

QUALITY OF LIFE VIOLATIONS

House Bill 5216

Sponsor: Rep. Steve Tobocman

House Bill 5217

Sponsor: Rep. Bill McConico

House Bill 5218

Sponsor: Rep. Ken Daniels

House Bill 5219

Sponsor: Rep. Jim Howell

House Bill 5220

Sponsor: Rep. Edward Gaffney

Committee: Judiciary

Complete to 11-3-03

A SUMMARY OF HOUSE BILLS 5216-5220 AS INTRODUCED 10-30-03

The bills would amend various acts to allow a city to adopt quality of life ordinances, provide civil fines and sanctions for quality of life violations, and establish an administrative hearings bureau to adjudicate and impose sanctions for those violations. The bills are described below.

House Bill 5216 would amend the Home Rule City Act (MCL 117.4l and 117.4q) to allow the legislative body of a city, whether or not authorized by the city charter, to adopt an ordinance designating a violation of the ordinance as a quality of life violation and allow a city to establish an administrative hearings bureau. A violation of any of the following types of ordinances could be designated as a quality of life violation: zoning; building or construction codes (including elevator, escalator, electrical, mechanical, and plumbing codes); building or property maintenance or conditions in buildings or on premises related to the health and safety of residents or employees; fire prevention; illegal dumping and the disposal of solid waste; noxious weeds; vehicle abandonment, inoperative vehicles, and vehicle impoundment.

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

Administrative hearings bureau. Under the bill, an administrative hearings bureau could adjudicate or impose sanctions for quality of life violations, as well as accept admissions of

responsibility for quality of life violations and collect civil fines and costs; the specific jurisdiction to do these activities would have to be established by city ordinance. A bureau would not have jurisdiction over criminal offenses, traffic civil infractions, or municipal or state civil infractions. A bureau and its hearing officers could not impose a penalty of incarceration or a civil fine of more than \$10,000. The expense of operating an administrative hearings bureau would have to be borne by the city that established it.

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

Hearings and appeals. Details regarding hearings are contained in the bill, but, generally speaking, a party would have to be provided the opportunity for a hearing during which he or she could be represented by counsel, present witnesses, and cross-examine witnesses. Formal and technical rules of evidence would not apply in the administrative hearings permitted under the bill. Evidence, including hearsay, could be admitted only if it was of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs. A final decision by a hearing officer would constitute a final decision and order for purposes of judicial review and could be enforced in the same manner as a judgment entered by a court of competent jurisdiction.

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

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

Hearing officers. Adjudicatory hearings would be conducted by hearing officers. A hearing officer would have to be an attorney who had been licensed to practice law in the state for at least five years, be appointed according to a city's charter, and complete the training program prescribed in the bill. Duties would include hearing testimony and accepting relevant

evidence; issuing subpoenas; preserving and authenticating the hearing record and all exhibits and evidence introduced at the hearing; issuing written determinations as to whether or not a quality of life violation existed; and imposing sanctions and assessing costs upon persons determined to be responsible for a quality of life violation.

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

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

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

House Bill 5219 would amend the Revised Judicature Act (MCL 600.8313) to specify that Section 8313 would not apply to an ordinance violation designated a quality of life violation by a political subdivision that established an administrative hearings bureau under statutory provisions to adjudicate and impose sanctions for quality of life violations. (Section 8313 specifies that violations of criminal law are to be prosecuted in the district court by the prosecuting attorney; violations of ordinances that are misdemeanors or not designated as civil infractions are to be prosecuted in the district court by the attorney for the municipality whose ordinance was violated; and, if the violation is a civil infraction, the prosecuting attorney or attorney for the municipality must appear in court only in those civil infraction actions that are contested before a judge of the district court in a formal hearing as provided in Section 8721 or 8821 of the act or Section 747 of the Michigan Vehicle Code.)

House Bill 5220 would amend the City and Village Zoning Act (MCL 125.587). Currently, a building erected, altered, razed, or converted, or a use carried on in violation of a local ordinance or regulation adopted under the act is a nuisance per se. A court has to order the nuisance abated, and the owner or agent in charge of the building or land is liable for maintaining a nuisance per se. The legislative body in the ordinance adopted under the act has to designate

the proper officials whose duty it is to administer and enforce the ordinance. The officials must also impose a penalty for the violation or designate the violation as a municipal civil infraction and impose a civil fine for that violation.

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

Analyst: S. Stutzky

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