michigan municipal league

Restoring Michigan Communities

Building by Building

Published by the Michigan Municipal League

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September 2007
Updated June 2016

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Creating a Fresh Look

This manual is intended to provide the basics for restoring Michigan communities—building by building. It focuses on the problems faced by the largest and the smallest of our communities. How do we effectively deal with dangerous and unsafe buildings? How can we best address the problems of litter, overgrown weeds, and abandoned buildings? We do so by acknowledging that the problems, unless dealt with effectively and quickly, not only impede our community progress but also sap our community spirit.

We know that vibrant communities have, in common, walkable downtowns, flourishing retail districts, exciting cultural opportunities, affordable housing and educational opportunities. We also know that favorable design concepts promote mixed-use, walkable neighborhoods that work to retain and attract young people and their employers to Michigan and the "new retirees" of the baby boomer generation. We know what works—we need to make sure that we have in place the tools that permit us to create vibrant communities in our downtowns, neighborhoods and regions.

The problems are not unique. Each of our communities faces, in one form or another, concerns that hinder the progress toward development of attractive and safe downtowns and neighborhoods. The tools to remedy these concerns are available for all Michigan communities. The goal of this manual is to encourage you as a community leader 1) to identify the problems that hinder your community's progress and 2) to develop a strategy or plan of action that addresses your community's problems including the adoption of tools and enforcement procedures necessary to fulfill that plan.

We can address these problems—one building at a time.

Hopefully, this manual will encourage you, as a community leader, to develop a strategy to address your community's building and structure problems, and to put in place the basic tools to facilitate the accomplishment of your goals.

Daniel P. Gilmartin
Executive Director
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THE PROBLEM

In an attempt to revitalize Michigan on the local level, communities are taking a fresh look at themselves—specifically, their downtowns and their neighborhoods. That "look," in many instances, is a visual one. It's a recognition that dangerous buildings and abandoned structures, litter, and overgrown weeds lower property values, increase crime, and detract—in every way—from the wellbeing of the community. They hinder the creation of a "sense of place"—the pride in where we live and work.

When you take a "fresh look" at your community, what do you see?

- A burned out house waiting to be torn down?
- An otherwise attractive neighborhood marred by a lot overgrown with weeds that attract rodents?
- An abandoned building accessible to children?
- A partially constructed house with no or little progress toward completion?
- An inoperable car parked on private property?
- A dead tree that presents a hazard to the public?
- An empty lot full of garbage?
- A stagnant pool of water allowed to remain on private property?
- An empty refrigerator left unattended outside of a house?
- An undrained swimming pool?
- A vacant, neglected building located next to the coffee-house attempting to establish an outdoor café?

These are just a few examples of the types of community problems that detract from the goal to create vibrant communities—not only in retail districts but residential neighborhoods as well. The problems exist to one degree or another in all Michigan communities—large and small. As a community leader, you share the responsibility in identifying these hindrances and making sure that your municipality has the appropriate tools and enforcement procedures necessary to address the problems.

Communities are recognizing that it's simply not enough to respond to problems piecemeal as they occur. Most likely, your community's tools and enforcement procedures have been developed over time with little thought as to how one tool interacts (or, worse, conflicts) with another. Quite frankly, your community's tools and enforcement procedures may be a mish-mash of ineffective, outdated, and unrelated procedures. Asking the municipal attorney to "prosecute" violators is not the long-term solution to these problems, either.

Rather, we would like to suggest that the long-term solution involves a four-step process:

1) Identify and evaluate those specific problems, conditions, or eyesores that "hold back" your community from creating a vibrant downtown and attractive neighborhoods.

2) Make a list and review your existing tools (i.e., the ordinances and statutes that your municipality relies on to address the problems) and enforcement procedures (i.e. whether your municipality prosecutes violations as crimes, municipal civil infractions, blight violations, and the like).

3) Develop goals and an action plan that includes recommended changes to existing municipal tools and enforcement procedures.

4) Put your plan in to action.

THE SOLUTION— Step by Step

STEP #1—Identify the Problems

Generally, this should be the easy step. You will find, however, that one person's effort to "naturalize his lawn" may be viewed by his neighbor as nothing more than overgrown weeds. You need to come to some sort of consensus as to what is, and what is not, a problem for your community. As you do, you will be developing an overall policy and vision for how you want your community to look and feel.

Muskegon identified its problem houses in residential neighborhoods through the formation of an ad hoc "committee" consisting of a city commissioner, a fire department inspector, and a police officer. The group called themselves the "Traveling Trio." Together they toured neighborhoods, inspected buildings, and talked with residents. "To do" lists were prepared—identifying those buildings subject to simple repairs to those requiring demolition. Clearly, the success of this approach is due in large part to the coalition of policy makers and city staff with input and involvement from neighborhood residents. Picnics were held in the neighborhoods when action was taken—restoring a sense of community as progress was made. During this same time, renewed development vigor in the downtown area was taking place.

STEP #2—Make an Inventory of Your Existing Tools and Enforcement Procedures

Certainly, no one can disagree that it is important to make a list of the tools and enforcement procedures your community has developed. But why, you ask, should you as a community leader be involved in reviewing those tools and enforcement procedures? Shouldn't that be left to your code enforcement officer and the municipal attorney? The answer is: Your code enforcement officer and municipal attorney can act more effectively and efficiently if you and other community policy makers have made thoughtful decisions and have clearly communicated your community's stated goals. And you can't make those decisions unless you know what tools and enforcement procedures are available.

The second reason why you, as a community leader, need an understanding of the tools and enforcement procedures is that there have been significant changes, on a statewide basis, on several key fronts. For example, since 1994, municipalities have had the ability to classify certain violations of ordinances as municipal civil infractions rather than as criminal offenses. The ability to decriminalize ordinances gives a municipality greater flexibility in how it chooses to enforce ordinances related to housing and zoning matters. Just as importantly, prosecuting violations as municipal civil infractions has the potential of funneling more revenue into the municipality, i.e., the distribution of fines and costs is directed to the municipality and not to other entities of government.

In addition, Michigan law has changed dramatically within the last decade with respect to construction guidelines and enforcement. Michigan is now governed by a statewide construction code that applies to all Michigan communities. Michigan communities no longer have the ability to adopt certain construction codes. The statewide construction code is divided into various "sub-codes" including the Michigan Building Code, the Michigan Residential Code, the Michigan Electrical Code, the Michigan Plumbing Code, and the Michigan Mechanical Code. Individual communities may choose to administer and enforce the basic construction codes—but the codes apply uniformly throughout the state.

A local property maintenance ordinance remains the province—and a key component—of a municipality's housing regulatory tool. You need to be aware of the policy considerations at the time of the adoption of your community's local property maintenance ordinance and help to develop policy as to the specifics of that ordinance.

In addition, you need to be aware of the ordinances that your community needs to adopt—whether dealing with litter, or overgrown weeks, or dangerous buildings, or abandoned structures. You, as a community leader, need to be a part of the development of a well thought-out policy regarding these issues.

It bears repeating that the current state of your community's tools and enforcement procedures may be disjointed and ineffective to address today's concerns. For example, if your community has not considered whether abandoned structures need to be registered, maybe you should. If your community has not considered whether to decriminalize some of its ordinances, maybe you should. If your dangerous building ordinance is modeled after the State Housing Law definition of a dangerous building and has not been

modified since 2003 reflecting the changes to the State Housing Law, maybe it should. If you do not currently have a dangerous building ordinance, maybe you should.

Now is the time to take that "fresh look." Appendix A, "Tools and Enforcement Procedures," is designed to give you an overview of the types of statutes and ordinances available and the techniques that you may choose to enforce your ordinances. For example, if you decide to adopt or modify your dangerous building ordinance, you will find references to possible definitions of a dangerous building throughout the Tools section of Appendix A. You will then need to pick a method of enforcement if a dangerous building (as you've defined it) exists in your community. The Enforcement Procedures section of Appendix A will help you decide the best enforcement procedure for your community's dangerous building ordinance.

You will also note that Appendix B outlines the State Housing Law. The State Housing Law, whether adopted by your community or not, is an extremely valuable guideline for 1) a plan of registry of rental units and 2) definition and procedures for dealing with dangerous buildings. Many communities use the dangerous building section of the State Housing Law as a guide for defining a dangerous building and/or for developing a procedure for enforcing the dangerous building ordinance.

Both Appendix A and Appendix B are "dry" reading — but hopefully they will give you guidelines for determining what's best for your municipality

STEP #3—Develop a Plan

OK—you've identified the problems and you've examined what tools and enforcement procedures are available. What's next? If you haven't done so yet, now is the time to pull in your code enforcement officers and the municipal attorney.

You need to encourage an open and honest discussion as to what works and what doesn't. You need to ask whether the problems that you've identified in Step #1 can be adequately addressed with the current tools and enforcement procedures.

At a minimum, you need to ask:

- Should your municipality administer the state construction codes? Or should you allow the state or county to enforce them?
- Can some tools be eliminated?
- Do you need to adopt a municipal civil infractions ordinance?
- Should you establish a municipal civil infractions bureau to process admissions (uncontested) violations?
- Do you have a dangerous building ordinance? Is it modeled after the definition of dangerous building found in the State Housing Law?
- Do you address the concern of abandoned—but not necessarily unsafe—structures?
- What problems can't you address? (i.e., can you require uniformity in the color of exterior of houses in a neighborhood)?

From a policy standpoint, you also need to make sure that your code enforcement team and municipal attorney know what is important to you, the policy makers of the community. They need to know that they have your support when they attempt to enforce violations of your ordinances. It's not fun to be a code enforcement officer and be told to "enforce" an ordinance when the officer has not been able to provide input and knows from experience that enforcement of that particular offense is impractical.

Just as importantly, make sure residents of your community have input. Finally, they need to know how you arrived at your policy and your thinking behind the policy.

STEP #4—Put Your Plan in Place

If you need modifications to your ordinances—determine who will make the drafts of the changes for presentation to the council or commission. Again, involve staff—and anyone who will be enforcing the ordinances. This also is a golden opportunity to "advertise" the policy and efforts you are making to members of your community. Your success can be measured from the level of "buy-in" by the public—you'll have greater success if you've involved your constituents from the beginning. But now's the time to showcase what's been accomplished to date.

Now, the fun part. Making things happen and seeing change for the better. As you put in place the tools and enforcement procedures and you begin to actually deal with the weeds, the vacant building, the standing water, etc., take before and after pictures. Show your residents what's been done to make where they live and work a community of pride—a community that counts!

And, finally, make a conscious effort at least every six months to re-evaluate your progress. You'll find that some "successes" need an additional push. You'll also discover areas of concern that you previously overlooked that are now ready to be addressed.

THE BIG PICTURE

Should your community's plan of action in addressing dangerous buildings and blighted property correspond with condemnation procedures of the municipality?

Short answer: Yes.

Long answer: In 2006, Michigan voters passed an amendment to the eminent domain provisions of the Michigan Constitution of 1963. This constitutional amendment restricts the ability of public corporations or a state agency to take private property for transfer to a private entity. One of the stated exceptions is for private property that is selected on grounds of independent public significance or concern, including blight.

In response to the constitutional amendment, the Michigan Legislature enacted amendments to various state statutes in order to provide a common definition of blight. Various redevelopment statutes affected by the common definition of blight include the following: the Blighted Area Rehabilitation Act (2006 PA 677, MCL 125.71); the Neighborhood Area Improvements Act (2006 PA 676, MCL 125.941); and the Obsolete Property Rehabilitation Act (2000 PA 146) MCL 125.2781 et seq.

NOTE: If you are interested in statutes that have been adopted to address problems of blight and other community problems on an area-wide basis, see Appendix C—Redevelopment tools available for community restoration on an area-wide basis.

Blighted property under the various statutes is property that meets any of the following criteria:

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

b) is an **attractive nuisance** because of physical condition or use.

c) is a **fire hazard** or is **otherwise dangerous** to the safety of persons or property.

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

e) is **tax reverted property** owned by a municipality, by a county, or by the state. The sale, lease, or transfer of tax reverted property by a municipality, a county, or the state shall not result in the loss to the property of the status as blighted for purposes of the Act.

f) is **property owned or under the control of a land bank fast track authority** under the Land Bank Fast Track Act, 2003 PA 258. The sale, lease, or transfer of property by a land bank fast track authority shall not result in the loss to the property of the status as blighted for purposes of the Act.

g) is **improved real property** that has remained **vacant for five consecutive years and that is not maintained in accordance with applicable local housing or property maintenance codes or ordinances.**

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

A universal definition of blighted property is now threaded throughout various Michigan state statutes. Local ordinances that deal with dangerous buildings, nuisances, abandoned structures, etc. should be patterned after the statutory framework and language of blighted property in order to provide a cohesive plan to remedy and restore Michigan communities on a building by building basis.

APPENDIX A
Tools and Enforcement Procedures

Tools—Sources of Authority

State law/regulations

- Abandoned vehicle and registered abandoned scrap vehicle
- Fire Prevention Code
- State Housing Law
- Stille-Derossett-Hale Single State Construction Code
- Act/Codes
- Michigan Building Code
- Michigan Residential Code
- Michigan Electrical Code
- Michigan Mechanical Code
- Michigan Plumbing Code
- Michigan Rehabilitation Code for Existing Buildings
- Michigan Uniform Energy Code
- Premanufactured Unit Rules
- Unattended icebox, refrigerator

Ordinances

- Abandoned or vacant structures (blight prevention)
- Abandoned possessions
- Abandoned vehicle and registered abandoned scrap vehicle
- Dangerous building
- Fire prevention
- Grass and noxious weeds
- Housing
- Litter
- Nuisance
- Property maintenance
- Zoning

Enforcement Procedures

Inspections

Agreements

Prosecution

- Misdemeanor
- Municipal Civil Infraction
- Municipal Civil Infractions Bureau (optional)
- Blight Violation
- Administrative Hearings Bureau (blight court) (optional)
- Abatement of Nuisance

Condemnation

Tools—Sources of Authority

State Law/Regulations

Abandoned vehicle and registered abandoned scrap vehicle (MCL 257.252 et seq.)

The Michigan Vehicle Code (MVC) outlines procedures for dealing with abandoned vehicles and registered abandoned scrap vehicles, including removal from public property and removal from private property at the direction of a person other than owner or police agency. The MVC provides that an abandoned vehicle may be taken into custody by the police and sold at public sale. MCL 257.252a.

Fire Prevention Code (MCL 29.1 et seq.)

The Fire Prevention Code provides a tool to regulate certain hazardous substances, dangerous conditions to persons or property, fire hazards, etc.

State Housing Law (MCL 125.401 et seq.)

The State Housing Law applies to certain local units of government by population. By its terms, a local unit of government is not required to enforce the State Housing Law. However, all municipalities (even those to which it does not specifically apply) may adopt the State Housing Law either 1) by reference or 2) by setting out its provisions, with or without amendment. See Appendix B—State Housing Law.

Stille-Derossett-Hale Single State Construction Code Act and Codes (MCL 125.1501 et seq.)

All Michigan communities are governed by various statewide construction codes promulgated pursuant to the Stille-Derossett-Hale Single State Construction Code Act. A Michigan community no longer has the ability to develop and adopt certain construction provisions that apply only to that community. The statewide construction code is divided into various "sub-codes" including the Michigan Building Code, the Michigan Residential Code, the Michigan Electrical Code, the Michigan Plumbing Code, and the Michigan Mechanical Code.

The state construction codes are promulgated by the Department of Licensing and Regulatory Affairs (LARA). The codes are set forth in the Michigan Administrative Code. All of the codes listed are administered through the Bureau of Construction Codes. Several of the codes listed below are sometimes referred to as the "pillar codes" as identified under the Act itself. Other codes, e.g., the Michigan Rehabilitation Code for Existing Buildings, have been adopted by LARA pursuant to the general authority granted under the Act.

Michigan Building Code (R 408.30401) applies to construction, alteration of buildings or structures or any attached buildings except for detached one- and two-family dwellings and townhouses.

NOTE: Although the Michigan Building Code adopts by reference the provisions of the International Property Maintenance Code, section 102.2 which indicates that "the provisions of this code shall not be deemed to nullify any provisions of local, state or federal law" has been upheld by the Michigan Supreme Court to permit a municipality to enforce its own property maintenance ordinance. *Azzar v City of Grand Rapids*, 725 NW2d 666 (2007). If a municipality enforces the Michigan Building Code but does not adopt its own local property maintenance ordinance, the municipality should recognize that the International Property Maintenance Code is incorporated and enforced as part of the Michigan Building Code.

Michigan Residential Code (R 408.30501) addresses the design and construction of one- and two-family dwellings and townhouses.

Michigan Electrical Code (R 408.30801) regulates the installation and use of electrical systems or material.

Michigan Mechanical Code (R 408.30901) regulates the design, installation, maintenance, alteration, and inspection of mechanical systems.

Michigan Plumbing Code (R 408.30701) regulates the installation and use of plumbing systems or plumbing materials.

Michigan Rehabilitation Code for Existing Buildings (R 408.30551) addresses repair, alterations and additions to existing buildings. The MRCEB contains previsions re: unsafe buildings, § 115, 116, 117 and dangerous buildings, § 202.

Michigan Uniform Energy Code (R 408.31001) addresses energy requirements.

Premanufactured Unit Rules (R 408.31101) addresses rules for premanufactured units.

Government subdivisions may choose to administer and enforce any or all of the four code disciplines, i.e. building, electrical, plumbing, and mechanical. See LARA Application to Administer and Enforce (BCC-246). If a unit of government chooses to enforce a code, it must establish a Construction Board of Appeals. See BCC Technical Bulletin, Publication No. 9. Other requirements will also need to be followed, including qualifications of local personnel enforcing the codes.

If a city, village, or township chooses not to enforce one of the codes, the state will provide enforcement, unless the county within which the governmental subdivision is located has agreed to administer and enforce the code. The Bureau of Construction Codes lists on its website all Michigan units of government and the enforcing agency for each particular unit.

A governmental subdivision that has assumed the responsibility for administering and enforcing a code may either:

1) issue a complaint and obtain a warrant for a violation of the code and prosecute in the same manner as it prosecutes a local ordinance violation, or

2) issue a citation or municipal ordinance violation notice pursuant of chapter 87 of the revised judicature act of 1961, i.e., MLC 600.8701-.8735 (municipal civil infractions statutory provisions).

The governmental subdivision may retain any fine imposed upon conviction or judgment. MCL 125.1508b; 1523.

Unattended icebox, refrigerator (MCL 750.493d)

The statute provides than any person who knowingly leaves an unattended icebox, refrigerator, etc. in a place accessible to children without first removing the locking device is guilty of a misdemeanor.

Ordinances

Abandoned building or vacant structures (blight prevention)

Within the past decade, many Michigan communities have adopted municipal ordinances to deal with the problems associated with abandoned buildings. "Unoccupied or vacant buildings can be to a neighborhood like missing teeth are to person's smile. Until they are sold to a caring owner or demolished by the city, they must be secured to prevent injury, water damage, infestation, or illegal occupation." (City of Grand Rapids' website.)

Grand Rapids notes that it is fortunate to have very well-maintained properties—but that even a small number of abandoned houses is unacceptable. The Grand Rapids' ordinance is part of its overall "Housing Code." An abandoned residential structure is basically a residential structure that has been vacant for 30 days and meets one of the following criteria: 1) is a location for criminal activity, 2) has one or more broken or boarded windows, 3) has taxes in arrears for at least 365 days, 4) has utilities disconnected or not in use or 5) is not maintained in compliance with the Housing Code. Owners of abandoned residential structures are required to register such properties.

Abandoned Possessions

An ordinance may be modeled after state statute, MCL 750.493d with respect to refrigerators, freezers, etc. The ordinance may also include other abandoned personal belongings.

Dangerous Building

The State Housing Law is a standard resource for defining dangerous buildings and for outlining procedures addressing dangerous buildings in a community. Many municipalities have adopted ordinances patterned after the provisions in the State Housing Law. See Appendix B, State Housing Law.

Fire Prevention

A municipality may adopt its own fire prevention ordinance. Generally, a municipality will incorporate by reference either the International Fire Code (ICC) or the Uniform Fire Code (NFPA), with or without amendment, as the basis for its fire prevention ordinance.

Housing

Some municipalities develop their own housing ordinance. Others have adopted the State Housing Law as their housing ordinance either by reference or by adopting the provision of the State Housing Law, with or without amendment. See Appendix B—State Housing Law.

Inoperable Vehicle

If a municipality has adopted the Michigan Vehicle Code as an ordinance, a municipality may enforce provisions related to abandoned vehicle and registered abandoned scrap vehicle as ordinance violations in the same manner as other Michigan Vehicle Code violations.

Many municipalities have also adopted separate ordinances relating to inoperable vehicles. [See e.g., Grand Rapids Code of Ordinances, chapter 151, section 9.108(11), enumerated as one of "Nuisances Prohibited on Public and Private Property."]

Litter

Ordinances may be developed to regulate garbage, refuse and rubbish which, if thrown or deposited, tends to create a danger to public health, safety and welfare.

Nuisance

Many municipalities adopt a general nuisance ordinance which commonly provides:

> [W]hatever annoys, injures or endangers the safety, health, comfort or repose of the public; offends public decency; interferes with, obstructs or renders dangerous any street, highway, navigable lake or stream; or in way renders the public insecure in life or property is hereby declared to be a public nuisance. Public nuisances shall include, but not be limited to, whatever is forbidden by any provision of this chapter. No person shall commit, create, or maintain any nuisance. [Ann Arbor Code of Ordinances, chapter 106, section 9:1.]

Nuisance ordinances frequently also enumerate specific violations such as dangerous buildings, unoccupied structures, grass and noxious weeds, litter, abandoned possessions, abandoned vehicles, blight, etc. [See, e.g., Grand Rapids Code of Ordinances, chapter 151, section 9.108 "Nuisances Prohibited on Public and Private Property."]

Nuisance provisions (and definitions) are also included in the State Housing Law and the International Property Maintenance Code (ICC).

Property Maintenance

Some Michigan municipalities have developed their own property maintenance ordinances. Others have adopted the International Property Maintenance Code as their property maintenance ordinance either by reference or by setting out the provisions of the International Property Maintenance Code, with or without amendment. If a municipality has not adopted a property maintenance ordinance and has chosen to administer and enforce the Michigan Building Code, and/or the Michigan Residential Code, the International Property Maintenance Code will be enforced through the Michigan Building Code and possibly the Michigan Residential Code. See, in general, "Local Property Maintenance Codes," available at mml.org.

Zoning

A violation of a zoning ordinance may be prosecuted as a misdemeanor, municipal civil infraction, or blight violation (if the city has an administrative hearings bureau pursuant to 4q of the Home Rule City Act). A violation of certain zoning ordinances is, by statute, a nuisance per se, subject to abatement by the court. MCL.125.3407.

Enforcement Procedures

Inspections

In order to effectively enforce building, housing, and other similar municipal ordinances to determine conditions of a building or structure, it is sometimes necessary to gain access to the building or structure and conduct an inspection.

The U.S. Supreme Court has issued two decisions relative to administrative searches (in contrast to searches conducted through criminal processes). In *Camara v Municipal Court*, 387 US 523 (1967) a tenant was arrested and charged with a violation of the San Francisco Housing Code for refusal to allow an inspection of his residence as authorized by the code of a living unit. The lower courts had upheld the right to inspect without a warrant. In a companion case, *See v City of Seattle*, the inspection involved commercial premises. The U.S. Supreme Court concluded, however, that administrative searches were significant intrusions upon the interests protected by the Fourth Amendment. Basically, the decisions hold that an inspection is unreasonable and impermissible unless conducted with consent, or in an emergency situation, or pursuant to a judicially authorized search warrant.

Under *Camara*, a reasonable search of private property within the meaning of the Fourth Amendment is made if probable cause to issue a warrant to inspect exists. The court stated that probable cause exists if reasonable legislative or administrative standards for conducting an area inspection are satisfied. According to the court, such standards, "which will vary with the municipal program being enforced, may be based upon the passage of time, the nature of the building . . . or the condition of the entire area, but they will not necessarily depend upon specific knowledge of the condition of the particular dwelling."

In Michigan, certainly, "reasonable legislative or administrative standards" can be found in the State Housing Law (MCL 125.526(5), the state's Building and Residential Codes, the State Health Code, and similar municipal ordinances.

Requests for an administrative search warrant may be made by completion of the State Court Administrative Office (SCAO) form MC 231 (Affidavit and Search Warrant).

Agreements

Many communities have been successful in resolving various property violations by entering into agreements with the violators. An agreement may establish a time period for compliance, provide for a cash bond if compliance is not met and other enforcement and judicial proceedings. In addition, the agreement may contain terms of release of liability to the municipality. (See, e.g., Mt. Mount Clemens). An agreement may also be utilized as a method to resolve litigation. Muskegon has successfully used a special agreement, i.e., a consent judgment, in adding "teeth" to its agreements once litigation has begun.

Prosecution

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

Misdemeanor

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 (180 days for forth class cities) or both. MCL 117.4i (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).

Municipal Civil Infraction

A violation of certain ordinances may be prosecuted as 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 the 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 civil infractions bureau has been established by the municipality.

Remedies available through district/municipal court 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. See comments below regarding Abatement of Nuisance.

Michigan Court Rule 4.100 (Civil Infraction Actions) should also be consulted. For more information, see the Michigan Municipal League's One Pager Plus Fact Sheet, "Municipal Civil Infractions."

[Optional] Municipal Civil Infractions Bureau

Municipal civil infraction ordinance may also establish a municipal civil infraction bureau pursuant to MCL 600.8396 to process admissions of responsibility. If a municipal civil infractions bureau has been established by a municipality, the respondent may admit responsibility to a notice of violation at the municipal civil infractions 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 117.4q. 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 weeks and vehicle abandonment, inoperative vehicles, vehicle impoundment, and municipal vehicle licensing. A blight violation may be enforced through an Administrative Hearings Bureau with the imposition of a fine not to exceed $10,000.

[Optional] 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 1,500,000 or more, may establish an administrative hearings bureau to adjudicate and impose sanctions for violations of the charter or ordinances

designated in the charter or ordinance as a blight violation. MCL 117.4q. The bureau may accept admissions of responsibility for blight violations. Pursuant to a schedule of civil fines and costs, the bureau may collect civil fines and costs for blight violations. An administrative hearings bureau shall not have jurisdiction over criminal offenses, traffic civil infractions, municipal civil infractions, or state civil infractions. The bureau and its hearing officers shall not have the authority to impose a penalty of incarceration and may not impose a civil fine in excess of $10,000. Appeal may be made to the circuit court. City may obtain a lien against property involved. City may also institute court action to collect the judgment.

Abatement of Nuisance

MCL 600.2940 provides that all claims based on, or to abate, nuisance may be brought in the circuit court. The statutory provision recognizes the traditional power and jurisdiction of circuit courts to grant injunctions to stay and prevent nuisances. Michigan Court Rules 3.310 (Injunctions) and 3.601 (Public Nuisances) should also be consulted.

If a violation of a nuisance is classified as a municipal civil infraction, certain powers are granted to district courts under the Revised Judicature Act, chapter 87. MCL 600.8727 provides that the district judge or magistrate may issue a writ or order under MCL 600.8302. MCL 600.8302 grants equitable jurisdiction and authority to district courts in an action under chapter 87 (Municipal Civil Infractions). The section specifically states that the grant of equitable jurisdiction does not affect the jurisdiction of the circuit court to 1) hear and decide nuisance claims under MCL 600.2940 or 2) hear and decide actions challenging the validity or application of an ordinance and enjoining an individual from enforcing the ordinance in district court or municipal court pending the outcome in circuit court.

Condemnation

Condemnation by the municipality is a procedure available, generally, "if all else fails." In short, it is the intentional acquisition of private property by a public entity. A full discussion is beyond the scope of this manual. For more discussion, however, see "The Big Picture" section of this manual.

Summary of Enforcement Procedures

Agreement

(no court action may be necessary if terms of agreement are fulfilled)

Municipal Civil Infraction (MCL 600.8701)

Notice → Municipal Civil Infractions Bureau (optional)
Citation → District/Municipal Court *

Misdemeanor (MCL 600.8313)

Complaint/Warrant → District/Municipal Court *

Abatement of Nuisance (MCL 600.2940)

Complaint/Warrant → Circuit Court

Note: A nuisance may be prosecuted as municipal civil infraction or as misdemeanor if provided by ordinance.

Blight Violation (MCL 117.4q)

Violation → Administrative Hearings Bureau *(optional)

*Appeal to Circuit Court

Practice Points

An ordinance may not designate a violation as both a municipal civil infraction and a blight violation.

There seems to be no advantage in designating a violation of an ordinance as a blight violation if an administrative hearings bureau is not established.

Tools of Enforcement Procedures At-a-Glance

	DISTRICT/ MUNICIPAL COURT	MUNICIPAL CIVIL INFRACTIONS BUREAU (optional)	ADMINISTRATIVE HEARINGS (blight court) (optional)	CIRCUIT COURT
	1) criminal misdemeanor violations 2) adjudications of responsibility of municipal civil infractions (except for admissions processed through MCI Bureau)	1) processing admissions of municipal civil infractions	1) adjudications of blight violations	1) abatement of nuisance (dangerous conditions) 2) appeals from district/ municipal court and administrative hearings
State Laws/Regulations				
Abandoned vehicle and registered abandoned scrap vehicle	x			
Michigan Fire Prevention Code	x			x
Single State Construction Code Act/Codes*				
Michigan Building Code	x	x		x
Michigan Electrical Code	x	x		x
Michigan Mechanical Code	x	x		x
Michigan Plumbing Code	x	x		x
Michigan Residential Code	x	x		x
Michigan Rehabilitation Code for Existing Buildings	x	x		x
Michigan Uniform Energy Code	x	x		x
Premanufactured Unit Rules	x	x		x
State Housing Law*	x			x
Unattended icebox, refrigerator	x			x
Ordinances				
Abandoned building	x	x	x	x
Abandoned possessions	x	x	x	
Dangerous building	x	x	x	x
Fire prevention	x	x	x	x
Housing	x	x	x	x
Inoperable vehicle	x	x	x	
Litter	x	x	x	
Local property maintenance	x	x	x	x
Grass and noxious weeds	x	x	x	x
Nuisance	x	x	x	x
Rental registration and/or inspection	x	x	x	
Zoning	x	x	x	x

*The state construction codes and the State Housing Law contain enforcement provisions with administrative and judicial procedures.

APPENDIX B
State Housing Law

Applicability

Areas covered by the State Housing Law

General—includes definitions
Maintenance—minimum standards
Improvements—minimum standards
General enforcement

Enforcement provisions, detailed

Generally
Registry of multiple unit dwellings
Inspection
Certificate of compliance
Violations
Judicial action to enforce provisions of act

Dangerous buildings
Maintaining a dangerous building
Notice of dangerous condition
Administrative hearing
Judicial action/money judgment
Criminal penalty
Board of appeals
Judicial appeal

State Housing Law

Applicability

MCL 125.401 et seq.

By its provisions, the State Housing Law applies to

1) cities and villages which have a population of 100,000 or more (**NOTE:** no affirmative action by municipality need be taken in order to enforce provisions of the act if the criteria of this provision apply).

2) areas adjacent to cities and villages identified above that extend 2 ½ miles beyond their boundaries in all directions.*

3) cities and villages which have a population of 10,000 or more.*

4) townships and charter townships that adopt the statute by ordinance.**

NOTE: Cities and villages that have a population of 10,000 or less may adopt the provisions of the State Housing Law and enforce as an ordinance.

* provisions of act relating to private dwellings and two-family dwellings shall not apply unless a city or village by resolution, and passed by a majority vote of the members elect of the legislative body, adopts the provision. MCL 125.401

** provisions of act relating to private dwellings and two-family dwellings may be applied to those areas by ordinance of a township board. MCL 125.401

Areas covered by the State Housing Law

General—includes definitions. NOTE: definition of nuisance. MCL 125.402(18)

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

Maintenance—minimum standards MCL 125.465-.488

Public halls in multiple dwelling; lighting; exit lights
Water closets in cellars
Water closet accommodations
Basement and cellar rooms
Joint use of kitchens in multiple family dwelling
Floors near water closets and sinks
Repairs and drainage
Water supply
Catch-basins
Cleanliness of dwellings
Court walls in multiple dwellings
Walls and ceilings in multiple dwellings
Wallpaper in multiple dwellings
Waste receptacles
Prohibited uses

Storage of combustible materials
Fire prevention and safety requirements
Smoke alarms in multiple dwellings
Overcrowding
Lodgers
Infected and uninhabitable dwellings; order to vacate
Illegal drug manufacturing site; protective measures
Public nuisance
Fire escape maintenance
Scuttles, bulkheads, ladders and stairs in multiple dwellings

Improvements—minimum standards MCL 125.489-.497

Rooms; lighting and ventilation
Multiple dwellings; public halls and stairs; lighting and ventilation
Plumbing fixtures
Privy vaults, school-sinks and water closets
Protection of basements and cellars
Shafts and courts; openings
Egress; above first floor; fire escapes
Egress; other means
Roof egress in multiple dwellings

General enforcement

– generally, including registry of multiple dwellings or rooming houses of more than 2 units. MCL 125.523 -.537

– of dangerous buildings MCL 125.538 -.542

Enforcement provisions, detailed

Generally—administrative proceedings with judicial enforcement

Registry of multiple unit dwellings

Registry of owners of multiple dwellings or rooming houses containing units offered for rent for more than 6 months of a calendar year. MCL 125.525

Inspection of leaseholds, multiple dwellings, and rooming houses of more than 2 units. MCL 125.526

Frequency of inspections. MCL 125.526(2)

Permission required to enter premises unless emergency. MCL 125.526(5)

Enforcing agency may adopt ordinance to implement provisions of providing access to leasehold. MCL 125.526(8)

If demand made by owner or occupant, warrant may be obtained from court. No warrant is required if emergency. MCL 125.527

Record to be kept of all inspections, checklist of recurring violations. MCL 125.528

Certificate of compliance

Necessary for multiple dwellings and rooming houses. MCL 125.529

Duty to pay rent if no certificate of compliance. MCL 125.530

Application. MCL 125.531

Violations

If violation is found upon inspection, enforcing agency shall record violation in registry. MCL 125.532

Owner shall be notified. MCL 125.532

If violation constitutes a hazard to occupant's health or safety under circumstances where the premises cannot be vacated, enforcing agency shall order violation corrected within shortest reasonable time. MCL 125.532

Re-inspection. MCL 125.532

Compliance by owner and occupant (if applicable). MCL 125.533

Judicial action to enforce provisions of act

If owner or occupant fails to comply, enforcing agency may bring action to enforce act. (Owner or occupant may also bring action.) MCL 125.534

Grounds for motion for preliminary injunction.

Owners, lienholders of record or ascertained with reasonable diligence shall be served with summons and complaint. Notice of pendency of action shall also be filed with Register of Deeds. MCL 125.534

Court may enjoin the maintenance of unsafe, unhealthy, or unsanitary conditions, or violations of the Act and order defendant to make repairs or corrections necessary to abate the conditions. Court may authorize the enforcing agency to repair or to remove the building or structure.

Removal shall be ordered unless the cost of repair is greater than the SEV of building or structure except in urban core cities or local units of government that are adjacent to an urban core city that have adopted stricter standards to expedite the rehabilitation or removal of a boarded or abandoned building or structure that remains either vacant or boarded, and a significant attempt has not been made to rehabilitate the building for a period of 24 consecutive months.

Court may order approval of expense, place a lien on the real property, and establish priority of liens. Court may also specify time and manner for foreclosure of the lien if not satisfied.

The phrase "urban core cities" is defined in section 2, Obsolete Property Rehabilitation Act, MCL 125.2782

Receivership. Court may appoint a receiver of the premises. MCL 125.535

Additional remedies. Action by occupant. MCL 125.536

Dangerous buildings—administrative proceedings with judicial enforcement

Maintaining a dangerous building

Maintaining a dangerous building is declared to be unlawful. Dangerous building is defined as having one or more of following defects:

a) Door, aisle, passageway, stairway not conforming to approved fire code of city, village, or township.

b) Portion of building damaged by fire, wind, flood, deterioration, neglect, abandonment, vandalism, or other cause so that structural strength or stability is appreciably less than before damage and does not meet minimum requirements of State Housing Law or a building code of city, village, or township.

c) Part of building is likely to fall, become detached or dislodged, or collapse and injure persons or damage property.

d) Portion of building has settled to the extent that walls have materially less resistance to wind than required for new construction

e) Building likely to collapse, or portion likely to fall.

f) Building manifestly unsafe for purpose for which it is used.

g) Building damaged by fire, wind, or flood, is dilapidated or deteriorated, and has become an attractive nuisance to children, harbor for vagrants, place for committing nuisance, or unlawful act.

h) Building intended as dwelling is unsanitary or unfit for human habitation, is in condition that health officer determines is likely to cause sickness, or is likely to injure the health, safety, or general welfare of people living in dwelling.

i) Building is vacant, dilapidated and open at door or window leaving interior exposed to elements or accessible to trespassers.

j) Building unoccupied for a period of 180 consecutive days, not listed for sale or rent with broker. This provision does not apply if either:

   a) owner has notified local law enforcement that building will remain unoccupied for 180 consecutive days (notice having been given not more than 30 days after the building becomes unoccupied), and owner maintains exterior in accordance with municipal code, or

   b) if secondary dwelling of owner regularly unoccupied for 180 days or longer each year, owner has notified local law enforcement that building will remain unoccupied for specified period of time.

Notice of dangerous condition

If found to be a dangerous building, enforcing agency shall issue a notice that structure is dangerous building.

Notice given to owner, agent, or lessee for registered properties. MCL 125.540(2)

Notice to specify time and place of hearing on whether building is a dangerous building. Person to whom the notice is directed shall have opportunity to show cause why hearing officer should not order building to be demolished, made safe, or maintained. MCL 125.540(3)

Hearing officer appointed by the mayor, village president, or township supervisor. Hearing officer shall have expertise as defined by statute. MCL 125.540. Hearing officer may not be employee of enforcing agency.

Administrative hearing
Hearing officer shall take testimony. Within five days of completion of hearing, the hearing officer shall render a decision either closing the proceedings or ordering the building demolished, otherwise made safe, or maintained.

If the owner fails to appear or comply with order, hearing officer shall file a report with the legislative body. (If legislative body has established a board of appeals under 125.541c, report should be filed with board of appeals.)

Legislative body (or board of appeals) shall conduct hearing not less than 30 days after the hearing officer's hearing. Legislative body may approve, disapprove, or modify order. Owner has 60 days after date of hearing to comply with order. An order of demolition may be appropriate is the legislative body or the board of appeals determines that building has been substantially destroyed by fire, wind, flood, deterioration, neglect, abandonment, vandalism, or other cause and the cost of repair will be greater than the SEV of the builder. Owner shall have 21 days to demolish.

Judicial action/money judgment
Enforcing agency may bring a judicial action against the owner for full cost of the demolition if owner fails to demolish and obtain a lien on the property. MCL 125.541(7).

Notification to owner by tax assessor.
Judgment entered against owner pursuant to MCL 125.541(7) may be collected against assets of owner other than building. Lien by municipality for judgment obtained pursuant to MCL 125.541(7) shall be against all real property located in state owned in whole or in part by owner of building.

Criminal penalty
Person who fails to comply with order of legislative body or board of appeals is guilty of a misdemeanor.

Board of appeals
Board of appeals may be established to hear all cases and duties of legislative body under MCL 125.541(3) and (4).

Judicial appeal
Order of legislative body or board of appeals may be appealed to circuit court by filing a petition for an order of superintending control within 20 days of date of decision.

Practice Points

No city, village, or township is required to adopt or enforce the provisions of the State Housing Law. MCL 125.543

A municipality that chooses to adopt and enforce the State Housing Law as an ordinance may do so by reference. MCL 125.523

A municipality to which the State Housing Law applies or a municipality which adopts the provisions of the Act by reference shall designate a local officer or agency which shall administer the act (enforcing agency). If no officer or agency is designated, the local governing body shall be responsible for administration. MCL 125.523.

Municipalities may, by agreement, provide for joint administration and enforcement if practicable.

The State Housing Law contains minimum housing requirements and does not prohibit enactment of higher standards by ordinance.

The State Housing Law contains definition of nuisance. See MCL 125.402(18)

The State Housing Law contains definition of dangerous building. See MCL 125.539

The definition of dangerous building was amended in 2003 to add the words deterioration, neglect, abandonment, and vandalism to the subsection dealing with damage to a building. If a municipality has set out the provisions of the State Housing Law as the basis for its dangerous building ordinance, the municipality should consider amending the definition of a dangerous building to include deterioration, neglect, abandonment, and vandalism.

APPENDIX C

Redevelopment Tools Available for Community Restoration on an Area-Wide Basis

Tax Increment Financing Tools

Downtown Development Authority
(1975 PA 197, MCL 125.1651)

Tax Increment Finance Authority (TIFA)
(1980 PA 450, MCL 125.1801)*

Local Development Finance Authority
(1986 PA 281, MCL 125.2151))

Brownfield Redevelopment Authority
(1996 PA 381, MCL 125.2651)

Historical Neighborhood TIFA
2004 PA 530, MCL 125.2841))

Corridor Improvement Authority
(2005 PA 280, MCL 125.2871)

Other Financing Tools

Principal Shopping District (1961 PA 120, MCL 125.981)

Business Improvement District
(1961 PA 120, MCL 125.981)

Business Improvement Zone
(2001 PA 260, MCL 125.990)

Economic Development Corporations
(1974 PA 338, MCL 125.1601)

Michigan Strategic Fund (1984 PA 270, MCL 125.2001)

Tax Abatements

Industrial Facilities Tax Abatement
(1974 PA 198, MCL 207.551)

Neighborhood Enterprise Zone
(1992 PA 147, MCL 207.771)

Renaissance Zones (1996 PA 376, MCL 125.2681)

Personal Property Abatement
(1998 PA 328, MCL 211.9f)

Obsolete Property Rehabilitation
(2000 PA 146, MCL 125.2781)

Commercial Rehabilitation
(2005 PA 210, MCL 207.841)

Other Resources

Blighted Area Rehabilitation Act
1945 PA 344, MCL 125.71)

State Housing Development Authority Act
(1966 PA 346, MCL 125.1401)

Land Reclamation and Improvement Authority Act
(1992 PA 173, MCL 125.2451)

Neighborhood Assistance and Participation Act
(1980 PA 56, MCL 125.801)

Urban Redevelopment Corporations Law
(1941 PA 250, MCL 125.901).

*for existing TIFA

Financing tools and tax abatement list provided by Michael McGee, Miller, Canfield, Paddock and Stone, P.L.C.

APPENDIX D
Bonner v Brighton

Background

On April 24, 2014, the Michigan Supreme Court issued an opinion upholding a Brighton city ordinance that permitted demolition of three unoccupied residential structures without providing the owners the option to repair the structures. The owners of the structures, Leon and Marilyn Bonner, sued the city claiming that their substantive and procedural due process rights had been violated since they had not been given the opportunity to repair the structures.

The trial court agreed with the Bonners that the ordinance violated property owners' substantive due process rights by not giving them the opportunity to make repairs. The Court of Appeals affirmed the decision of the trial court and further held that the ordinance violated property owners' procedural due process rights. The Michigan Supreme Court, however, reversed the judgment of the Court of Appeals and found that the ordinance, on its face, did not violate either substantive or procedural due process rights of those subject to the ordinance. The case was remanded to the trial court for further proceedings.

The case provides a thorough analysis and resulting "green light" for one of the more severe tools available to municipalities dealing with dangerous and unsafe buildings—an ordinance permitting demolition of an unsafe structure.

The Brighton Dangerous Building ordinance is included in its Code of Ordinances under Unsafe Structures (Article III) of Buildings and Building Regulations (Chapter 18). There are six articles included in Chapter 18; Article III contains 19 sections relating to definitions and procedures for addressing an "unsafe structure." [See listings of the articles in Chapter 18 and of the sections in Article III below.]

Before beginning a discussion of the ordinance itself, it is important, first, to recognize the authority upon which the city relied in the adoption of the ordinance.

Under what authority did the city adopt the ordinance?

The ordinance was enacted pursuant to the city's police powers and its purpose was to abate a public nuisance by requiring repair or demolition of unsafe structures. Cities in Michigan have a legitimate interest in promoting the health, safety, and the welfare of their citizens—the so-called *police powers*. Certain other types of local units of government have been granted police powers as well. There is no question that nuisance abatement is a legitimate exercise of a municipality's police power and that demolition is a permissible method of achieving that end.

A declaration or finding that a building is a public nuisance carries with it certain inherent—and beneficial—procedural options. In Michigan, claims based on abating a nuisance may be brought in the circuit court. MCL 600.2940 recognizes the traditional power and jurisdiction of circuit courts to grant injunctions to stay and prevent nuisances. In addition, Michigan court rules specifically address a court's power with respect to injunctions and public nuisances.

What does the ordinance provide?

The ordinance, in general, defines what an unsafe structure is (BCO § 18-46) and outlines the steps the city can take to remedy the problem (BCO § 18-47 through 18-64).

When is a structure unsafe?

BCO § 18-46 sets out 10 defects or conditions that determine when a structure may be deemed to be unsafe. [See BCO § 18-46 in its entirety below.] Included among the 10 factors are (1) "a structure, because of dilapidation, decay, damage, faulty construction, or otherwise which is unsanitary or unfit for human use," and (5) "a structure that is in such a condition so as to constitute a nuisance, as defined by this Code."

NOTE: *The inclusion of a condition constitut-ing a public nuisance as one of the 10 factors provides "extra teeth" for enforcement options by the municipality.*

Section 18-47 makes it unlawful for an owner to maintain or occupy an unsafe structure.

NOTE: *Although not applicable to the analysis of the case, all 10 factors were found by the city to have existed in the Bonner structures.*

Why was this ordinance challenged?

After determining that the structures in question were unsafe, the city applied Section 18-59 of the Unsafe Structures ordinance. Section 18-59 creates a rebuttable presumption that an unsafe structure may be demolished as a public nuisance if it is determined that the cost to repair the structure would exceed 100 percent of the structure's true cash value as reflected in assessment tax rolls before the structure became unsafe. The standard created by the ordinance is referred to as the *unreasonable–to-repair* presumption. Under the ordinance, the unreasonable-to-repair presumption can be overcome by presenting a viable repair plan that the repair costs would not exceed 100 percent of the property value or evidence that the structure subject to demolition has some sort of cultural, historical, familial, or artistic value. The Bonners argued that the ordinance violated their constitutional rights of substantive and procedural due process since it did not provide them the opportunity to first repair the structures before demolition.

NOTE: *BCO § 18-59 specifically provides a different procedure for those situations where a structure is unsafe as a result of an event beyond the control of the owner, such as fire, windstorm, tornado, flood or other Act of God.*

Did the Bonners challenge the ordinance on its face or as applied to them?

The assertions by the Bonners were "facial" attacks, requiring the Bonners to establish that no set of circumstances existed under which the ordinance would be valid.

Who makes the unreasonable-to-repair determination?

The determination of the unreasonable-to-repair presumption is made, under the terms of the ordinance, by the city manager or his or her designee who may then order demolition without giving the owner the option to repair. BCO § 18-61 provides for the procedure to be followed by an owner after a determination has been made by the city manager or designee that a structure is unsafe.

Breaking down Section 59, clause by clause

A visual representation of the ordinance, clause by clause, helps in understanding its components and requirements.

If structure is unsafe

AND

If the cost of repairs exceeds 100 percent true cash value of structure before deemed unsafe

THEN

1. **the repairs are presumed unreasonable**
   and
2. **the structure is presumed to be a public nuisance that may be ordered demolished without providing the owner an option to repair it.**

The remainder of the Unsafe Structure s ordinance sets out the procedures to be followed by the city upon a determination that a structure is unsafe and by the owner if appealing that determination.

Why did the Michigan Supreme Court hold that the ordinance does not violate a property owner's substantive due process rights?

The Bonners asserted that the ordinance violates substantive due process by permitting demolition of an unsafe structure without extending to its owner an option to repair, because denying a property owner the chance to repair an unsafe structure does not advance the city's otherwise legitimate interest in protecting the health, safety, and welfare of the Brighton citizenry. The Court, however, recognized that the public purpose that BCO § 18-59 was intended to serve, i.e., to protect the health and welfare of its citizens by eliminating the hazards posed by dangerous structures, is a legitimate purpose.

Federal due process provisions in the U.S. Constitution guarantee that no person shall be deprived of "life, liberty, or property, without due process of law." (U.S. Const, Am XIV) The Court acknowledged that the Bonners, as owners of the three structures at issue and the land on which those structures were situated, had a significant property interest within the protection of the Due Process Clause.

The Court noted that the touchstone of due process is to protect individuals against arbitrary action of government. In particular, the substantive component of due process protects against the arbitrary exercise of governmental powers.

Having found that property owners have a significant property interest, the Court turned its inquiry into whether that property interest was fundamental. If the right asserted is not fundamental, then the government's interference (Section 18-59) with that right need only be reasonably related to a legitimate governmental interest. The Court recognized the line of cases in which it and the U.S. Supreme Court have held that reasonableness is essential to the validity of an exercise of police power affecting the general rights of the landowner by restricting the character of the owner's use, including the opportunity to repair unsafe structures.

As such, the Court found that the right asserted could not be considered fundamental and that the Bonners had the burden of showing that the unreasonable-to-repair presumption did not bear any reasonable relationship to a legitimate governmental interest. The Court stated, in part, "the infringement of an interest that is less than fundamental, such as the right asserted here, requires no more than a reasonable relationship between the governmental purpose and the means chosen to advance that purpose." The Court further stated, "property owners have a constitutional right of property use, but this does not translate into an absolute constitutional right to repair unsafe structures." Further, the Court did not find that BCO § 18-59 violated their substantive due process rights as an arbitrary and unreasonable restriction on their constitutionally recognized property interests.

Why did the Michigan Supreme Court hold that the ordinance does not violate a property owner's procedural due process rights?

The Bonners argued that the ordinance violates procedural due process by failing to provide a procedure to safeguard a property owner's right to choose whether to repair a structure municipally deemed unsafe before the city orders it demolished.

As noted above, the touchstone of due process is to protect individuals against arbitrary action of government. As it relates to the procedural component, the aim is to safeguard at ensuring constitutionally sufficient procedures for the protection of life, liberty, and property interests. Since aggrieved parties are provided the right to appeal an adverse decision to the city council as well as the right to

subsequent judicial review under the ordinance, the Court found no violation of the Bonners' claim of a procedural due process violation.

Is there any relationship between the city's Unsafe Structures ordinance and its adoption of the International Property Maintenance Code?

Yes. The city adopted the International Property Maintenance Code as prepared by the International Code Council in Section 18-76 with certain additions and revisions. In particular, the following revision to the Property Maintenance Code is included within the city's code:

Section 110.1 General. The code official shall order the owner of any premises upon which is located any structure, which in the code official's judgment is so old, dilapidated or has become so out of repair as to be dangerous, unsafe, unsanitary or otherwise unfit for human habitation or occupancy, and **such that it is unreasonable to repair the structure, as defined in Section 18-59 of the Brighton City Ordinances, to demolish and remove such** structure; or if such structure is capable of being made safe by repairs, to repair and make safe and sanitary or to demolish and remove at the owner's option; or where there has been a cessation of normal construction of any structure for a period of more than two years, to demolish and remove such structure. [Emphasis provided.]

Why is the Bonner case important for municipalities?

The case provides a basis upon which municipalities and their attorneys can review their Dangerous Building ordinances in terms of scope and needs of the community. It also is a good starting point for reviewing all municipal ordinances that pertain to buildings and the enforcement procedures adopted by the community.

APPENDIX

[The following are relevant code provisions found in Chapter 18 of Brighton's Code of Ordinances.]

Chapter 18 BUILDINGS AND BUILDING REGULATIONS

Note
ARTICLE I. IN GENERAL
ARTICLE II. STATE CONSTRUCTION CODE
ARTICLE III. UNSAFE STRUCTURES
ARTICLE IV. PROPERTY MAINTENANCE CODE
ARTICLE V. FLOODPLAIN MANAGEMENT PROVISIONS
ARTICLE VI. MANDATORY REGISTRATION AND INSPECTION OF RESIDENTIAL RENTAL PROPERTIES

ARTICLE III. UNSAFE STRUCTURES

Sec. 18-46. Definitions
Sec. 18-47. Unlawful to occupy or maintain
Sec. 18-48. Owner and occupants responsible for structure
Sec. 18-49. Enforcing officers
Sec. 18-50. Rules and regulations
Sec. 18-51. Right of entry
Sec. 18-52. Notice
Sec. 18-53. Placarding of structure
Sec. 18-54. Removal of placard
Sec. 18-55. Prohibited use
Sec. 18-56. Emergency measures
Sec. 18-57. Temporary safeguards
Sec. 18-58. Notice and order to show cause
Sec. 18-59. Unreasonable repairs
Sec. 18-60. Restoration
Sec. 18-61. Appeal to city council
Sec. 18-62. Commencement of legal proceedings
Sec. 18-63. Appeal to circuit court
Sec. 18-64. Penalties and remedies
Secs. 18-65 - 18-75. Reserved

BCO § 18-46

Unsafe structure means a structure which has any of the following defects or is in any of the following conditions:

(1) A structure, because of dilapidation, decay, damage, faulty construction, or otherwise which is unsanitary or unfit for human use;

(2) A structure that has light, air, or sanitation facilities which are inadequate to protect the health, safety, or general welfare of those who live or may live within;

(3) A structure that has inadequate means of egress as required by this Code;

(4) A structure, or part thereof, which is likely to partially or entirely collapse, or some part of the foundation or underpinning is likely to fall or give way so as to injure persons or damage property;

(5) A structure that is in such a condition so as to constitute a nuisance, as defined by this Code;

(6) A structure that is hazardous to the safety, health, or general welfare of the people of the city by reason of inadequate maintenance, dilapidation, or abandonment;

(7) A structure that has become vacant, dilapidated, and open at door or window, leaving the interior of the structure exposed to the elements or accessible to entrance by trespassers or animals or open to casual entry;

(8) A structure that has settled to such an extent that walls or other structural portions have less resistance to winds than is required in the case of new construction by this Code;

(9) A structure that has been damaged by fire, wind, flood, or by any other cause to such an extent as to be dangerous to the life, safety, health, or general welfare of the people living in the city;

(10) A structure that has become damaged to such an extent that the cost of repair to place it in a safe, sound, and sanitary condition exceeds 50 percent of the assessed valuation of the structure, at the time when repairs are to be made.

BCO § 18-47

It shall be unlawful for an owner or agent to maintain or occupy an unsafe structure.

BCO § 18-59

Whenever the city manager, or his designee, has determined that a structure is unsafe and has determined that the cost of the repairs would exceed 100 percent of the true cash value of the structure as reflected on the city assessment tax rolls in effect prior to the building becoming an unsafe structure, such repairs shall be presumed unreasonable and it shall be presumed for the purpose of this article that such structure is a public nuisance which may be ordered demolished without option on the part of the owner to repair. This section is not meant to apply to those situations where a structure is unsafe as a result of an event beyond the control of the owner, such as fire, windstorm, tornado, flood, or other Act of God. If a structure has become unsafe because of an event beyond the control of the owner, the owner shall be given by the city manager, or his designee, reasonable time within which to make repairs and the structure shall not be ordered demolished without option on the part of the owner to repair. If the owner does not make the repairs within the designated time period, then the structure may be ordered demolished without option on the part of the owner to repair. The cost of demolishing the structure shall be a lien against the real property and shall be reported to the city assessor, who shall assess the cost against the property on which the structure is located.

BCO § 18-61

An owner of a structure determined to be unsafe may appeal the decision to the city council. The appeal shall be in writing and shall state the basis for the appeal.... The owner or his agent shall have an opportunity to be heard by the city council at a regularly scheduled council meeting. The city council may affirm, modify, or reverse all or part of the determination of the city manager, or his designee.

BCO § 18-77 Additions, Insertions and Changes

[found in Article IV of Chapter 18]

The following sections of the adopted International Property Maintenance Code, current edition, are hereby revised as follows:

Section 110.1 General. The code official shall order the owner of any premises upon which is located any structure, which in the code official's judgment is so old, dilapidated or has become so out of repair as to be dangerous, unsafe, unsanitary or otherwise unfit for human habitation or occupancy, and such that it is unreasonable to repair the structure, as defined in Section 18-59 of the Brighton City Ordinances, to demolish and remove such structure; or if such structure is capable of being made safe by repairs, to repair and make safe and sanitary or to demolish and remove at the owner's option; or where there has been a cessation of normal construction of any structure for a period of more than two years, to demolish and remove such structure.

michigan municipal league

Updated June 2016