following:

- (a) Hear and decide claims based on nuisance or abate nuisances under section 2940. — NUISANCE
- (b) Hear and decide actions challenging the validity or applicability of an ordinance and, in those actions, enjoin a defendant from enforcing the ordinance in the district court or in a municipal court pending the outcome of the action in circuit court.

ABATEMENT
IN
CIRCUIT
COURT

History: Add. 1980, Act 438, Eff. Sept. 1, 1981;— Am. 1994, Act 12, Eff. May 1, 1994.

Compiler's note: Sections 2 and 4 of Act 438 of 1980 provide:

"Conditional effective date; action constituting exercise of option; effect of exercising option.

"Section 2. (1) This amendatory act shall not take effect unless the city of Detroit and the county of Wayne, by resolutions adopted not later than May 1, 1981, by the governing bodies of the city and the county, respectively, agree to assume responsibility for any expenses required of the city or the county by this amendatory act, and the bills listed in enacting section 7 which are enacted and take effect.

"(2) If the city of Detroit and the county of Wayne, acting through their governing bodies, agree to assume responsibility for any expenses required of the city and the county by this amendatory act, and the bills listed in enacting section 7 which are enacted and take effect, that action constitutes an exercise of the city's and the county's option to provide a new activity or service or to increase the level of activity or service offered in the city of Detroit and the county of Wayne beyond that required by existing law, as the elements of that option are defined by Act No. 101 of the Public Acts of 1979, being sections 21.231 to 21.244 of the Michigan Compiled Laws, and a voluntary acceptance by the city and the county of all expenses and capital improvements which may result from establishment of the district court in the thirty-sixth district and the reorganization of the circuit court in the third judicial circuit and the recorder's court of the city of Detroit. However, the exercise of the option does not affect the state's obligation to pay the same portion of each district or circuit judge's salary which is paid by the state to the other district or circuit judges, or to appropriate and disburse funds to the district control units, city, or county, for the necessary costs of state requirements established by a state law, other than this amendatory act or the bills listed in enacting section 7 which becomes effective on or after December 23, 1978."

The resolutions referred to in Section 2 were adopted by the city council of the city of Detroit on April 29, 1981, and by the board of commissioners of the county of Wayne on April 30, 1981.

"Effective date of certain sections.

"Section 4. Sections 304, 555, 563, 564, 567, 591, 592, 593, 594, 595, 641, 821, 1114, 1123, 1168, 1302, 1303, 1306, 1417, 1471, 1481, 5706, 8202, 8271, 8272, 8273, 8275, 8281, 8283, 8302, 8314, 8322, 8501, 8521, 8525, 8535, 8621, 9924, 9944, and 9947 shall take effect September 1, 1981."

LANSING
RENTAL

1460.44. - Registry.

- (a) *General.* All rental properties in the City of Lansing, except owner-occupied single-family dwellings, are subject to Sect ~~1460.44~~ through ~~1460.51~~ of this Code. Owners and agents of rentals subject to this Code shall register their names, telephone numbers and place of residence or usual places of business, and the location of the premises regulated by this Code, with the Office of Code Compliance, all absentee landlords shall have a registered agent in Lansing. An absentee landlord is the owner of property that is leased, assigned or rented to another and who lives more than 40 miles from the Lansing City Limits.
- (b) *Identification Required.* The owner of any rental properties shall provide proof or verification of his or her driver's license or State of Michigan Personal Identification Card to the Office of Code Compliance. A corporation, limited liability company, partnership, or D.B.A. registered with the State of Michigan or county shall provide such other information as may be required by the Office of Code Compliance. If the premises are managed or operated by an agent, the owners shall provide proof or verification of the agent's driver's license or State of Michigan Personal Identification Card to the Office of Code Compliance, which shall be placed with the owner's name in the registry.
- (c) *Time Allowed to Register Rental Property.* The owner(s) shall be responsible for registering a rental property within 30 days following the day on which the owner offers the premises, dwelling or unit for occupancy. If there is a transfer or change of owner or agent required to register under this section, the new owner or agent shall, within 30 days of such transfer or change, notify, in writing, the Office of Code Compliance and provide the information required under this section.
- (d) *Change of Owner or Agent's Address or Phone.* After registration, if the registered owner or registered agent changes residence or his or her usual place of business or his or her telephone number(s). The registered owner or agent shall provide, in writing, the new address(es) and/or telephone number(s) to the Office of Code Compliance within 15 days of such change; if there is a new agent or there is no longer an agent, the registered owner shall provide, in writing, the required information to the Office of Code Compliance within 15 days of such change.
- (e) *Transfer of Ownership.* If there is a transfer of ownership for any rental dwelling or unit required to be registered under this section, the registered owner or agent shall, within 15 days of such transfer or change, notify, in writing, the Office of Code Compliance and provide the name(s) and address of the new owner(s). If the registered owner or agent sells or transfers property on a land contract or similar real estate installment sales contract, the registered owner or agent shall provide a copy of that entire land contract or agreement which has been recorded with the county register of deeds to the office of code compliance and the city assessor's office within 15 days of such sale or transfer. The registered owner or agent shall provide such additional information as may be required by the Office of Code Compliance. The property shall be presumed to be a rental if the documentation required pursuant to this subsection is not filed as provided here.
- (f) *Application for Certificate of Compliance.* An owner or agent shall apply for a Certificate of Compliance. The issuance of certificates shall comply with the requirements of this Code and with the procedures established by the Office of Code Compliance. If any owner or agent fails to make an application for a Certificate of Compliance, the occupant of the dwelling may apply for a certificate.
- (g) *Certificate of Compliance Withheld.* When a certificate is withheld pending compliance or the rental dwelling is not registered and the premises is not occupied for dwelling purposes, the premises shall not be occupied until a Certificate of Compliance is obtained. Those premises which are occupied for dwelling purposes may be ordered vacated until reinspection and proper compliance has been obtained.
- (h) *Lack of Certificate of Compliance.* If a rental dwelling unit lacks a current Certificate of Compliance or is not registered within the required time stated in subsections (c) and (d) hereof, the dwelling may be ordered vacated and the occupants may be required to place the rent into an escrow account until a Certificate of Compliance is issued. The Office of Code Compliance may notify the occupants when the Certificate of Compliance is issued. A nonrefundable administrative service fee as established by Council Resolution shall be assessed in instances where the lack of a current certificate of compliance necessitates an investigation by the Office of Code Compliance and noncompliance is found to exist.
- (i) *Certificate Issued on Condition.* A Certificate of Compliance shall be issued on the condition that the premises remain in safe, healthful and fit condition for occupancy. If, upon reinspection, the Manager of Code Compliance determines that conditions exist which are in violation of this Code. The certificate shall be immediately revoked and the premises may

vacated as provided in Section 1460.08 (Substandard structures, or premises) and/or Section 1460.09 (Unsafe premise: structure).

(Ord. No. 01024, § 1, 2-19-01; Ord. No. 1132, § 1, 4-21-08; Ord. No. 1205, § 1, 11-28-16)

1460.45. - Inspections.

- (a) *General.* The Manager of Code Compliance or Code Compliance Officers shall inspect, on a periodic basis, all rental dwellings and units required to be registered under this Code.
- (b) *Method for Conducting Inspections.* Inspections shall be conducted in the best manner to secure compliance with this Code. Agents or employees of the Department of Code Compliance may request permission to enter any premises regulated by Section 1460.44 (Registry) at reasonable hours to undertake an inspection. Upon an emergency, the Manager may enter any time. Inspections may be conducted on one or more of the following basis:
 - (1) When all regulated premises in a predetermined geographical area are inspected simultaneously or within a short period of time.
 - (2) When complaints of violations are inspected within a reasonable time.
 - (3) When premises are found to have a high incidence of recurrent or uncorrected violations are inspected more frequently or
 - (4) When the Certificate of Compliance has expired.

The registered owner or agent shall ensure that the premises regulated by this section are accessible for inspection during normal working hours of the Code Compliance Division. However, an occupant of the premises may allow inspection at any time.

- (c) *Two-Year Certificates.* In no event shall the period between Certificate of Compliance inspections be longer than two years for rental dwellings with three or more units or rooming houses that have received any violations of this Code during the most recent inspection of the premises.
- (d) *Three-Year Certificates.* In no event shall the period between Certificate of Compliance inspections be longer than three years for rental dwellings with one or two units or rental dwellings with three or more units, or rooming houses that have not received any violations of this Code during the most recent inspection of the premises.
- (e) *Duties of Landlord.* Once notified of the Office of Code Compliance intent to inspect or reinspect a leasehold, a landlord, registered agent or property manager shall:
 - (1) Provide Code Compliance Officers access to all leaseholds if the lease provides the owner, landlord, agent or manager with the right of entry.
 - (2) Provide access to areas other than the leasehold or areas open to public view, or both.
 - (3) Notify tenants of the office's request to inspect the leasehold and make a good faith effort to obtain permission for inspection from them, and arrange for the inspection. If a tenant has vacated a leasehold after the Office of Code Compliance has requested an inspection, the owner or manager shall notify the office of that fact within ten days after the leasehold is vacated.
 - (4) Provide access to the leasehold if a tenant of that leasehold has made a complaint to the Office of Code Compliance.

(Ord. No. 01024, § 1, 2-19-01)

1460.46. - Fees.

- (a) *General.* The City shall charge nonrefundable fees for inspection and/or registration. Inspection and reinspection fees shall be set by resolution of City Council and shall be paid at the time of registration and in advance of inspection. The fee for inspection covers the initial inspection and one complete reinspection. If any subsequent reinspections are required, City Council shall establish by resolution a reinspection fee that shall increase at a progressively higher rate for each reinspection. Failure on the part of the owner, owner's agent, or property manager to provide a 48-hour notice of inspection cancellation and/or failure to keep a scheduled inspection time may result in the assessment by the Manager of Code Compliance of a fee for each missed inspection.

nonrefundable late fee, as established by City Council Resolution

- (b) *Certificate Expires.* If the owner or registered agent fails to schedule a certification inspection before the expiration of an existing Certificate of Compliance, the fee for the certification inspection will be double the fee for the initial inspection.
- (c) *Administrative Fee Added.* If any registered owner or registered agent fails to pay any fees required by this Code within 30 days after the Certificate of Compliance has expired, an administrative service fee as established by City Council resolution shall be assessed.
- (d) *Payment.* Any fee for required inspections or reinspections, including the administrative service fee, shall be paid by the owner whose name appears on the City's real property tax assessment records.
- (e) *Lien on Property.* Any unpaid fees or costs assessed under this Code shall be a lien against the real property and shall be reported to the City's Assessor for placement on the real property tax assessment records. Unpaid fees and costs shall be collected as allowed by law.
- (f) *Notification to Add to Tax Roll.* The owner shall be notified of the amount of unpaid fees by first-class mail at the address shown on the City Assessor's records. If the owner fails to pay the amount owed within 30 days after mailing of the notice, the City Assessor shall add the amount to the next tax roll of the City and it shall be collected as provided by law for the collection of City taxes.

(Ord. No. 01024, § 1, 2-19-01; Ord. No. 1132, § 1, 4-21-08)

1460.47. - Warrants.

- (a) *General.* In a nonemergency situation, if the registered owner, registered agent or occupant demands a warrant for inspection of the premises, the Manager of Code Compliance shall obtain a warrant for inspection from a court of competent jurisdiction.
- (b) *Preparation of Warrant.* The Manager of Code Compliance shall prepare the warrant, stating the address of the structure to be inspected, the nature of the inspection, as defined in this Code or other applicable codes or statutes, and the reasons for the inspection. It shall be appropriate and sufficient to set forth the basis for inspection established in Section 1460.45 (Inspections). If the warrant is issued pursuant to Section 1460.45, it shall state that it is for the purposes set forth in Section 1460.45.
- (c) *Warrant Shall be Issued.* If the court finds that the warrant is in proper form and in accordance with this Code, it shall be issued forthwith.
- (d) *Emergency.* In the event of an emergency, no warrant shall be required.

(Ord. No. 01024, § 1, 2-19-01)

1460.48. - Procedures; inspection records and checklist

- (a) *Procedures.* The inspection procedures set forth in this Code are established, to secure the health and safety of the occupants of dwellings and of the general public.
- (b) *Inspection Records.* The Office of Code Compliance shall keep a record of all inspections in the housing violation letter database.
- (c) *Checklists.* The Office of Code Compliance shall make available to the general public a checklist of commonly recurring violations found in examining premises offered for occupancy.

(Ord. No. 01024, § 1, 2-19-01)

1460.49. - Certificates of compliance

- (a) *General.* Rental dwellings or units required by this Code to be registered shall not be occupied unless a Certificate of Compliance has been issued by the Office of Code Compliance. The Certificate of Compliance shall be issued only after inspection of the premises has been conducted by the Office of Code Compliance; appropriate fees have been paid; and there are no delinquent real property taxes owed upon the premises. A violation of this Code shall not prevent the issuance of a certificate, but the Office of Code Compliance shall not issue a certificate when the existing conditions constitute a hazard.

the health or safety of those who may occupy the premises. Two copies of the certificate shall be issued within 30 days written application has been made, an inspection has been conducted and a determination has been made that the premises meets the requirements of this Code. One copy of the certificate shall be prominently displayed in the front entrance of the rental dwelling in dwellings containing one or more rental units when any rental unit in the dwelling is vacant. If both units are rented then the certificate need only be kept on the premises and made available at the request of tenants or government officials. Any rental property with three or more rental units must prominently display the certificate in the entrance area of the rental dwelling

- (b) *Occupancy if Violation is Found* Upon a finding that there is a violation of this Code, but that the existing violation does not constitute any unsafe condition, occupancy may continue at the discretion of the Manager of Code Compliance. All continued occupancy shall not nullify or otherwise effect the enforcement of any violations of this Code
- (c) *No Certificate or Expiration of Certificate* Prior to the issuance of initial certificate or the expiration of a Certificate of Compliance, the Office of Code Compliance shall notify by regular first class mail, the registered owner and the registered agent, to arrange for a certification inspection. The registered owner shall be responsible for arranging an initial certification inspection within the time specified to register the rental dwelling in Section 1460.44(c) (Time allowed to register). The registered owner shall also be responsible for arranging for all certification inspections required thereafter prior to the expiration date on the certificate. If the registered owner fails to schedule a certification inspection before the expiration date of the existing Certificate of Compliance, the fees for the certification inspection will be doubled
- (d) *Lack of Valid Certificate or Unregistered Rental Dwelling* If the owner or agent has not registered the rental dwelling or paid the appropriate fees or arranged an initial certification inspection, the Office of Code Compliance shall issue a notice of lack of valid Certificate of Compliance to the owner and the occupants of each unit. If the registered owner or registered agent has paid the appropriate inspection fees, or arranged a certification inspection, after a valid Certificate of Compliance has expired, the Office of Code Compliance shall issue a notice of lack of valid Certificate of Compliance to the registered owner or registered agent and the occupant of each unit. The notice shall state:
 - (1) That the dwelling does not have a valid Certificate of Compliance
 - (2) That it is unlawful for any vacant unit to be reoccupied or rented
 - (3) That current tenants may be entitled to escrow rent moneys as provided for under state law
 - (4) That a placard containing this information may be posted on the dwelling and may not be removed until a new Certificate of Compliance is issued.
 - (5) That the registered owner, registered agent or occupant may arrange for a certification inspection
 - (6) That if the certification inspection has not been scheduled and if the registration and inspection fees have not been paid, the Manager of Code Compliance may order the structure vacated within 30 days

(Ord. No. 01024, § 1, 2-19-01; Ord. No. 1207, § 1, 3-13-17)

1460.50. - Notice, reinspection and revocation of certificate

- (a) *General.* If, upon inspection, the premises or any part thereof are found to be in violation of any of the provisions of this Code, the violation shall be recorded by the Office of Code Compliance in the housing violation letters database
- (b) *Notice to be Sent.* The taxpayer of record, registered owner, the registered agent and, at the discretion of the Office of Code Compliance, the occupants, shall be notified, in writing as per Section 1460.07 (Notices and orders), of the existence of the violation and shall be ordered to correct the violation as provided in this Code
- (c) *Reinspections.* The Office of Code Compliance shall reinspect after a reasonable time for the purpose of ascertaining whether or not the violation has been corrected
- (d) *Revocation of Certificate of Compliance* If any Certificate of Compliance for occupancy is revoked because of the condition of any dwelling unit, the registered owner or agent may appeal such revocation under Section 1460.12 (Means of appeal), except that such an appeal shall be in addition to and shall not change in any way the procedure contained in Section 1460.11 (Unsafe).

(Ord. No. 01024, § 1, 2-19-01; Ord. No. 1207, § 1, 3-13-17)

1460.51. - Remedies.

Nothing in this Code shall limit or eliminate any right of action at common law or under statute that the City may otherwise have enforcing the requirements of this Code.

(Ord. No. 01024, § 1, 2-19-01)

CIVIL INFRACTIONS

REVISED JUDICATURE ACT OF 1961 (EXCERPT) Act 236 of 1961

600.8701 Definitions.

Sec. 8701. As used in this chapter:

(a) "Authorized local official" means a police officer or other personnel of a county, city, village, township, or regional parks and recreation commission created under section 2 of Act No. 265 of the Public Acts of 1961, being section 46.352 of the Michigan Compiled Laws, legally authorized to issue municipal civil infraction citations.

(b) "Citation" means a written complaint or notice to appear in court upon which an authorized local official records the occurrence or existence of 1 or more municipal civil infractions by the person cited.

(c) "Municipal civil infraction determination" means a determination that a defendant is responsible for a municipal civil infraction by 1 of the following:

(i) An admission of responsibility for the municipal civil infraction.

(ii) An admission of responsibility for the municipal civil infraction, "with explanation".

(iii) A preponderance of the evidence at an informal hearing or formal hearing on the question under section 8719 or 8721, respectively.

(iv) A default judgment for failing to appear as directed by a citation or other notice, at a scheduled appearance under section 8715(3)(b) or (4), at an informal hearing under section 8719, or at a formal hearing under section 8721.

History: Add. 1994, Act 12, Eff. May 1, 1994.

REVISED JUDICATURE ACT OF 1961 (EXCERPT)
Act 236 of 1961

600.8703 Municipal civil infraction; commencement; political subdivision as plaintiff; jurisdiction of courts; time and place of appearance.

Sec. 8703. (1) A municipal civil infraction action is commenced upon the issuance of a citation as provided in section 8707. The plaintiff in a municipal civil infraction action is the political subdivision whose ordinance has been violated.

(2) The district court and any municipal court have jurisdiction over municipal civil infraction actions.

(3) The time specified in a citation for appearance shall be within a reasonable time after the citation is issued.

(4) The place specified in the citation for appearance shall be the court referred to in subsection (2) that has territorial jurisdiction of the place where the municipal civil infraction occurred. Venue in the district court is governed by section 8312.

History: Add, 1994, Act 12, Eff. May 1, 1994;—Am. 1996, Act 388, Eff. Jan. 1, 1998.

REVISED JUDICATURE ACT OF 1961 (EXCERPT)
Act 236 of 1961

600.8705 Citation; numbering; form; contents; modification; treatment as under oath.

Sec. 8705. (1) Each citation shall be numbered consecutively, be in a form as approved by the state court administrator, and consist of the following parts:

- (a) The original, which is a complaint and notice to appear by the authorized official and shall be filed with the court in which the appearance is to be made.
- (b) The first copy, which shall be retained by the ordinance enforcement agency.
- (c) The second copy, which shall be issued to the alleged violator if the violation is a misdemeanor.
- (d) The third copy, which shall be issued to the alleged violator if the violation is a municipal civil infraction.

(2) With the prior approval of the state court administrator, the citation may be modified as to content or number of copies to accommodate law enforcement and local court procedures and practices. Use of this citation for violations other than municipal civil infractions is optional.

(3) A citation for a municipal civil infraction signed by an authorized local official shall be treated as made under oath if the violation alleged in the citation occurred in the presence of the authorized local official signing the complaint and if the citation contains the following statement immediately above the date and signature of the official: "I declare under the penalties of perjury that the statements above are true to the best of my information, knowledge, and belief."

History: Add. 1994, Act 12, Eff. May 1, 1994.

REVISED JUDICATURE ACT OF 1961 (EXCERPT)
Act 236 of 1961

600.8707 Citation; preparation; issuance; service; municipal ordinance violation notice.

Sec. 8707. (1) An authorized local official who witnesses a person violate an ordinance a violation of which is a municipal civil infraction shall prepare and subscribe, as soon as possible and as completely as possible, an original and 3 copies of a citation, except as provided in subsection (6).

(2) An authorized local official may issue a citation to a person if, based upon investigation, the official has reasonable cause to believe that the person is responsible for a municipal civil infraction. An authorized local official may issue a citation to a person if, based upon investigation of a complaint by someone who allegedly witnessed the person violate an ordinance a violation of which is a municipal civil infraction, the official has reasonable cause to believe that the person is responsible for a municipal civil infraction and if the prosecuting attorney or other attorney for the political subdivision employing the authorized local official approves in writing the issuance of the citation.

(3) Except as otherwise provided under subsection (4), the authorized local official shall personally serve the third copy of the citation upon the alleged violator.

(4) In a municipal civil infraction action involving the use or occupancy of land or a building or other structure, a copy of the citation need not be personally served upon the alleged violator but may be served upon an owner or occupant of the land, building, or structure by posting the copy on the land or attaching the copy to the building or structure. In addition, a copy of the citation shall be sent by first-class mail to the owner of the land, building, or structure at the owner's last known address.

(5) A citation served under subsection (4) for a violation involving the use or occupancy of land or a building or other structure shall be processed in the same manner as a citation served personally upon a defendant pursuant to subsection (1) or (2).

(6) Except under the circumstances described in section 8709(5)(a) or (b), if a county, city, village, or township has established a municipal ordinance violations bureau, an authorized local official of the county, city, village, or township may issue and serve a municipal ordinance violation notice, instead of a citation, under the same circumstances and upon the same persons as provided in this section for the service of a citation. If an authorized local official issues and serves a municipal ordinance violation notice and if an admission of responsibility is not made and the civil fine and costs, if any, prescribed by ordinance for the violation are not paid at the municipal ordinance violations bureau, a citation may be filed with the court described in section 8703(4) and a copy of the citation may be served by first-class mail upon the alleged violator at his or her last known address. The citation filed with the court pursuant to this subsection need not comply in all particulars with sections 8705 and 8709 but shall consist of a sworn complaint containing the allegations stated in the municipal ordinance violation notice and shall fairly inform the defendant how to respond to the citation. A citation issued under this subsection shall be processed in the same manner as a citation issued personally to a defendant pursuant to subsection (1) or (2). As used in this subsection, "municipal ordinance violation notice" means a notice, other than a citation, directing a person to appear at a municipal ordinance violations bureau in the city, village, township, or county in which the notice is issued and to pay the fine and costs, if any, prescribed by ordinance for the violation of the ordinance.

History: Add. 1994, Act 12, Eff. May 1, 1994.

REVISED JUDICATURE ACT OF 1961 (EXCERPT)
Act 236 of 1961

600.8709 Citation; contents; railway municipal civil infraction.

Sec. 8709. (1) A citation issued pursuant to section 8707 shall contain the name of the plaintiff, the name and address of the defendant, the municipal civil infraction alleged, the place where the defendant shall appear in court, the telephone number of the court, the time at or by which the appearance shall be made, and the additional information required by this section.

(2) Except as provided in subsection (5), the citation shall inform the defendant that he or she may do 1 of the following:

(a) Admit responsibility for the municipal civil infraction by mail, in person, or by representation, at or by the time specified for appearance.

(b) Admit responsibility for the municipal civil infraction "with explanation" by mail by the time specified for appearance or, in person, or by representation.

(c) Deny responsibility for the municipal civil infraction by doing either of the following:

(i) Appearing in person for an informal hearing before a judge or district court magistrate, without the opportunity of being represented by an attorney, unless a formal hearing before a judge is requested by the plaintiff.

(ii) Appearing in court for a formal hearing before a judge, with the opportunity of being represented by an attorney.

(3) Except as provided in subsection (5), the citation shall inform the defendant of all of the following:

(a) That if the defendant desires to admit responsibility "with explanation" in person or by representation, the defendant must apply to the court in person, by mail, by telephone, or by representation within the time specified for appearance and obtain a scheduled date and time for an appearance.

(b) That if the defendant desires to deny responsibility, the defendant must apply to the court in person, by mail, by telephone, or by representation within the time specified for appearance and obtain a scheduled date and time to appear for a hearing unless a hearing date is specified on the citation.

(c) That a hearing shall be an informal hearing unless a formal hearing is requested by the defendant or the plaintiff political subdivision.

(d) That at an informal hearing the defendant must appear in person before a judge or district court magistrate, without the opportunity of being represented by an attorney.

(e) That at a formal hearing the defendant must appear in person before a judge with the opportunity of being represented by an attorney.

(4) The citation shall contain a notice in boldfaced type that the failure of the defendant to appear within the time specified in the citation or at the time scheduled for a hearing or appearance is a misdemeanor and will result in entry of a default judgment against the defendant on the municipal civil infraction. Except as provided in subsection (5), return of the citation with an admission of responsibility and with full payment of applicable civil fines and costs, return of the citation with an admission of responsibility with explanation, or timely application to the court for a scheduled date and time for an appearance under subsection (3)(a) or a hearing under subsection (3)(b) constitutes a timely appearance.

(5) A citation that may be issued for a railway municipal civil infraction shall be designed to allow the authorized local official to indicate that the defendant is required to appear at a formal hearing. An authorized local official issuing a citation for a railway municipal civil infraction shall require the defendant to appear at a formal hearing if either or both of the following apply:

(a) The railway municipal civil infraction caused damage to a natural resource or facility.

(b) The authorized local official impounds the vehicle.

History: Add. 1994, Act 12, Eff. May 1, 1994.

REVISED JUDICATURE ACT OF 1961 (EXCERPT)
Act 236 of 1961

600.8711 Citation; admission; denial of responsibility; filing of sworn complaint; failure to appear; warrant for arrest.

Sec. 8711. If an authorized local official issues a citation under section 8707, the court may accept an admission with explanation or an admission or denial of responsibility upon the citation without the necessity of a sworn complaint. If the defendant denies responsibility for the municipal civil infraction, further proceedings shall not be held until a sworn complaint is filed with the court. A warrant for arrest for failure to appear on the municipal civil infraction citation under section 8727(9) shall not be issued until a sworn complaint relative to the municipal civil infraction is filed with the court.

History: Add. 1994, Act 12, Eff. May 1, 1994.

REVISED JUDICATURE ACT OF 1961 (EXCERPT)
Act 236 of 1961

600.8713 Materially false statement; penalty.

Sec. 8713. An authorized local official who, knowing the statement is false, makes a materially false statement in a citation issued under section 8707 is guilty of perjury, a felony punishable by imprisonment for not more than 15 years, and in addition is in contempt of court.

History: Add. 1994, Act 12, Eff. May 1, 1994.

REVISED JUDICATURE ACT OF 1961 (EXCERPT)

Act 236 of 1961

600.8715 Citation; appearance; response to allegations; acceptance of admission; sanctions; admission of responsibility with explanation; effect; denial of responsibility; hearing.

Sec. 8715. (1) A person to whom a citation is issued under section 8707 shall appear by or at the time specified in the citation and, except as otherwise provided by section 8709(5), may respond to the allegations in the citation as provided in this section.

(2) If the defendant wishes to admit responsibility for the municipal civil infraction, the defendant may do so by appearing in person, by representation, or by mail. If appearance is made by representation or mail, the court may accept the admission with the same effect as though the defendant personally appeared in court. Upon acceptance of the admission, the court may order any of the sanctions permitted under section 8727.

(3) If the defendant wishes to admit responsibility for the municipal civil infraction "with explanation", the defendant may do so in either of the following ways:

(a) By appearing by mail.

(b) By contacting the court in person, by mail, by telephone, or by representation to obtain from the court a scheduled date and time for an appearance, at which time the defendant shall appear in court in person or by representation.

(4) If a defendant admits responsibility for a municipal civil infraction "with explanation" under subsection (3), the court shall accept the admission as though the defendant has admitted responsibility under subsection (2) and may consider the defendant's explanation by way of mitigating any sanction that the court may order under section 8727. If appearance is made by representation or mail, the court may accept the admission with the same effect as though the defendant personally appeared in court, but the court may require the defendant to provide a further explanation or to appear in court.

(5) If the defendant wishes to deny responsibility for a municipal civil infraction, the defendant shall do so by appearing for an informal or formal hearing. If the hearing date is not specified on the citation, the defendant shall contact the court in person, by representation, by mail, or by telephone, and obtain a scheduled date and time to appear for an informal or formal hearing. If the hearing date is specified on the citation, the defendant shall appear on that date. The hearing shall be an informal hearing, unless a formal hearing is requested by the defendant or the plaintiff as provided by section 8717. If a hearing is scheduled by telephone, the court shall mail the defendant a confirming notice of that hearing by regular mail to the address appearing on the citation or to an address that is furnished by the defendant. An informal hearing shall be conducted pursuant to section 8719, and a formal hearing shall be conducted pursuant to section 8721.

History: Add. 1994, Act 12, Eff. May 1, 1994.

REVISED JUDICATURE ACT OF 1961 (EXCERPT)
Act 236 of 1961

600.8717 Request for formal hearing.

Sec. 8717. (1) The court shall schedule a formal hearing if either the defendant or the plaintiff expressly requests a formal hearing as provided by this section.

(2) A request for a formal hearing must be received by the court at least 10 days before the hearing date. The request may be made in person, by representation, by mail, or by telephone.

(3) The party requesting a formal hearing shall notify the other party or parties of the request. Notification of the request must be received by the other parties at least 10 days before the hearing date. The notification of a request for a formal hearing may be made in person, by representation, by mail, or by telephone.

(4) In a railway municipal civil infraction action, the court shall also schedule a formal hearing if either or both of the following apply:

- (a) The railway municipal civil infraction caused damage to a natural resource or facility.
- (b) The authorized local official impounded the vehicle.

History: Add. 1994, Act 12, Eff. May 1, 1994.

REVISED JUDICATURE ACT OF 1961 (EXCERPT)
Act 236 of 1961

600.8719 Informal hearing.

Sec. 8719. (1) An informal hearing shall be conducted by a district court magistrate, if authorized by the judge or judges of the district court district, or by a judge of the district court or a municipal court. A district court magistrate may administer oaths, examine witnesses, and make findings of fact and conclusions of law at an informal hearing. The judge or district court magistrate shall conduct the informal hearing in an informal manner so as to do substantial justice according to the rules of substantive law, but is not bound by the statutory provisions or rules of practice, procedure, pleading, or evidence, except provisions relating to privileged communications. There shall not be a jury at an informal hearing. A verbatim record of an informal hearing is not required.

(2) At an informal hearing, the defendant shall not be represented by an attorney and the plaintiff shall not be represented by the prosecuting attorney or attorney for a political subdivision.

(3) Notice of a scheduled informal hearing shall be given to the plaintiff. The plaintiff and defendant may subpoena witnesses. Witness fees need not be paid in advance to a witness. Witness fees for a witness on behalf of the plaintiff are payable by the district control unit of the district court for the place where the hearing occurs, or by the city or village if the hearing involves an ordinance violation in a district where the district court is not functioning.

(4) If the judge or district court magistrate determines by a preponderance of the evidence that the defendant is responsible for a municipal civil infraction, the judge or magistrate shall enter an order against the defendant as provided in section 8727. Otherwise, a judgment shall be entered for the defendant, but the defendant is not entitled to costs of the action.

(5) The plaintiff and defendant are entitled to appeal an adverse judgment entered at an informal hearing. An appeal from a municipal judge shall be a trial de novo in the circuit court. In other instances, an appeal shall be de novo in the form of a scheduled formal hearing as follows:

- (a) The appeal from a judge of the district court shall be heard by a different judge of the district.
- (b) The appeal from a district court magistrate shall be heard by a judge of the district.

History: Add. 1994, Act 12, Eff. May 1, 1994.

REVISED JUDICATURE ACT OF 1961 (EXCERPT)
Act 236 of 1961

600.8721 Formal hearing.

Sec. 8721. (1) A formal hearing shall be conducted only by a judge of the district court or a municipal court.

(2) In a formal hearing, the defendant may be represented by an attorney, but is not entitled to counsel appointed at public expense.

(3) Notice of a formal hearing shall be given to the prosecuting attorney or the attorney who represents the plaintiff political subdivision. That attorney shall appear in court for a formal hearing and is responsible for the issuance of a subpoena to each witness for the plaintiff. The defendant may also subpoena witnesses. Witness fees need not be paid in advance to a witness. Witness fees for a witness on behalf of the plaintiff are payable by the district control unit of the district court for the place where the hearing occurs, or by the city or village if the hearing involves an ordinance violation in a district where the district court is not functioning.

(4) There shall not be a jury trial in a formal hearing.

(5) If the judge determines by a preponderance of the evidence that the defendant is responsible for a municipal civil infraction, the judge shall enter an order against the defendant as provided in section 8727. Otherwise, a judgment shall be entered for the defendant, but the defendant is not entitled to costs of the action.

History: Add. 1994, Act 12, Eff. May 1, 1994.

REVISED JUDICATURE ACT OF 1961 (EXCERPT)
Act 236 of 1961

600.8723 Failure to appear; default judgment.

Sec. 8723. If the defendant fails to appear as directed by the citation or other notice at a scheduled appearance under section 8715(3)(b) or (4), at a scheduled informal hearing, or at a scheduled formal hearing, the court shall enter a default judgment against the defendant.

History: Add. 1994, Act 12, Eff. May 1, 1994.

REVISED JUDICATURE ACT OF 1961 (EXCERPT)
Act 236 of 1961

600.8725 Issuance of citation; fee prohibited; violation.

Sec. 8725. (1) An authorized local official issuing a citation under this chapter for a municipal civil infraction shall not accept a fee for issuing the citation.

(2) An authorized local official who violates this section is guilty of misconduct in office and subject to removal from office.

History: Add. 1994, Act 12, Eff. May 1, 1994.

REVISED JUDICATURE ACT OF 1961 (EXCERPT)
Act 236 of 1961

600.8727 Municipal civil infraction; civil fine, costs, justice system assessments, damages, and expenses.

Sec. 8727. (1) A municipal civil infraction is not a lesser included offense of a criminal offense or an ordinance violation that is not a civil infraction.

(2) If a defendant is determined to be responsible or responsible "with explanation" for a municipal civil infraction, the judge or district court magistrate may order the defendant to pay a civil fine, costs as provided in subsection (3), the justice system assessment as provided in subsection (4), and, if applicable, damages and expenses as provided in section 8733(2). In the order of judgment, the judge or district court magistrate may grant a defendant permission to pay a civil fine, costs, assessment, and damages and expenses within a specified period of time or in specified installments. Otherwise, the civil fine, costs, assessment, and damages and expenses are due immediately.

(3) If a defendant is ordered to pay a civil fine under subsection (2), the judge or district court magistrate shall summarily tax and determine the costs of the action, which are not limited to the costs taxable in ordinary civil actions and may include all expenses, direct and indirect, to which the plaintiff has been put in connection with the municipal civil infraction, up to the entry of judgment. Costs of not more than \$500.00 shall be ordered. Until September 30, 2003, the amount of costs ordered shall be not less than \$9.00. Except as otherwise provided by law, costs shall be payable to the general fund of the plaintiff.

(4) Effective October 1, 2003, in addition to any fine or cost ordered to be paid under subsection (2), the judge or district court magistrate shall order the defendant to pay a justice system assessment of \$10.00. Upon payment of the assessment, the clerk of the court shall transmit the assessment collected to the state treasurer for deposit in the justice system fund created in section 181.

(5) In addition to ordering the defendant to pay a civil fine, costs, a justice system assessment, and damages and expenses, the judge or district court magistrate may issue a writ or order under section 8302. — *EQUITY*

(6) A district court magistrate shall impose the sanctions permitted under subsections (2) and (5) only to the extent expressly authorized by the chief judge or only judge of the district court district.

(7) Each district of the district court and each municipal court may establish a schedule of civil fines, costs, and assessments to be imposed for municipal civil infractions that occur within the district or city. If a schedule is established, it shall be prominently posted and readily available for public inspection. A schedule need not include all municipal civil infractions. A schedule may exclude cases on the basis of a defendant's prior record of municipal civil infractions.

(8) A default in the payment of a civil fine, costs, assessment, or damages or expenses ordered under subsection (2), (3), or (4) or an installment of the fine, costs, assessment, or damages or expenses may be collected by a means authorized for the enforcement of a judgment under chapter 40 or chapter 60.

(9) If a defendant fails to comply with an order or judgment issued pursuant to this section within the time prescribed by the court, the court may proceed under section 8729, 8731, or 8733, as applicable.

(10) A defendant who fails to answer a citation or notice to appear in court for a municipal civil infraction is guilty of a misdemeanor.

History: Add. 1994, Act 12, Eff. May 1, 1994;— Am. 2003, Act 95, Eff. Oct. 1, 2003.

REVISED JUDICATURE ACT OF 1961 (EXCERPT)
Act 236 of 1961

600.8729 Payment of fine, costs, assessment, damages, or expenses; default as civil contempt.

Sec. 8729. (1) If a defendant defaults in the payment of a civil fine, costs, assessment, or, if applicable, damages or expenses as provided in section 8733(2) if applicable, or any installment, as ordered pursuant to section 8727, the court, upon the motion of the plaintiff or upon its own motion, may require the defendant to show cause why the defendant should not be held in civil contempt and may issue a summons, an order to show cause, or a bench warrant of arrest for the defendant's appearance.

(2) If a corporation or an association is ordered to pay a civil fine, costs, assessment, or damages or expenses, the individuals authorized to make disbursement shall pay the fine, costs, assessment, or damages or expenses, and their failure to do so shall be civil contempt unless they make the showing required in this section.

(3) Unless the defendant shows that the default was not attributable to an intentional refusal to obey the order of the court or to a failure on his or her part to make a good faith effort to obtain the funds required for payment, the court shall find that the default constitutes a civil contempt and may order the defendant committed until all or a specified part of the amount due is paid.

(4) If it appears that the default in the payment of a fine, costs, assessment, or damages or expenses does not constitute civil contempt, the court may enter an order allowing the defendant additional time for payment, reducing the amount of payment or of each installment, or revoking the fine, costs, assessment, or damages or expenses.

(5) The term of imprisonment on civil contempt for nonpayment of a civil fine, costs, assessment, or damages or expenses shall be specified in the order of commitment and shall not exceed 1 day for each \$30.00 due. A person committed for nonpayment of a civil fine, costs, assessment, or damages or expenses shall be given credit toward payment for each day of imprisonment and each day of detention in default of recognizance before judgment at the rate of \$30.00 per day.

(6) A defendant committed to imprisonment for civil contempt for nonpayment of a civil fine, costs, assessment, or damages or expenses shall not be discharged from custody until 1 of the following occurs:

- (a) The defendant is credited with the amount due pursuant to subsection (5).
 - (b) The amount due is collected through execution of process or otherwise.
 - (c) The amount due is satisfied pursuant to a combination of subdivisions (a) and (b).
- (7) The civil contempt shall be purged upon discharge of the defendant pursuant to subsection (6).

History: Add. 1994, Act 12, Eff. May 1, 1994;— Am. 2003, Act 95, Eff. Oct. 1, 2003.

REVISED JUDICATURE ACT OF 1961 (EXCERPT)
Act 236 of 1961

LIEN - CIVIL
INFRACTION

600.8731 Violation involving land, building, or other structure; nonpayment of civil fine, costs, or installment; lien.

Sec. 8731. (1) If a defendant does not pay a civil fine, costs, or assessment or an installment ordered under section 8727 within 30 days after the date on which payment is due under section 8727 in a municipal civil infraction action brought for a violation involving the use or occupation of land or a building or other structure, the plaintiff may obtain a lien against the land, building, or structure involved in the violation by recording a copy of the court order requiring payment of the fines, costs, and assessment with the register of deeds for the county in which the land, building, or structure is located. The court order shall not be recorded unless a legal description of the property is incorporated in or attached to the court order. The lien is effective immediately upon recording of the court order with the register of deeds.

(2) The court order recorded with the register of deeds shall constitute notice of the pendency of the lien. In addition, a written notice of the lien shall be sent by the plaintiff by first-class mail to the owner of record of the land, building, or structure at the owner's last known address.

(3) The lien may be enforced and discharged by a county, city, village, or township in the manner prescribed by its charter, by the general property tax act, 1893 PA 206, MCL 211.1 to 211.157, or by an ordinance duly passed by the governing body of the county, city, village, or township. However, property is not subject to sale under the general property tax act, 1893 PA 206, MCL 211.1 to 211.157, for nonpayment of a civil fine, costs, or assessment or an installment ordered under section 8727 unless the property is also subject to sale under the general property tax act, 1893 PA 206, MCL 211.1 to 211.157, for delinquent property taxes.

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

- (a) The other lien is a lien for taxes or special assessments.
- (b) The other lien is created before May 1, 1994.
- (c) Federal law provides that the other lien has priority.
- (d) The other lien is recorded before the lien under this section is recorded.

(5) A political subdivision may institute an action in a court of competent jurisdiction for the collection of the judgment imposed by a court order for a municipal civil infraction. However, an attempt by a county, city, village, or township to collect the judgment by any process does not invalidate or waive the lien upon the land, building, or structure.

(6) A lien provided for by this section shall not continue for a period longer than 5 years after a copy of the court order imposing a fine, costs, or assessment is recorded, unless within that time an action to enforce the lien is commenced.

History: Add. 1994, Act 12, Eff. May 1, 1994;— Am. 2003, Act 95, Eff. Oct. 1, 2003;— Am. 2003, Act 178, Eff. Oct. 1, 2003.

REVISED JUDICATURE ACT OF 1961 (EXCERPT)
Act 236 of 1961

600.8733 Trailway municipal civil infraction; seizure and impoundment of vehicle; lien; bond; payments; forfeiture and application of bond; enforcement of lien by foreclosure sale; notice; distribution of proceeds.

Sec. 8733. (1) An authorized local official may seize and impound a vehicle operated in the commission of a trailway municipal civil infraction. Upon impoundment, the vehicle is subject to a lien, subordinate to a prior lien of record, in the amount of any fine, costs, or assessment that the defendant may be ordered to pay under section 8727 and any expenses described in subsection (2) that the defendant may be ordered to pay under section 8727. The defendant or a person with an ownership interest in the vehicle may post with the court a cash or surety bond in the amount of \$750.00. If such a bond is posted, the vehicle shall be released from impoundment. The vehicle shall also be released, and the lien shall be discharged, upon a judicial determination that the defendant is not responsible for the trailway municipal civil infraction or upon payment of the fine, costs, assessment, and damages and expenses.

(2) In a trailway municipal civil infraction action, an order under section 8727 may require the defendant to pay 1 or both of the following:

(a) The amount of damages to any land, water, wildlife, vegetation, or other natural resource or to any facility damaged by the violation of the ordinance. Money collected under this subdivision shall be distributed to the governmental entity that has jurisdiction over the recreational trailway.

(b) The reasonable expense of impoundment under subsection (1). Money collected under this subdivision shall be distributed to the governmental entity employing the authorized local official who impounded the vehicle involved in the trailway municipal civil infraction.

(3) If the court determines that the defendant is responsible for the trailway municipal civil infraction and the defendant defaults in the payment of the fine, costs, assessment, or damages or expenses, or in any installment, as ordered pursuant to section 8727, any bond posted under subsection (1) shall be forfeited and applied to the fine, costs, assessment, damages, expenses, or installment. The court shall certify any remaining unpaid amount to the attorney for the governmental entity whose ordinance was violated. The attorney for the governmental entity may enforce the lien by a foreclosure sale. The foreclosure sale shall be conducted in the manner provided and subject to the same rights as apply in the case of execution sales under sections 6031, 6032, 6041, 6042, and 6044 to 6047.

(4) Not less than 21 days before the foreclosure sale, the attorney for the governmental entity whose ordinance was violated shall by certified mail send written notice of the time and place of the foreclosure sale to each person with a known ownership interest in or lien of record on the vehicle. In addition, not less than 10 days before the foreclosure sale, the attorney shall twice publish notice of the time and place of the foreclosure sale in a newspaper of general circulation in the county in which the vehicle was seized. The proceeds of the foreclosure sale shall be distributed in the following order of priority:

(a) To discharge any lien on the vehicle that was recorded prior to the creation of the lien under subsection (1).

(b) To the clerk of the court for the payment of the fine, costs, assessment, damages, and expenses that the defendant was ordered to pay under section 8727.

(c) To discharge any lien on the vehicle that was recorded after the creation of the lien under subsection (1).

(d) To the owner of the vehicle.

History: Add. 1994, Act 12, Eff. May 1, 1994;—Am. 2003, Act 95, Eff. Oct. 1, 2003.

REVISED JUDICATURE ACT OF 1961 (EXCERPT)
Act 236 of 1961

600.8735 Municipal civil infraction; additional costs.

Sec. 8735. If the defendant in a municipal civil infraction action is determined responsible for a municipal civil infraction, the judge or district court magistrate, in addition to any fine, costs, and assessment imposed under section 8727, may assess additional costs incurred in compelling the appearance of the defendant, which additional costs shall be returned to the general fund of the unit of government incurring the costs.

History: Add. 1995, Act 54, Eff. Jan. 1, 1996;—Am. 2003, Act 95, Eff. Oct. 1, 2003.

CHAPTER 655. - NUISANCES

Footnotes:

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Cross reference— *Health and sanitation generally* - see Mich Const., Art. 4, Sec. 51; M.C.L.A. Secs. 325.1 et seq., 327.1 et seq., 750.466 et seq.; GEN. OFF. Ch. 676; *State Housing Law* - see M.C.L.A. Secs. 125.401 et seq.; *Nuisance abatement; damages and expenses* - see M.C.L.A. Sec. 600.2940; *Nuisances generally* - see M.C.L.A. Secs. 600.3801 et seq.; *Unsanitary actions in public places* - see GEN. OFF. 660.04; *Abatement of encroachments in rights of way obstructing view of State Capitol Building* - see S.U. & P.S. 1022.065(d); *Sewer violations* - see S.U. & P.S. 1040.16; *Substandard buildings* - see B. & H. 1460.07.

655.01. - Purpose.

The purpose of this chapter is to promote the public health, safety and welfare of residents of the City and to provide for the removal and abatement of unhealthy, noxious or dangerous substances, structures and conditions, at private expense.

(Ord. No. 791, 9-26-88)

655.02. - Application of chapter.

Various nuisances are defined and prohibited in this and other chapters of these Codified Ordinances. It is the intent of Council, in enacting this chapter, to provide for the abatement of any nuisance described herein and to supplement other chapters in which nuisances are defined and prohibited. The provisions of this chapter relating to the abatement of nuisances shall be an alternative to other methods and procedures for abatement as provided by statute, ordinance or common law and shall not limit or derogate such other methods and procedures.

(Ord. No. 791, 9-26-88)

655.03. - Definitions.

As used in this chapter:

Emergency Situation. "Emergency situation" means any situation involving a hazardous condition, nuisance or obstruction wherein there exists a reasonable possibility of imminent or immediate danger or harm to the public health, safety or welfare, or to any individual.

Enforcement Official. "Enforcement Official" means the officer or employee of the City or Health Officer charged with the responsibility of enforcing any aspect of these Codified Ordinances with respect to the department, agency or division in which he or she is employed. Enforcement Officials include, but are not

limited to, the Mayor, the Director of Public Service, the Director of Parks and Recreation, the Director of Planning and Municipal Development, the Executive Director of Emergency Services, the Director of Building Safety, the Fire Chief and the Chief of Police.

Noxious Weeds or Plants. "Noxious weeds or plants" means those weeds or plants defined as such by statute or established as such by resolution of Council.

Nuisance. "Nuisance" means any public nuisance, known as such at common law or in equity jurisprudence, and whatever is dangerous to human life or detrimental to health. Further, "nuisance" means any condition or activity which is unwholesome, dangerous, offensive or unhealthy, which constitutes a menace to the health and safety of the public, or any structure which, due to a structural defect or dilapidation, has become dangerous to life or property. "Nuisance" includes, but is not limited to:

- (1) Unsanitary disposal of litter, including garbage, waste, peelings of vegetables or fruits, rubbish, ashes, cans, bottles, wire, paper, cartons, boxes, parts of automobiles, wagons, furniture, glass, oil of an unsightly or unsanitary nature, or anything else of an unsightly or unsanitary nature;
- (2) Unburied dead animals;
- (3) The accumulation of water causing mosquito or other vector breeding or proliferation;
- (4) Rodent or insect infestation;
- (5) The accumulation of bees, fowl, bats, wasps or other venomous pests or animals in such a manner as to create a condition that may be injurious to the public health or safety;
- (6) Hazards, such as open excavations, open wells, pits, trees or parts thereof in danger of falling on any street, sidewalk or portion of a public right of way, discarded refrigerators and freezers with doors attached, unsecured vacant structures or habitation for bats, wasps or other venomous pests;
- (7) Allowing bird infestation within a dwelling or bird roost conditions that are conducive to an unhealthful or disease-causing condition;
- (8) The growth of noxious weeds or plants which are about to spread or mature seeds;
- (9) A condition for which a correction order requiring immediate compliance has been issued pursuant to Section 2.204 of the Uniform Fire Code, as adopted in Chapter 1610 of the Fire Prevention Code;
- (10) Obstructions, as defined in subsection (e) hereof;
- (11) A prolonged violation, intermittent or continuous, violation of any of the provisions of Chapter 654 (Noise);
- (12) A violation of any of the provisions of Sections 676.01 (Littering), 676.02 (Unlawful Deposits on Public and Private Property), or 676.025 (Scattered Trash in Public Right of

Way);

- (13) A violation of Section 840.09 (Outdoor Gatherings);
- (14) A violation of any of the provisions of Chapter 1040 (Sewers Generally), as provided in Section 1040.16;
- (15) A violation of any of the provisions of Chapter 1060 (Garbage and Rubbish Collection and Disposal);
- (16) A violation of any of the provisions of the Zoning Code, as provided in Section 1242.01(e);
- (17) A violation of any of the provisions of the Lansing Housing Code, as provided in Section 1460.07, 1460.20, 1460.21 or 1460.24; and
- (18) A public nuisance, as defined in Section 1460.04(23) of the Lansing Housing Code.

Obstruction. "Obstruction" means any structure, vessel, vehicle, tree, bush, shrub, hedge, vine or other plant growth or any other object, or any collection of debris, litter or other objects or substances, which endangers the public health or the safety of any person, or which constitutes an interference or hazard to the lawful use of the waters, railroads, streets, sidewalks or other public ways in the City.

Owner. "Owner" means and includes both the owner or part owner of property on which a nuisance is located, and the occupant or lessee of such property if the property is leased, where such occupant or lessee is responsible, in whole or in part, for creating or maintaining the nuisance. The legal owner of such property shall, in all events, be responsible for the cost of removing, repairing, abating or obviating such nuisance, and, where applicable, a lessee or occupant shall share mutual responsibility with the owner for such costs.

Person. "Person" means and includes any individual, partnership, firm, corporation or other legal entity.

(Ord. No. 791, 9-26-88)

655.04. - Nuisances prohibited.

No person shall cause, harbor, commit or maintain, or suffer to be caused, harbored, committed or maintained, any nuisance, as defined by the statutes or by the common law of this State or as defined in this chapter or in any ordinance of the City, at any place within the City.

(Ord. No. 791, 9-26-88)

655.05. - Inspections.

The Enforcement Official is hereby authorized to inspect occupied or vacant land or premises to ascertain the existence of nuisances on such land or premises. The Enforcement Official shall inspect the land or premises at reasonable daylight times in a reasonable manner and in compliance with all applicable

provisions of law. If the owner or occupant of the land or premises refuses or denies access for such purpose, the Enforcement Official shall have recourse to every remedy provided by law to secure entry. If the condition that is believed to exist creates an emergency situation in that it imminently endangers human life or health no search warrant shall be required.

(Ord. No. 791, 9-26-88)

655.06. - Procedure for abatement of nuisances.

- (a) *Commencement of Proceedings.* If, at any time, the Enforcement Official finds that a condition exists or that a practice or activity is occurring in the City, which condition, practice or activity constitutes a nuisance, he or she shall commence proceedings to cause the abatement of such nuisance.
- (b) *Notice of Violation.*
 - (1) *Issuance.* The Enforcement Official shall issue a written notice to the person responsible for the creation, commission or maintenance of such nuisance.
 - (2) *Content.* The notice shall describe in detail the location and nature of the nuisance and the corrective action to be taken to abate it. The notice shall specify a time limit for compliance with the order to abate such nuisance, which shall be a reasonable time, but not to exceed fifteen days from the time the notice is served.
 - (3) *Service.* Notice shall be served upon any person entitled to notice by personal service or by first class mail, addressed to such person at his or her last known address, sent in an envelope containing thereon the return address of the Enforcement Official.
- (c) *Failure to Comply With Notice; Hearing by Council.* If the person responsible for the creation, commission or maintenance of the nuisance neglects or refuses to take the steps required to abate the nuisance, the Enforcement Official shall file a copy of his or her findings, and a copy of the order previously served, with Council, requesting that necessary action be taken to abate the nuisance. Council shall fix a date for a hearing, which date shall not be later than ten days from the date the findings and order are filed with Council, and shall give notice to the person responsible for the creation, commission or maintenance of the nuisance of the time and place of the hearing. At the hearing the person responsible for the creation, commission or maintenance of the nuisance shall be given an opportunity to show cause why the nuisance should not be abated, and Council shall issue an order which either approves, disapproves or modifies the order for abatement of the nuisance.

(Ord. No. 791, 9-26-88)

655.07. - Noncompliance with order of council; recourse of city.

- (a) If the person responsible for the creation, commission or maintenance of the nuisance does

not comply with the order for abatement of the nuisance issued by Council, within three days of its issuance, Council shall forthwith direct the appropriate City officer to remedy the condition which is the subject of such notice.

- (b) The expense, including the administration cost to the City, incurred by the City in so doing shall be a lien against the real property and shall be reported to the City Assessor who shall assess the same against the property on which the nuisance was located.
- (c) The owner or party in interest in whose name the property appears upon the last local tax assessment records shall be notified of the amount of such cost by first class mail at the address shown on the records. If he or she fails to pay the same within thirty days after mailing by the City Assessor of the notice of the amount thereof, the City Assessor shall add the same to the next tax roll of the City and the same shall be collected in the same manner in all respects as provided by law for the collection of taxes by the City.
- (d) Abatement by the City of any condition which constitutes a nuisance and reimbursement to the City of expenses incurred thereby shall not bar prosecution for maintenance of the nuisance.

(Ord. No. 791, 9-26-88)

655.99. - Penalty.

Editor's note— See Section 202.99 for general Code penalty if no specific penalty is provided.