

ORDINANCE NO. 2 OF 2018

AN ORDINANCE ESTABLISHING A SCHEDULE OF CIVIL FINES FOR CERTAIN OFFENSES TO BE KNOWN AS MUNICIPAL CIVIL INFRACTIONS AND DEFINING THE SAME; DESIGNATING AN AUTHORIZED TOWNSHIP OFFICIAL TO ISSUE MUNICIPAL INFRACTIONS; ESTABLISHING A MUNICIPAL ORDINANCE VIOLATIONS BUREAU; ESTABLISHING A PROCEDURE FOR MUNICIPAL CIVIL INFRACTION ACTIONS; AND REPEALING PREVIOUS ORDINANCES.

The Township of Clarendon, Calhoun County, Michigan, ordains:

SECTION 1. TITLE. This Ordinance may be referred to as the “Clarendon Township Municipal Civil Infraction Ordinance.”

SECTION 2. DEFINITIONS. As used in this Ordinance:

- A. “Act” means Act No. 236 of the Public Acts of 1961, as amended.
- B. “Authorized Local Official” means the personnel of Clarendon Township designated by this Ordinance to be legally authorized to issue municipal civil infraction citations.
- C. “Authorized Township Official” means the personnel of Clarendon Township authorized by this Ordinance to issue municipal civil infraction citations or municipal civil infraction notices.
- D. “Bureau” means the Clarendon Township Municipal Ordinance Violations Bureau as established by this Ordinance.
- E. “Citation” means a written complaint or notice to appear in court upon which an authorized local official records the occurrence or existence of one or more municipal civil infractions by the person cited.
- F. “Municipal Civil Infraction” means an act or omission that is prohibited by an ordinance enumerated herein or any Ordinance of the Township but which is not a crime and for which civil sanctions including but not limited to fines, costs, damages, and expenses may be ordered as authorized by Chapter 87 of 1961 PA 236, as amended. A municipal civil infraction is not a lesser included offense of a violation of any Ordinance of Clarendon Township that is a criminal offense.
- G. “Municipal Civil Infraction Action” means a civil action in which the Defendant is alleged to be responsible for a municipal civil infraction.

- H. “Municipal Civil Infraction Citation” means a written complaint or notice prepared by an authorized Township official directing a person to appear in court regarding the occurrence or existence of a municipal civil infraction violation by the person cited.
- I. “Municipal Civil Infraction Violation Notice” means a written notice prepared by an authorized Township official directing a person to appear at the Clarendon Township Municipal Ordinance Violations Bureau and to pay the fine and costs, if any, prescribed for the violation by the schedule of civil fines adopted by the Township as authorized under Sections 8396 and 8707 (6) of the Act.

SECTION 3. GENERAL PENALTIES AND SANCTIONS FOR MUNICIPAL CIVIL INFRACTIONS; CONTINUING VIOLATIONS; INJUNCTIVE RELIEF.

- A. Unless a violation of an Ordinance of the Township is specifically designated as a municipal civil infraction, the violation shall be deemed to be a misdemeanor.
- B. The sanction for a violation which is a municipal civil infraction shall be a civil fine in the amount as provided by this Ordinance or any ordinance, plus any costs, damages, expenses and other sanctions, as authorized under Chapter 87 of 1961 PA 236, as amended, and other applicable laws.
- C. Unless otherwise specifically provided for by this Ordinance or any ordinance, the civil fine for a municipal civil infraction violation shall be as set forth in Section 10 of this ordinance plus costs and other sanctions, for each infraction.
- D. Increased civil fines may be imposed for repeated violations of any requirement or provisions of this Ordinance or any ordinance by a person. As used in this ordinance, “repeat offense” means a second (or any subsequent) municipal civil infraction violation of the same requirement or provision (i) committed by a person within any six-month period (unless some other period is specifically provided by this Ordinance or any ordinance) and (ii) for which the person admits responsibility or is determined to be responsible. Unless otherwise specifically provided by this Ordinance or any ordinance for a particular municipal civil infraction violation, the increased fine for a repeat offense shall be as follows:
 - 1. The fine for any offense which is a first repeat offense shall be Two Hundred Fifty Dollars (\$250) plus costs.
 - 2. The fine for any offense which is a second offense or any subsequent repeat offenses shall be Five Hundred Dollars (\$500) plus costs.
- E. A “violation” includes any act which is prohibited or made or declared to be unlawful or an offense by this Ordinance or any Ordinance; and any omission or failure to act as required by this Ordinance or any ordinance.
- F. Each day on which any violation of this Ordinance or any ordinance continues constitutes a separate offense and shall be subject to penalties or sanctions as a separate offense.

- G. In addition to any remedies available at law, the Township may bring an action for an injunction or other process against a person to restrain, prevent, or abate any violation of this Ordinance or any township ordinance.

SECTION 4. MUNICIPAL CIVIL INFRACTION ACTIONS; COMMENCEMENT.

- A. A municipal civil infraction action may be commenced by the issuance by an authorized Township official of (1) a municipal civil infraction citation directing the alleged violator to appear in court; or (2) a municipal civil infraction notice directing the alleged violator to appear at the Clarendon Township Municipal Ordinance Violations Bureau. The Plaintiff in a municipal civil infraction action is the Township of Clarendon.
- B. Except as to persons under the age of 17 at the time of the occurrence of the violation, the district court has jurisdiction over the municipal civil infraction actions. For persons cited for municipal civil infraction under the age of 17 at the time of the occurrence of the violation, the Juvenile Division of the Probate Court of Calhoun County shall have jurisdiction over the proceedings and shall proceed to hear and dispose of the case as provided by Chapter XII. A of 1939 PA 228.
- C. The time specified in the citation for appearance shall be within a reasonable time after the citation is issued.
- D. The place specified in the citation for appearance shall be the district court.

SECTION 5. MUNICIPAL CIVIL INFRACTION CITATIONS; ISSUANCE AND SERVICE. Municipal civil infraction citations shall be issued and served by authorized Township official as follows:

- A. An authorized Township official who witnesses a person violate an Ordinance, a violation of which is a municipal civil infraction, shall prepare and subscribe, as soon as possible, and as completely as possible, an original and three (3) copies of a citation, except as provided in subsection (E).
- B. An authorized Township official may issue a citation to a person if, based upon investigation, the official has reasonable cause to believe that the person is responsible for a municipal civil infraction. An authorized Township official may issue a citation to a person if, based upon investigation of a complaint by someone who allegedly witnessed the person violate an ordinance, a violation of which is a municipal civil infraction, the official has reasonable cause to believe that the person is responsible for a municipal civil infraction and if the prosecuting attorney or Township attorney approves in writing the issuance of the citation.
- C. Except as otherwise provided under subsection (D), the authorized Township official shall personally serve the third copy of the citation upon the alleged violator.

- D. In a municipal civil infraction action involving the use or occupancy of land or a building or other structure, a copy of the citation need not be personally served upon the alleged violator but may be served upon an owner or occupant of the land, building, or structure by posting the copy on the land or attaching the copy to the building or structure. In addition, a copy of the citation shall be sent by first class mail to the owner of the land, building, or structure at the owner's last known address. A citation served under this subsection shall be processed in the same manner as a citation personally served upon a defendant.
- E. An authorized Township official may issue and serve a municipal ordinance violation notice, instead of a citation, under the same circumstance and upon the same persons as provided in this section for the issuance of a citation. If an authorized Township official issues and serves a municipal ordinance violation notice and if an admission of responsibility is not made and a civil fine and costs, if any, prescribed by Ordinance for the violation are not paid at the Municipal Ordinance Violations Bureau, a citation may be filed with the court described in Section 8703(4) of the Act and a copy of the citation may be served by first class mail upon the alleged violation at his or her last known address. The citation filed with the court pursuant to this subsection need not comply in all particulars with section 8705 and 8709 of the Act, but shall consist of a sworn complaint containing the allegations stated in the municipal ordinance violation notice and shall fairly inform the Defendant how to respond to the citation. A citation issued under this subsection shall be processed in the same manner as a citation issued personally to a Defendant pursuant to subsection A or B. A “municipal ordinance violation notice” may not be issued in place of a citation for a township municipal civil infraction and instead such violation shall be prosecuted only by means of a municipal civil infraction.

SECTION 6. FORM AND NUMBERING OF CITATION.

- A. Each citation shall be numbered consecutively and shall be in form approved by the State Court Administrator. The original citation shall be filed with the state district court. Copies of the citation shall be retained by the Township and issued to the alleged violator as provided by Section 8705 of the Act.
- B. A citation for a municipal civil infraction signed by an authorized Township official shall be treated as made under oath if the violation alleged in the citation occurred in the presence of the authorized Township official signing the complaint and if the citation contains the following statement immediately above the date and signature of the official:

I declare under the penalties of perjury that the statements above are true to the best of my information, knowledge, and belief.

SECTION 7. MUNICIPAL CIVIL INFRACTION CITATIONS; CONTENTS.

- A. A municipal civil infraction citation shall contain the name of the Plaintiff, the name and address of the Defendant, the municipal civil infraction alleged, the place where the Defendant shall appear in court, the telephone number of the court, the time at or by which appearance shall be made, and the additional information required by this section.
- B. The citation shall inform the Defendant that he or she may do one of the following:
1. Admit responsibility for the municipal civil infraction by mail, in person, or by representation, at or by the time specified for appearance.
 2. Admit responsibility for the municipal civil infraction “with explanation” by mail by the time specified for appearance or in person or by representation.
 3. Deny responsibility for the municipal civil infraction by doing either of the following:
 - i Appearing in person for an informal hearing before a judge or district court magistrate, without the opportunity or being represented by an attorney, unless a formal hearing is requested by the Plaintiff.
 - ii Appearing in court for a formal hearing before a judge, with the opportunity of being represented by an attorney.
- C. The citation shall also inform the Defendant of the following:
1. That if the Defendant desires to admit responsibility “with explanation” in person or by representation, the Defendant must apply to the court in person, by mail, by telephone, or by representation within the time limit specified for appearance and obtain a scheduled date and time for an appearance.
 2. That if the Defendant desires to deny responsibility, the Defendant must apply to the court in person, by mail, by telephone, or by representation with the time specified for appearance and obtain a scheduled date and time to appear for a hearing, unless a hearing date is specified on the citation.
 3. That a hearing shall be an informal hearing, unless a formal hearing is requested by the Plaintiff or Defendant.
 4. That at an informal hearing, the Defendant must appear in person before the judge or district court magistrate, without the opportunity of being represented by an attorney.
 5. That at a formal hearing, the Defendant must appear in person before a judge with the opportunity of being represented by an attorney.

- D. The citation shall contain a notice in boldface type that the failure of the defendant to appear within the time specified in the citation or at the time scheduled for a hearing or appearance is a misdemeanor and will result in entry of a default judgment against the defendant on the municipal civil infraction. Return of the citation with an admission of responsibility and with full payment of applicable civil fines and costs, return of the citation with an admission of responsibility with explanation, or a timely application to the court for a scheduled date and time for an appearance, or a hearing constitutes a timely appearance.

SECTION 8. MUNICIPAL ORDINANCE VIOLATIONS BUREAU.

- A. **Bureau established.** The Township of Clarendon hereby establishes a Municipal Ordinance Violations Bureau to accept admissions of responsibility for a municipal civil infractions and to collect and retain civil fines and costs pursuant to a schedule as prescribed by this Ordinance.
- B. **Location, supervision, employees, rules, and regulations.** The Bureau shall be located at the Township offices and shall be under the supervision and control of the Township Treasurer. The Township Treasurer, subject to the approval of the Board of Trustees, shall adopt rules and regulations for the operations of the Bureau and appoint any necessary qualified Township employees to administer the Bureau.
- C. **Disposition of violations.** The Bureau may dispose only of municipal civil infraction violations for which a fine has been scheduled and for which a municipal civil infraction violation notice (as compared with a citation) has been issued. The fact that the fine has been scheduled for a particular violation shall not entitle any person to dispose of the violation at the Bureau, and nothing in this ordinance shall prevent or restrict the Township from issuing a municipal civil infraction citation for any violation or from prosecuting any violation in a court of competent jurisdiction. No person shall be required to dispose of a municipal civil infraction violation at the Bureau and may have the violation processed before the court of appropriate jurisdiction. The willingness of any person to dispose of any violation at the Bureau shall not prejudice the person or in any way diminish the person's rights, privileges, and protection according to law.
- D. **Bureau limited to accepting admissions of responsibility.** The scope of the Bureau's authority shall be limited to accepting admissions of responsibility for municipal civil infractions and collecting and retaining civil fines and costs as a result of those admissions. The Bureau shall not accept payment of a fine from any person who denies responsibility of commission of an offense or who admits responsibility with explanation, and in no event shall the Bureau determine, or attempt to determine, the truth or falsity of any fact or matter relating to an alleged violation.

E. **Municipal civil infraction violation notice.** Municipal civil infraction violation notices shall be issued and served by authorized Township officials under the same circumstances and upon the same persons as provided for citations in Sections 5A. and 5B. of this Ordinance. In addition to any other information required by this Ordinance or other Ordinance, the notice of violation shall indicate the time by which the alleged violator must appear at the Bureau, the methods by which an appearance can be made, the address and telephone number of the Bureau, the hours during which the Bureau is open, the amount of the fine scheduled for the alleged violation, and the consequences for failure to appear and pay the required fine within the required time.

F. **Appearance; payment of fines and costs.** An alleged violator receiving a municipal civil infraction violation notice shall appear at the Bureau and pay the specified fine and costs at or by the times specified for appearance in the municipal civil infraction violation notice. An appearance may be made by mail, in person, or by representation.

SECTION 9. AUTHORIZED TOWNSHIP OFFICIAL.

The Clarendon Township Ordinance Enforcement Officer, Assessor/Zoning Administrator, Building Inspector, and police officers (including deputies of police agencies or sheriff department with whom the Township may elect to contract pursuant to MCL 41.181) are hereby designated as the authorized Township officials to issue municipal civil infraction citations and municipal civil infraction violation notices as provided in this Ordinance.

SECTION 10. ORDINANCES PUNISHABLE AS CIVIL INFRACTIONS.

A. A person who violates an ordinance designated as a municipal civil infraction shall be subject to a civil fine according to the class of offense as follows:

SCHEDULE OF MUNICIPAL CIVIL INFRACTION FINES

Class	First Offense	Second (Repeat) Offense Within One Year	Third and Subsequent Repeat Offenses Within One Year
A	\$10	\$20	\$40
B	25	50	100
C	50	250	500
D	100	500	1,000
E	200	750	1,500
F	500	1,000	2,000

B. A copy of the schedule as amended from time to time shall be posted at the Bureau.

SECTION 11. MUNICIPAL CIVIL INFRACTION; PENALTIES AND SANCTIONS.

- A. **Municipal Civil Infraction.** A person who violates any ordinance punishable as a municipal civil infraction shall be subject to payment of a civil fine of not less than \$ 10 nor more than \$ 2,000, plus costs and other sanctions for each infraction. Repeat offences shall be subject to increased fines consistent with the Schedule of Fines contained in Section 10.
- B. **Costs.** If a Defendant is ordered to pay a civil fine under Section 10, the judge or district court magistrate shall summarily tax and determine the costs of the action, which are not limited to the costs taxable under ordinance civil actions and may include all expenses, direct and indirect, to which the Plaintiff has been put in connection with the municipal civil infraction, up to the entry of judgment. Costs of not less than \$9.00 or more than \$500.00 may be ordered. Except as otherwise provided by law, costs shall be payable to the general fund of the Plaintiff.
- C. **Equitable writ or order.** In addition to ordering the Defendant to pay a civil fine, costs, and damages and expenses, the judge or district court magistrate may issue a writ or order under Section 8302 of the Act, if expressly authorized by the chief judge.
- D. **Failure to answer citation.** A Defendant who fails to answer a citation or notice to appear in court for a municipal civil infraction citation is guilty of a misdemeanor punishable by a fine of up to \$500.00 and/or 90 days in jail.
- E. **Lien against land, buildings, or structures.** If a Defendant does not pay a civil fine or costs or an installment as ordered following a determination of responsibility within thirty (30) days after the date on which the payment is due in a municipal civil infraction action brought for a violation involving the use or occupation of land or a building or other structure, the Plaintiff may obtain a lien against the land, building, or structure involved in the violation by recording a copy of the court order requiring payment of the fines and costs with the Register of Deeds of for the Calhoun county. The court order shall not be recorded unless a legal description of the property is incorporated in or attached to the court order. The lien is effective immediately upon recording of the court order with the Register of Deeds. In addition, a written notice of lien shall be sent by the Plaintiff by first class mail to the owner of record of the land, building, or structure at the owner's last known address. Said lien may be enforced and discharged in the manner described in Section 8731 of the Act.
- F. **Default.** If a defendant defaults in the payment of a civil fine, costs, or, if applicable, damages or expenses as provided in section 8733(2) of the Act, if applicable, or any installment, as ordered pursuant to section 8727 of the Act, the court, upon the motion of the plaintiff or upon its own motion, may require the defendant to show cause why the defendant should not be held in civil contempt and may issue a summons, order to show cause, or a bench warrant of arrest for the defendant's appearance.

- G. Corporations and Associations.** If a corporation or an association is ordered to pay a civil fine, costs, or damages or expenses, the individuals authorized to make disbursement shall pay the fine, costs, or damages or expenses, and their failure to do so shall be civil contempt unless they make the showing required in this section.
- H. Civil Contempt.** Unless the defendant shows that the default was not attributable to an intentional refusal to obey the order of the court or to a failure on his or her part to make a good faith effort to obtain the funds required for payment, the court shall find that the default constitutes a civil contempt and may order the defendant committed until all or a specified part of the amount due is paid.
- I. Time for Payment.** If it appears that the default in the payment of a fine, costs, or damages or expenses does not constitute civil contempt, the court may enter an order allowing the defendant additional time for payment, reducing the amount of payment or of each installment, or revoking the fine, costs, or damages or expenses.
- J. Order of Commitment.** The term of imprisonment on civil contempt for nonpayment of a civil fine, costs, or damages or expenses shall be specified in the order of commitment, and shall not exceed 1 day for each \$30 due. A person committed for nonpayment of a civil fine, costs, or damages or expenses shall be given credit toward payment for each day of imprisonment and each day of detention in default of recognizance before judgment at the rate of \$30 per day.
- K. Discharge From Custody.** A defendant committed to imprisonment for civil contempt for nonpayment of civil fine, costs, or damages or expenses shall not be discharged from custody until one of the following occurs:
- (1) The defendant is credited with the amount due pursuant to subsection J;
 - (2) The amount due is collected through execution of process or otherwise;
 - (3) The amount due is satisfied pursuant to a combination of subdivisions (1) and (2).
- K. Purging Contempt.** The civil contempt shall be purged upon discharge of the defendant pursuant to subsection K.

SECTION 12. REPEAL OF CONFLICTING PROVISIONS.

Ordinance No. 2004-0 currently in effect in the Township is hereby repealed.

SECTION 13. SEVERABILITY OF INVALID PROVISIONS.

If any provision of this Ordinance shall be held invalid, its invalidity shall not affect any other provisions of this Ordinance that can be given effect without the invalid provision, and, for this purpose, the provisions of this Ordinance are hereby declared severable.

SECTION 14. SAVINGS CLAUSE.

All suits, proceedings, or prosecutions, whether civil or criminal, for causes arising or acts done or committed prior to this ordinance, may be commenced, maintained, and/or prosecuted as if said amendment had not been made.

SECTION 14. EFFECTIVE DATE.

This Ordinance shall take effect thirty (30) days after the date of publication of this ordinance or a summary thereof pursuant to MCL 41.184, which publication shall take place within thirty days from the date of adoption and shall be in a local newspaper of general circulation.

This ordinance is hereby declared to have been passed and adopted by Clarendon Township, County of Calhoun, State of Michigan, at a regularly scheduled meeting thereof duly called and held on this _____ day of _____, 2018.

Steve R. Schrock, Supervisor

ATTEST:

Sharla Vincent, Township Clerk

Prepared by:
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