

**TOWNSHIP OF KAWKAWLIN
BAY COUNTY, MICHIGAN**

ORDINANCE NO. 2009-1

AN ORDINANCE TO ESTABLISH A SYSTEM FOR ENFORCEMENT OF MUNICIPAL CIVIL INFRACTIONS; TO PROVIDE DEFINITIONS AND PROCEDURES AND TO PROVIDE FOR CIVIL PENALTIES FOR THE VIOLATION OF SUCH MUNICIPAL CIVIL INFRACTIONS INCLUDING THE TAXATION OF MUNICIPAL COSTS UPON INDIVIDUALS FOUND RESPONSIBLE FOR VIOLATIONS THEREOF.

THE TOWNSHIP OF KAWKAWLIN ORDAINS:

SECTION I

"Act" means Act No. 12 of the Public Acts of 1994, as amended.

"Authorized Township Official" means the Township Supervisor, Township Building Inspector, Zoning Administrator, Code Enforcement Official, or any other Township employee specially designated in writing by the Supervisor, to issue municipal civil infraction citations.

"Municipal civil infraction action" means a civil action in which the defendant is alleged to be responsible for a municipal civil infraction.

"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 one or more municipal civil infraction violations by the person cited.

SECTION II

(Municipal Civil Infraction Action; Commencement)

- A. Before commencement of a Municipal Civil Infraction Action an authorized Township Official shall by first class regular mail and certified mail, notify the alleged violator, an owner or occupant of the land, building or structure, that he/she shall be named as a Respondent in a Municipal Civil Infraction Action, within ten (10) days of the date of the notice of the ordinance violation
- B. A Municipal Civil Infraction Action may be commenced upon the issuance by an authorized Township Official with respect to an ordinance violation designated a civil infraction of a municipal civil infraction citation directing the alleged violator to appear in court.

SECTION III
(Municipal Civil Infraction Citations)
(Issuance and Service)

Municipal civil infraction citations shall be served by authorized Township officials as follows:

- A. The time for appearance specified in a citation shall be within a reasonable time after the citation is issued.
- B. The place for appearance specified in a citation shall be the 74th District Court.
- C. Each citation shall be numbered consecutively and shall be in a form approved by the State Court Administrator. The original citation shall be filed with the District Court. Copies of the citation shall be retained by the Township and issued to the alleged violator as provided by the Act.
- D. 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 official signing the complaint 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."
- E. An authorized Township official who witnesses a person commit a municipal civil infraction shall prepare and subscribe, as soon as possible and as completely as possible, an original and required copies of a citation.
- F. An authorized Township official may issue a citation to a person if:
 1. Based upon investigation, the official has reasonable cause to believe that the person is responsible for a municipal civil infraction; or
 2. Based upon investigation of a complaint by someone who allegedly witnessed the person commit a municipal civil infraction, the official has reasonable cause to believe that the person is responsible for an infraction, and, if the Township Attorney approves in writing the issuance of the citation.
- G. Municipal civil infraction citations shall be served by authorized Township official as follows:
 1. Except as provided by Section 3 (g) (2), an authorized Township official shall personally serve a copy of the upon the alleged violator.

2. That if the alleged violator desires to deny responsibility the alleged violator must apply to the court in person, by mail, by telephone, or by representation within 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 alleged violator or by the Township.
 4. That at an informal hearing the alleged violator must appear in person before a judge or district court magistrate, without the opportunity of being represented by an attorney.
 5. That at a formal hearing the alleged violator must appear in person before a judge with the opportunity of being represented by an attorney.
- D. The citation shall contain a notice in boldfaced type that the failure of the alleged violator 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 the entry of a default judgment against the alleged violator on the municipal civil infraction.

SECTION V
(Penalties)

- A. If a defendant is determined to be responsible for a municipal civil infraction the Judge or District Court Magistrate making the determination of responsibility may order the defendant to pay a civil fine not to exceed the sum of Five Hundred (\$500.00) Dollars, and, if applicable, in addition to the civil fine, the Judge or Magistrate may order the payment of damages and expenses incurred as authorized by Section 8733 of the Act.
- B. If a defendant is ordered to pay a civil fine, the Judge or Magistrate shall summarily determine the Township's costs of the action and tax such costs. The Township's costs shall not necessarily be limited to the costs taxable in ordinary civil actions and may include all expenses, direct and indirect, to which the Township has been put in connection with the municipal civil infraction, up to the entry of the judgment. Costs of not less than Nine (\$9.00) Dollars or more than Five Hundred (\$500.00) Dollars shall be ordered.
- C. In addition to the imposition of civil fines and costs as set forth in sub-section A and B above, the District Court Judge may exercise its equitable jurisdiction as provided by Section 8302 of the Act and issue and enforce injunctive orders, order the recession or reformation of a contract and/or issue and enforce any judgment, writ or order necessary to enforce the ordinance violated, and to issue any such orders necessary to abate nuisances.

2. If the municipal civil infraction action involves the use or occupancy of land, a building or other structure, a copy of the citation does not need to 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 a 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.

SECTION IV
(Municipal Civil Infraction Citations; Contents)

- A. A municipal civil infraction citation shall contain the name and address of the alleged violator, the municipal civil infraction alleged, the place where the alleged violator shall appear in court, the telephone number of the court, and the time at or by which the appearance shall be made.
- B. Further, the citation shall inform the alleged violator 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:
 - a. Appearing in person for an informal hearing before a judge or district court magistrate, without the opportunity of being represented by an attorney, unless a formal hearing before a judge is requested by the Township.
 - b. 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 alleged violator of all of the following:
 1. That if the alleged violator desired to admit responsibility "with explanation" in person or by representation, the alleged violator must apply to the court in person, by mail, by telephone, or by representation within the time specified for appearance and obtain a scheduled date and time for an appearance.

- D. In the Order of Judgment finding the defendant responsible for the violation of a municipal civil infraction, the Judge or District Court Magistrate may grant a defendant permission to pay the civil fine, costs, expenses imposed within a specified period of time or in specified installments. In the event no period of time is specified and no specified installments are set forth in the Judgment all of such fines, costs, damages and expenses are due immediately.
- E. 1. A failure to pay a civil fine, costs, damages and/or expenses may result in the Township's obtaining a lien against the land, building, or structure involved in the violation in accordance with Section 8731 of the Act, and, may subsequently be enforced and discharged as provided.
2. A failure to pay a civil fine, costs, damages and/or expenses may further result in the court's issuance of an Order To Show Cause requiring the defendant to show cause why the defendant should not be held in civil contempt; or, the court's issuance of a bench warrant of arrest for the defendant's appearance.
- F. A defendant who fails to answer a citation for a municipal civil infraction is guilty of a misdemeanor punishable by a fine not to exceed Five Hundred (\$500.00) Dollars, or by imprisonment in the Bay County Jail for a term not exceeding ninety (90) days, or, by both fine and imprisonment.

SECTION VI
(Amendment Provision)

All penalty sections of all other Township ordinances in effect and as amended are hereby amended as follows:

The penalty for the violation of this ordinance shall be deemed a municipal civil infraction and upon a finding of responsibility shall be subject to the penalties as set forth in Section 5 of Ordinance No. 53 which establishes the penalties for the violation of a Township municipal civil infraction.

SECTION VII
(Severability)

The various parts, sections and clauses of this Ordinance are hereby declared to be severable. If any part, sentence, paragraph, section or clause is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of the Ordinance shall not be affected thereby.

SECTION VIII
(Publication)

This Ordinance shall be published in a newspaper of general circulation within the Township of Kawkawlin, Bay County, Michigan.

SECTION IX
(Effective date)


This Ordinance shall become effective Thirty (30) days after the date of publication. A copy of this Ordinance shall be maintained on file for public review in the Township clerk's office.

THE TOWNSHIP OF KAWKAWLIN

BY:


DENNIS J. BRAGIEL, Supervisor

BY:


GREGORY A. PETRIMOULX, Clerk

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June 4, 2009