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Municipal Prosecution

Distribution of Fines and Costs

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Does it make a difference (\$\$\$\$) if a municipality . . .

- *charges a violation under its ordinance as opposed to a statute?*
- *prosecutes a violation in a municipal ordinance violations bureau or administrative hearings bureau as opposed to the district court?*

The answer to each of these questions is YES.

This report is intended to tell you “why” the answer is YES under Michigan law. It’s also intended to provide background so that your municipality can make basic prosecutorial decisions, including:

Should our municipality adopt the Michigan Vehicle Code as an ordinance?

Should our municipality adopt the Uniform Traffic Code as promulgated by the Michigan State Police?

Should our municipality consider

- 1) adopting a municipal civil infraction ordinance and
- 2) designating the penalty for a violation of specific ordinances as a municipal civil infraction as opposed to a criminal misdemeanor?

Should our municipality establish a Municipal Ordinance Violations Bureau?

Should our city designate the penalty for a violation of certain ordinances as a blight violation?

Should our city establish an Administrative Hearings Bureau?

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Background

The power to prosecute/before and after 1994

Ordinance enforcement pre 1994 was generally restricted to the prosecution of crimes and abatement of nuisances

The power of cities, villages and townships to prosecute violations of local ordinances is based on Michigan constitutional and statutory authority. See, in general, “Municipal Prosecutions,” *Local Government Law and Practice in Michigan*, by Eric D. Williams. Generally, municipalities have the power to adopt ordinances relative to their municipal concerns, property, and government, subject to the constitution and law. Broadly speaking, the power to adopt and enforce ordinances in furtherance of the public health, safety, and welfare is referred to as the police power of the municipality.

The state legislature has also been granted the power to adopt statutes for the purpose of protecting the public health, safety and welfare. Generally, a municipality is precluded from enacting an ordinance if the ordinance is in direct conflict with a statutory scheme or if the statutory scheme preempts the ordinance by occupying the field of regulation to the exclusion of the municipality.

However, if a state statute does not preempt or directly conflict with a municipal ordinance, it is possible for the state and municipal “laws” to “co-exist” in a given municipality. The most obvious example is the co-existence of traffic laws on the state and municipal levels. On the state level, the Michigan Vehicle Code (state statute) and the Uniform Traffic Code (state administrative rules) are effective statewide. If, however, a municipality adopts an ordinance incorporating provisions of the Michigan Vehicle Code and the Uniform Traffic Code (which it is specifically authorized to do), it is possible for an individual to violate, within a particular municipality, the state regulation as well as the municipal ordinance. Assuming that the decision has been made to charge the individual, a law enforcement officer is then faced with a choice: Should the violation be charged as a statute violation or should it be charged as a municipal ordinance violation?

Prior to 1994, the vast majority of ordinances were prosecuted as criminal offenses. Since municipalities are limited to the penalty which can be imposed, i.e. generally 90 days’ imprisonment

with the exception of the imposition of 93 days’ imprisonment for certain offenses, municipalities may prosecute ordinance misdemeanors (up to 93 days’ imprisonment) but not “high court misdemeanors” or felonies.

Ordinance enforcement post 1994 has expanded to include municipal civil infractions and blight violations.

In 1994, the options available to a municipality were broadened to include the option to prosecute certain municipal ordinance violations as municipal civil infractions. In 2004, cities meeting a population threshold were also given the option to blight violations.

Factors impacting distribution of fines and costs—what is charged and where action is processed

Although there may be many factors to consider, this report is intended to lay out the financial impact to a municipality, primarily in the distribution of fines and costs, depending on whether the violation is charged under a state statute or under a municipal ordinance. (The results are basically the same regardless of whether the violation is civil or criminal.)

The actual dollar amounts distributed to a municipality will vary based on a number of factors including 1) the offense actually charged and 2) the court, tribunal or bureau in which the action is processed. In addition, if an action is processed in one of the judicial courts of the state, i.e., a district court, the results will vary depending on whether the district court is classified as a district court of the first, second, or third class.

The results will also vary depending on whether the municipality has established a municipal ordinance violations bureau to process municipal civil infractions, a parking violations bureau to process parking tickets, or whether a city has established an administrative hearings bureau (sometimes referred to as a blight court) to process blight violations.

In a Nutshell

Violations of ordinances

Generally, violations of ordinances are prosecuted as criminal misdemeanors unless the municipality has adopted a municipal civil infraction ordinance or has adopted a blight ordinance which provides for civil fines and sanctions.

Prosecuting attorney

The municipal attorney is the prosecuting attorney for the prosecution of ordinance violations of the municipality. The county prosecutor is the prosecuting attorney for the prosecution of state offenses.

Ordinance misdemeanors (crimes)

If the violation of an ordinance is a misdemeanor, action will be initiated by issuance of a complaint and warrant. Proceedings are conducted through district court/municipal court. MCL 600.8313. The penalty for such violation shall not exceed a fine of \$500 or imprisonment of 90 days or both. MCL 1174i (Home Rule City); MCL 89.2 (Fourth Class City); MCL 66.2 (General Law Village); MCL 78.24 (Home Rule Village); MCL 41.183 (Township). If state law provides a penalty of up to 93 days in jail, e.g., certain traffic violations, an ordinance violation that substantially corresponds to the state law may be punished by up to 93 days in jail. Cities, villages and townships have no authority to pass ordinances with penalties in excess of 93 days in jail.

State misdemeanor

Misdemeanor violations of state statutes are initiated in a district court/municipal court. The prosecutor of such actions is the county prosecutor and not the municipal attorney.

Municipal civil infraction

A violation of an ordinance may be prosecuted as a municipal civil infraction if it is specifically indicated that a violation of the ordinance is a municipal civil infraction. Primarily, the types of infractions that may be designated as municipal civil infractions are related to zoning and building code violations, noxious weeds and related ordinances. Certain specific violations are precluded from being designated as municipal civil infractions. In order to prosecute a violation of an ordinance as a municipal civil infraction, the municipality must 1) adopt a municipal civil infraction ordinance and 2) specifically indicate that the violation of an ordinance is a municipal civil infraction.

The municipal civil infraction ordinance must indicate the municipal official(s) authorized to write and serve municipal civil infraction tickets. If the violation is indicated to be a municipal civil infraction, action will be initiated by issuance of a notice of violation. All proceedings will be conducted through the district court/municipal court unless a municipal ordinance violations bureau has been established by the municipality.

Remedies available through district/municipal court for violations of municipal civil infractions include the imposition of fees, liens, orders of expense reimbursement, fines and orders of compliance. No imprisonment may be ordered for a violation of a municipal civil infraction.

Michigan Court Rule 4.100 (Civil Infraction Actions) should be consulted.

For more information, see Michigan Municipal League's One-Pager Plus, "Municipal Civil Infractions."

Municipal ordinance violations bureau (municipal civil infractions bureau)

A municipal civil infraction ordinance may also establish a municipal ordinance violations bureau pursuant to MCL 600.8396 to process admissions of responsibility. A municipality which establishes a bureau will be responsible for the costs of administration of the bureau. If a municipal ordinance violations bureau has been established, the respondent may admit responsibility to a notice of violation at the municipal ordinance violations bureau. If the respondent denies responsibility, a citation will be issued and further civil proceedings will be conducted through the district court/municipal court.

Blight violation

A violation of certain types of ordinances may be prosecuted by cities meeting certain population thresholds as a blight violation. MCL 117.4l(4). The following types of ordinances may be designated as blight violations: zoning, building or property maintenance, solid waste and illegal dumping, disease and sanitation, noxious weeds and vehicle abandonment, inoperative vehicles, vehicle impoundment and municipal vehicle licensing.

Administrative hearings bureau (blight court)

A city that has a population of 7,500 or more and is located in any county, or a city that has a population of 3,300 or more and is located in a county that has a population of 2,000,000 or more, may establish an administrative hearings bureau to adjudicate and impose sanctions for violations of the charter or ordinances designated in the charter or ordinance as a blight violation. MCL 117.4q. A city that establishes a bureau will be responsible for the costs of administration of the bureau.

Pursuant to a schedule of civil fines and costs, the bureau may collect civil fines and costs for blight violations. An administrative hearings bureau does not have jurisdiction over criminal offenses, traffic civil infractions, municipal civil infractions, or state civil infractions. The bureau and its hearing officers do not have the authority to impose a penalty of incarceration and may not impose a civil fine in excess of \$10,000. The appeal may be made to the circuit court. The city may obtain a lien against property involved. The city may also institute court action to collect the judgment.

Court funding unit

The court funding unit of a district court of the first or second class is the county. There may be one or more funding units of a district court of the third class depending upon the number of municipalities served by the third class district court and whether the municipalities have agreed upon a formula for funding the court and distribution of fines and/or costs. Most third class district courts are located in southeastern Michigan and the Lansing and Grand Rapids’ areas.

Municipal court

Those municipalities that retained their municipal courts when legislation authorizing district courts was enacted—i.e., Grosse Pointe, Grosse Pointe Farms, Grosse Pointe Shores, Grosse Pointe Woods and Grosse Pointe Park.

Fines and costs

Fines are generally considered to be the monetary penalties for violations of state statutes or municipal ordinances. Costs are those expenses incurred by the entity initiating or prosecuting the action.

Assessments

Fines and costs are not the only “charges” imposed for a civil or criminal violation. Depending on the violation, certain statutory assessments, which will be distributed according to statute, may be imposed.

Important Practice Tip:

If your municipality enforces ordinances in the district court, make sure that you provide the district court clerk with copies of your municipality’s up-to-date ordinances on a regular basis.



Distribution of Fines and Costs

Who gets the money?

Parking Violations

Tribunal/Bureau	Fines distributed to . . .	Costs distributed to . . .
Parking Violations Bureau	political subdivision whose ordinance was violated	political subdivision whose ordinance was violated

MCL 600.8395 Parking Violations Bureau

Municipal Civil Infractions

Tribunal/Bureau	Fines distributed to . . .	Costs distributed to . . .
District/Municipal Court*	1/3 political subdivision whose ordinance was violated 2/3 court funding unit	political subdivision whose ordinance was violated
Municipal Ordinance Violations Bureau	political subdivision whose ordinance was violated	political subdivision whose ordinance was violated

*See exception for 52nd District Court MCL 600.8379(2)

Note: A Justice System Assessment is also required if violation is processed through the District/Municipal Court (MCL 600.8381). The Assessment is paid to the Justice System Fund and distributed according to MCL 600.181. A Justice System Assessment is not imposed if processed through Municipal Ordinance Violations Bureau.

MCL 600.8379 District Court/Fines and Costs

Blight Violations

Tribunal/Bureau	Fines distributed to . . .	Costs distributed to . . .
Administrative Hearings Bureau*	political subdivision whose ordinance was violated	political subdivision whose ordinance was violated

*Available for home rule city if population threshold met

Note: A Justice System Assessment is imposed on violations processed through an Administrative Hearings Bureau and is distributed as provided by MCL 600.181.

MCL 117.4l (4) Home Rule City/Ordinance

MCL 117.4q Home Rule City/Administrative Hearing

Non-Traffic Violations (Civil and Criminal)

Violation	Tribunal/Bureau	Fines distributed to . . .	Costs distributed to . . .
Statute	District/Municipal Court	libraries	court funding unit
Ordinance	District/Municipal Court*	1/3 political subdivision whose ordinance was violated 2/3 court funding unit	1/3 political subdivision whose ordinance was violated 2/3 court funding unit

*See exception for 52nd District Court MCL 600.8379(2)

Note: In addition to fines and costs, assessments including Justice System Assessment (civil) and minimum state costs (criminal) (MCL 600.8381) may be imposed. Assessments are paid as provided by statute.

MCL 600.8379 District Court/Fines and Costs

MCL 600.8827 State Civil Infraction/Fines and Costs

MCL 600.8831 State Civil Infraction/Fines

Traffic Violations (Civil and Criminal)

Violation	Tribunal/Bureau	Violation Type	Fines distributed to . . .	Costs distributed to . . .
Statute	District Court	all violations regardless of vehicle type	libraries	court funding unit
	Municipal Court	commercial vehicle, Motor Carrier Safety Act (serious safety defect)	political subdivision in which violation occurred	court funding unit
		all other violations regardless of vehicle type	libraries	court funding unit
Ordinance	District/Municipal Court*	non-commercial vehicle	1/3 political subdivision whose ordinance was violated 2/3 court funding unit	1/3 political subdivision whose ordinance was violated 2/3 court funding unit
		commercial vehicle	30% libraries 70% political subdivision whose ordinance was violated	1/3 political subdivision whose ordinance was violated 2/3 court funding unit

*See exception for 52nd District Court MCL 600.8379(2)

Notes: 1. Fines and costs will not be distributed to a political subdivision for ordinance traffic violations unless: 1) the charging document indicates that the offense is being charged as an ordinance violation and 2) if applicable, the political subdivision has adopted the Michigan Vehicle Code and/or Uniform Traffic Code.

2. In addition to fines and costs, assessments including Justice System Assessment (civil) and minimum state costs (criminal) (MCL 600.8381) may be imposed. Assessments are paid as provided by statute.

MCL 257.601 - .750 Michigan Vehicle Code/Traffic Laws

MCL 257.901 - .953 Michigan Vehicle Code/Penalties

MCL 257.909 Michigan Vehicle Code/Civil Fees

MCL 479.1 et. seq Motor Carrier Act

MCL 480.17b Motor Carrier Act Safety Act/Penalties

MCL 600.8379 District Court/Fines and Costs

MCL 600.8827 State Civil Infraction/Fines and Costs

MCL 600.8831 State Civil Infraction/Fines

Answers to frequently asked questions

Traffic

Will a municipality receive any money from fines and costs imposed for a traffic violation which occurs within its jurisdiction if the violation is charged under a state statute? NO

Will a municipality receive a percentage of the fines and costs if a traffic violation which occurs within its jurisdiction is charged under a municipal ordinance as opposed to a state statute? YES

Can a municipality charge a traffic offense which has its basis in state law as an ordinance violation if the municipality has not adopted the Michigan Vehicle Code and/or the Uniform Traffic Code as an ordinance? NO

Municipal ordinance prosecution

Will a municipality receive a percentage of the fines and costs imposed if a civil or criminal violation which occurs within its jurisdiction is charged under a municipal ordinance as opposed to a state statute? YES

Municipal civil infractions

If a municipality has adopted a municipal civil infractions ordinance, has designated certain violations as municipal civil infractions and has also established a municipal ordinance violations bureau, can the municipality initiate prosecution of those offenses in the municipal ordinance violations bureau instead of district court? YES

Will a municipality receive 100% of the fines and costs imposed for an admission of responsibility to a municipal civil infraction violation if it prosecutes the municipal civil infraction in its municipal ordinance violations bureau rather than in the district court? YES

Will a municipality bear the expense of operation of its municipal ordinance violations bureau? YES

Administrative hearings bureau (blight court)

May all municipalities establish an administrative hearings bureau (blight court)? NO—only home rule cities meeting certain population threshold requirements.

If a city, meeting the population requirements for establishment of an administrative hearings bureau, has designated certain violations of the charter or ordinances as blight violations and has also established an administrative hearings bureau, can the city prosecute those offenses in its administrative hearings bureau instead of district court? YES

Will a city receive 100% of the fines and costs imposed for a blight violation if it prosecutes the blight violation in its administrative hearings bureau rather than in the district court? YES

Will the city bear the expense of the operation of its administrative hearings bureau? YES

NOTE: The answers may vary for the municipal courts, i.e., Grosse Pointe, Grosse Pointe Farms, Grosse Pointe Park, Grosse Pointe Woods and Grosse Pointe Shores.



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