

Fahey Schultz Burzych Rhodes

EXPERT COUNSEL



REAL SOLUTIONS

Getting the Most out of Civil Infractions

Violation Notices, Informal Hearings, Warning Letters and Consent Judgments

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Disclaimer

- This presentation, and the materials associated with it, are comprised of general information and not intended as legal advice related to specific questions of attorney-client privilege.
- Please contact an attorney if you need assistance related to a specific legal issue.



Municipal Civil Infractions - Overview

Misdemeanor prosecution is default enforcement method under Michigan Law

The municipal civil infraction process is generally simpler, easier, and cheaper.

- Must adopt a civil infractions ordinance and amend any ordinances to be enforced by civil infractions
- Both zoning and non-zoning (police power) ordinances can be enforced through civil infractions
- Civil infractions are processed through the district court
- Allows municipalities to pursue violations without legal counsel



Municipal Ordinance Violations Bureaus

- A municipal ordinance violation notice (rather than a civil infraction citation) is payable to a township’s “municipal ordinance violations bureau,” established in a township’s civil infraction ordinance.
- Municipal ordinance violation bureaus utilize existing facilities and personnel. Generally, it is not much of a financial or administrative burden.
- Once a township establishes an ordinance violations bureau, it can begin issuing municipal ordinance violation notices.



Municipal Ordinance Violation Notices – Fines

- Municipal ordinance violation notices are paid directly and in full to the issuing municipality, which retains 100% of fine.
- Civil infraction citations are paid to the district court, which might result in a small percentage being remitted from the county to the issuing municipality.
- Compared to civil infraction citations, municipal ordinance violation notices better offset enforcement costs.
- Fines are payable by mail, in person, or through representation (e.g., an attorney).

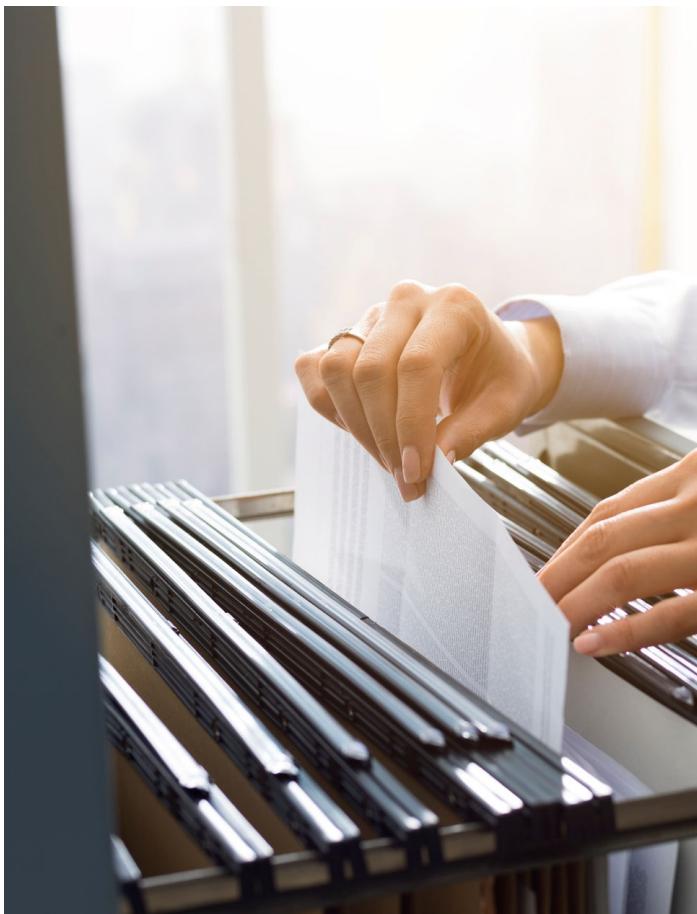


Municipal Ordinance Violation Notices – Outcomes



- Unlike a district court, a municipal ordinance violations bureau does not have any authority to engage in fact-finding concerning an alleged violation (e.g., to determine whether or not a violation occurred).
- A municipal ordinance violations bureau likewise cannot compel a defendant to appear, assess an unpaid fine as a lien, or order violations corrected.
- Once a municipal ordinance violation notice is issued, there are three possible outcomes:
 1. The defendant admits responsibility and pays the fine.
 2. The defendant admits responsibility with an explanation and pays the fine.
 3. The defendant disregards the municipal ordinance violation notice.



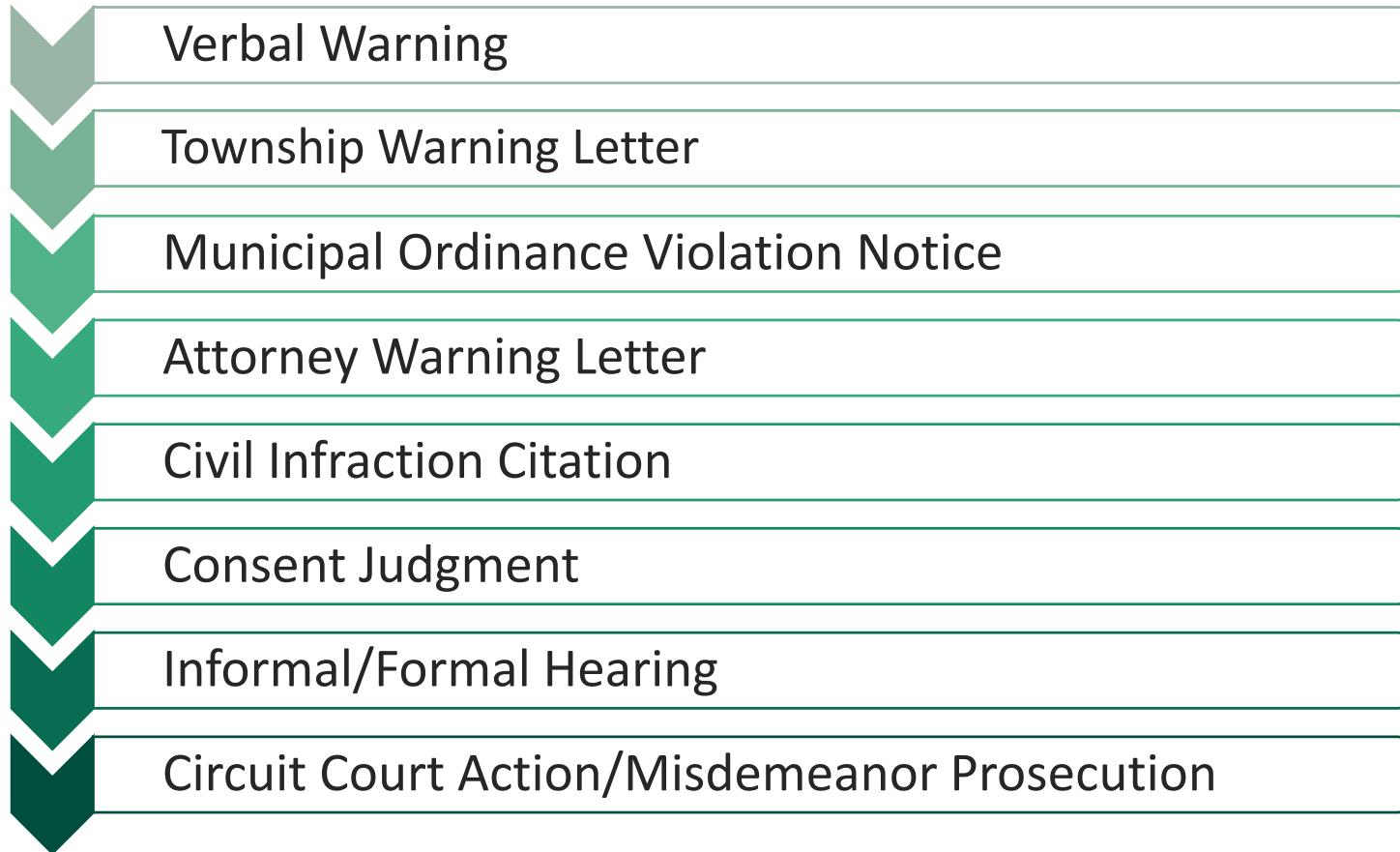


Benefits of Municipal Ordinance Violation Notices

- Are not very costly to issue and are paid fully to the issuing municipality.
- Do not involve the township attorney or the district court.
- Valuable step in the code enforcement escalation continuum, can coerce more reasonable violators into compliance.
- Can be used in later proceedings to demonstrate the township's reasonableness in its enforcement process and the unreasonableness of the defendant.



Sample Code Enforcement Escalation Continuum



Informal Hearings – Overview

- After a municipal civil infraction citation is issued, a defendant can request an informal hearing to deny responsibility for the citation.
- At an informal hearing, neither party is represented by legal counsel.
- Typically, the zoning administrator or code enforcement official prosecutes the violation on behalf of the municipality. Must prove the violation through a “preponderance of the evidence,” e.g., more likely than not.
- Daunting, but can save thousands in legal fees that would be incurred in a formal hearing (or tens of thousands that might be spent enforcing a violation in circuit court).





Informal Hearings – Developing the Record

Photographic Evidence. Take an ample number of clear, detailed photos, preferably on the same day you issue the citation. Using a camera that automatically date-stamps photos can be helpful.

Accessing the Violation. If the violation is not visible from a public area, the following tactics might be viable:

- Ask the landowner for consent to enter their property to photograph the violation.
- Ask neighbors if you can enter their yard to get a better view of the violation.
- Obtain an administrative search warrant (consider arranging for an escort).





Informal Hearings – Developing the Record

- **Witness Testimony.** Ordinance violations can also be proved through witness testimony. This can be the best type of evidence for violations concerning conditions that can't be photographed, exist only for a limited duration, or where it must be established that a violation has persisted for a certain amount of time. This can also put a "face" on the case, and garner sympathy for your position.
- **Paper Trail.** Documentation is also important. Bring warning letters, notes from site visits, and civil infraction violation notices. These show the continuing nature of the violation and the township's efforts to resolve the matter without court involvement.





Informal Hearings – *Injunctive Relief*

The District Court is authorized by statute (but not required) to issue injunctive relief following an informal hearing. To increase your chances of obtaining this remedy, we recommend:

- Request injunctive relief on the citation itself.
- Educate the judge or magistrate on the district court's authority to issue injunctive relief (See MCL 600.8302).
- Know exactly what relief you want and request it with specificity.
- Consider having your attorney prepare a draft order.



Informal Hearings – Default Judgments

- District courts might not always know what to do if a defendant fails to appear for an informal hearing.
- Under Michigan law, the district court is required to enter a default judgment and a sanction against the absent defendant. See MCR 4.101(B)(4).
- If a defendant does not appear, request that the court enter a default judgment in favor of the township and spell out the relief desired by the township (including injunctive relief).
- It may be helpful to direct the magistrate or judge to this court rule (consider bringing a copy).



Informal Hearings – Helpful Perspective

- If the district court rules against you in an informal hearing, you always have the option to appeal the decision.
- An appeal of an informal hearing results in a formal hearing, starting over from scratch. See MCL 600.8819(5).
- This means that no matter how poorly the informal hearing goes, the township attorney can *always* retry the case via a formal hearing. The stakes are low!
- **NOTE:** If appealed to a formal hearing, the proceedings will be on the *same* citation, so it is very important to develop a thorough record. It will make the township attorney's job much more challenging if you don't have any evidence of the violation on the day the citation was issued.





Leveraging the Township Attorney

- The township attorney is required to be involved if the township wants to prosecute violations through formal hearings, misdemeanor proceedings, or through a civil action in circuit court, but there are other more cost-effective ways for the township attorney to be involved in code enforcement efforts.



Leveraging the Township Attorney – *Warning Letters*



Warning letters from the township attorney's office can produce results where township warning letters or civil infraction violation notices have been ignored.



Attorney warning letters generally don't take much time to prepare and therefore will not cost the township much in legal fees, especially compared to the costs of a formal hearing.



These can be another useful step in the code enforcement escalation continuum.



Leveraging the Township Attorney – *Consent Judgments*

Consent judgments are essentially settlement agreements signed by the parties and entered by the court, possessing all the power of a court order. These are one of the most powerful and effective code enforcement tools.

- A consent judgment is an option only after a civil infraction citation is issued, but is available for cases slated for formal or informal hearings.
- Once a citation is filed, the township attorney can reach out to the defendant (or their attorney) and attempt to negotiate a consent judgment before the hearing.
- A consent judgment can be filed by mail before the hearing, or at hearing itself, in lieu of proceeding forward with the hearing.



Leveraging the Township Attorney *Consent Judgments*

Consent judgments typically contain the following:

- An admission of responsibility by the defendant;
- Actions the defendant must take to correct the violation;
- A deadline for compliance;
- Penalties for noncompliance;
- A waiver or suspension of fines and costs; and
- Cancellation of the scheduled hearing.



Why are consent judgments such powerful tools?

- Most people have a strong aversion to going to court and will often be eager to agree to correct violations to avoid a hearing, even if that agreement entails significant penalties for noncompliance.
- Consent judgments are extremely flexible as they can include whatever terms the parties find mutually agreeable. This allows the township to cut to the heart of the violation and include remedies that might not be ordered by a court (e.g., a deadline to apply for a special land use permit, daily fines for noncompliance, a requirement to build an accessory structure in which junk can be stored, etc.).
- Consent judgments possess the full force and effect of a court order, and noncompliance can result in fines, additional injunctive relief, and even imprisonment for contempt of court!





Questions?

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