

## **ATTORNEY WRITES**

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### **Enforcement!**

Many municipalities have wonderful local ordinance provisions that assist riparian property owners in protecting their riparian rights. Whether found in the local zoning ordinance or separate police power ordinances, local ordinance provisions can regulate a variety of waterfront topics such as lakefront development, docks, road ends, building setbacks from the water, and environmental matters. Such ordinances do little good, however, if they are not enforced. Unfortunately, some municipalities use literally every excuse in the book to avoid enforcing ordinance provisions that help riparians.

Prior to 1994, local municipalities (cities, villages, and townships) could only enforce their ordinances by means of criminal misdemeanor prosecutions. While traffic offenses could be pursued as municipal civil infraction proceedings (*i.e.*, through the utilization of civil infraction tickets), local ordinance violations had to be treated as criminal misdemeanors. The mechanics of a municipal criminal misdemeanor prosecution can be expensive and time-consuming. For example, a criminal defendant has the right to a jury trial on every offense, the municipality has to prove guilt beyond a reasonable doubt (as well as proving every element of the ordinance violation beyond a reasonable doubt), courts and juries are often reluctant to give someone a permanent criminal record based on a simple local ordinance violation, and the municipality's attorney has to be involved one way or the other in all prosecution cases.

Effective in 1994, Michigan law was changed to allow a municipality to designate a violation of some or all of its ordinances as a municipal civil infraction offense. While it is optional for a municipality to adopt civil infraction proceedings, the overwhelming majority of municipalities in Michigan have changed the penalty provisions for some or all of their ordinances to municipal civil infraction violations. Where the penalty provision of a local ordinance specifies that a violation of the ordinance constitutes a municipal civil infraction offense, a designated municipal official (or officials) can write tickets or citations to a violator.

A municipal civil infraction proceeding for the violation of a local municipal ordinance follows essentially the same procedure as has been utilized for nearly a half century for traffic offenses. The defendant can either admit or deny responsibility. Typically, if the defendant denies responsibility, an informal hearing is held before the local district court's magistrate. A defendant who is found responsible at an informal hearing is subject to a fine. The losing party at the informal hearing stage (whether it be the defendant or the municipality) has the option of appealing the case to a formal hearing before the local district court judge. Upon a finding of responsibility by the district court judge at a formal hearing, the judge has the option of not only imposing a fine on the defendant, but also ordering the defendant to do or not to something (for instance, remove an illegal dock and not replace the same) and to also reimburse the municipality for some or all of its costs and attorney fees incurred in pursuing the municipal civil infraction proceeding. At both an informal hearing and a formal hearing, the municipality need only prove its case (and all elements of the offense) by a "preponderance of the evidence" standard (*i.e.*, the magistrate or court must be convinced by just over fifty percent that the defendant violated the ordinance provision involved).

If a municipality uses municipal civil infraction proceedings properly, it can be a cost-effective and efficient way to enforce local ordinances. The availability of municipal civil infraction proceedings greatly undercuts some of the excuses that municipalities use as to why ordinance provisions are not typically enforced (i.e., expense and burden of prosecution). If your local municipality has not yet changed the penalty provision for its local ordinances from a criminal misdemeanor to a municipal civil infraction offense, you should urge the municipality to do so, particularly with regard to the zoning ordinance and any other ordinances that might affect the lakes or rivers in your township, city, or village.

Recently, the Michigan Townships Association (“MTA”) released a publication I authored entitled “Michigan Civil Infractions—the Process.” The publication can be ordered by contacting MTA at (517) 321-6467. To find out more about municipal civil infraction proceedings in general, please go to [www.lwr.com](http://www.lwr.com), and follow the links [Attorneys](#), [Clifford Bloom](#), and [See Cliff Bloom’s Publications](#). Finally, select the article under the “Municipal Articles” heading entitled “Michigan Civil Infractions—MTA News Article.”