



## Property Maintenance Code

### The *Ewing* decision

On October 1, 1999, the Michigan Court of Appeals struck down a Detroit ordinance that adopted the BOCA National Property Maintenance Code/1990 by reference and without publishing it in its entirety. (The BOCA National Property Maintenance Code is now known as the International Property Maintenance Code.) In particular, the court held that MCLA 117.3(k) of the Home Rule City Act which authorizes a home rule city to adopt by reference certain specific code subjects does not provide a basis for adoption of a property maintenance code. *Ewing v City of Detroit*, 237 Mich App 696 (1999).

In addition, the court examined whether Detroit's adoption of the property maintenance code by reference was nonetheless justified by its charter. The Michigan Supreme Court in 1920 had examined a prior provision of the Detroit charter that permitted adoption by reference of a document that was already a public record. The *Ewing* court held that the property maintenance code was not made a part of the public record prior to its adoption by reference and, as a consequence, was not authorized by the city's charter.

The City of Detroit is appealing the decision.

### Incorporation by reference provisions

The Home Rule City (HRC) Act, the Home Rule Village (HRV) Act and the General Law Village (GLV) Act contain language (each of which differs from the other) providing the incorporation by reference of certain codes. The *Ewing* decision is limited to a ruling on the language contained in the HRC Act. The court stated that the HRC language was specific as to which codes could be adopted and did not contain general language (as does the GLV Act) which provides for the adoption by reference of "other code(s) promulgated by this state . . . or by an organization or association that is organized or conducted for the purpose of developing a code, by reference to the code in an adopting ordinance and without publishing the code in full. . . ."

### Problems facing municipalities

The new statewide construction code does not deal with property maintenance issues. Property maintenance guidelines and requirements must be addressed independently if the municipality wants to address the issues at all. Because of the *Ewing* decision, some municipalities have adopted the International Property Maintenance Code by setting it out in full as an ordinance (rather than adopting it by reference). Those municipalities have faced copyright and licensing problems with the publication of a summary. Ludington, by the efforts of its City Attorney Roger Anderson, has received permission from the International Code Council for publication of its summary, which is similar to the one attached to this One-Pager *Plus*.

### Possible legislative solution

The Michigan Municipal League is considering a legislative solution which would amend the HRC and HRV Acts to provide for the adoption of "other codes, etc." similar to the language in the GLV Act. Your thoughts and comments are appreciated. They may be faxed to Sue A. Jeffers, Associate General Counsel, at 734-662-8083.

## **Publication Summary of Property Maintenance Code**

The city/village of \_\_\_\_\_ adopted the Property Maintenance Code (the “Code”), which will be effective ten (10) days from this publication. The code is based upon the International Property Maintenance Code published by the International Code Council, Inc. A copy of the entire code may be viewed or a copy purchased at the office of the City Clerk, [address]. Violations of the code are a municipal civil infraction punishable by a fine of up to \$250 plus costs. The following is a brief summary of the provisions of the Code.

### The Code:

- Provides standards for the maintenance of property, structures and equipment located in the city.
- Provides notice to owners, occupants or other responsible parties of violations and requirements to correct violations.
- Provides for the appointments and outlines the duties and responsibilities of the enforcement official (city building inspector).
- Authorizes the closing of structures that are not fit for occupancy, the posting of notice of closing and prohibits occupancy of such structures.
- Authorizes the building inspector to take emergency action when there is a dangerous condition.
- Upon notice by the building inspector, requires owners or persons in control of unsafe or unsanitary structures to repair or remove the structure; allows the city to remove such structure in the event that the owner or person in control fails to do so; and authorizes the city to place a lien upon the property to recover the costs of demolition.
- Designates a board of appeals and provides the procedure for an appeal of a decision or order of the building inspector.
- Requires owners of property to maintain the exterior of such property:
  - in a safe, sanitary and clean condition.
  - graded to prevent erosion or accumulation of water.
  - by keeping sidewalks in good repair.
  - free of weeds or plant growth over 10 inches in height.
  - by preventing discharge of smoke, odor or gases to adjacent properties.
  - in good repair, including exterior surfaces and structures.
  - by limiting or prohibiting unregistered vehicles.
  - by prohibiting outside storage of vehicles in disrepair.
  - by requiring the display of house numbers.
  - by maintaining windows and doors in good repair and operable condition.
- Requires owners to maintain the interior of structures, including interior surfaces and structural members.
- Requires owners and occupants to keep exteriors and interiors neat and clean, free of accumulation of garbage or rubbish, except in approved containers.

- Requires owners and occupants to keep property free of rodents.
- Requires adequate interior and exterior lighting by windows and/or artificial lighting.
- Requires adequate ventilation by windows or mechanical exhaust systems.
- Provides for minimum dimensions of rooms in dwellings and lodging units, egress from bedrooms, accessibility to bathrooms and provides for maximum numbers of occupants in a dwelling unit.
- Requires owners to provide and maintain adequate plumbing, including required bathroom and drinking facilities for dwellings and lodging units.
- Requires adequate sanitary water supply system for all plumbing fixtures and specifies location and operation of water heaters.
- Requires all plumbing fixtures to be connected to public sanitary sewer or other approved private sewer system.
- Prohibits storm drainage that creates a public nuisance.
- Requires owners to install adequate mechanical facilities and maintain the facilities in good working order, including:
  - heating facilities in dwellings and indoor workspaces.
  - fireplaces and stoves.
  - cooking facilities.
- Requires owners to maintain electrical systems in compliance with the specifications of the code and the state electrical code, free of hazards and requires laundry and bathroom receptacles to be grounded.
- Requires elevators and escalators to be properly maintained.
- Requires owners to be responsible for fire safety by:
  - providing and maintaining unobstructed and adequate means of exit from any building.
  - providing and maintaining barriers to resist movement of smoke in certain circumstances.
  - providing and maintaining handrails for stairs with more than four steps and on porches or decks of greater than 30 inches above adjoining grade.
  - providing and maintaining proper signage of floor numbers and exits for certain buildings.
  - providing and maintaining an emergency exit from sleeping rooms.
  - prohibiting storage of combustibles, explosive or hazardous materials except in accordance with fire codes.
  - installing and maintaining fire doors and fire resistant materials as required.
  - installing and maintaining required fire suppression systems.
  - installing and maintaining smoke detectors in sleeping areas in residences and group homes.