

MEMORANDUM

TO: Local Government Officials and HBA Members

FROM: Bob Filka, HBAM CEO and Melissa Hagen, Cohl, Stoker & Toskey, P.C.

RE: Permit Fees Must Bear a Reasonable Relation to Bldg. Dept.'s Operational Costs

Date: March 20, 2026

A 15-year long lawsuit brought by our association recently ended with the defendant local unit of government being permanently enjoined and liable for the plaintiff's 15-years of attorney and expert witness fees. There, the defendant City privatized its Building Department through a contract whereby SafeBuilt of Michigan would provide a "turnkey" operation of the Building Department in exchange for receiving 75-80% of the Building Department fees. The local unit of government retained 20-25% of the fees collected. This arrangement, the Michigan Supreme Court ruled, violated Michigan's Construction Code Act ("CCA").

Why? Because while local units of government may charge fees for services provided by their Building Departments, the CCA requires, among other things, that those fees "bear a reasonable relation to the cost" of providing Building Department services. In the lawsuit, the Supreme Court found that the 20-25% "surplus" violated the CCA's mandate that fee amounts bear a reasonable relation to the cost of providing the service.

Creative accounting will not change this result. Following the Supreme Court's ruling, the defendant municipality canceled its contract with SafeBuilt and returned to an in-house styled Building Department. However, it also increased its overhead costs to include, among other things, services provided by its other Departments. This, the Court of Appeals found, also violated the CCA and the Headlee Amendment.

Why? Because the CCA requires that any unit of local government that elects to administer and enforce the Michigan building code designate an agency (typically, the Building Department) to be responsible for said administration and enforcement of the Michigan building code. This agency, statutorily referred to as the "Enforcing Agency," is subject to approval by the State Construction Code Commission. Once certified by the State Construction Code Commission, only the "Enforcing Agency," that is, the Building Department, may administer and enforce the building code and perform the services provided thereunder "including, without limitation, . . . issuance of building permits, examination of plans and specifications, inspection of construction undertaken pursuant to a building permit, and the issuance of certificates of use and occupancy." The oversight and management of these services, the Court found, may not be delegated to others. *Id.* at pp 19-20.

In addition, while recovery of overhead or indirect costs is permitted under the CCA, those charges must be calculated using only appropriate items as outlined in the Michigan Department of Treasury guidelines as follows:

Overhead costs can include a proportional share of common costs such as telephone service, building maintenance, utilities, general insurance and office supplies. Other indirect costs may include the allocation of the cost of salaries and fringe benefits related to certain support activities, such as human resources and the accounting staff. However, the allocation of costs should not include those offices required by statute, such as the clerk and treasurer. Since a local unit of government would incur those costs, regardless of the decision to enforce the state building code, they do not represent appropriate allocable costs.

Id. at pp 21-22. The Court of Appeals stated:

The trial court properly concluded that defendant could not “continue to designate other department costs as being direct costs of the [B]uilding [D]epartment 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 *[B]uilding [D]epartment costs.*”

In conclusion, the CCA requires that fee amounts reasonably relate to the cost of providing the service. **The CCA also requires that the revenue derived from the fees be used ONLY “for the operation of the Enforcing Agency.”** Violations will result in injunctions and, if the complaining party actually paid the fees, a refund of those fees may be ordered. So, be wary of any Building Department fee structure that is based, not on the cost of providing the service, but on something arbitrary like the cost of building a house. Unfortunately, the International Code Council has always included a valuation fee template in their model code books that does NOT comport with Michigan law. Local jurisdictions that have simply adopted this template, or some version of it, should re-evaluate their fee structures and adjust them to prevent future disputes.