

U.S. CIRCUIT COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

CASE NO. 13-2535

DAVID SHOEMAKER,

Plaintiff-Appellee,

v.

CITY OF HOWELL

Defendant-Appellant,

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On Appeal from United States District Court  
Eastern District Of Michigan, Southern Division  
USDC Case No. 11-15135, Hon. Lawrence P. Zatkoff

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**MICHIGAN MUNICIPAL LEAGUE AND MICHIGAN MUNICIPAL  
LEAGUE LIABILITY & PROPERTY POOL, MICHIGAN TOWNSHIP  
ASSOCIATION AND PUBLIC CORPORATION LAW SECTION'S *AMICI  
CURIAE* BRIEF IN SUPPORT OF DEFENDANT/APPELLANT  
CITY OF HOWELL'S BRIEF ON APPEAL**

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**STATEMENT REGARDING AUTHORIZATION  
TO FILE AMICI CURIAE BRIEF; CONSENT OF ALL PARTIES**

This Amici Curiae Brief was authorized by the Michigan Municipal League, Legal Defense Fund, Michigan Municipal League Liability & Property Pool, Michigan Township Association and Public Corporation Law Section. The brief was not authored in whole or in part by counsel for a party and no person, other than the Amicus Curiae, its member or counsel contributed money intended to fund preparation or submission. This amici curiae brief is filed with the consent of all parties to the appeal. FED. R. APP. P. 29(a).



**INTEREST OF AMICI CURIAE**

Amicus Curiae Michigan Municipal League (hereinafter, “Michigan Municipal League”) is a non-profit Michigan corporation whose purpose is the improvement of municipal government and administration through cooperative effort. Its membership is comprised of 524 Michigan local governments, of which 478 are also members of the Michigan Municipal League Legal Defense Fund (the “Legal Defense Fund”). The Michigan Municipal League operates the Legal Defense Fund through a board of directors. The purpose of the Legal Defense Fund is to represent the member local governments in litigation of statewide significance.

This amicus curiae brief is authorized by the Legal Defense Fund’s Board of Directors, whose membership includes the president and executive director of the Michigan Municipal League, and the officers and directors of the Michigan Association of Municipal Attorneys: Lori Grigg Bluhm, city attorney, Troy; Clyde J. Robinson, city attorney, Kalamazoo; Randall L. Brown, city attorney, Portage; Catherine M. Mish, city attorney, Grand Rapids; Eric D. Williams, city attorney, Big Rapids; James O. Branson, III, city attorney, Midland; James J. Murray, city attorney, Boyne City and Petoskey; Robert J. Jamo, city attorney, Menominee; John C. Schrier, city attorney, Muskegon; Thomas R. Schultz, city attorney,

Farmington and Novi; and William C. Mathewson, general counsel, Michigan Municipal League.

Amicus Curiae The Michigan Municipal League Liability & Property Pool was established under 1982 PA 138 to develop and to administer a group program of liability and property self-insurance for Michigan municipalities. The principal objectives of the Pool are to establish and to administer municipal risk management service, to reduce the incidents of property and casualty losses occurring in the operation of local government functions, and to defend the Pool's members against liability losses.

Amicus Curiae the Michigan Township Association is a Michigan non-profit corporation whose membership consisting of over 1,230 townships within the State of Michigan (including both general law and charter townships) joined together for the purpose of providing education, exchange of information and guidance to and among township officials to enhance the more efficient and knowledgeable administration of township government services under the laws and statutes of the State of Michigan.

The Board of Directors of the Michigan Township Association has authorized and directed counsel to move this Honorable Court to grant leave to the Defendant-Appellant to appeal the within cause and to grant leave to file an amicus curiae brief in support of The City of Howell.

Amicus Curiae The Public Law Section is a voluntary membership section of the State Bar of Michigan, comprised of approximately 614 attorneys who generally represent the interests of government corporations, including cities, villages, townships and counties, boards and commissions, and special authorities. Although the Section is open to all members of the State Bar, its focus is centered on the laws, regulations, and procedures relating to public law. The Public Corporation Law Section provides education, information and analysis about issues of concern to its membership and the public through meetings, seminars, the State Bar of Michigan website, public service programs and publications. The Public Corporation Law Section is committed to promoting the fair and just administration of public law. In furtherance of this purpose, the Public Law Corporation Section participates in cases that are significant to governmental entities throughout the State of Michigan. The Section has filed numerous *Amicus Curiae* briefs before the appellate courts.

The Public Corporation Law Section Council, the decision-making body of the Section, is comprised of 21 members, with currently 20 members actively serving. The filing of this *Amicus Curiae* Brief was authorized at the June 20, 2014 regular meeting of the Council. Thirteen members of the Council were present at the meeting, and the motion passed on a vote of 13 to 0 with 0

abstention. The position expressed in this *Amicus Curiae* Brief is that of the Public Law Corporation Section only and is not the position of the State Bar of Michigan.

The district court's decision invalidating parts of the City's health, safety and sanitation ordinance as a violation of procedural and substantive due process is a cause of great concern. If allowed to stand, the lower court's decision would have a negative economic impact on governmental entities. Similar ordinances have been enacted throughout the state of Michigan as appropriate exercises of municipal authority to protect the health, safety and welfare of residents under the police power. Requiring additional process to abate nuisances would constitute a significant burden. If not maintained, the unkempt properties would have a detrimental impact on municipal efforts to encourage traffic safety, enhance aesthetics, and to abate or prevent potential nuisances and improve property values. Moreover, the district court's interpretation runs counter to decades of precedent supporting such legislation under the authority of the police power.

## SUMMARY OF ARGUMENT

The district court incorrectly found that Plaintiff's procedural due process rights were violated. There is no dispute that Plaintiff had actual, repeated notice of his violation of the ordinance requiring property owners to maintain the outlawn, the area between the sidewalk and the street, and was advised of the violation by an enforcement officer. The City's ordinance provided for both notice and opportunity for a hearing. Plaintiff failed to avail himself of the process at his disposal and should not be able to use his inaction to claim a violation of due procedural due process.

The district court further concluded that Plaintiff's fundamental substantive due process rights were violated by being forced to abate a nuisance on City property. This erroneous conclusion was premised on the court's determination that Plaintiff had no property interest in the outlawn. Michigan law provides that the interest conveyed to a municipality for a public way in a statutorily dedicated plat is only nominal title and that no beneficial ownership interest is acquired. No fundamental right was implicated by the ordinance and legitimate governmental interests, including nuisance abatement, public health and aesthetics, supported the validity of the ordinance under rational basis review.

This Amici Curiae Brief supports the City's request for reversal.

Amici adopts the City's Statement of Facts and Proceedings.

## ARGUMENT

### I. The City Ordinance Did Not Violate Procedural Due Process Where Constitutionally Adequate Notice And Opportunity To Be Heard Was Available.

The essential elements of due process are notice and opportunity to be heard. *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 546, 105 S.Ct. 1487, 84 L.Ed.2d 494 (1985). To state a procedural due process claim, Plaintiff is required to show he was deprived of a liberty or property interest. *Bd. of Regents of State Colls. v. Roth*, 408 U.S. 564, 92 S.Ct. 270, 133 L.Ed.2d 548 (1972). Plaintiff must then show that the procedures available to protect that interest were insufficient, using the balancing test discussed in *Mathews v. Eldridge*, 424 U.S. 319, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976). *Mathews* identified three factors – the nature of the private interest, risk of an erroneous deprivation under the existing procedures and the value of any additional procedural safeguards as well as the government’s interest, including administrative burdens which the additional safeguards would add. *Id.* at 335. “[T]he fundamental requirement of due process is the opportunity to be heard ‘at a meaningful time and in a meaningful manner.’” *Id.* at 333.

This Circuit has stated:

To establish a procedural due process claim pursuant to §1983, plaintiffs must establish three elements: (1) that they have a life, liberty or property interest protected by the Due Process Clause of the Fourteenth Amendment to the United States Constitution, (2) that they were deprived of this protected interest within the meaning of the Due

Process Clause, and (3) that the state did not afford them adequate procedural rights prior to depriving them of their protected interest. *Hahn v. Star Bank*, 190 F.3d 708, 716 (6th Cir. 1999) (citation omitted).

Assuming that the special assessment of \$600 in costs and administrative fees added to the City's tax rolls was a protected property interest, Plaintiff here received adequate notice and an opportunity to be heard.

Plaintiff received sufficient notice that his failure to maintain the property violated ordinance § 622.02 (Addendum p. 20)<sup>1</sup>, and that he was subject to a fine under the municipal civil infraction ordinance, which provided an opportunity for judicial review. Following inspection by the City code enforcement officer, Plaintiff received notice personally and in writing that the height of the grass/weeds in the outlawn violated § 622.02. A "door hanger" advised him of the violation and provided a telephone number. (R. 25, Ex. 9, 8/18/11 Door Hanger, PG ID 535-536). He received two written letters titled "Notice of Ordinance Violation" on May 17, 2011 and August 9, 2011, informing him of the violation of § 622.02, the need to resolve the condition within five days and that if he failed to comply he would be liable under the Municipal Civil Infraction Ordinance (MICO) which establishes fines for uncorrected ordinance violations. (R.26, Defendant's MSJ, Exs. 4 and 8, PG ID 608 and 621).

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<sup>1</sup> Excerpts of the City's Ordinances are included as an Addendum, hereafter referred to as "Add."

Section 622.02 prohibits an owner, lessee or occupant having control of land within the City from “permit[ting] or maintain[ing] on any such lot or land or on or along the sidewalk, street or alley adjacent to the same between the property line and the curb . . . any growth of weeds, grass or other rank vegetation to a greater height of eight inches on the average . . .” (§ 622.02(a) (Add. p. 20)).

If an owner lessee or occupant does not comply, a representative must provide notice, either written or verbal, instructing him to comply. § 622.02(e). (Add. p. 21). The City will have the vegetation removed and the cost, plus an administrative fee, will be certified to the assessor and become a lien on the property if it goes unpaid for 45 days. This amount is either incorporated into a special assessment roll or entered on the next tax roll to be collected and the lien enforced in the same manner as general city taxes are collected. § 622.02(e).

Plaintiff nonetheless had actual notice of the violation, sufficient time to remedy the situation and was aware that failure to do so would result in abatement by the City and imposition of a fine. (R.26, Exs. 4 and 8, PG ID 608 and 621).

Plaintiff argued that the City could not point to any available formal or informal hearing before a neutral fact finder under § 622.02. However, violation of § 622.02 constitutes a municipal civil infraction. Section 622.99 (Add. p. 25) states: “whoever violates any of the provisions of this chapter is responsible for a municipal civil infraction and shall be subject to the civil fines set forth in §



202.99.” (Add. pp. 5-6). A fine under § 202.99 affords the process outlined in § 208.07. (Add. pp. 12-14). (Municipal Ordinance Violations Bureau).

Plaintiff received written municipal civil infraction violation notices titled “Notice of Ordinance Violation”. The letters, dated May 17, 2011 and August 9, 2011, advised Plaintiff of the specific ordinance violated, a timeline for resolution, notice of a follow up inspection, the fine and fees for noncompliance, and the name and title of the Ordinance Officer.<sup>2</sup> The Notice states costs incurred will be billed to the owner and/or placed on property taxes for collection. (R.26, Exs. 4 and 8, PG ID 608 and 621).

Provisions of the “MCIO” provide for both notice and hearing. After committing a violation, a person may receive either a municipal civil infraction *citation* (§ 208.02(e)) (Add. p. 10) or violation *notice* (§ 208.02(f) (Add. p. 10)). Sections 208.07(c) and (d) (Add. p. 13) apply to a municipal civil infraction violation *notice*, such as the City issued to Plaintiff.

(c) Disposition of Violations. The [Municipal Ordinance Violations] Bureau may dispose only of Municipal civil infraction violations for which a fine has been scheduled and for which a

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<sup>2</sup> Section 208.07(e) (Add. p. 13) instructs as to what the substance of the Notice should contain. Here, the City did not strictly comply with its own ordinance. Its oversight, however, is immaterial to the sufficiency of notice and process. To hold otherwise would constitutionalize every ordinance, regulation, or state law. *Brody v. City of Mason*, 250 F.3d 432, 437 (6th Cir. 2001). “A state cannot be said to have a federal due process obligation to follow all of its procedures; such system would result in the constitutionalizing of every state rule, and would not be administrable.” *Levine v. Torvik*, 986 F.2d 1506, 1515 (6th Cir. 1993).

Municipal civil infraction violation notice (as compared with a citation) has been issued. The fact 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 afforded by law.

(d) Bureau Limited to Accepting Admissions of Responsibility. 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.

The MCIO allows the violation to be processed by a court of competent jurisdiction instead of the Bureau, should the recipient deny responsibility or request a judicial hearing. The notice of violation triggers the opportunity to be heard despite lack of a citation. Plaintiff received a notice of violation. Receipt of the notice of violation was sufficient to put Plaintiff on notice of the Ordinance. Review of its provisions would have confirmed the existence of hearing procedures. Citizens are presumed to know the law and ignorance of the law is no excuse. "This maxim, deeply embedded in our American legal tradition, reflects a presumption that citizens know the requirements of the law." *United States v.*

*Baker*, 197 F.3d 211, 218 (6th Cir. 1999). The Supreme Court recently explained: We have long recognized the “common maxim, familiar to all minds, that ignorance of the law will not excuse any person, either civilly or criminally.” *Jerman v. Carlisle, McNellie, Rini, Kramer & Ulrich LPA*, 559 U.S. 573, 581-82, 130 S. Ct. 1605, 176 L. Ed. 2d 519 (2010) (quoting *Barlow v. United States*, 7 Pet. 404, 411, 8 L.Ed. 728 (1833) (opinion for the Court by Story, J.)) (citing *Cheek v. United States*, 498 U.S. 192, 199, 111 S.Ct. 604, 112 L.Ed.2d 617 (1991)).

The notice plaintiff received, under the circumstances, provided opportunities to contest the city’s action and satisfied due process. The process which is due varies with the particular circumstances and may be satisfied in various ways. In *Mathews*, the Supreme Court articulated the factors that determine what process is due: (1) the nature of the private interest, (2) the risk of erroneous deprivation and availability of substitute safeguards, (3) the administrative and/or fiscal burdens that substitute safeguards would impose on the government. *Mathews v. Eldridge*, 424 U.S. 319, 334 (1976).

Federal courts have consistently refused to apply a one size fits all approach to due process claims. In *Hussein v. City of Perrysburg*, 617 F. 3d 828, 830 (6th Cir. 2010), plaintiffs ignored a stop work order issued by zoning authorities and proceeded to have asphalt laid on their driveway. City officials ordered plaintiffs’

contractor to remove it. The Court held no procedural due process violation occurred; the requirements of notice and opportunity to be heard were satisfied:

[I]f a state official states his view that a citizen's actions are in violation of the law and threatens litigation, this is not a deprivation of the citizen's interest without notice and an opportunity to be heard. These actions are the provisions of notice, and if the citizen does not comply with the official's demands, the threatened litigation will provide the opportunity to be heard. *Id.* at 832.

Plaintiff received the same sort of warning from city officials present in *Hussein*. Specifically, that failure to maintain his property between the sidewalk and street would result in a fine. That notice alerted him to the procedures provided by city code and state law to challenge the decision.

*Silvernail v. County of Kent*, 385 F.3d 601 (6th Cir. 2004) concluded that the process provided to individuals who wrote bad checks to merchants was sufficient to satisfy their procedural due process rights. *Silvernail* involved demand notices sent to individuals after their checks were dishonored. *Id.* at 603-04. Bad checks were processed by a private company which sent notices demanding payment of the check amount plus fees, a \$25 County fee and referred to possible criminal action. There was no way to request a hearing, but a telephone number and address were included for additional information. The Court determined the private interest was minimal; proof of the violation was the bad check itself, eliminating the risk of erroneous deprivation. If plaintiffs failed to pay the fees, they would receive full due process protection if a criminal action was initiated. *Id.* at 604-605.

Similar to *Silvernail*, Plaintiff's private interest was minimal (an initial fine of \$50), the risk of erroneous deprivation negligible, and the process available included judicial review.

In *DePiero v. City of Macedonia*, 180 F.3d 770 (6th Cir. 1999) plaintiff was issued a parking ticket by city police which contained no information how to contest the complaint or when to appear as required by state statute. However, a hearing on the citation was docketed in mayor's court. After plaintiff failed to pay the ticket or appear, a summons was mailed, ordering him to appear. He did not, and a bench warrant was issued for his arrest.

The ticket issued to DePiero did not comport with content required by the state statute. Nevertheless, the citation's failure to comply with state requirements did not automatically translate into a constitutional deprivation of due process. *Id.* at 788. Although DePiero did not receive notice in the ticket itself, he received notice on the summons ordering him to appear in court and indicating he would not be threatened with arrest unless he failed to appear. "As a result, he was not deprived of any liberty interests before his failure to appear at the second hearing. ..." *Id.* at 788. The district court dismissed his due process claim; before he was convicted, plaintiff appeared at trial and after his conviction he took advantage of post-deprivation remedies. The pre-deprivation opportunity to respond coupled with the post-deprivation procedures was sufficient. *Id.* at 787.

Similarly, Plaintiff could have challenged the liens assessed against his property, even if he chose to ignore the notice and assessment of fines, through the procedure outlined in § 892.09 (Add. p. 37). Section 892.09 requires publication, notice by first class mail, a hearing before the city council and allows an opportunity to file a written objection prior to the hearing.

In *Horn v. City of Chicago*, 860 F.2d 700, 705 (7th Cir. 1988), if recipients of parking violations failed to pay and did not appear as directed on their ticket, the City used a private company to send demand notices to plaintiffs for payment of the amount shown and to prevent further legal action by the City if not paid. To prevent further action, plaintiffs were required to respond within fifteen days and pay an additional \$20 per unpaid ticket. Additional information was available by writing or calling the listed phone number. Subsequent notices were sent if there was no response. Similarly, the notice of violation issued to Plaintiff included the name and position of the Ordinance Officer. Like Horn, Plaintiff received follow ups to the initial notice that he chose to ignore.

The Plaintiffs in *Horn* argued the notice violated their due process rights by misrepresenting that plaintiffs owed fines and costs where no judgment had ever been entered. The Seventh Circuit disagreed, citing the flexibility of due process and noting that each notice listed a phone number and address to receive information. *Id.* at 705.

These cases illustrate that due process may be satisfied in a variety of ways; its protections vary according to the demands of a particular set of circumstances. Plaintiff was not deprived of anything by the enforcement officer's actions or the actions the City took in informing him of the violation and the City's remedies. These actions constituted the provision of notice. The notice stated that his failure to maintain the property constituted a violation. The MCIO established fines for violation and provided a hearing.

The notice and process at issue here satisfied procedural due process. First, the nature of the private interest – the mowing fee – was minimal. There was slight risk of an erroneous deprivation because the height of the vegetation could be objectively verified as could the owner of the property. Additional safeguards were not needed to prevent an erroneous deprivation. In contrast, the City had a strong interest in minimizing the administrative and economic burdens which additional safeguards would have entailed.

Plaintiff had additional opportunities for review. Plaintiff had notice and an opportunity for hearing to dispute the City's tax assessment or lien. Section 622.02(e) provides that an unpaid fine can be added as a special assessment or tax lien. If so, notice and hearing procedures are available. (Add. p. 21).

At the discretion of the City Manager, the amounts are either incorporated into a special assessment or entered as a lien on the next tax roll. (§ 622.02(e)). In

either instance, notice and opportunity to object are afforded. If processed as a special assessment, Section 14.4 of Chapter 14 contains detailed notice requirements for individual assessments. (Add. p. 32). Section 14.5<sup>3</sup> requires a special assessment procedure. (Add. p. 33). Chapter 892 contains the special assessment procedure; it includes a review and hearing provision for special assessments at § 892.09. (Add. p. 37). Where the amount is entered on the next tax roll as a lien, notice and hearing are provided by provisions of Chapter 12. Chapter 12 includes the general provisions for challenging a property tax assessment including notice prior to an increase or decrease in assessment and opportunity for a hearing before an elected Board of Review. §§ 12.9 through 12.12. (Add. p. 28).

Even if no review of the notice of violation and imposition of fees and costs was available, MICH. CONST. Art. VI, §28 provides:

All final decisions, findings, rulings and orders of any administrative officer or agency existing under the Constitution or by law, which are judicial or quasi-judicial and affect private rights or licenses, shall be subject to direct review by the courts as provided by law. This review shall include as a minimum, the determination whether such final decisions, findings, rulings and orders are authorized by law; and, in case in which a hearing is required, whether the same are supported by competent, material and substantial evidence on the whole record.

(See *Carleton Sportsman's Club v. Exeter Twp.*, 217 Mich. App. 195, 550 N.W.2d 867, 869 (Mich. Ct. App. 1996). (A township board's quasi-judicial decision is

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<sup>3</sup> Section 14.5 provides: the Council shall, by general ordinance, prescribe a complete special assessment procedure.



final and subject to direct review by the circuit court under Art. 6, § 28 where no further review is provided.). Ample process was available to Plaintiff both through proceedings prior to the alleged deprivation, or prior to payment of taxes and outstanding liens. He chose not to avail himself of these opportunities.

This Court has explained:

The predeprivation process need not always be elaborate, however, the amount of process required depends, in part, on the importance of the interests at stake . . . Moreover, the sufficiency of pre-deprivation procedures must be considered in conjunction with the options for post-deprivation review; if elaborate procedures for post-deprivation review are in place, less elaborate pre-deprivation process may be required. In some cases, post-deprivation review may possibly be sufficient, and no predeprivation process is required. *Dubuc v. Twp. of Green Oak*, 406 F. App'x 983, 987-988 (6th Cir. 2011)(quoting *Leary v. Daeschner*, 228 F.3d 729, 742-743 (6th Cir. 2003) (citations omitted)).

*Dubuc* concluded that plaintiffs did not take advantage of all township procedures available to them, making it difficult to argue that the procedures were inadequate. Because they did not avail themselves of these opportunities, “they should not be able to now use their inaction against the defendants in claiming a violation of due process.” *Id.* at 989 (citing *Santana v. City of Tulsa*, 359 F.3d 1241, 1244 (10th Cir. 2004)). Like *Dubuc*, Plaintiff failed to avail himself of the process at his disposal.

Plaintiff had options to obtain a hearing through further inquiry regarding the MCIO or by challenge to the lien or his special assessment. Additionally, an

action in circuit court is provided for by MICH. CONST. Art. VI, §28. Plaintiff failed to take advantage of the process available and “should not be able to now use [his] inaction in claiming a violation of due process.” *Dubuc*, 406 F. App’x at 989. The district court erred in concluding Plaintiff was denied procedural due process.

**II. The City’s Ordinance Did Not Violate Substantive Due Process, Requiring A Property Owner To Abate A Nuisance On His Property Abutting Sidewalks And Streets Involved A Legitimate State Interest And Did Not Implicate A Fundamental Right.**

**1. The District Court Incorrectly Concluded That the Outlaw of Plaintiff’s Property Was Owned by the City Rather than Plaintiff.**

The district court found “the interest to be free from mandated private maintenance of municipal property” was a fundamental right and violative of substantive due process. (R.34, Opinion and Order, p. 17, PG ID 831). The district court explained: “[t]his mandated maintenance of public property directly contradicts the goal of limited government intervention . . . left unchecked, such an unheralded display of government power may fray the fabric that holds that Nation together.” *Id.* The court found that Plaintiff lacked a property interest in the outlaw. That finding is inconsistent with Michigan law and reliance thereon led the district court to frame the legal issue incorrectly. Plaintiff had a property interest in the outlaw he refused to maintain. The Michigan Supreme Court explained:

[T]he owner of property abutting upon a street sustains a threefold relation to the street: 1. As one of the general public. 2. As owner of the reversionary interest to the center of the street. 3. As owner of a lot, possessed of the right of ingress and egress to and from the street. *2000 Baum Family Trust v Babel*, 488 Mich. 136, 152; 792 NW2d 633, 644 (2010) (quoting *Detroit City R. Co. v Mills*, 85 Mich 634, 653; 48 NW 1007 (1891) (internal marks omitted).

The City argued persuasively both in the district court (R.29, Defendant's Response to Plaintiff's MSJ, pp. 4-7, PG ID 738-41) and on appeal (Appellant's Brief) that Plaintiff retained an ownership interest in the outlawn which he refused to mow. In Michigan, owners of land abutting a street are presumed to own the fee to the property all the way to the center of the street, subject to the easement of public way. *Loud v. Brooks*, 241 Mich. 452, 455, 217 N.W. 34 (1938). Even where the streets have been dedicated for public use pursuant to statute, the governing authority only obtains "nominal title" to the streets; it acquires no beneficial ownership of the land. *Kalkaska v. Shell Oil Co.*, 163 Mich. App. 534, 536; 415 N.W.2d 267 (1987) *aff'd* 433 Mich. 348; 446 N.W.2d 91 (1989). Plaintiff's ownership interest extended to the middle of the street abutting his property. The City Ordinance required Plaintiff to maintain land in which he held a property interest.

*2000 Baum Family Trust* contains a thorough and cogent explanation of the property interest maintained by a landowner in land dedicated to a public way. *Baum* considered whether dedication of a public right of way between lake front

property and the water removed the landowner's riparian rights. In a comprehensive review of Michigan case law, the Court determined that the public right of way did not divest the abutting landowner of his ownership interest in that property or the property from the street to the water.

Thus, by the turn of the last century, this Court had provided ample direction on the nature of the property interest created by the early plat acts. Through a conveyance by a platting statute, the county does not receive title in the nature of private ownership, it acquires no beneficial ownership in the land and has no voice concerning the use, and it does not possess the usual rights of a proprietor but rather takes title only to the extent that it could preclude questions which might arise respecting the public uses, other than those of mere passage. Simply put, the law vests the government entity with *nominal* title. (Emphasis in original). *Baum Family Trust*, 488 Mich. at 163.

Almon Whipple divided the property formerly owned by the plaintiff pursuant to the Plat Act and offered the plat to the Village of Howell. (R.32, Copy of Plat, Ex. 22, PG ID 807. See also Warranty Deed to Shoemaker, R.29, Ex. 1, PG ID 746). The plat divided the property into lots and designated and named the streets built therein. The *Baum* Court explains “[a] plat conforming to the statute operates as a conveyance of a fee, though probably a base fee.” *Id.* (quoting *Patrick v Young Men's Christian Ass'n of Kalamazoo*, 120 Mich 185, 191 (1899)). The property in question was conveyed pursuant to the Plat Act and as such the reasoning outlined by *Baum* applies. (R.32, Ex. 22, PG ID 807).

*Baum* instructs that Plaintiff maintained an ownership interest in the property he refused to maintain. Nevertheless, Plaintiff enjoyed the benefits of the

public way and public utilities on his property but refused to comply with basic standards of upkeep required by Ordinance. The district court based its decision on the premise that the Ordinance sought to compel Plaintiff to maintain City property. Because this assertion forms the foundation of the district court's substantive due process analysis its absence is fatal to Plaintiff's substantive due process claim.

**2. The Ordinance Does Not Implicate An Enumerated Fundamental Right**

Whereas procedural due process protects the method by which the government deprives a citizen of liberty or property, substantive due process provides heightened protection against government interference with certain fundamental rights and liberty interests regardless of process. *Washington v. Glucksberg*, 521 U.S. 702, 720, 117 S.Ct. 2258, 138 L.Ed.2d 772 (1997). This Circuit explains that due process has a substantive component which "serves as a vehicle to limit various aspects of potentially oppressive government action." *Valot v. Se. Local Sch. Dist. Bd. of Educ.*, 107 F.3d 1220, 1228 (6th Cir. 1997). The interests protected by substantive due process are much narrower than those protected by procedural due process, however. *Bell v. Ohio State Univ.*, 351 F.3d 240, 249-250 (6th Cir. 2003). Additionally, substantive due process applies to such interests as "those protected by specific constitutional guarantees . . . freedom from government actions that 'shock the conscience' . . . and certain interests that

the Supreme Court has found so rooted in the traditions and conscience of our people as to be fundamental.” *Id.* (Internal citation omitted). The Supreme Court recognizes the following as fundamental rights: marriage, having children and directing their education and upbringing, marital privacy, contraception, bodily integrity, abortion, *Id.* at 719, voting, see *Reynolds v. Sims*, 377 U.S. 533, 562, 84 S.Ct. 1362, 1381, 12 L.Ed.2d 506 (1964), interstate travel, *Jones v. Helms*, 452 U.S. 412, 418, 101 S.Ct. 2434, 2439, 69 L.Ed.2d 118 (1981), speech, *Thornhill v. State of Alabama*, 310 U.S. 88, 95, 60 S.Ct. 736, 740, 84 L.Ed. 1093 (1940), religion, *W. Virginia State Bd. of Educ v. Barnette*, 319 U.S. 624, 638, 63 S.Ct. 1178, 1185, 87 L.Ed. 1628 (1943), and assembly, *Id.*

The Supreme Court cautioned about expanding the concept of substantive due process.

We have always been reluctant to expand the concept of substantive due process because guideposts for responsible decision making in this uncharted area are scarce and open-ended. By extending constitutional protection to an asserted right or liberty interest, we, to a great extent, place the matter outside the arena of public debate and legislative action. *Washington v. Glucksberg*, 521 U.S. 702, 720-721 (1997).

The list of liberty interests and fundamental rights “is short, and the Supreme Court has expressed very little interest in expanding it.” *Seal v. Morgan*, 229 F.3d 567, 574-575 (6th Cir. 2000); see also *Does v. Munoz*, 507 F.3d 961 (6th Cir. 2007). The City’s ordinance does not implicate one of the fundamental rights

identified by the Supreme Court. Likewise, the requirement that Plaintiff maintain the outlawn did not “shock the conscience.” Where no physical abuse is alleged, the shock the conscience standard is meant to convey the degree of arbitrariness necessary to set aside a decision. *Cnty. of Sacramento v. Lewis*, 523 U.S. 833, 847, 118 S.Ct. 1708, 140 L.Ed.2d 1043 (1988)). “Not all arbitrary and capricious state action amounts to a violation of substantive due process; otherwise judicial review for compliance with substantive due process would become the equivalent of a typical state or federal Administrative Procedure Act.” *Hussein*, 617 F.3d at 832-33 (quoting *Bell*, 351 F.3d at 251). Given the legitimate and varied government interests implicated by the maintenance ordinance, the fact that Plaintiff was required to maintain areas of his property, including the outlawn between the sidewalk and the street is not such an egregious action that it would “shock the conscience.” *Id.*

**3. The City’s Ordinance is Properly Subject to Rational Basis Review.**

The City had both the authority to adopt ordinances to protect public health, safety and welfare (including the specific ordinance provision at issue pursuant to MICH. COMP. LAWS § 117.4j(3)) and legitimate government interests which supported the Ordinance. Among those interests were aesthetics, safety of motorists, use of the area by owners and occupants to access their property, nuisance control, and better visibility for motorists. These interests far exceed the

limited scope of the one interest focused on by the district court – abatement of a potential nuisance.

*Rowe v. City of Elyria*, 38 F. App'x 277, 282 (6th Cir. 2002) analyzed a similar claim and determined the claim was subject to rational basis review. Plaintiff's allegation that a municipal ordinance which forced him to mow the grass owned by the city adjacent to his property or pay a fine could be fairly characterized as a "badge or incident of slavery" was rejected. He also asserted a substantive due process violation on this basis. The Court rejected the substantive due process claim finding a rational relationship between the terms of the ordinance and a legitimate governmental purpose. *Id.* (distinguishing *Berger v. City of Mayfield Heights*, 154 F.3d 621 (6th Cir. 1998)). Whether the area mowed did or did not belong to the city did not affect the rational relationship between the ordinance and legitimate governmental purposes relating to aesthetics and vermin control. *Id.*

This Court has explained that "Even 'legislation that does not proscribe fundamental liberties nonetheless violates the Due Process Clause' where it imposes burdens without any 'rational basis' for doing so." *Sheffield v. City of Fort Thomas, Ky.*, 620 F.3d 596, 613 (6th Cir. 2010) (quoting *United States v. Comstock*, 560 U.S. 126, 150, 130 S.Ct. 1949, 176 L.Ed.2d 878 (2010) (Kennedy, J., concurring)). "However, enactments that do not encroach upon fundamental



rights are endowed with a presumption of legislative validity, and the burden is on [the challenger] to show that there is no rational connection” between the enactment and a legitimate government interest.” *Id.* (Internal quotation marks omitted). The rational basis test “is highly deferential; courts hold statutes unconstitutional under the standard of review only in rare or exceptional circumstances.” *Id.*, (quoting *Doe v. Mich. Dep’t of State Police*, 490 F.3d 491, 501 (6th Cir. 2007)).

A party challenging a legislative enactment subject to rational basis review must “negative every conceivable basis which might support it.” *American Express Travel Related Servs. Co., Inc. v. Kentucky*, 641 F.3d 685, 690 (6th Cir. 2011). “[W]e will be satisfied with the government’s ‘rational speculation’ linking the regulation to a legitimate purpose, even ‘unsupported by evidence or empirical data.’” *Id.* (quoting *Fed. Commc’ns Comm’n v. Beach Commc’ns, Inc.*, 508 U.S. 307, 313, 113 S.Ct. 2096, 124 L.Ed.2d 211 (1993)). A statute will survive rational basis scrutiny if it can be upheld under any plausible justification offered by the state, or even hypothesized by the court. *Id.* (citing *Berger*, 154 F.3d at 624-26). “A legislative body need not select the best or the least restrictive method of obtaining its goals so long as the means selected are rationally related to those goals.” *Schenck v. City of Hudson*, 114 F.3d 590, 594 (6th Cir. 1997); see also *Richardson v. Twp. of Brady*, 218 F.3d 508, 514 (6th Cir. 2000).

Despite employing this highly deferential standard, the district court found Howell's ordinance failed under a rational basis review because it was not "rationally related to a legitimate government purpose." The district court focused on nuisance abatement only in determining if the ordinance was rationally related to a legitimate government purpose and rejected the ordinance on this basis. The issue was whether it was "within the power of a municipal government to force a citizen to abate a nuisance created on City property." (R.34, District Court Opinion and Order, p. 20, PG ID 834). Although abating a nuisance on private property might be a valid government use of the police power, the lower court could perceive "no rational relationship between the interest the city has in abating a nuisance on public property and the ordinance currently in place." (R.34, pp. 20-21, PG ID 834-35). This conclusion incorrectly assumed that Plaintiff retained no ownership interest in the outlawn under state law and led the district court to the wrong result.

Moreover, the district court ignored the many government interests served by the ordinance, including public health and safety and aesthetics which have been recognized as legitimate government interests by the Supreme Court. (See, e.g., *Church of the Lukumi Babalu Aye v. City of Hialeah*, 508 U.S. 520, 538, 113 S.Ct. 2217, 124 L.Ed.2d 472 (1993) (public health); *Barnes v. Glen Theatre*, 501 U.S. 560, 569, 111 St. Ct. 2456, 115 L.Ed.2d 504 (1991) (safety); *Metromedia*,

*Inc. v. City of San Diego*, 453 U.S. 490, 507, 101 S.Ct. 2882, 69 L.Ed.2d 800 (1981) (aesthetics). These are among the many rational explanations for requiring the outlawn of Plaintiff's property to be maintained.

Clearly, Plaintiff had ample notice of the Ordinance violation. He also had opportunities for a hearing, but failed to avail himself of these opportunities. Under the circumstances, the process he received was constitutionally adequate. The district court erred in holding otherwise.

**RELIEF REQUESTED**

For these reasons Amici Curiae Michigan Municipal League, Michigan Municipal League Liability and Property Pool, Michigan Township Association and Public Corporation Law Section respectfully ask this Court to reverse the decision of the district court.

Respectfully submitted,

*/s/Julie McCann O'Connor*

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Dated: October 10, 2014

**CERTIFICATE OF COMPLIANCE**

Pursuant to FRAP 32(a)(7)(C), the undersigned counsel hereby certifies that this brief complies with the type-volume found at FRAP 32(a)(7)(B). It contains 6,960 words and has been prepared in Microsoft Word, using a proportionally spaced face, Times New Roman, and a 14-point font size.

Respectfully submitted,

*/s/Julie McCann O'Connor*

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Dated: October 10, 2014

U.S. CIRCUIT COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

CASE NO. 13-2535

DAVID SHOEMAKER,

Plaintiff-Appellee,

v.

CITY OF HOWELL

Defendant-Appellant,

---

On Appeal from United States District Court  
Eastern District Of Michigan, Southern Division  
USDC Case No. 11-15135, Hon. Lawrence P. Zatkoff

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**PROOF OF SERVICE**

**Jemmis F. Lawrence** states that on October 10, 2014, on behalf of Amici Curiae Michigan Municipal League, Legal Defense Fund, Michigan Municipal League Liability & Property Pool, Michigan Township Association and Public Corporation Law Section, she served the attached *Amici Curiae Brief* and *Proof of Service* upon counsel of record via e-filing with the 6<sup>th</sup> Circuit Court of Appeals electronic filing system to their e-mail addresses of record.

/s/ Jemmis F. Lawrence  
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**MICHIGAN MUNICIPAL LEAGUE AND MICHIGAN MUNICIPAL LEAGUE LIABILITY & PROPERTY POOL, MICHIGAN TOWNSHIP ASSOCIATION AND PUBLIC CORPORATION LAW'S DESIGNATION OF RECORD ON APPEAL**

Pursuant to 6<sup>th</sup> Cir R 30(b), *Amicus Curiae* hereby designates the following filings in the district court's record as items being part of the pertinent Record on Appeal:

<b>DESCRIPTION OF ENTRY</b>	<b>DATE FILED</b>	<b>RECORD ENTRY NO.</b>
Addendum: Excerpts of City of Howell Code of Ordinances		Addendum (Add.) pp. 1-42
Howell Code of Ordinances § 622.02		Add. p. 20
8/18/11 Door Hanger	10/31/12	R.25, Ex. 9, PG ID 535-536
5/17/11 Notice of Ordinance Violation	11/2/12	R.26, Ex. 4, PG ID 607-608
8/9/11 Notice of Ordinance Violation	11/2/12	R.26, Ex. 8, PG ID 621
Howell Code of Ordinances § 622.02(e)		Add. p. 21
Howell Code of Ordinances § 622.99		Add. p. 25
Howell Code of Ordinances § 202.99		Add. pp. 5-6
Howell Code of Ordinances § 208.07		Add. pp. 12-14
Howell Code of Ordinances § 208.07(e)		Add. p. 13
Howell Code of Ordinances § 208.02(e)		Add. p. 10
Howell Code of Ordinances § 208.02(f)		Add. p. 10
Howell Code of Ordinances § 208.07(c)&(d)		Add. p. 13
Howell Code of Ordinances § 892.09		Add. p. 37
Howell Code of Ordinances § 14.4		Add. p. 32
Howell Code of Ordinances § 14.5		Add. p. 33
Howell Code of Ordinances § 12.9-12		Add. p. 27-8

Order Granting Plaintiff's Motion for Summary Judgment; Denying Defendant's Motion for Summary Judgment	11/12/13	R.34 p. 17, PG ID 831
Defendant's Response to Plaintiff's MSJ	11/26/12	R.29 pp. 4-7, PG ID 738-41
Copy of Plat	12/10/12	R.32, Ex. 22, PG ID 807
Defendant's Response to Plaintiff's MSJ	11/26/12	R.29, Ex. 1, PG ID 746
Warranty Deed to Shoemaker	11/26/12	R.29, Ex. 1, PG ID 746
Order Granting Plaintiff's Motion for Summary Judgment; Denying Defendant's Motion for Summary Judgment	11/12/13	R.34 p. 20, PG ID 834
Order Granting Plaintiff's Motion for Summary Judgment; Denying Defendant's Motion for Summary Judgment	11/12/13	R.34 p. 21, PG ID 834-35



U.S. CIRCUIT COURT OF APPEALS  
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**ADDENDUM**

Print

Howell, MI, Code of Ordinances

## TITLE TWO - General Provisions

### CHAPTER 202 Codified Ordinances

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- 202.01 Designation; citation; headings.
- 202.02 Amendments and supplements; numbering.
- 202.03 Definitions and interpretation.
- 202.04 Separability of provisions.
- 202.05 Sections and ordinances repealed.
- 202.06 Exemptions from repeal.
- 202.98 Fees.
- 202.99 General Code penalty; fines for Municipal civil infractions; equitable remedies.

#### ***CROSS REFERENCES***

Compilation or codification - see CHTR. Sec. 6.7

Publication of codes of municipal ordinances - see M.C.L.A. Sec. 117.5b

Ordinances and resolutions - see ADM. Ch. 214

#### **202.01 DESIGNATION; CITATION; HEADINGS.**

(a) This volume consists of all ordinances of a general and permanent nature of the Municipality, as revised, codified, arranged, numbered and consolidated into component codes, titles, chapters and sections, and as such shall be known and designated as the Codified Ordinances of Howell, Michigan, 1982, for which designation "Codified Ordinances" or "City Code" or "Howell City Code" may be substituted. Code, title, chapter and section headings do not constitute any part of the law as contained in the Codified Ordinances.

(b) All references to codes, titles, chapters and sections are to such components of the Codified Ordinances unless otherwise specified. Any component code may be referred to and cited by its name, as the "Traffic Code." Sections may be referred to and cited by the designation "section" followed by the number, such as "Section 202.01."

#### **202.02 AMENDMENTS AND SUPPLEMENTS; NUMBERING.**

(a) The Codified Ordinances of Howell may be amended or supplemented at any time and, when

any amendment or supplement is adopted in such form as to indicate the intention of Council to make the same a part thereof, such amendment or supplement shall be incorporated in, and deemed a part of, the Codified Ordinances, so that a reference to the Codified Ordinances shall be understood and construed as including the Codified Ordinances of Howell and any and all such amendments and supplements.

(b) All amendments and supplements enacted as a part Of the Codified Ordinances shall be integrated therewith by following the form of arrangement and plan set forth in the original Codified Ordinances as follows: each Code shall be subdivided into titles and/or chapters, and each chapter shall be subdivided into sections, which shall be numbered in accordance with the decimal numbering system. The numbering of all sections, except penalty sections, shall be consecutive within each chapter commencing with the first section of Chapter 202, which shall be numbered 202.01, the first "2" signifying Code 2, and the two figures "02" before the decimal signifying the chapter within the Code, and the two figures "01" after the decimal signifying the first section in Chapter 202 of the Code. Penalty sections shall be designated "99" and shall be the last section of a chapter.

### **202.03 DEFINITIONS AND INTERPRETATION.**

In the construction of these Codified Ordinances, or any provision thereof, the following rules and definitions shall control, except those which are inconsistent with the manifest intent of Council as disclosed in a particular provision, section or chapter:

(1) Adopting Ordinance. "Adopting Ordinance" means the ordinance of the Municipality adopting the Codified Ordinances of Howell in conformity with Section 6.7 of the City Charter and M.S.A. Section 5.2084(2).

(2) Authority. Whenever in the Codified Ordinances authority is given to an officer or an act is required to be performed, such authority may be exercised and such act may be performed, at the instance of such officer, by a deputy or subordinate, unless contrary to law or to the clear intent of any such particular provision.

(3) Calendar-Computation of Time. The terms "month" and "year" mean the calendar month or year. The time expressed in days within which an act is to be done or a period is to expire shall be computed by excluding the first and including the last day, unless the last day is a Sunday, in which case it shall be excluded. If time is expressed in hours, the whole of Sunday shall be excluded.

(4) City Council. "City Council" or "Council" means the legislative authority of the Municipality.

(5) Conjunctions. "And" includes "or" and "or" includes "and," if the sense so requires.

(6) County. "County" means the County of Livingston, Michigan.

(7) Gender. Words importing the masculine shall extend and be applied to the feminine and neuter genders.

(8) General Rule. Except as otherwise provided in this section, words and phrases shall be construed according to the common usage of the language, provided, however, that technical words and phrases and such others as may have acquired a special meaning in the law shall be construed according to such technical or special meaning.

(9) Joint Authority. Words giving authority to a board, commission, authority or to three or more officers or employees or other persons shall be construed as giving authority to a majority thereof,

unless otherwise specifically provided.

(10) Keeper and Proprietor. "Keeper" and "proprietor" mean persons, firms, associations, corporations, clubs and copartnerships, whether acting by themselves or as a servant, agent or employee.

(11) Land and Real Estate. "Land" and "real estate" include rights and easements of an incorporeal nature.

(12) Law. "Law" means all applicable laws of the United States of America, the State of Michigan and the City of Howell.

(13) Manager. "Manager" means the City Manager of the Municipality.

(14) Municipality or City. "Municipality" or "City" means the City of Howell, Michigan.

(15) Number. Words in the plural include the singular and words in the singular include the plural number.

(16) Oath. "Oath" includes affirmation. When an oath is required or authorized by law, an affirmation in lieu thereof may be taken by a person having conscientious scruples about taking an oath. An affirmation shall have the same force and effect as an oath.

(17) Ordinance. "Ordinance" means and includes any ordinance of the Municipality, including any provision of these Codified Ordinances.

(18) Owner. "Owner," when applied to property, includes a part owner, joint owner or tenant in common of the whole or any part of such property.

(19) Person. "Person" includes any individual, copartnership, corporation, association, club, joint venture, estate, trust and any other group or combination acting as a unit, and the individuals constituting such group or unit.

(20) Premises. "Premises," when used as applicable to property, extends to and includes land and buildings.

(21) Property. "Property" includes real and personal property and any mixed and lesser estates or interests therein. "Personal property" includes every kind of property except real property; "real property" includes lands, tenements and hereditaments.

(22) Public Place. "Public place" means any place to or upon which the public resorts or travels, whether such place is owned or controlled by the City or any agency of the State or is a place to or upon which the public resorts or travels by custom or by invitation, express or implied.

(23) Publish. "Publish" means to print in a newspaper of general circulation in the Municipality the entire document or a brief summary thereof with a listing of places where copies have been filed and times when they are available for inspection.

(24) Reasonable Time. In all cases where provision is made for an act to be done or notice to be given within a reasonable time, it shall be deemed to mean such time only as may be necessary for the prompt performance of such act or the giving of such notice.

(25) Residence. "Residence" means an abode in which a person permanently resides.

(26) Shall and May. "Shall" is mandatory; "may" is permissive.

(27) Sidewalk. "Sidewalk" means that portion of a street between the curb lines or lateral lines and the right-of-way lines, which is intended for the use of pedestrians.

(28) State. "State" means the State of Michigan.

(29) Street, Highway and Alley. "Street," "highway" and "alley" mean the entire width subject to an easement for public right of way, or owned in fee by the City, County or State, of every way or place, of whatever nature, whenever any part thereof is open to the use of the public as a matter of right for purposes of public travel. The word "alley" means any such way or place providing a secondary means of ingress and egress from a property.

(30) Tenant and Occupant. "Tenant" and "occupant," as applied to buildings or land, shall extend and be applied to any person holding a written or oral lease of, or who occupies the whole or any part of, a building or land, alone or with others.

(31) Tenses. The use of any verb in the present tense includes the future.

(32) Time. Whenever any time established in the Codified Ordinances for the taking of any action expires on a Sunday or a legal holiday, such time shall not expire on such day but shall expire on the next week day.

(33) Responsibility. Whenever any act is prohibited by a provision of these Codified Ordinances or by any rule or regulation adopted thereunder, such prohibition shall extend to and include the causing, securing, aiding or abetting of another person to do such act.

#### **202.04 SEPARABILITY OF PROVISIONS.**

Each section and each part of each section of the Codified Ordinances is hereby declared to be an independent section or part of a section and notwithstanding any other evidence of legislative intent, it is hereby declared to be the controlling legislative intent that if any such section or part of a section, or any provision thereof, or the application thereof to any person or circumstance, is held to be invalid, the remaining sections or parts of sections and the application of such provision to any other person or circumstance, other than those as to which it is held invalid, shall not be affected thereby, and it is hereby declared to be the legislative intent that the Codified Ordinances would have been adopted independently of such section or part of a section so held to be invalid.

#### **202.05 SECTIONS AND ORDINANCES REPEALED.**

All ordinances, resolutions, rules and regulations of the Municipality, and parts of the same, in conflict with any of the provisions of these Codified Ordinances, are hereby repealed.

#### **202.06 EXEMPTIONS FROM REPEAL.**

The repeal provided for in Section 202.05 shall not affect:

(a) Any offense or act committed or done, or any penalty or forfeiture incurred, or any contract or right established or accruing, before the adoption of these Codified Ordinances;

(b) Any ordinance or resolution promising or guaranteeing the payment of money by or to the Municipality, or authorizing the issuance of any bonds of the Municipality, or any evidence of the Municipality's indebtedness, or any contract or obligation assumed by the Municipality;

- (c) The administrative ordinances and resolutions of Council not in conflict or inconsistent with any provision of these Codified Ordinances;
- (d) Any right, license or franchise conferred by any ordinance or resolution of Council on any person;
- (e) Any ordinance or resolution establishing, naming, relocating or vacating any street or other public way;
- (f) Any ordinance or resolution or part thereof providing for the establishment of positions, for salaries or compensation;
- (g) Any prosecution, suit or other proceeding pending, or any judgment rendered, on or prior to the adoption of these Codified Ordinances;
- (h) Any ordinance or resolution levying or imposing taxes or assessments;
- (i) Any ordinance or resolution establishing or changing the boundaries of the Municipality; or
- (j) Any ordinance or resolution adopted by Council after the adoption of these Codified Ordinances.

#### **202.98 FEES.**

All present and future fees and charges imposed by the City of Howell shall be set from time to time by resolution of the Howell City Council.

(Ord. 663. Passed 10-27-97.)

#### **202.99 GENERAL CODE PENALTY; FINES FOR MUNICIPAL CIVIL INFRACTIONS; EQUITABLE REMEDIES.**

(a) Except in those cases where a violation of these Codified Ordinances is specifically designated as a Municipal civil infraction, and except in those cases where a different penalty is prescribed for a specific violation of a provision of these Codified Ordinances, whoever violates any provision of these Codified Ordinances is guilty of a misdemeanor punishable by a fine of not more than five hundred dollars (\$500.00), plus the costs of prosecution, or by imprisonment in the County jail for a period not to exceed ninety days, or both, for each offense.

(b) The sanctions for a violation of these Codified Ordinances designated as a Municipal civil infraction shall include all remedies authorized by Act 12 of the Public Acts of 1994, as amended, including, but not limited to, fines of not less than fifty dollars (\$50.00) nor more than five hundred dollars (\$500.00), plus all costs incurred by the City in enforcing the Municipal civil infraction, including actual attorneys' fees and all other damages and equitable remedies as ordered by the Court and authorized by Act 12 of the Public Acts of 1994, as amended. Civil fines may be increased for repeat violations of these Codified Ordinances, and each day during or on which a violation or noncompliance occurs or continues shall be deemed a separate offense. Specific fines for Municipal civil infractions shall be as provided in subsection (c) hereof.

(c) The following schedule of fines for Municipal civil infractions, payable at the Municipal Ordinance Violations Bureau as provided for in Chapter 208, for admissions of responsibility by persons served with Municipal civil infraction citations and/or violation notices, is hereby

established as follows:

- |      |                    |                    |             |
|------|--------------------|--------------------|-------------|
| (1)  | Chapter 622        | First offense      | \$ 50.00    |
|      | "Health, Safety    | Any repeat offense | 250.00      |
|      | And Sanitation"    |                    |             |
| (2)  | Chapter 652        | First offense      | \$ 50.00    |
|      | "Nuisances"        | Any repeat offense | 250.00      |
| (3)  | Chapter 872        | First offense      | \$ 50.00    |
|      | "Street Vendor"    | Any repeat offense | 250.00      |
| (4)  | Chapter 1020       | First offense      | \$ 50.00    |
|      | "Streets and       | Any repeat offense | 250.00      |
|      | Excavations"       |                    |             |
| (5)  | Chapter 1022       | First offense      | \$ 50.00    |
|      | "Sidewalks"        | Any repeat offense | 250.00      |
| (6)  | Chapter 1024       | First offense      | \$ 50.00    |
|      | "Trees"            | Any repeat offense | 250.00      |
| (7)  | Chapter 1040       | First offense      | \$ 50.00    |
|      | "Water"            | Any repeat offense | 250.00      |
| (8)  | Chapter 1042       | First offense      | \$ 50.00    |
|      | "Sewers"           | Any repeat offense | 250.00      |
| (9)  | Chapter 1043       | First offense      | \$ 1,000.00 |
|      | "Industrial Waste  | Any repeat offense | 1,000.00    |
|      | Water Pretreatment |                    |             |
|      | Regulations"       |                    |             |
| (10) | Chapter 1044       | First offense      | \$ 50.00    |
|      | "Water and         | Any repeat offense | 250.00      |
|      | Sewerage Rates     |                    |             |
|      | and Management"    |                    |             |
| (11) | Chapter 1060       | First offense      | \$ 50.00    |
|      | "Garbage and       | Any repeat offense | 250.00      |
|      | Rubbish Collection |                    |             |

## And Disposal"

(12)	Chapter 1062	First offense	\$ 50.00
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"Parks and	Any repeat offense	250.00
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## Recreational

## Facilities"

(13)	Chapter 1066	First offense	\$ 50.00
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"Fire and Burglar	Any repeat offense	250.00
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## Alarm Systems"

(14)	Chapter 1216	First offense	\$ 50.00
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"Land Divisions"	Any repeat offense	250.00
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(15)	Chapter 1240.01	First offense	\$ 50.00
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"Appendix A	Any repeat offense	250.00
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## Howell Zoning Code"

(16)	Chapter 1410	First offense	\$50.00
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"State Construction	Any repeat offense	250.00
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## Code"

(17)	Chapter 1420	First offense	\$ 50.00
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"Unsafe Buildings"	Any repeat offense	250.00
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(18)	Chapter 1450	First offense	\$ 50.00
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"Fees for Permits,	Any repeat offense	250.00
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## Certificates and

## Inspections"

(19)	Chapter 1460	First offense	\$50.00
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"Residential Rental	Any repeat offense	250.00
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## Properties"

(20)	Chapter 1470	First offense	\$50.00
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"Residential Rental	Any repeat offense	250.00
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## Property Maintenance

## Code"

(21)	Chapter 1614	First offense	\$500.00
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"Fireworks Code"	Any repeat offense	500.00
(22) Chapter 1620	First offense	\$ 50.00
"Fire Lanes"	Any repeat offense	250.00
(23) Chapter 1630	First offense	\$ 50.00
"Life Safety Code"	Any repeat offense	250.00

(d) A repeat offense is one in which the same or a similar violation has been committed within one year of the first offense.

(e) Each day on which any violation of this Code or any ordinance continues constitutes a separate offense and shall be subject to penalties or sanctions as a separate offense.

(f) In addition to any remedies available at law, the City may bring an action for an injunction or other process against a person to restrain, prevent or abate any violation of these Codified Ordinances or any City ordinance.

(Ord. 663. Passed 10-27-97; Ord. 722. Passed 11-19-01; Ord. 753. Passed 1-12-04; Ord. 795. Passed 3-26-07; Ord. 879. Passed 8-26-13.)

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Howell, MI, Code of Ordinances

## CHAPTER 208 Municipal Civil Infractions

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- 208.01 Short title.
- 208.02 Definitions.
- 208.03 Designation of authorized City officials.
- 208.04 Municipal civil infraction action; commencement.
- 208.05 Municipal civil infraction citations; issuance and service.
- 208.06 Municipal civil infraction citations; contents.
- 208.07 Municipal Ordinance Violations Bureau.
- 208.08 Failure to appear; penalty.
- 208.09 Severability.
- 208.10 Savings.

### ***CROSS REFERENCES***

Authority of Council re penalties - see CHTR. Sec. 6.3

General Code penalty - see ADM. 202.99(a)

Municipal civil infraction schedule of fines - see ADM. 202.99(c)

Penalties for parking violations - see TRAF. 430.05

Penalties for violations of Zoning Code - see P. & Z. Chapter 1240 (Zoning Code)

### **208.01 SHORT TITLE.**

This chapter shall be known and may be cited as the "Municipal Civil Infraction Ordinance."  
(Ord. 660. Passed 9-29-97.)

### **208.02 DEFINITIONS.**

For the purpose of the provisions of this chapter, the following words and phrases shall be construed to have the meanings as set forth herein, unless it is apparent from the context that a different meaning is intended:

- (a) "Act" means Act No. 236 of the Public Acts of 1961, as amended.
- (b) "Authorized City official" means a police officer or other personnel of the City of Howell

authorized by this chapter or any ordinance to issue Municipal civil infraction citations or Municipal civil infraction violation notices.

(c) "Bureau" means the City of Howell Municipal Ordinance Violations Bureau as established in this chapter.

(d) "Municipal civil infraction" means a civil action in which the defendant is alleged to be responsible for a municipal civil infraction.

(e) "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.

(f) "Municipal civil infraction violation notice" means a written notice prepared by an authorized City official, directing a person to appear at the City of Howell 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. 660. Passed 9-29-97.)

### **208.03 DESIGNATION OF AUTHORIZED CITY OFFICIALS.**

The following personnel of the City of Howell have the authority to issue Municipal civil infraction citations and Municipal civil infraction violation notices pursuant to this chapter:

- (a) Police Officers
- (b) Fire Chief
- (c) Building/Zoning Inspector
- (d) Code Enforcement Officer
- (e) Assistant City Manager
- (f) Department of Public Service Director
- (g) City Manager
- (h) Deputy Chief of the Howell City Fire Department
- (i) City of Howell Fire Inspector
- (j) Department of Public Works Superintendent.
- (k) Wastewater Treatment Plant Superintendent.
- (l) Wastewater Treatment Plant Inspector.

(Ord. 669. Passed 3-2-98; Ord. 754. Passed 1-12-04.)

### **208.04 MUNICIPAL CIVIL INFRACTION ACTION; COMMENCEMENT.**

A Municipal civil infraction action may be commenced upon the issuance by an authorized City official of:

- (a) A Municipal civil infraction citation directing the alleged violator to appear in court; or
  - (b) A Municipal civil infraction violation notice directing the alleged violator to appear at the City of Howell Municipal Ordinance Violations Bureau.
- (Ord. 660. Passed 9-29-97.)

### **208.05 MUNICIPAL CIVIL INFRACTION CITATIONS; ISSUANCE AND SERVICE.**

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 53rd 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 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 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 if the City attorney approves in writing the issuance of the citation.
- (g) Municipal civil infractions citations shall be served by an authorized City official as follows:
  - (1) Except as provided by 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 action 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 of the citation 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.

(Ord. 660. Passed 9-29-97.)

**208.06. MUNICIPAL CIVIL INFRACTION CITATIONS; CONTENTS.**

(a) A Municipal civil infraction citation shall contain the name and address of the alleged violator, the Municipal civil infraction alleged to have been violated, 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.

(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:

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 City.

ii. 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 with the opportunity of being represented by an attorney.

(d) The citation shall contain a notice in boldfaced type 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. 660. Passed 9-29-97.)

**208.07. MUNICIPAL ORDINANCE VIOLATIONS BUREAU.**

(a) Bureau Established. The City hereby establishes a Municipal Ordinance Violations Bureau ("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 this chapter or any other ordinance.

(b) Location; Supervision; Employees; Rules and Regulations. The Bureau shall be located at the City of Howell Police Department and shall be under the supervision and control of the City of Howell Chief of Police. The Chief of Police, subject to the approval of City Council, shall adopt rules and regulations for the operation of 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 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 afforded by law.

(d) Bureau Limited to Accepting Admissions of Responsibility. 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.

(Ord. 660. Passed 9-29-97.)

(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 provided for citations in Section 208.05 and subsection (g) hereof. In addition to any other information required by this chapter or 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.

(Ord. 664. Passed 12-22-97.)

(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 for the violation are not paid at the Bureau, a Municipal civil infraction 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. 660. Passed 9-29-97.)

**208.08. FAILURE TO APPEAR; PENALTY.**

A person served with a Municipal civil infraction citation as provided in Section 208.05(g) who fails to appear within the time specified in the citation or at the time scheduled for a hearing or appearance is guilty of a misdemeanor, punishable by a fine of not more than five hundred dollars (\$500.00). Failure to appear will also result in the entry of a default judgment on the Municipal civil infraction.

(Ord. 664. Passed 12-22-97.)

**208.09. SEVERABILITY.**

If any section, subsection, clause, phrase or portion of this chapter is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent portion of this chapter and such holding shall not affect the validity of the remaining portions of this chapter. (Ord. 660. Passed 9-29-97.)

**208.10. SAVINGS.**

All proceedings pending and all rights and liabilities existing, acquired or incurred at the time this chapter takes effect are saved and may be consummated according to the law in force when they are commenced.

(Ord. 660. Passed 9-29-97.)

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Howell, MI, Code of Ordinances

## CHAPTER 3

### GENERAL MUNICIPAL POWERS

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#### Section 3.1 Powers of the City.

Unless otherwise provided or limited in this Charter, the City of Howell and its officers shall be vested with any and all powers, privileges, and immunities, expressed and implied, which cities and their officers are, or hereafter may be, permitted to exercise or to provide for in their charters under the Constitution and laws of the State of Michigan, and of the United States of America, including all the powers, privileges, and immunities which cities are permitted to or may provide in their charters by Act No. 279 of the Public Acts of 1909, as amended, as fully and completely as though these powers, privileges, and immunities were specifically enumerated in and provided for in this Charter, and in no case shall any enumeration of particular powers, privileges, or immunities in this Charter be held to be exclusive. The City and its officers shall have power to exercise all municipal powers in the management and control of municipal government, whether such powers be expressly enumerated or not; to do any act to advance the interests of the City, the good government and prosperity of the Municipality and its inhabitants; and, through its regularly constituted authority, to pass and enforce all laws, ordinances, and resolutions relating to its Municipal concerns, subject to the provisions of the law.

#### Section 3.2 Specific Powers of the City.

Without limiting the general grant of powers contained in Section 3.1., the City shall have power to manage and control the finances, rights, interests, buildings, and property belonging to the City, to enter into contracts, and to protect the public peace, morals, health, safety, and general welfare. In the exercise of the City's powers, the Council may enact ordinances, rules, and regulations, and take such other action as may be required, not inconsistent with law, to:

(1) Declare as a hazard or nuisance any act or condition which is or may be dangerous to the health, safety, morals, or welfare of the inhabitants of the City; to provide for the abatement thereof; and to provide that the costs of such abatement shall be charged as a special assessment against the real property on which the hazard or nuisance is located;

(2) Provide for the public welfare by:

(a) Regulating trades, occupations, and amusements within the City, and prohibiting trades, occupations, and amusements which are detrimental to the safety, health, morals, or welfare of its inhabitants;

(b) Regulating the preparation, storage, transportation and sale of foods, drugs, and beverages for human consumption;

(c) Collecting and disposing of garbage and rubbish;

(d) Licensing, regulating, and limiting the number and locations of oil and gasoline stations;



(e) Licensing, regulating, and limiting the number of vehicles which carry persons or property for hire, fixing the rates of fare and charges, and determining the location of stands for such vehicles;

(f) Licensing, regulating, and limiting the number and locations of billboards and advertising signs;

(g) Directing and regulating the construction, erection, alteration, equipment, repair, moving, removal, demolition, occupancy, and maintenance of buildings and structures and their appurtenances and service equipment;

(h) Establishing zones within the City and regulating therein the use and occupancy of lands or structures; the height, area, size, and location of buildings; the required open spaces for light and ventilation of buildings; and the density of population;

(i) Regulating, limiting, and prohibiting the construction and use of buildings and lands in order to promote the public safety and to prevent and suppress fires;

(j) Regulating and controlling the use of streams, waters, and watercourses within the City;

(3) Establish and control streets, alleys, bridges, and public places, and the space above and beneath them, and the use thereof by:

(a) Creating and vacating the same and acquiring and disposing of the land, or any interest in land, required therefor;

(b) Providing a plan of streets and alleys within the City and for a distance of not more than three miles beyond its limits;

(c) Requiring the owners of real property to build and maintain public sidewalks abutting upon such property, and upon the failure of any owner to do so, constructing and maintaining such sidewalks and assessing the cost thereof, or such part of such cost as the Council shall establish by ordinance, against such property as a special assessment;

(d) Compelling all persons to care for the space between street curbs and the sidewalks which abut upon premises owned, controlled, or occupied by them, and to keep the same free from weeds and from objects which are offensive or hazardous to public health and safety;

(e) Compelling persons to keep sidewalks which abut upon premises owned, controlled, or occupied by them, free from snow, ice, dirt, wood, or any other object which obstructs such sidewalks, or which makes the same offensive or hazardous to the public health or safety;

(f) Providing for the grade of streets and requiring public utility users of the streets to conform thereto with respect to their tracks or facilities located on, above, or under the streets; requiring railroads or street railroads to keep their tracks and the street surface between, and for a distance of one foot on each side of them and other utility facilities in the streets, in reasonable repair at all times; and requiring railroads to give warning by person or automatic signal of the approach of trains upon or across the streets and to light all such crossings at night;

(g) Regulating the speed of vehicles, trains, and locomotives upon or across the streets within the provisions and limitations of law, and the stopping and parking of the same upon the streets and at street crossings;

(h) Providing for and regulating the lighting of streets and alleys;

- (i) Preventing and abating the encumbering of streets and alleys or any part thereof;
  - (j) Providing for and regulating the numbering of buildings upon property abutting the streets and alleys and compelling the owners and occupants thereof to affix numbers thereto;
  - (k) Providing for the use by others than the owner thereof of any property located on, or under, or above streets, alleys, and other public property, which is devoted to public utility purposes, upon the payment of a reasonable compensation therefor to the owner;
- (4) Undertake any public work or make any public improvement or any repair or replacement thereof either directly or by contract with private persons; and to participate in any public work or public improvement under any lawful plan by which the whole or partial support of such work or improvement is provided by another governmental unit or agency;
- (5) Construct, provide, maintain, extend, operate, regulate, and improve:
- (a) Within the City; a City Hall; community buildings; police stations, fire stations; a civic auditorium; and polling places; and,
  - (b) Either within or without the corporate limits of the City or of Livingston County; public parks; recreation grounds and stadiums; Municipal camps; public grounds; zoological gardens; museums; airports and landing fields; cemeteries; public wharves and landing upon navigable waters; levees and embankments for flood control and other purposes related to the public health, safety, and welfare; electric light and power plants and systems; gas plants and systems; public heating plants and systems; waterworks and  
water treatment plants and systems; sewage disposal plants and systems; storm sewers; garbage disposal facilities; refuse and rubbish disposal facilities; market houses and market places; facilities for the storage and parking of vehicles; hospitals; facilities for the docking of pleasure crafts and hydroplanes; and any other structure or facility devoted to or intended for public purposes within the scope of the powers of the City.
- (6) Acquire by purchase, gift, condemnation, construction, lease, or otherwise, property, and interests in property, either within or without the corporate limits of the City or of Livingston County, for any public use or purpose within the scope of its powers, including, but not by the way of limitation, the uses and purposes set forth in clause (5) of this section, including the necessary lands therefor;
- (7) Join with any municipal corporation or with any other unit of government, or with any number or combination thereof, by contract, or otherwise, as may be permitted by law, in the ownership, operation, or performance, jointly, or by one or more on behalf of all, of any property, facility, or service which each would have the power to own, operate, or perform separately;
- (8) Provide for the public peace and health and for the safety of persons and property.

### **Section 3.3 Exercise of Powers.**

Where no procedure is set forth in this Charter for the exercise of any power granted to or possessed by the City and its officers, resort may be had to any procedure set forth in any statute of the State of Michigan which was passed for the government of cities or townships, or in any other statute of the State of Michigan. If alternate procedures are to be found in different statutes, then the Council shall select that procedure which it deems to be most expeditious and to the best advantage of the City and its inhabitants. Where no procedure for the exercise of any power of the City is set

forth, either in this Charter or in any statute of the State of Michigan, the Council may prescribe by ordinance a reasonable procedure for the exercise thereof.

**Section 3.4 Continuation of Rights and Liabilities.**

The adoption of this Charter shall not be regarded as discharging, impairing, or limiting any right vested in or liability incurred by the City of Howell at the time of the adoption of this Charter.

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## CHAPTER 622

### Health, Safety and Sanitation

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- 622.01 Air pollution.
- 622.02 Trees and vegetation.
- 622.03 Noxious odors; filthy accumulations; polluting and diverting watercourses.
- 622.04 Accumulations of junk.
- 622.05 Storage of certain motor vehicles.
- 622.06 Unenclosed wells, cisterns, excavations.
- 622.07 Slaughterhouses.
- 622.08 Playing games in streets; throwing missiles; coasting.
- 622.09 Barbed wire; obstruction of street rights of way.
- 622.10 (Reserved for future legislation)
- 622.11 Abandoned refrigerators.
- 622.99 Penalty.

#### ***CROSS REFERENCES***

Health and sanitation generally - see Mich. Const. Art. 4, Sec. 51; M.C.L. Secs. 325.1 et seq., 327.1 et seq., 750.466 et seq.

Health and sanitation in home rule cities - see M.C.L. Secs. 117.3, 117.4i

Municipal health departments - see M.C.L. Sec. 327.205

Public safety generally - see M.C.L. Secs. 750.493 et seq.

Board of Health - see ADM. Ch. 274

Mandatory child restraints - see TRAF. 410.03 (U.T.C. Sec 5.82)

Safety belts - see TRAF. 410.03 (U.T.C. Sec. 5.83)

Nuisances - see GEN. OFF. Ch. 652

Private sewage disposal systems - see S.U. & P.S. 1042.04

Performance standards in zoning - see P. & Z. Chapter 1240 (Zoning Code)

### 622.01 AIR POLLUTION.

(a) No person shall cause or permit the discharge into the open air of any vapors, smoke, dirt or soot by the use of fuel and a fuel burning device so as to cause physical discomfort or danger to the health or person of any of the inhabitants of the City or so as to interfere with the ordinary use and enjoyment of the property of any inhabitant in the City. A violation of this subsection is hereby declared to be a public nuisance.

(b) The continuance of a public nuisance, as referred to in subsection (a) hereof, may be restrained by proceedings in the Forty-fourth Judicial Circuit Court upon the complaint of the Mayor and Clerk of the City. The institution of such proceedings shall not be a bar to the arrest, prosecution and conviction of any person violating subsection (a) hereof or to any suit to recover such penalty.

(c) The provisions of this section shall not apply to the discharge into the open air of vapors, smoke, dirt or soot by the use of any fuel and fuel burning device located and used in single residences occupied and used solely for residential purposes.

(Ord. 147. Passed 12-9-52.)

(d) In the event of a conflict between any of the provisions of this section and a provision of any State or Federal statute or regulation, the State or Federal statute or regulation shall prevail.

### 622.02 TREES AND VEGETATION.

(a) Cutting and Removal. No owner, lessee or occupant, or any agent, servant, representative or employee of such owner, lessee or occupant, having control of any occupied or unoccupied lot or land or any part thereof in the City, shall permit or maintain on any such lot or land, or on or along the sidewalk, street or alley adjacent to the same between the property line and the curb, or between the property line and the middle of the alley up to twenty feet outside the property line if there is no curb, any growth of weeds, grass or other rank vegetation to a greater height than eight inches, or any accumulation of dead weeds, grass or brush. No person shall cause, suffer or allow poison ivy, ragweed or other poisonous plants, or plants detrimental to health, to grow on any such lot or land in such a manner that any part of such ivy, ragweed or other poisonous or harmful weed extends upon, overhangs or borders any public place (including the public sidewalk), or allow seed, pollen or other poisonous particles or emanations therefrom to be carried through the air into any public place. No person shall allow or maintain upon any portion of such lot or land any growth of grass, brush, weeds so as to create a nuisance due to unsightliness, an unhealthy or unsafe condition, or traffic hazard, or fire hazard.

No person shall neglect to cut, remove or destroy weeds, grass or other vegetation as directed in this section, or fail, neglect or refuse to comply with the provisions of any notice herein provided for or violate any of the provisions in this section, or resist or obstruct the City Manager or his or her authorized agent in the cutting and removal of weeds, grass and other vegetation.

(b) Trees. No tree or other vegetation by virtue of disease, damage or insect infestation which presents a hazard to persons or vegetation on public property shall be maintained on private property.

(c) Obstructing Vision. Whenever any tree, shrub, bush or plant is located on or adjacent to a street right of way such as to obstruct the view of a driver of a vehicle entering or driving upon that street, the vegetation in question shall be cut or trimmed so as to eliminate such obstruction,

provided that the written approval of the City Manager must be obtained before any tree with a trunk diameter of greater than one inch is removed or radically trimmed. No shrub, bush or plant shall be permitted to grow to a height of greater than three feet if it is located so as to provide such obstruction.

(d) Duty of Owner Lessee or Occupant. The owner, lessee or occupant of any lot or land shall cut and remove or cause to be cut and removed or destroyed by other lawful means, all such weeds, grass or other rank, poisonous or harmful vegetation as often as may be necessary to comply with subsection (a) hereof, provided that cutting, removing or destroying such weeds and vegetation at least once in every four weeks between May 15 and September 15 shall be deemed to be in compliance with this section.

(Ord. 187. Passed 9-21-59.)

(e) Noncompliance; Remedy of City. If the provisions of the foregoing subsections are not complied with, the City Manager or his or her duly authorized representative shall serve notice upon the owner, lessee or occupant or any person having the care or control of any such lot or land to comply with the provisions of this section. Such notice shall be given verbally to any of such persons or in writing. If in writing, it shall be sent first class mail to the owner of record of the lot or land in question with a copy sent to the occupant of such lot or land if other than the owner of record thereof. If the person upon whom the notice is served fails, neglects or refuses to cut, remove or destroy, or to cause to be cut, removed or destroyed, such weeds, grass, trees, or other vegetation within five business days from the date of such notice, or if no person can be found in the City who either is or claims to be the owner of such lot or land or who either represents or claims to represent such owner, the City Manager shall cause such weeds, grass, trees and other vegetation to be removed or destroyed and the actual cost of such cutting, removal or destruction, plus an administrative fee of seventy-five dollars (\$75.00) for inspection and other additional costs in connection therewith, shall be certified to by the City Manager or his or her duly authorized representative and shall become and be a lien upon the property on which such weeds, grass, trees and other vegetation were located. A statement for such actual costs plus administrative fee shall thereupon be sent by first class mail to the property owner or his or her representative to whom the original notice was given. Should the obligation as described by this statement remain unpaid after forty-five days from the date of the statement, the City Manager or his or her representative may then certify the delinquent amount, after first adding a penalty of ten percent, to the Assessor. At the discretion of the City Manager, this amount shall either be incorporated into a special assessment roll, to be processed in the manner prescribed by the City Charter and ordinances of the City, or shall be entered upon the next tax roll as a charge against such premises and be collected and the lien thereof enforced in the same manner as general City taxes against such premises are collected and liens enforced. In general, the decision as to whether the obligation shall be made a part of a special assessment roll or certified directly to the assessing officer for collection as a City tax shall depend upon the number and magnitude of such outstanding delinquent statements. (Ord. 676. Passed 6-22-98.)

(f) Hardship. Under proof of financial hardship the City Manager may authorize charges under subsection (d) herein to be paid in installments or to be reduced subject to City Council approval.

(g) Exemptions. Exempted from the provisions of this section, except subsection (b) hereof, are flower gardens, plots of shrubbery, vegetable gardens and small grain plots. An exemption under this subsection cannot be claimed unless the land has been subjected to adequate cultivation. (Ord. 187. Passed 9-21-59.)

(Ord. 812. Passed 7-14-08; Ord. 869. Passed 5-20-13.)

**622.03 NOXIOUS ODORS; FILTHY ACCUMULATIONS; POLLUTING AND DIVERTING WATERCOURSES.**

No person shall erect, continue, use or maintain a dwelling, building, structure or place for a residence or for the exercise of a trade, employment or business, or for the keeping or feeding of an animal which, by occasioning noxious exhalations or noisome or offensive smells, becomes injurious to the health, comfort or property of individuals or of the public. No person shall cause or allow offal, filth or noisome substances to be collected or remain in any place to the damage or prejudice of others or of the public. No person shall unlawfully obstruct or impede the passage of a navigable river, harbor or collection of water, or corrupt or render unwholesome or impure, a watercourse, stream or water, or unlawfully divert such watercourse, from its natural course or state to the injury or prejudice of others.

**622.04 ACCUMULATIONS OF JUNK.**

(a) No person shall allow, permit or maintain a public nuisance.

(b) No person owning, occupying or otherwise having charge or control of any property shall place or permit to be placed on such property any paper, dirt, ashes, cartons, boxes or any scrap or waste material unless such person takes reasonable steps to secure such matter from being blown or carried onto any street, sidewalk, alley, park, public ground or property of another person.

(c) As used in this section:

(1) "Public nuisance" means the accumulation, storage or disposition of garbage or refuse in any manner other than as provided in these Codified Ordinances or the accumulation or storage of junk at any place except in a wholly enclosed building or structure, provided that this paragraph shall not apply to a junk yard lawfully operated by one customarily engaged in and having facilities for processing junk.

(2) "Junk" means old or scrap rope, rags, batteries, paper, rubber, lumber, pipe and copper, brass, iron, steel or other ferrous or nonferrous materials which are not held for sale for remelting purposes by a person customarily engaged in such business and having facilities for processing such materials, as well as used building and roofing materials.

(3) "Garbage" means all putrescible wastes, except wastes of the human body, and other water-carried wastes, and includes all vegetable and animal wastes resulting from the handling, preparation, cooking or consumption of foods. Containers that contained food or liquids for consumption by humans or other beings shall also be classified as garbage.

(4) "Refuse" means ashes, crockery, bottles, cans, paper and other wood pulp products, boxes, rags, grass clippings and other cut vegetation, old or discarded clothing, bedding, mattresses, furniture, appliances, rubbish, stone, sand, dirt, nails, pieces of glass and oil and all other similar nonputrescible wastes other than those included in the definition of garbage.

(5) "Person" means the owner, occupant, user or other in control of the premises.

(d) In addition to the penalties provided in Section 622. 99, following conviction and while the nuisance continues, the City Manager shall cause written notice to abate such public nuisance to be served upon the person convicted and the owner of the premises, if other than the person convicted. Such notice shall be served personally or by certified mail, return receipt requested, and shall state the nature of the public nuisance and the time, not less than ten days following service of the notice, within which the public nuisance shall be abated. If, by the time stated, the public nuisance has not

been abated, the City Manager shall cause it to be abated and shall certify the cost thereof to the City Treasurer, who shall certify the same to the County Auditor to be placed upon the tax duplicate of the owner of the property involved to be collected as taxes.

#### **622.05 STORAGE OF CERTAIN MOTOR VEHICLES.**

(a) No person in charge or control of any property within the City, whether as owner, tenant, occupant, lessee or otherwise shall store on, place on, permit to be stored or placed on or allow to remain on any private property in the City a dismantled, partially dismantled, inoperable motor vehicle, any part of a motor vehicle, untitled motor vehicle or unregistered motor vehicle except in a completely enclosed building or upon the premises of an authorized junk yard or impound yard, as may be permitted under the Howell City Zoning Code. Placement of a tarpaulin or other covering over a motor vehicle described in this chapter shall not be deemed to be in compliance herewith.

(b) No person in charge or control of any property within the City, whether as owner, tenant, occupant, lessee or otherwise shall dismantle, cut up, remove parts from otherwise disassemble a motor vehicle, except in a completely enclosed building or upon the premises of an authorized junk yard, as may be permitted under the Howell City Zoning Code.

(c) This section shall not be constructed to permit the parking or placing of dismantled, partially dismantled, inoperable motor vehicles, any part of a motor vehicle, untitled motor vehicles or unregistered motor vehicles on any street area in the City of Howell or in any front yard, as defined in the Howell City Zoning Code.

(d) The Chief of Police, or the Code Enforcement Officer, as designated in Section 208.03 of the Howell City Code, may remove or cause to be removed any dismantled, partially dismantled or inoperative motor vehicle, untitled motor vehicle or unregistered motor vehicle or part thereof, from private property in the City after having notified, in writing, the owner or occupant of such property of the intended removal at least ten days prior to such removal. Such notice shall be served personally upon a person in charge or control, whether as owner, tenant, occupant or lessee, of the property, if occupied, or may be posted in a conspicuous place upon vacant or unoccupied property, and such vehicles or parts thereof, so removed, shall be disposed of according to law.

(e) As used in this section:

(1) "Dismantled and partially dismantled motor vehicles" means motor vehicles from which a part which is ordinarily a component of such a motor vehicle has been removed or is missing. Exempt from this definition are motor vehicles which are undergoing regularly scheduled maintenance or mechanical repairs, and which otherwise do not meet any criteria of this section.

(2) "Enclosed building" shall mean a garage or other permanent structure which has four walls, a roof and a means of access for ingress and egress, i.e., doors large enough to accommodate ingress and egress.

(3) "Inoperable motor vehicles" means motor vehicles which, by reason of dismantling, disrepair or other causes, are incapable of being propelled under their own power.

(4) "Motor vehicles" means wheeled vehicles which are self-propelled or intended to be self-propelled.

(5) "Unregistered motor vehicle" is a motor vehicle which has not been registered pursuant to the Michigan State Motor Vehicle Code which is Act 300 of the Public Acts of 1949, as amended, being M.C.L. 257.1 et seq. and is not registered to the owner, tenant, occupant or lessee of the



property wherein the motor vehicle is stored or placed.

(6) "Untitled motor vehicle" is a motor vehicle which has not been titled pursuant to the Michigan State Motor Vehicle Code which is Act 300 of the Public Acts of 1949, as amended, being M.C.L. 257.1 et seq. and is not titled to the owner, tenant, occupant or lessee of the property wherein the motor vehicle is stored or placed.

(f) The presence of a dismantled, partially dismantled, inoperable motor vehicle, part of a motor vehicle, untitled motor vehicle or unregistered motor vehicle on a platted or unplatted parcel of land in violation of any of the provisions of this section is hereby declared to be a public nuisance.

(Ord. 724. Passed 3-11-02.)

#### **622.06 UNENCLOSED WELLS, CISTERNS, EXCAVATIONS.**

(a) No person shall cause, allow, permit or suffer to exist an open unenclosed well, cistern, cellar, hole or excavation, which may be dangerous to small children roaming on lots not so enclosed as to prevent their so doing, or a cellar or excavation containing water under an old building or a pool of standing stagnant water, or a dangerous approach on a street or unenclosed lot. A violation of this subsection is hereby declared to be a public nuisance.

(b) Upon complaint made in writing to the Chief of Police, the Chief shall give written notice to the owner of the lot in question or, if the owner is unknown or absent, then to the occupant of such lot, to abate the nuisance complained of within one week after receipt of such notice. At the end of such period, the Chief shall investigate such nuisance and if he or she finds that it has not been abated by having been placed in a safe and sanitary condition, then he or she shall make a complaint or cause the same to be done for the purpose of prosecuting the owner or occupant for a violation of this section.

(Ord. 31. Passed 5-17-1898.)

#### **622.07 SLAUGHTERHOUSES.**

No person shall keep, use or maintain a slaughterhouse or other place for the slaughtering of animals in the City. No person shall slaughter any animal in the City.

(Ord. 9. Passed 1-6-1896.)

#### **622.08 PLAYING GAMES IN STREETS; THROWING MISSILES; COASTING.**

(a) No person shall play baseball, football or any other game played with a ball or a ball and a club, or bat any ball, on any of the public streets in the City. No person shall throw any baseball, football, snowball or any other kind of ball, or any stone or other hard substance, in any of the public streets and alleys of the City.

(b) No person shall coast on any of the sidewalks of the City with a sled or any other article or thing.

(Ord. 10. Passed 1-13-1896.)

**622.09 BARBED WIRE; OBSTRUCTION OF STREET RIGHTS OF WAY.**

(a) No person shall place or maintain any barbed wire fencing or any strand of barbed wire along the line of, or in, any public street, alley or public place in the City. No person shall place or allow such barbed wire to remain between any premises owned or occupied by him or her and the adjoining premises, or place or allow to remain any barbed wire fencing or barbed wire in the City in any place where it will expose a person to injury on account thereof, provided that it shall not be unlawful to place such barbed wire at the top of a legal fence when placed not less than six feet from the ground.

(b) No person shall place or maintain a fence, tree, shrub or other obstacle in any portion of a street right of way except by permission of the Chief of Police.

**622.10 (RESERVED FOR FUTURE LEGISLATION)**

**622.11 ABANDONED REFRIGERATORS.**

(a) No person shall leave outside of any building or dwelling, in a place accessible to children, any abandoned, unattended or discarded ice box, refrigerator or container having airtight doors which when closed cannot be opened from the inside.

(b) No person shall leave outside of any building or dwelling, in a place accessible to children, any abandoned, unattended or discarded ice box, refrigerator or other container of any kind which has an airtight snap-lock or other device thereon without first removing such snap-lock or the doors from such ice box, refrigerator or container.

**622.99 PENALTY.**

Whoever violates any of the provisions of this chapter is responsible for a Municipal civil infraction and shall be subject to the civil fines set forth in Section 202.99.



Howell, MI, Code of Ordinances

## CHAPTER 12 TAXATION

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### **Section 12.1 Power to Tax.**

In order to carry out its purposes, powers, and duties of the City government established by this Charter, the City may assess, levy, and collect ad valorem taxes, rents, tolls, and specific or excise taxes.

### **Section 12.2 Subjects of Taxation.**

The subjects of ad valorem taxation for Municipal purposes shall be the same as for State, County, and school purposes under the general law.

### **Section 12.3 Tax Procedure.**

Except as otherwise provided by this Charter, City taxes shall be levied, collected, and returned in the manner provided by law. In the event of failure of any tax through the defective procedure of any assessment, collection, or sale, the Council may provide for its reassessment upon the property chargeable therewith in the first instance.

### **Section 12.4 Exemptions.**

The power of taxation shall not be surrendered or suspended by any grant or contract to which the City shall be a party. No exemptions from ad valorem taxation shall be allowed, except such as are expressly required or permitted by law.

### **Section 12.5 Personal Property; Jeopardy Assessment.**

If the Treasurer finds that any person, who is or may be, liable for taxes upon personal property, the taxable situs of which was in the City on tax day, intends to depart from the City or to remove therefrom personal property, which is, or may be, liable for taxation, or intends to conceal himself or his property, or intends to do any other act tending to prejudice, or to render wholly or partly ineffectual, the proceedings to collect the tax, unless proceedings therefor cannot be brought without delay, he shall cause notice of his finding to be given such person, together with a demand for the immediate payment of the tax. Thereupon, the tax shall become immediately due and payable and the Treasurer shall have and exercise all the powers granted by law to township and city treasurers for the collection thereof. If the exact amount of any such tax has not, at the time of such finding, been determined because the same has not been spread upon the tax roll, the Treasurer shall estimate the amount of the tax upon such personal property and the estimate shall be presumed to be the amount of tax upon such property which, together with other taxes which have accrued thereon,

shall become payable as hereinabove provided. The tax so estimated by the Treasurer shall, upon the giving of the notice herein provided, become a lien upon the property liable for the tax. The lien shall be of the same type and legal effect as the lien upon personal property provided in Section 12.18 of this chapter. If the estimate of the Treasurer is in excess of the amount of tax spread against such property upon the tax roll, he shall refund the excess upon the demand of the person from whom it was collected or his legal representative. If such person furnishes evidence, satisfactory to the Treasurer, by bond or otherwise, that he will duly pay the tax or taxes to which the Treasurer's finding relates, then such tax or taxes shall not be payable prior to the time otherwise fixed for payment thereof.

### **Section 12.6 Assessment.**

The Assessor shall, annually, prepare an assessment roll of all property in the City and shall place a value, in accordance with law, upon all taxable property, both real and personal, in the City. The value shall be determined by the Assessor in accordance with established assessment rules, techniques, and procedures. The value shall be determined according to the facts existing of the date fixed by law as tax day, for the assessment of property throughout the State, for the year for which the roll is made, and no change of the status or of the location of any such property, after that day, shall be considered by the Assessor or the Board of Review.

### **Section 12.7 Assessment Procedure.**

The process of assessment of property within the City for the purpose of taxation shall be continuous, but all assessments, as the same shall appear on the annual assessment and tax rolls of the City, shall be corrected by the Assessor to and shall stand as of the tax day of the year to which they apply.

### **Section 12.8 Time for Making Assessment Rolls.**

On or before the first day of the meeting of the Board of Review in each year, the Assessor shall complete and certify an assessment roll in the manner and form required by law. In making such assessment roll, the Assessor shall possess all the powers and immunities vested in, and shall be charged with all the duties imposed upon, assessing officers by law. On the date and at the time of convening of the Board of Review in each year the Assessor shall deliver the completed assessment roll to the Board of Review. Such roll may be divided into two or more volumes, which shall be identified by the Assessor, for the purpose of convenience. The attachment of any certificate or warrant, required by this chapter, to any volume of the roll, either as an assessment roll or as a tax roll, shall constitute the attachment thereof to the entire roll, provided the several volumes thereof are identified in such certificate or warrant.

### **Section 12.9 Notice of Change of Assessments.**

The Assessor shall give notice by first class mail to each owner of property which has been added to the assessment roll or the value of which has been increased or decreased on such roll. The notice shall be addressed to the owner according to the records of the Assessor's office and mailed not less than ten days before the date of the convening of the Board of Review. Neither the failure of the Assessor to give notice nor the failure of a person to receive notice shall invalidate any assessment

roll or any assessment thereon.

#### **Section 12.10 Board of Review.**

(a) The Board of Review shall be composed of three members as provided for in Section 4.1 of this Charter. The terms of office of each member of the Board of Review shall be for four years. At each City election held in a year following a presidential election year, two members of the Board of Review shall be elected. At each other regular City election, one member of the Board of Review shall be elected. The Council shall fix the compensation of the members of the Board of Review.

(b) The Board of Review shall convene at nine o'clock in the forenoon on the third Monday in March in each year at the Council Chambers and shall continue in session for six hours during that day and each of the following three days for the purpose of examining and reviewing the assessment roll of the City. The Council may, by appropriate action, extend this period. On the first day of its meeting in each year, the Board shall elect one of its members Chairman. The Board shall have all powers vested in and be charged with all duties imposed by law upon boards of review in townships.

#### **Section 12.11 Notice of Meetings of Board of Review.**

The Council shall provide for giving notice to the public of the time and place of the meeting of the Board of Review. Such notice shall be given not less than ten days before the convening of the Board and as often thereafter as the Council deems fit. If, for any reason, the meetings of the Board are not held, as in this chapter required, the Council shall give such further notice as time and circumstances warrant.

#### **Section 12.12 Notice of Assessment Changes.**

The Board of Review shall give notice, prior to adjournment, to each owner of property according to the records of the Assessor's office, whose property is added to the assessment roll by it, or the value of whose property is increased or decreased thereon by it. Neither the failure on the part of the Board of Review to so give notice in any particular case, nor the failure of a person to receive notice, shall invalidate the assessment roll or any assessment thereon.

#### **Section 12.13 Confirmation of Assessment Roll.**

The Board of Review shall hold a meeting on the Monday following the date of its first session, and, at that meeting, shall complete the review of the assessment roll submitted to it by the Assessor and shall endorse and approve the same as provided and required by law. The omission of such endorsement shall not affect the validity of such assessment roll. If, for any cause, a quorum of the Board of Review does not assemble, or in the event that the Board fails or refuses to act during the days set for the meeting thereof, the roll as prepared by the Assessor shall stand as if approved by the Board of Review, without further formality. After the review of the assessment roll has been completed and the roll endorsed and signed, as required by law, the Board of Review shall redeliver the roll to the Assessor.

**Section 12.14 Records of the Board of Review.**

The Assessor shall be the Secretary of the Board of Review, shall attend its meetings with the privilege of participating therein, but without the right to vote upon any decision made by the Board, shall give the Board information relating to matters under consideration by it, and shall keep a permanent record of all proceedings of the Board, which record shall be filed with the Clerk within thirty days after the adjournment of the Board.

**Section 12.15 Validity of Assessment Roll.**

Upon the completion of the roll and from and after midnight ending the last day of the meeting of the Board of Review, the same shall be the assessment roll of the City for County, school, and City taxes on real and personal property that may be authorized by law, and shall be conclusively presumed by all courts and tribunals to be valid and shall not be set aside except for causes set forth in the general laws of the State.

**Section 12.16 Clerk to Certify Levy.**

Within three days after the Council has adopted the budget for the ensuing year, the Clerk shall certify to the Assessor the total amount which the Council determines shall be raised by general tax, together with such assessments and other lawful charges as the Council shall authorize to be spread against or charged to property and persons appearing upon the roll.

**Section 12.17 City Tax Roll.**

Upon receiving the certification of the amount to be raised, as provided in the preceding section, the Assessor shall proceed to spread the amounts of the general City tax upon the assessment roll according to and in proportion to the several valuations set forth therein. To avoid fractions in computation on any tax roll, the Assessor may add to the amount of the several taxes to be raised not more than the amount permitted by law, which added amount when collected shall be credited to the General Fund of the City. Assessments and other lawful charges authorized by the Council to be spread against or charged to property or persons upon the roll shall also be spread and charged thereon as directed by the Council.

**Section 12.18 Taxes Lien on Property.**

The City taxes thus assessed against personal property shall become at once a debt due to the City from the persons to whom they are assessed, and the amounts assessed on any interest in real property shall on the first day of July become a lien upon such real property, and the lien for such amounts and for all interest and other charges thereon shall continue until payment thereof. All personal taxes shall also be a first lien, prior, superior, and paramount, upon all personal property of the person so assessed from and after the first day of July in each year and shall so remain until paid. Such tax liens shall take precedence over all other claims, encumbrances, and liens upon the said personal property, whether created by chattel mortgage, execution, levy, judgment, or otherwise, and whether arising before or after the assessment of said personal property taxes, and no transfer of personal property assessed for taxes thereon shall operate to divest or destroy the lien, except where the personal property is actually sold in the regular course of retail trade.

**Section 12.19 Tax Roll Certified for Collection.**

(a) After extending the taxes aforesaid and not later than the second Monday in June in each year, the Assessor shall certify the tax roll, and shall annex his warrant thereto, directing and requiring the Treasurer to collect from the several persons named in the roll the several sums mentioned therein opposite their respective names as a tax, assessment, or charge, and granting to and vesting in him, for the purpose of collecting the taxes, assessments, and charges on the roll, all the power and immunities granted by law to township treasurers for the collection of taxes.

(b) The Assessor shall, at the same time, deliver to the Clerk a statement showing the amount of the taxes assessed upon the roll and the Clerk shall make an entry thereof in the books of his office and charge the gross amount thereof to the Treasurer.

**Section 12.20 Notification of Taxes Due.**

The Treasurer shall not be required to make personal demand for the payment of taxes, but, upon receipt of the City tax roll by him, he shall forthwith mail a tax statement to each person named in the tax roll and shall give at least six days' notice of the date upon which City taxes are due, by publication in a newspaper of the City, which notice shall be sufficient demand for the payment of all taxes assessed in the City tax roll. Neither the failure on the part of the Treasurer to give notice or to mail a tax statement, nor the failure of any person to receive the notice or the tax statement, shall invalidate the taxes on the tax roll or release any person or property assessed from the penalty provided in this chapter in case of nonpayment.

**Section 12.21 Tax Payment Schedule.**

The taxes, charges and assessments on each City tax roll shall be due and payable on the first day of July of the fiscal year in which levied. All such taxes, charges, and assessments which are paid on or before the thirty-first day of July of such year shall be collected by the Treasurer without the addition of any fee or charge for the collection thereof. There shall be added to all taxes, charges, and assessments on such tax roll which remain unpaid after the said thirty-first day of July a collection fee of one-half of one per cent during the month of August and an additional one-half of one per cent per month during each and every month or fraction of a month which shall elapse thereafter before the payment of such taxes, charges, or assessments is made, until the twentieth day of February next following the date that such taxes, charges or assessments became due and payable. All such collection charges, when paid, shall be paid into the City's treasury for the use and benefit of the City. Upon all City taxes, charges, and assessments returned to the County Treasurer upon any delinquent tax roll, a charge of three and one-half per cent shall be added and the same shall be collected by the County Treasurer in like manner as and together with the taxes, charges, and assessments so returned.

**Section 12.22 Procedure for Collecting Taxes on Personal Property.**

Respecting taxes levied against personal property, the Treasurer shall have power to levy upon and sell at public sale the personal property of a person refusing or neglecting to pay the tax, in the manner provided by law and shall have the same powers respecting the property assessed and the person who is the owner or custodian thereof as provided by law for the collection of such taxes.

**Section 12.23 State, County, and School Taxes.**

For the purpose of assessing and collecting taxes in the City for State, County, and school purposes, the City shall be considered the same as a township, and all provisions of law relative to the collection of such taxes, the accounting therefor to the appropriate taxing units, and the returning of taxes to the County Treasurer for nonpayment thereof shall apply to the performance thereof by the Treasurer, who shall perform the duties and have the powers granted to a township treasurer by law. Collection fees charged and collected for the collection of such taxes shall be paid into the General Fund of the City.

**Section 12.24 Lien for Taxes, Assessments, and Charges.**

All taxes, assessments, and charges spread on tax rolls shall, until paid, be a lien upon the property against which they were levied.

**Section 12.25 Proportioning of Tax on Portion of Taxed Items.**

Any person owning an undivided share or other part of any parcel of real property, assessed as one description, may pay the taxes assessed against such description or may pay the share or part owed by him by paying an amount having the same relation to the whole tax as the value of the part on which payment is made bears to the value of the whole description. The receipt given and the record of the Treasurer shall show the payment and the interest with respect to which it was made.

**Section 12.26 Protection of City Lien.**

Consistent with the provisions of law, the City shall have power to acquire any premises within the City, either by purchase at any tax or other public sale, or by purchase from the State or the fee owner, when the purchase of such property is necessary to protect the lien of the City for any City taxes, assessments, and charges. The City may hold, lease, or sell the property so acquired. Any such acquisition shall be deemed for a public purpose.



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Howell, MI, Code of Ordinances

## CHAPTER 14

### SPECIAL ASSESSMENTS

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#### **Section 14.1 General Powers Relative to Special Assessments.**

The Council may determine the necessity for any public improvement, and determine that the whole or any part of the cost thereof shall be defrayed by special assessment upon the property especially benefited. The Council may authorize public improvements other than those for which petitions have been filed, whether the cost thereof is to be defrayed from the General Fund of the City or by special assessments upon the property especially benefited.

#### **Section 14.2 Petitions for Public Improvements.**

Petitions for making public improvements, any part of the expense of which is to be borne by special assessments, shall be filed with the Clerk. All such petitions filed during any calendar year shall be considered by the Council not later than January 31st of the next calendar year.

#### **Section 14.3 Preliminary Resolution for Public Improvement.**

No contract or expenditure, except for the necessary procedures of the Council and for the preparing of necessary profiles, plans, specifications, and estimates of cost, shall be made for any public improvement, the cost of which is to be paid by special assessment upon the property especially benefited thereby, until the Council has passed a resolution determining to proceed with such public improvement.

#### **Section 14.4 Assessments on Single Lots.**

When any expenditure is made on account of any separate or single lot, parcel of land, or lands, or premises, which, by the provisions of this Charter or by law, the City is authorized to charge and collect as a special assessment against the same, and which assessment is not of that class of special assessment required to be made pro rata upon lots or parcels of land in a special assessment district, a statement of the labor or services for which such expenditure was incurred, verified by the City Manager, with a description of the lot and the name of the owner or person chargeable therewith, if known, shall be reported to the Council in the manner prescribed by it. The Council shall determine the part of such expenditure that shall be charged, and the person against whom, if known, and the premises upon which the same shall be levied, as a special assessment. As often as the Council deems expedient, the Clerk shall give notice of the several amounts so determined and reported to the several persons chargeable therewith. Such notice shall be sent by first class mail to the last known addresses of such persons as shown on the assessment roll of the City, or by publication. Such notice shall state the basis of the assessment, and the amount thereof, and shall give a reasonable time, not less than thirty days, within which payment shall be made to the Treasurer. In all cases where payment is not made within the time set, the fact shall be reported by the Treasurer

to the Assessor, who shall charge such amounts, together with a penalty of ten per cent of such amounts, against the persons or real property chargeable therewith, on the next tax roll.

#### **Section 14.5 Special Assessment Procedure by Ordinance.**

The Council shall, by general ordinance, prescribe a complete special assessment procedure.

#### **Section 14.6 Poverty Provisions.**

In any instance where, in the opinion of the Council, the owner of any property which is assessed to defray any part of the cost of making any public improvement benefiting such property is unable to contribute toward the cost thereof because of poverty, the City may take from the owner a trust deed or assignment of the property so assessed, in lieu of the payment of such assessments in cash. Such trust deed shall not deprive the owner of such property of full right to use and occupy such property so long as he shall live and shall contain a clause to the effect that such deed shall cease to be effective upon the payment of the assessments which have accrued and become payable upon the property.

#### **Section 14.7 Special Assessment Accounts.**

Except as otherwise provided in this Charter, moneys raised by special assessment to defray the cost of any public improvement shall be held in a special fund to pay only such cost and, to the extent required, to repay any money borrowed or advanced therefor and the accrued interest thereon.

#### **Section 14.8 Contested Assessments.**

No suit or action shall be instituted or maintained for the purpose of contesting or enjoining the collection of a special assessment unless written notice, stating an intention to contest the collection thereof and setting forth the grounds of such contest, is filed with the Clerk. Such notice shall be filed within fifteen days after the date of the resolution of the Council confirming the assessment roll for such improvement, or, in the case of an assessment upon a single lot or premises, ordering the special assessment. Any such suit or action must be commenced within ninety days following the giving of notice.

#### **Section 14.9 Reassessment for Benefits.**

Whenever the Council deems any special assessment invalid or defective, or whenever a court adjudges an assessment to be illegal in whole or in part, the Council may cause a new assessment to be levied for the same purpose, whether or not the improvement or any part thereof has been completed, or any part of the special assessment collected. In reassessment proceedings hereunder, it shall not be necessary for the Council to redetermine the necessity of the improvement or to hold a hearing thereon. If any portion of the original special assessment is collected and not refunded, it shall be applied upon the reassessment, and the reassessment shall, to the extent, be deemed satisfied. If more than the amount reassessed is collected, the balance shall be refunded to the person making such payment.

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## **CHAPTER 892**

### **Special Assessments**

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- 892.01 Application of chapter.
- 892.02 Authority of Council.
- 892.03 Petitions for improvement; forms; consideration by Council.
- 892.04 Investigation of petition; cost estimates.
- 892.05 Determination of necessity of improvement; additional cost estimate.
- 892.06 Action prohibited prior to resolution.
- 892.07 Contents of resolution.
- 892.08 Preparation of special assessment roll.
- 892.09 Notice of proposed assessment; hearings; objections.
- 892.10 Conduct of hearing; alteration and confirmation of roll.
- 892.11 Payment schedule.
- 892.12 Assessment as lien.
- 892.13 Collection fees.
- 892.14 Placement on City tax roll; collection; delinquency.
- 892.15 Partial payment prior to work.
- 892.16 Segregation of moneys.
- 892.17 Refunds.
- 892.18 Additional assessments.
- 892.19 Reassessments.
- 892.20 Assessments for hazards or nuisances.
- 892.21 Bonds.
- 892.22 Responsibility for costs.

#### ***CROSS REFERENCES***

City Assessor - see CHTR, Sec. 7.6

Taxation - see CHTR, Ch. 12

Special assessments - see CHTR, Ch. 14

Tax Increment Finance Authority - see B.R. & T. Ch. 896

Brownfield Redevelopment Authority - see B.R. & T. Ch. 899

Subdivision improvements - see P. & Z. Ch. 1228

#### **892.01 APPLICATION OF CHAPTER.**

When, by the provisions of the City Charter, the whole or any part of the cost of any public improvement is to be defrayed by a special assessment upon the property especially benefited, such assessment shall be made as provided in this chapter.

(Ord. 158. Passed 7-2-56.)

#### **892.02 AUTHORITY OF COUNCIL.**

Council may initiate proceedings for any other public improvement, other than those for which petitions have been filed, whether the cost thereof is to be defrayed from the general funds of the City or by special assessments upon the property especially benefited.

(Ord. 158. Passed 7-2-56.)

#### **892.03 PETITIONS FOR IMPROVEMENT; FORMS; CONSIDERATION BY COUNCIL.**

A petition for making a public improvement, any part of the expense of which will be borne by special assessments, shall be filed with the City Clerk. Such a petition shall be upon a form furnished by the City. Council, by resolution, shall prescribe the form of petition to be used. No petition need be considered by Council unless the same has been signed by the owners of at least sixty percent of the lands subject to be assessed for the cost of the proposed public improvement. All petitions filed in accordance with this chapter during any calendar year shall be considered by Council not later than January 31 of the next calendar year.

(Ord. 158. Passed 7-2-56.)

#### **892.04 INVESTIGATION OF PETITION; COST ESTIMATES.**

(a) Upon receipt of a petition requesting a public improvement or repairs, filed in accordance with Section 892.03, the City Manager shall investigate the petition. If the Manager finds that the same is in accordance with this chapter, he or she shall thereupon prepare a cost estimate and submit the same to Council together with the petition. The cost estimate shall include the cost of doing the work, engineering and legal fees, land acquisition if any, advertising fees and any other expenses incidental thereto.

(b) When Council initiates proceedings for a public improvement, it shall, as a preliminary, direct the Manager to prepare the cost estimate.

(Ord. 158. Passed 7-2-56.)

**892.05 DETERMINATION OF NECESSITY OF IMPROVEMENT; ADDITIONAL COST ESTIMATE.**

After Council has received the cost estimate provided for in Section 892.04, it shall then determine the necessity of the proposed public improvement. Before ordering the public improvement to be made, Council shall cause to be prepared necessary profiles, plans and specifications. The same, when completed, shall be filed with the Clerk and a further cost estimate shall be prepared by the City Manager.

**892.06 ACTION PROHIBITED PRIOR TO RESOLUTION.**

No contract or expenditure, except for the necessary procedures of Council and for preparing necessary profiles, plans, specifications and estimates of cost, shall be made for a public improvement, the cost of which is to be paid in whole or in part by special assessments upon the property especially benefited thereby, until Council has passed a resolution determining to proceed with such public improvement.

(Ord. 158. Passed 7-2-56.)

**892.07 CONTENTS OF RESOLUTION.**

Upon the filing and consideration of the profiles, plans, specifications and additional cost estimate provided for in Section 892.05, Council may then by resolution determine to proceed with the proposed public improvement. The resolution shall declare what portion of the costs and expenses shall be assessed against the property to be especially benefited; specify the sum to be so assessed; specify the boundaries of the property deemed to be especially benefited; specify whether such special assessment shall be made according to benefits based on frontage, area or otherwise; and direct the City Assessor to prepare a special assessment roll in accordance with the resolution.

(Ord. 158. Passed 7-2-56.)

**892.08 PREPARATION OF SPECIAL ASSESSMENT ROLL.**

The City Assessor shall prepare the special assessment roll and return the same to Council within thirty days following the passage of the resolution of Council referred to in Section 892.07. Upon the assessment roll the Assessor shall enter and describe all the lots, premises and parcels of land to be assessed, with the names of the persons, if known, who are the owners thereof and the amount to be assessed against each lot, premises and parcel in the manner directed by Council and this chapter. The Assessor shall certify the assessment roll at the time he or she reports and returns the same to Council. The certification of the Assessor to be endorsed on the assessment roll may be in the following form:

STATE OF MICHIGAN    )

)) SS

COUNTY OF LIVINGSTON    )

I do hereby certify and report that the foregoing is the special assessment roll and the assessment made by me pursuant to a resolution of Council of the City of Howell, Michigan, adopted (give

date) \_\_\_\_\_, for the purpose of paying that part of the cost which Council has resolved should be paid and borne by special assessment (here insert the object of the assessment); that in making such assessments I have, as near as may be, and according to my best judgment, conformed to the directions contained in the resolution of Council hereinbefore referred to, the Charter and the ordinances of the City relating to such assessments.

Dated \_\_\_\_\_

City Assessor

(Ord. 158. Passed 7-2-56.)

### **892.09 NOTICE OF PROPOSED ASSESSMENT; HEARINGS; OBJECTIONS.**

When a special assessment roll is reported and returned by the City Assessor to Council, the same shall be filed in the office of the City Clerk and numbered. Before confirming a special assessment roll, Council shall give notice to all persons interested by publishing, in a newspaper published and circulated in the City, once in each week for two weeks in succession, a notice stating the lots, premises and parcels of land assessed, the names of the persons, if known, who are the owners thereof, the purpose of the assessment and the amount thereof. Such notice shall also state the time and place at which Council shall meet for the purpose of reviewing the assessment roll and hearing any person so assessed who considers himself or herself aggrieved thereby. At least ten days prior to the date of the hearing by Council, the Clerk shall notify the owners of the lots, premises and parcels of land assessed, by first class mail, so far as the same are known and as shown on the tax rolls of the City. A person objecting to his or her assessment may file his or her objections thereto in writing with the Clerk.

(Ord. 209. Passed 12-10-62.)

### **892.10 CONDUCT OF HEARING; ALTERATION AND CONFIRMATION OF ROLL.**

At the time and place designated in the notice provided for in Section 892.09, Council and the City Assessor shall meet and hear all persons interested in such assessments and consider all objections as filed with the City Clerk. At such time and place, Council shall review the assessment roll and may alter, change or correct the same if necessary and confirm it as reported and returned or as altered, changed and corrected. Otherwise, Council may refer the assessment roll back to the Assessor for revision or annul it and direct a new assessment, in which case the same proceedings shall be had as in the case of original assessment. However, in altering, changing or correcting the roll, Council shall not add any lands not included in the notice of the original assessment. Further, Council may adjourn and continue such hearing from time to time. When the special assessment roll has been confirmed by Council, the Clerk shall endorse a certificate thereof upon the roll showing the date of confirmation.

(Ord. 158. Passed 7-2-56.)

### **892.11 PAYMENT SCHEDULE.**

At the time of confirmation of a special assessment roll, Council shall, in its resolution, state the number of installments in which the assessment is to be paid, the due date of the first and subsequent installments and the rate of interest to be charged on unpaid installments, which rate

shall not exceed twelve percent per year. However, the whole assessment, after confirmation, may be paid to the City Treasurer at any time in full with accrued interest thereon.

#### **892.12 ASSESSMENT AS LIEN.**

Upon the date of the confirmation of a special assessment roll, the special assessments thereon shall become a debt due to the City from the persons to whom they are assessed and shall, until paid, be a lien upon the property assessed for the amount of such assessments and all interest and charges thereon. Such lien shall be of the same character and effect as that which is created by the City Charter for City taxes.

(Ord. 158. Passed 7-2-56.)

#### **892.13 COLLECTION FEES.**

Each special assessment, or each installment of such an assessment when installment payments are provided for, shall be collected by the City Treasurer without a collection fee for a period ending on the last day of the first month following each such due date. Thereafter, the City Treasurer shall add to the assessment or installment a collection fee of one-half of one percent for each month or fraction thereof which elapses following the first month, until the payment of such assessment or installment. All such collection fees shall belong to the City and be collectible in the same manner as the collection fees or collection charges for City taxes as provided in Section 12.21 of the City Charter.

(Ord. 158. Passed 7-2-56.)

#### **892.14 PLACEMENT ON CITY TAX ROLL; COLLECTION; DELINQUENCY.**

(a) Each special assessment, or each installment of such an assessment when installment payments are provided for, with accrued interest thereon, if any, which becomes due on July 1 of a given year, shall be placed on the tax roll of the City for that year in a column for special assessments, and thereupon the amount so levied in the tax roll shall be collected in all respects as are City taxes due on July 1 of that year and shall be subject to the same fees and charges as are City taxes due on that date. If uncollected by the following February 20, such amount shall be returned to the County Treasurer with unpaid taxes, as provided in Section 12.21 of the City Charter.

(b) Each special assessment or installment which becomes due other than on July 1 of a given year shall, if unpaid for ninety days after March 1 of the calendar year following the calendar year in which the assessment or installment was due, be certified as delinquent to Council by the City Treasurer. Council shall order such delinquent assessment or installment to be placed on the tax roll of the City for that year, together with accrued interest and accrued collection fees in a column for special assessments. Thereafter, the total amount of such assessment or installment, with interest and fees, shall be collected in all respects as are City taxes due on July 1 of that year, and such total amount shall be subject to the same fees and charges as are City taxes due on that date. If uncollected by the following February 20, such amount shall be returned to the County Treasurer with unpaid taxes, as provided in Section 12.21 of the City Charter.

(Ord. 158. Passed 7-2-56.)

#### **892.15 PARTIAL PAYMENT PRIOR TO WORK.**

Council, at its discretion, need not proceed with the performance of the public improvement or repair, the cost of which is to be defrayed in whole or in part by a special assessment, until twenty-five percent of the total assessment has been paid into the City Treasury.

(Ord. 158. Passed 7-2-56.)

#### **892.16 SEGREGATION OF MONEYS.**

Except as otherwise provided in the City Charter or by law, moneys raised by special assessment for a public improvement shall be segregated in a special fund or account and may be used only to pay for the costs of the improvement for which the assessment was levied, together with the expenses incidental thereto, and to repay any money borrowed or advanced therefor, together with interest which has accrued thereon.

(Ord. 158. Passed 7-2-56.)

#### **892.17 REFUNDS.**

If a special assessment proves greater than the actual cost of the improvement and the expenses incidental thereto, such excess may be placed in the General Fund of the City if such excess is five percent or less of the assessment. Should the assessment prove greater than necessary by more than five percent, the entire excess shall be refunded on a pro rata basis to the then owners of the property assessed. Such refund may be made by credit against future unpaid installments, to the extent that such installments then exist, and the balance of the refund shall be in cash. No refund shall be made which contravenes the provisions of any evidence of outstanding indebtedness secured in whole or in part by such special assessment.

(Ord. 158. Passed 7-2-56.)

#### **892.18 ADDITIONAL ASSESSMENTS.**

If a special assessment proves to be more than five percent less than the actual cost of the improvement and the expenses incidental thereto, Council may order the City Assessor to make an additional pro rata assessment to cover the deficiency. The additional pro rata assessment shall not exceed twenty-five percent of the assessment, as originally confirmed, unless a meeting of Council is held to review such additional assessment. Notice of any such meeting shall be published and all proceedings taken thereon shall be in accordance with this chapter as it applies to an original assessment.

(Ord. 158. Passed 7-2-56.)

#### **892.19 REASSESSMENTS.**

Whenever, in the opinion of Council, a special assessment is invalid or defective by reason of irregularity or informality in the proceedings, or if a court of competent jurisdiction adjudges such assessment to be illegal in whole or in part, Council may, whether or not the improvement has been made or any part of the assessments has been paid, cause a new assessment to be made for the same



purpose for which the former assessment was made. All proceedings on such reassessment and for the collection thereof shall be conducted in the same manner as provided for the original assessment, except that it shall not again be necessary to prepare plans and estimates of cost, redetermine the necessity of the improvement or hold a hearing thereon, unless and to the extent that the cause of irregularity arose in such proceedings. Whenever a sum or part thereof, levied upon any property for the assessment so set aside, has been paid and not refunded, the payment so made shall be applied toward the reassessment, or if the payment exceeds the amount of the reassessment, a refund shall be made to the person making such payment. No judgment or decree, or any act of Council, vacating a special assessment, shall destroy or impair the lien of the City upon the premises assessed for such amount of the assessment as may be equitably charged against the same had such charge been lawfully assessed thereupon in accordance with the procedure established or authorized in this chapter.

(Ord. 158. Passed 7-2-56.)

### **892.20 ASSESSMENTS FOR HAZARDS OR NUISANCES.**

The assessment for the cost of the abatement of a hazard or nuisance, to be made pursuant to Section 3.2(1) of the City Charter, shall be made by resolution of Council. Notice of the time at which Council will act thereon shall be given, by publication in a newspaper published and circulating in the City, once in each week for two weeks in succession, and sent by certified mail, return receipt requested, to all owners of the property constituting or creating such nuisance or hazard, as shown on the last tax roll of the City. Failure of any such owner to receive such notice shall not invalidate any such assessment. For the purposes of collection of such assessment, the adoption of such resolution shall be equivalent to the confirmation of a special assessment roll. The amount of such assessment shall become a debt due the City upon the adoption of such resolution, shall be payable and subject to collection fees and shall be a lien and be collectible as provided in Sections 892.12, 892.13 and 892.14. This section shall not apply to those cases falling within the provisions of Section 14.4 of the City Charter.

### **892.21 BONDS.**

If the payment of a special assessment is divided into installments, as provided in this chapter, Council may authorize and direct the Mayor and City Treasurer to issue, in accordance with law, and negotiate at not less than par, on behalf of the City, bonds bearing not more than twelve percent annual interest, for the aggregate amount of such special assessment. The maturity of such bonds shall in all cases correspond substantially in time and amount to the payment of the assessments for the public improvement for which the bonds are issued. The proceeds received from the sale of the bonds shall be deposited with the City Treasurer and disbursed by him or her, on the order of Council, in payment of the cost and expense of the public improvement for which they were issued. Such proceeds shall be used for no other purpose. The proceeds of the extended special assessment, when collected, shall be used for the payment of such bonds and for no other purpose.

(Ord. 158. Passed 7-2-56.)

### **892.22 RESPONSIBILITY FOR COSTS.**

The policies set forth in this section are established for public improvements in the City. Such policies will cover projects undertaken in already-developed areas of the City. It is anticipated that

all costs for public improvements in new development areas will be covered by the developer.

(a) Sidewalks. (EDITOR'S NOTE: This subsection was repealed by Ordinance 572, passed February 8, 1993. See Section 1022.055.)

(b) Local street construction. Upon the receipt of a petition for the making of a public improvement for local street construction, and upon the granting of the same, the costs for local street construction will be borne by the City.

(c) Major Street Construction. Upon the receipt of a petition for the making of a public improvement for major street construction, and upon the granting of the same, the costs for major street construction will be borne by the City.

(Ord. 683. Passed 9-14-98; Ord. 718. Passed 6-4-01.)

(d) Storm Sewer Construction. The City will cover fifty percent of the cost of storm sewer construction projects. Major drainage area outlet and retention area work will be fully funded by the City.

(e) Sewer and Water Extensions to Previously Developed Property. For extensions of water and sewer service into areas of the City that were previously developed, the City will cover thirty-four percent of the cost. In addition to picking up sixty-six percent of the extension costs, property owners will pay the appropriate capital charges and tap-in fees. Property owners may spread the cost of their portion of the work on the tax rolls at the same interest rate as on any bonds issued by the City for the project or at any other rate and schedule established by the City Council.

(f) Corner Lot Assessment Procedure. In recognition of the added burden on corner lot owners and realizing that the majority of property owners do not pay for assessments based on side yard footage (front footage only), the following procedure will be used to assess costs to corner lot owners. When work is done and assessed on the shortest side of the property it will be assessed in the normal procedure based on the footage in the project area.

When work is done and assessed on the longest side of the property, it will be assessed based on the following formula for determining front footage:

Assessment Footage - One-half of seventy-five percent of the sum of the footage of the two sides of the property fronting on the streets.

Example:

[Click here to view image](#)

(1) When Street X is reconstructed, assessment to property owner will be based on 66' since this is the shortest side.

(2) When Street Y is reconstructed, assessment to property owner will be based on the corner lot assessment formula since this is the longest side.

$$\text{Assessment Footage} = 1/2 \times .75 (66 + 132) = \underline{148.5} = 74.25'$$

2

(Res. 90-17. Passed 4-9-90.)

(g) Local and Major Street Construction Undertaken by City. All local street construction and major street construction undertaken by the City will be paid for from the General Fund of the City,

or on bonds that may be issued by the City for any local or major street construction project, as the same may be determined by Council.

(Res. 91-28. Passed 9-9-91.)

(h) Driveway Approaches and Driveway Aprons. If the City undertakes any local street or major street construction or reconstruction in which curb and gutter is installed, then, as to the cost of driveway approaches and driveway aprons, the cost to the City and the property owner and the method of payment thereon by the property owner, shall be determined as set forth in the Zoning Code.

(Ord. 683. Passed 9-14-98.)