

CIVIL INFRACTIONS

The Township of Caledonia, County of Alcona, State of Michigan

ORDAINS:

ORDINANCE NO.: 2020-01

Adopted: 3-11-2020

Effective: 4-11-2020

AN ORDINANCE providing for the establishment of municipal civil infractions in the Township of Caledonia, and for the process by which same will be administered and enforced; and amending various other Township Ordinances to render a violation thereof a civil infraction hereunder.

Section 1. Definitions:

- a. **Act** means Act No. 236 of the Public Acts of 1961, as amended by Act No. 12 of the Public Acts of 1994, being MCLA § 600.8701, *et seq.*
- b. **Authorized Township Official** means the Zoning Administrator, any Code Enforcement Officer, Supervisor, Township Attorney, or other personnel or agent of the Township (including without limitation officers of the Alcona County Sheriff's Office) authorized by this or any other Township Ordinance to issue municipal civil infraction citations or municipal civil infraction violation notices.
- c. **Bureau or Township Ordinance Violations Bureau** means the municipal ordinance violations bureau established by this Ordinance.
- d. **Municipal civil infraction** means a violation of a provision of this or any other Township Ordinance for which the remedy and/or penalty is prescribed to be a civil fine, or other sanction other than a criminal penalty. A municipal civil infraction is not a lesser included offense of either a criminal offense or an ordinance violation that is not a civil infraction.
- e. **Municipal civil infraction citation** means a written complaint or notice prepared by an authorized Township official or Court of proper jurisdiction directing a person to appear in said Court regarding the alleged occurrence or existence of a municipal civil infraction violation by that person.
- f. **Municipal civil infraction determination** means a determination that an individual accused of a civil infraction is responsible for a municipal civil infraction by one of the following:

- (1) An admission of responsibility for the municipal civil infraction.
 - (2) An admission of responsibility for the municipal civil infraction, "with explanation."
 - (3) A preponderance of the evidence at an informal hearing or formal hearing.
 - (4) A default judgment for failing to appear at a scheduled appearance.
- g. ***Municipal civil infraction violation notice*** means a written notice prepared by an authorized Township official, directing a person to appear at the Township Ordinance Violations Bureau for the purpose of paying a civil fine and/or costs for a violation which is prescribed to be a municipal civil infraction.
- h. ***Repeat offense*** means a determination of responsibility for a second or any subsequent municipal civil infraction with regard to the same Ordinance provision, committed by the same person within any three-year period, unless some other period is specifically provided hereinbelow and/or with regard to a specific provision of a separate Ordinance.
- i. ***Responsible or responsibility*** means either an admission or a determination entered by a Court or magistrate that a person is in violation of a provision of this or any other Township Ordinance prescribed to be a municipal civil infraction.
- j. ***Violation*** means any act which is prohibited or made or declared to be unlawful or an offense under this or any other Township Ordinance, including affirmative acts as well as omissions and/or failures to act where the act is required by this or any other Township Ordinance.

Section 2. Commencement of municipal civil infraction action:

- (a) Municipal civil infraction action may be commenced upon the issuance by an authorized Township official, or a Court official, of either of the following:
- (1) A municipal civil infraction notice directing the alleged violator to appear at the Township Ordinance Violations Bureau.
 - (2) A municipal civil infraction citation directing the person alleged to be responsible to appear in court, either on a specified date or one to be Noticed by the Court.

Section 3. Issuance of Municipal Civil Infraction Citation; Contents; Service:

- (a) Municipal civil infraction citations shall be issued and served by authorized Township officials and/or the 81st District Court for the County of Alcona (or in the event of certain violations involving minors, the Alcona County Probate Court), substantially as follows:
- (1) The time for appearance specified in a citation shall be within a reasonable

time after the citation is issued.

- (2) The place for appearance, whether the Township Ordinance Violations Bureau or 81st District Court, shall be specified in the citation and/or accompanying documentation.
 - (3) Each citation shall be numbered consecutively and shall be in a form approved by the state court administrator and in accordance with state law (See, MCLA § 600.8709). The original citation shall be filed with the appropriate District or Probate Court. Copies of the citations shall be retained by the Township and issued to the alleged violator as provided by the Act.
 - (4) 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 same 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."*
 - (5) 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.
- (b) The basis for issuance of a municipal civil infraction citation or notice shall be as set forth below:
- (1) An authorized Township official witnesses a person violate an ordinance, the violation of which is a municipal civil infraction.
 - (2) An authorized Township official may issue a citation or notice to a person if, based upon investigation, the official has reasonable cause to believe that a person is responsible for a municipal civil infraction.
 - (3) An authorized Township official may issue a citation or notice to a person if, based upon investigation of a complaint by someone who allegedly witnessed the person violate an ordinance, the official has reasonable cause to believe that the person is responsible for a municipal civil infraction and if the attorney for the Township approves in writing the issuance of the citation or notice.
- (c) A municipal ordinance citation and/or accompanying documentation shall contain the following:
- (1) the name and address of the alleged violator
 - (2) each municipal civil infraction alleged to have been violated
 - (3) the date, time and place when and where the alleged violator shall appear in court

- (4) the telephone number of the court
- (5) notice that the alleged violator may do one of the following:
 - (A) Admit responsibility for the municipal civil infraction by mail, in person, or by representation, on or before the time and at the place specified for appearance.
 - (B) Admit responsibility for the municipal civil infraction "with explanation" by mail, in person or by representation within the time and at the place specified for appearance.
 - (C) 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 of being represented by an attorney, unless a formal hearing before a judge is requested by the Township or the alleged violator.
 - (ii) Appearing in court for a formal hearing before a judge, with the opportunity of being represented by an attorney.
- (6) further notice to the alleged violator of all of the following:
 - (A) That if the alleged violator desires 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.
 - (B) 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.
 - (C) That a hearing shall be an informal hearing unless a formal hearing is requested by the alleged violator or the Township.
 - (D) 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.
 - (E) That at a formal hearing the alleged violator must appear in person before a judge with the opportunity of being represented by an attorney.
- (7) further 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 entry of a default judgment against the alleged violator on the municipal civil infraction.

- (d) Municipal civil infraction citations or notices shall be served in the following manner:
- (1) Except as otherwise provided below, the authorized official shall personally serve a copy of the citation or notice upon the alleged violator.
 - (2) In a municipal civil infraction action involving the use or occupancy of land or a building or other structure, a copy of the citation or notice 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 conspicuously posting the copy on the land or attaching the copy to the building or structure. In addition, a copy of the citation or notice shall be sent by first class mail to the owner of the land, building or structure at the owner's last known address as determined by the Township tax rolls.
 - (3) A citation or notice served as provided in paragraph (2), above, for a violation involving the use or occupancy of land or a building or other structure, shall be processed in the same manner as a citation or notice served personally upon a defendant.
 - (4) If the municipal civil infraction action involves the use of a motor vehicle, boat or snowmobile, a copy of the citation does not need to be personally served upon the alleged violator, but may be served by attaching the copy to the motor vehicle, boat or snowmobile. In addition, a copy of the citation shall be sent by first-class mail to the registered owner of the motor vehicle, boat or snowmobile at the owner's last known address.

Section 4. Civil Infraction Violation Notice; Contents; Service; Failure to Admit Responsibility:

Unless the circumstances render it impracticable or futile, a civil infraction violation notice shall be issued and serve prior to issuance of a citation.

- (a) Municipal civil infractions violation notices shall be issued by authorized Township official(s), and upon the same grounds applicable to civil infraction citations under Section 3 (b), above.
- (b) A municipal civil infraction violation notice shall be on a form approved by the state court administrator, if any, and shall contain the following:
 - (1) the name and address of the alleged violator
 - (2) a statement of each alleged violation
 - (3) the date on or before which the alleged violator must appear at or contact the Bureau for purposes of admitting or denying responsibility.
 - (4) the amount of scheduled fines/costs for each alleged violation.

- (5) the address, telephone number and hours of operation of the Bureau
- (6) notice that the alleged violator may do one of the following:
 - (A) Admit responsibility for the municipal civil infraction by mail, in person, or by representation, on or before the time specified for appearance as aforesaid.
 - (B) Admit responsibility for the municipal civil infraction "with explanation" by mail, in person, or by representation by the time specified for appearance as aforesaid.
 - (C) Deny responsibility for the municipal civil infraction by mail, in person, or by representation by the time specified for appearance as aforesaid.
- (c) A civil infraction violation notice shall be served in accordance with Section 3 (d), above.
- (d) In the event the alleged violator served with a civil infraction violation notice shall fail to admit responsibility without explanation and/or pay the required fines/costs within the time set forth within the notice, the authorized Township official shall cause a civil infraction citation to issue and proceed with judicial process pursuant to the Act and Section 3, above.

Section 5. Authorized Township Official:

- (a) The Township Zoning Administrator, Supervisor and Township Attorney are Authorized Township Officials. The Township Board of Trustees (hereinafter "Board" or "Township Board") is hereby authorized to appoint by motion or resolution any person or persons as Authorized Township Official(s) for and upon such term or terms as may be designated in the motion or resolution for purposes of carrying out the duties and responsibilities specified in this Ordinance and enforcing the provisions of this or any other Ordinance, any violation of which is prescribed to be a municipal civil infraction. The Board may further, by motion or resolution, remove any person from such office, in its discretion.
- (b) Any Authorized Township Official appointed pursuant to this Ordinance is authorized to enforce all provisions of this and any other Ordinance, whether or not any particular provision specifies or designates a different enforcing official. Where a particular officer is designated in any code provision, that officer's authority shall continue in full force and effect, and shall not be diminished or impaired by the terms of this section, and the authority of the Authorized Township Official shall be in addition and supplementary to the authority granted to such other specific officer.
- (c) The Authorized Township Official's duties shall include, but are not necessarily limited to, the following: investigation of Ordinance violations; issuance and service of municipal ordinance violation notices and municipal civil infraction citations; appearance in court or other judicial or quasi-judicial proceedings in the

administration of this Ordinance.

Section 6. Establishment of Bureau:

- (a) A Township Ordinance Violations Bureau (hereinafter referred to as the "Bureau") is hereby established for the purpose of accepting admissions of responsibility for municipal civil infractions in response to municipal civil infraction violation notices.
- (b) Payments made to the Bureau shall be retained and accounted for as fines and costs, respectively, and shall be deposited in the general fund or such other funds as the Township Board may direct and established in conformity with applicable law.
- (c) The Bureau shall be located at the Township Hall as determined by the Board, and shall be under the immediate supervision and control of the Township Clerk, or in the Clerk's absence, the Supervisor. Hours of operation shall be established and posted by the Board if other than the hours during which the Township Hall is otherwise open.

Section 7. Authority of Bureau:

- (a) The Bureau is authorized to accept payment of fines and costs in response to municipal civil infraction violation notices, and shall not be authorized to accept monies or admissions of responsibility in response to municipal civil infraction citations.
- (b) The Bureau shall not accept payment of a fine or costs from any person who denies having committed a municipal civil infraction charged in a municipal civil infraction violation notice.
- (c) The Bureau shall not have authority or jurisdiction to determine, or attempt to determine, the truth or falsity of any fact or matter relating to an alleged violation.

Section 8. Penalties for municipal civil infractions; Schedule of fines; Remedies not exclusive:

- (a) The following civil fines shall apply in the event of a determination of responsibility for a municipal civil infraction, unless a different fine is specified in connection with a particular Ordinance provision. The fines reflect whether the responsible party or parties admit(s) such responsibility, as well as the judicial process contemplated in the event responsibility is not admitted:

	<u>admitted</u>	<u>not admitted</u>
First offense within a three (3) year period	\$100	\$250
Second offense within a three (3) year period	\$500	\$1,000
Third offense within a three (3) year period	\$1,000	\$2,000
Fourth or subsequent offense within a three (3) year period	\$2,000	\$3,000

Unless specifically indicated to the contrary within the Ordinance under which a violation is charged, each day on which a violation exists shall be deemed a separate offense, and of the same class as originally charged on the first date thereof (i.e., as a First, Second, Third, Fourth or subsequent offense). For purposes of illustration only, if a condition or situation results in a First offense charge and continues for a ten (10) period, then each of those ten (10) days shall constitute a separate, First offense.

- (b) Administrative costs; Expenses of Prosecution: In the event of a determination of responsibility without need for issuance of a civil infraction violation citation and/or judicial process, there shall be due, together with and in addition to payment of the above fines, an administrative fee in the amount of \$20.00.

In the event of a determination of responsibility pursuant to a civil infraction citation and/or judicial process, there shall be due, together with payment of the above fines, the aforesaid administrative fee as well as the Township's administrative and other costs, fees and expenses incurred in the prosecution of said citation in an amount not to exceed \$500.00 per offense. Further, and in the event the violation involves the use of land, buildings or structures thereon, all of such fines, fees and expenses shall constitute a lien against such land and buildings/structures, and shall be assessed and collected in the same manner as *ad valorem* taxes if not paid in the manner provided by the judgment and statute, including without limitation MCL § 600.8731, as amended.

- (c) Copies of the schedule of fines, as amended from time to time, shall be conspicuously posted at the Bureau.
- (d) *Remedies not exclusive.* In addition to and/or in lieu of any processes and remedies provided for in this Ordinance, the Township may pursue any other legal or equitable proceedings, actions or remedies available, including without limitation Circuit Court actions for abatement/injunctive relief and/or self-help remedies provided by statute or separate Ordinance.

Section 9. Designation of civil infractions:

In addition to any Ordinance adopted hereinafter in which the specified penalty is a civil infraction, a violation of the following Ordinance chapters, articles, provisions and/or sections, or any rule, regulation or order adopted or issued in pursuance thereof, shall be deemed to be a civil infraction which shall subject the violator to the provisions of this Ordinance, and each such Ordinance chapter, provision, section, rule and/or regulation is hereby amended accordingly:

ORV Ordinance, No.: 09-03

Outdoor and Open Burning Ordinance, No.: 10-01

Cemetery Ordinance, No.: 13-001

Zoning Ordinance, No.: 14-01

Park Ordinance, No. 15-01, as amended

Prohibition of Marihuana Establishments Ordinance, No.: 19-01

Additional Ordinances may be hereafter designated as civil infractions by Resolution of the Township Board.

Section 10. 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 and shall remain in full force and effect.

Section 11. Effective Date: 4-11-2020

This Ordinance shall take effect thirty (30) days after publication following adoption.

CERTIFICATION

The foregoing is a true copy of Ordinance No. 2020-01 which was enacted by the Board of Trustees of the Township of Caledonia, Alcona County, at a regular/special meeting held on the 11 day of March, 2020. A copy or Notice of same was published in the Alcona County Review on 3-25, 2020.


KERRY SCOTT, Clerk