

ORDINANCE NO. 2012-2

OTSEGO COUNTY MUNICIPAL CIVIL INFRACTIONS ORDINANCE

Adopted: May 8, 2012

Effective: June 27, 2012

AN ORDINANCE TO PROVIDE FOR THE ISSUANCE AND SERVICE OF MUNICIPAL CIVIL INFRACTION CITATIONS

THE COUNTY OF OTSEGO, MICHIGAN, HEREBY ORDAINS:

Section 1. Short title

This Ordinance shall be known and may be cited as the “Municipal Civil Infraction Ordinance.”

Section 2. Definitions

As used in this Ordinance:

“Act” means Act No. 236 of the Public Acts of 1961, as amended.

“Authorized County Official” means a police officer, animal control officer, building code enforcement officer, zoning administrator, soil erosion enforcement officer, marine officer, or any other personnel of Otsego County authorized by this Ordinance, by any other ordinance or state law permitted to enforce an ordinance or state law and/or 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 prepared by an authorized County Official, directing a person to appear in court regarding the occurrence or existence of a municipal civil infraction violation by the person cited.

“Municipal civil infraction” means any civil infraction issued by an authorized County Official as provided for by ordinance or state law.

Section 3. Designation of authorized officials

The following persons have the authority to issue municipal civil infraction citations pursuant to this Ordinance:

- (a) Otsego County Sheriff’s Department deputized law enforcement officers;
- (b) Officers of the City of Gaylord Police Department;
- (c) Officers of the Michigan State Police;

- (d) Conservation Officers of the Michigan Department of Natural Resources;
- (e) Any employee of Otsego County charged with the enforcement of the building code;
- (f) Otsego County Land Use Services Director;
- (g) Any employee of Otsego County charged with the enforcement of the Otsego County Zoning Ordinance;
- (h) Otsego County Administrator;
- (i) Any officer, employee, or agent of Otsego County charged with the enforcement of any other ordinance and/or state law.

Section 4. Municipal civil infraction action; commencement

A municipal civil infraction action may be commenced upon the issuance by an authorized County Official of a municipal civil infraction citation directing the alleged violator to appear in court.

Section 5. Municipal civil infraction citations; issuance and service

Municipal civil infraction citations shall be issued and served by authorized County 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 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. The County shall retain copies of the citation, and one (1) copy shall be issued to the alleged violator as provided by § 8705 of the Act.
- (d) A citation for a municipal civil infraction signed by an authorized County Official shall be treated as if made under oath, if the violation alleged in the citation occurred in the presence of the 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."
- (e) An authorized County Official who witnesses a person commit a municipal civil infraction may prepare and subscribe, as soon as possible, and as completely as possible, an original citation and the required copies.
- (f) An authorized County Official may issue a citation to a person if:
 - (i) Based upon investigation, the official had reasonable cause to believe that the person is responsible for a municipal civil

infraction; or

- (ii) 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 County attorney approves in writing the issuance of the citation.
- (g) Municipal civil infraction citations shall be served by an authorized County Official as follows:
- (i) An authorized County Official shall personally serve a copy of the citation upon the alleged violator;
 - (ii) An authorized County Official may, in lieu of personal service, serve a copy of the citation by certified mail, return receipt requested, and delivery restricted to the alleged violator;
 - (iii) If the municipal civil infraction action involves the use or occupancy of land, a building or 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 of the citation on the land or attaching the copy to the building or structure. In addition, a copy of the citation shall be sent by certified mail, return receipt requested, and delivery restricted to the owner of the land, building, or structure at the owner's last known address.

Section 6. Municipal civil infraction citations; contents

- (a) A municipal civil infraction citation shall contain the name and last known address of the alleged violator and, in the case of a minor, shall also include the name and address of a parent or guardian of said minor; the municipal civil infraction alleged, the place where the alleged violator shall appear in court, the telephone number of the court, and the time when the appearance shall be made.
- (b) Further, the citation shall inform the alleged violator that he or she may do one of the following:
 - (i) Admit responsibility for the municipal civil infraction by mail, in person, or by representation, at or by the time specified for appearance.
 - (ii) Admit responsibility for the municipal civil infraction “with explanation” by mail, in person, or by representation, at or by the time specified for appearance.

- (iii) 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 County.
 - (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:
 - (i) 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.
 - (ii) 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.
 - (iii) That a hearing shall be an informal hearing, unless a formal hearing is requested by the alleged violator or the County.
 - (iv) 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.
 - (v) That at a formal hearing, the alleged violator must appear in person before a judge, with the opportunity of being represented by an attorney.
 - (vi) The citation shall contain a notice in boldface 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, will result in entry of a default judgment against the alleged violator on the municipal civil infraction.

Section 7. Failure to appear; penalty

A person served with a municipal civil infraction citation as provided in Section 5(g), who fails to appear within the time specified in the citation or at the time scheduled for a hearing or

appearance, shall have a default judgment entered against them in the amount provided by this Ordinance or any other ordinance, plus any costs, damages, expenses, and other sanctions, as authorized under the Act, including an order to show cause why the defaulted person should not be held in civil contempt.

Section 8. Sanctions for Municipal civil infractions; repeat offenses; continuing violations; injunctive relief

- (a) 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 other ordinance violated, plus costs, damages, expenses and other sanctions, as authorized under the Act, and other applicable laws.
- (b) Increased civil fines may be imposed for repeat offenses by a person of any requirement or provision of any ordinance. As used in this section, “repeat offenses” means a second (or any subsequent) admission or determination of responsibility for the same municipal civil infraction made within the period as specified by the ordinance violated.
- (c) Each day on which any violation designated as a municipal civil infraction continues constitutes a separate offense and shall be subject to sanctions as a separate violation.
- (d) In addition to any remedies available at law, the County may bring an action for an injunction or other process against a person to restrain, prevent, or abate any municipal civil infraction violation.

Section 9. Schedule of civil fines and costs

Unless a different schedule of civil fines is provided for by an applicable ordinance, the civil fines payable upon admission or determination of responsibility by a person served with a municipal civil infraction citation, shall be determined pursuant to the following schedule:

1 st violation	\$25.00-\$50.00
2 nd violation within a 3-year period	\$50.00-\$100.00
3 rd violation within a 3-year period	\$100.00-\$200.00
4 th violation within a 3-year period	\$250.00-\$500.00

The time period for determining second (or any subsequent) violations is based upon the date of the violation.

Section 10. Severability

This Ordinance and the various parts, sections, and clauses thereof are hereby declared to be severable. If any part, sentence, paragraph, section, or clause is adjudged unconstitutional or invalid, the remainder of the Ordinance shall not be affected thereby.

Section 11. Repealer

All prior ordinances addressing the same subject matter as this Ordinance are hereby repealed.

Section 12. Effective Date

This Ordinance shall be effective on the day when notice of its adoption is published in a newspaper of general circulation in Otsego County.

Adoption of the Ordinance was moved by _____ and supported by _____.

YEAS:

NAYS:

ORDINANCE DECLARED ADOPTED ON _____, 2012.

Paul M. Beachnau
Its: Chairman, Otsego County Board of
Commissioners

STATE OF MICHIGAN)
) ss.
COUNTY OF OTSEGO)

The undersigned, being the Clerk of the County of Otsego, hereby certifies that the foregoing is a true and complete copy of the Ordinance duly adopted by the Otsego County Board of Commissioners at its regular meeting held on the ____ day of _____, 2012, at which meeting a quorum was present and remained throughout and that an original thereof is on file in the records of the County. I further certify that the meeting was conducted, and public notice thereof was given, pursuant to and in full compliance with Act No. 267, Public Acts of Michigan, 1976, as amended, and that the minutes of such meeting were kept and will be or have been made available as required thereby.

Dated:

Susan I. DeFeyer, County Clerk