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October 12, 2023

VIA ELECTRONIC MAIL

Historic District Commission
City of Mackinac Island
7358 Market Street
P.O. Box 455
Mackinac Island, MI 49757

Re: Graduated Fines for Violation of Historic District Ordinance

Dear Commission Members:

At the HDC October meeting, you expressed a frustration with repeat violations of work being done without the required historic district permits and that the existing fine associated with such violations is not sufficient to compel compliance.

You asked whether the fines associated with violating the Historic District Ordinance of the City of Mackinac Island (“HDO”) could be revised to contemplate for increasing fines based upon first, second and third and subsequent violations. The short answer is “yes”.

As you are likely aware, the HDO is codified in the City of Mackinac Code Ordinances¹ (“Code”). Generally speaking, all violations of the Code are civil infractions unless otherwise stated.² Civil infractions can be enforced with a Notice of Violation issued by the Mackinac Island Municipal Ordinance Violations Bureau (“Bureau”).³ The Bureau can only accept admissions of responsibility without explanations and collect the scheduled fines for the violation.⁴ Where a charged individual denies responsibility or admits responsibility with explanation, then a Municipal Civil Infraction Citation can be issued and filed with the court.⁵

Violations for civil fines payable to the Bureau are \$100 for the first offense, \$200 for the second offense, and \$500 for the third offense within a 2-year period, unless some other fine schedule is provided.⁶ The fine for a violation associated with a citation shall not exceed \$500 unless otherwise stated by the Code.⁷

¹ Article V, Code of Ordinances.

² §1-7(d), Code of Ordinances.

³ Article 2, Division 5, Code of Ordinances.

⁴ §2-333, Code of Ordinances.

⁵ §2-334(b), Code of Ordinances.

⁶ §2-335, Code of Ordinances

⁷ §1-7(f), Code of Ordinances.

However, the HDO has its own penalty. The HDO states that a person who violates the HDO may be fined not more than \$5,000.00.⁸ This penalty is substantially similar to the penalty provided for by the Michigan Local Historic Districts Act (“Act”).⁹ The Act states: “A person, individual, firm, corporation, organization, institution, or agency of government that violates this act is responsible for a civil violation and may be fined not more than \$5,000.00.”¹⁰ A civil violation fine of this level is consistent with the Michigan Revised Judicature Act.¹¹

The penalties for violating the HDO can differ for first, second, third, and subsequent offenses so long as the greatest fine does not exceed \$5,000.00 because the Code makes an exception to its general fine requirements where specifically provided for in the Code, and State law only limits the fine to no more than \$5,000.00. It is therefore our conclusion that you may provide for graduated fines depending on the number of times the HDO has been violated up to \$5,000.00.

Should you wish to have a graduated fine scale for a violation of the HDO, we recommend that the City Council consider amending Section 10-170(a) of the Code to read something like the following:

(a) A person, individual, partnership, firm, corporation, organization, institution, or agency of government that violates this ~~ordinance article~~ is responsible for a civil violation and may be fined ~~not more than \$5,000.00~~ pursuant to the following schedule, but in no case more than \$5,000.00:-

1st violation within 2-year period *....\$ _____

2nd violation within 2-year period *....\$ _____

3rd and subsequent violation(s) within 2-year period *....\$ _____

* determined on the basis of the date of violation(s).

(b) A person, individual, partnership, firm, corporation, organization, institution, or agency of government that violates this ordinance may be ordered by the court to pay the costs to restore or replicate a resource unlawfully constructed, added to, altered, repaired, moved, excavated or demolished.

If you have any questions or need any further information, please do not hesitate to contact my office.

Very truly yours,

ADKISON, NEED, ALLEN, & RENTROP, PLLC



G. Hans Rentrop

GHR/mjl

⁸ §10-170(a), Code of Ordinances.

⁹ §15(1) of PA 169 of 1970.

¹⁰ *Id.*

¹¹ §8727 of PA 236 of 1961.