



MEMORANDUM

TO: Members of the Troy City Council
FROM: Lori Grigg Bluhm, City Attorney
DATE: September 9, 2009
SUBJECT: Retroactive provisions in Proposed Property Maintenance Code

A question has been raised about the ability of City Council to enact retroactive provisions in the Property Maintenance Code. Under the powers of the Home Rule Cities Act, MCL 117.3 (j), municipalities are charged with the responsibility to protect the public peace and health and safety of persons and property. In addition, MCL 117.3(k) empowers municipalities to adopt building codes, fire codes, electrical codes, plumbing codes, etc., that are promulgated by other entities. These health, safety and welfare regulations (police powers) can require modifications to structures which were built prior to the adoption of the codes. For example, according to the Michigan Attorney General, a home rule city is empowered to require homeowners to install smoke detectors in houses built prior to the effective date of the State Construction Code. (1978 OAG 5264). This opinion heavily relies on the *Queenside Hills Realty Co v. Saxl* case, 328 US 80 (1946), where the state of New York was authorized to enact a law requiring sprinkler systems for new and existing buildings.

However, retroactive application of health, safety and welfare regulations must be reasonable in order to avoid the application of the Ex Post Facto Clause of the Federal and State Constitution. The State law provision is similar to the federal provision, and provides "No bill of attainder, ex post facto law or law impairing the obligation of a contract shall be enacted." (Constitution of 1963, Article I, Section 10). This legal principle pre-dates the American revolution, and prohibits punishment for criminal acts that were not criminal at the time they were committed. According to *Taylor v. Secretary of State*, 216 Mich. App. 333, 341 (1996), "a law that addresses health and safety considerations rather than punishment is not ex post facto even though it may contain incidental punitive aspects." This is especially true when violations result in municipal civil infraction citations, as opposed to misdemeanor citations. The intent of the proposed property maintenance code is to protect the public, and any potential punitive sanction is incidental to this goal. This is especially true, since there are several mechanisms to obtain relief from the provisions by appealing to the State, to the Building Code Board of Appeals, or to the Courts.

If you have any questions, please let me know.