

Municipal Litigation Center Local Property Maintenance Codes

Recently, the city of Grand Rapids successfully concluded six years of litigation relating to preemption and the State Construction Code Act, which has significant statewide implications for local control.

Background

In 1999, the Michigan state legislature amended the State Construction Code Act, 1972 PA 230. Basically, the amendments renamed the act the Stille-DeRossett-Hale Single State Construction Code Act (act) and provided for statewide application of the Act and the State Construction Code (code) as promulgated by the director of the Department of Consumer and Industry Services, now Department of Labor and Economic Growth.

The Act specifically provides that

... the code shall consist of the International Residential Code, the International Building Code, the International Mechanical Code, the International Plumbing Code published by the International Code Council, the National Electrical Code published by the National Fire Prevention Association, and the Michigan Uniform Energy Code with amendments, addition, or deletions as the director determines appropriate. (MCL 125.1504(2)).

Section 8a (MCL 125.1508a) states that the act and the code apply throughout the state. The act establishes a statewide construction code which precludes local units of government from the adopting their own local building codes, which are specifically preempted. The overriding purpose of the amended act is to provide a statewide uniform construction code permitting builders to comply with only one code, regardless of location, within the state.

Although the act precludes legislative and certain regulatory action on behalf of local units of government, the act specifically permits a local unit of government to enforce the provisions of the act and the code within its jurisdiction. MCL 125.1508b outlines the method by which a local unit of government may opt to administer and enforce the act and the code. In the event that a local unit of government elects not to administer and enforce the act and code, the director of the department is responsible for the administration and enforcement of the code unless the county in which the local unit of government is located files a notice of intent to administer and enforce the act and the code. MCL 125.1508b(3) further provides that an official or agent enforcing the provisions of the act and the code must be "registered under the building officials and inspectors registration act, 1986 PA 54," commonly known as Act 54.

Subsequent to the adoption of the Single State Construction Act in 1999, local units of government were instructed by officials of the state construction code office that in addition to the six named codes that were listed in the act, the amended act also mandated statewide use of the International Property Maintenance Code (IPMC) and, that local maintenance codes were preempted even though no reference is made to the IPMC in the act. On more than one occasion, local units were instructed that the act and the code incorporated by reference the IPMC.

Local officials were told that the basis for the inclusion of the IPMC is the reference to the IPMC in the Michigan Building Code. The Michigan Building Code does, in fact, refer to the IPMC in section 101.4.5; however 102.2 specifically states as follows:

The provisions of this code shall not be deemed to nullify any provisions of local, state or federal law.

Despite the information provided by the state construction code office, many municipalities have consistently taken the position, based on a reading of the home rule cities act and the state constitution, that the act and code do not preclude enforcement of local building maintenance codes. The act lists those codes which constitute the State Construction Code. The IPMC is not one of the identified codes. Local ordinances addressing property maintenance issues covered by the IPMC are therefore not "preempted" but are specifically recognized and legitimized by virtue of the language in section 102.2.

The issue has recently been litigated. The facts are these: The city of Grand Rapids cited Mr. Azzar for violations of its Building Maintenance Code. Azzar's subsequent prosecution on those Building Maintenance Code violations resulted in an acquittal as Azzar had corrected the asserted violations. Nonetheless, Azzar asserted that the state act and code specifically preempted the Grand Rapids Building Maintenance Code. In a separate action filed by Azzar, the circuit court found that the Grand Rapids Building Maintenance Code was not preempted by state law. The Court of Appeals, in a divided, unpublished decision, specifically found that the act in question did not preempt the City's building maintenance code. The Michigan Supreme Court initially granted leave to appeal. However, on January 19, 2007, (after briefing and oral argument) the Michigan Supreme Court vacated its earlier order and denied leave to appeal the Court of Appeals' decision. The Supreme Court let stand the Court of Appeals' decision which held that the act and the code do not preempt Grand Rapids' building maintenance code.

Possible actions by municipality

If a municipality decides to adopt and enforce a property maintenance ordinance, it may do so in one of two ways – adopting its own provisions or adopting by reference the provisions of the International Property Maintenance Code.:

1. Draft and adopt a property maintenance ordinance

- a. Draft a property maintenance ordinance which sets out standards important to the local municipality.
 - b. Adopt the property maintenance ordinance.
 - c. Publish a summary of the property maintenance ordinance in the manner as provided by statute (and local ordinance, if applicable).
- Note:** Grand Rapids, East Lansing, Detroit and Big Rapids have adopted property maintenance ordinances which are available on their city websites for review.

2. Adopt by reference the International Property Maintenance Code, with or without

- a. Pursuant to the incorporation by reference provisions of the Home Rule City Act, the Home Rule Village Act, and the General Law Village Act, adopt by reference the International Property Maintenance Code (IPMC).
- b. Secure permission from the International Code Council (ICC) for publication of summary suitable for publication.

- c. Publish a summary of the IPMC in the manner as provided by statute (and local ordinance, if applicable).

Note: Bay City, Huntington Woods, Ludington and Oak Park have adopted the IPMC by reference, several with amendments. Ludington has received permission from the International Code Council for publication of the attached summary. Permission should be obtained from the ICC, however, to avoid copyright and licensing problems. If a municipality adopts the IPMC by reference, careful review of its provision should be undertaken to ensure that the IPMC sets forth the actual intention of the municipality and does not create conflicts with the municipality's code of ordinances.

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.

Ludington Property Maintenance Code

Municipal Litigation Center
 1675 Green Road
 Ann Arbor, MI 48105-2530
 Sue A. Jeffers, Director
 sjeffers@mml.org
 734-662-3246

