Michigan Courts Have Ruled On Establishing And Expending Building Department Permit Fees

MCL 125.1522(1) of the Stille-DeRossett-Hale Single State Construction Code Act (Public Act 230 of 1999) places three restrictions on a municipality's authority to establish fees under the CCA.

> One—the amount of the fee "shall" be reasonable.
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> Two—the amount of the fee "shall" be reasonably related to the cost of providing the service.
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> Three—the fees collected "shall" only be used for the operation of the enforcing agency or the construction board of appeals, or both, and "shall" not be used for any other purpose.

In MAHB v City of Troy, the Michigan Supreme Court (MSC) ruled *discretion* (for setting fees) *under MCL 125.1522(1) is not unfettered; it is subject to a reasonableness component that ensures payments are related to the costs for building inspection services performed or overhead, not the overall operation of the Building Department. MCL 125.1522(1).*

In *MAHB IV*, 504 Mich at 216, the MSC set forth the three mandatory restrictions that limited a municipality's authority to establish CCA fees, "*fee reasonableness, the fee amount reasonably related to the service cost, and the fee collected to solely be used for the operation of the enforcing agency. ... This reasonableness component was designed to ensure that the payments bore a relationship to building inspection services or overhead."*

The court also ruled "*use of building inspection fees for the purpose of satisfying a historical deficit violates the second restriction in MCL 125.1522(1),*" i.e., that "*the amount of the fee 'shall' be reasonably related to the cost of providing the service."*

"*The reasonableness of a fee would be suspect if it consistently generated revenue that exceeded the cost of the service. A lack of proportionality between the fees and cost of services, creates an unauthorized surplus that is revenue generating. Inclusion of costs incurred by other city departments (is) inconsistent with the CCA.*"

The MSC rejected the proposition that property owners can control the amount of the fee they pay by building less on their property ... "[*W]e do not find that this is a legitimate method for controlling the amount of the fee because it is tantamount to requiring property owners to relinquish their rights of ownership to their property by declining to build on the property*." [*Bolt*, 459 Mich at 168.]

The MSC ruled in 2015 that MAHB was not required to exhaust administrative remedies before filing suit, [*MAHB II*, 497 Mich at 288] and ruled in 2019 that MAHB had a private cause of action for declaratory and injunctive relief to redress violations of the CCA, [*MAHB IV*, 504 Mich at 225-226.]

MCL 339.6021(1) of the Skilled Trades Regulation Act, Act 407 of 2016 provides that *"subject to subsection (2), an individual shall not be appointed or employed as a building official, inspector, or plan reviewer by an enforcing agency, unless the individual is registered under this article and the rules promulgated under this article*.

The Court of Appeals ruled inclusion of costs incurred by other city departments was inconsistent with the Act, ruling "*The trial court properly concluded that defendant could not continue to designate other department costs as being direct costs of the building department and use a percentage of these inflated costs to calculate its indirect costs. This method of calculating costs violates the CCA's requirement that fees be related to building department costs. Nowhere in the Act does it state that a building official can delegate building department functions to other city departments."*