

**Suttons Bay Township
Municipal Civil Infractions Ordinance
Ordinance No. 2021-1**

AN ORDINANCE TO DEFINE MUNICIPAL CIVIL INFRACTION AND RELATED TERMS, TO PROVIDE FOR PENALTIES AND SANCTIONS FOR VIOLATION OF TOWNSHIP ORDINANCES, TO ESTABLISH A MUNICIPAL CIVIL INFRACTION ORDINANCE VIOLATIONS BUREAU, TO AUTHORIZE CERTAIN TOWNSHIP OFFICIALS TO ISSUE MUNICIPAL CIVIL INFRACTION CITATIONS, AND TO PROVIDE FOR THE EFFECTIVE DATE OF THIS ORDINANCE.

THE TOWNSHIP OF SUTTONS BAY COUNTY OF LEELANAU, AND STATE OF MICHIGAN ORDAINS:

Section 1. Definitions.

For purposes of their use in this Ordinance, the following words and terms are herein defined. Any word or term not herein defined shall be considered to be defined in accordance with its common or standard definitions.

- A. "Act" means Act No. 236 of the Public Acts of 1961, as amended.
- B. "Authorized Township Official" means a police officer or other personnel of the Township authorized by Ordinance to issue municipal civil infraction citations or municipal civil infraction violation notices.
- C. "Bureau" means Suttons Bay Township Municipal Ordinance Violations Bureau as established by this Ordinance.
- D. "Municipal civil infraction" means an act or omission that is prohibited by Ordinance of the Township, but which is not a crime under this Ordinance or other Ordinances of the Township, and for which civil sanctions, including without limitation, fines, damages, expenses and costs, may be ordered, as authorized by Chapter 87 of Act No. 236 of the Public Acts of 1961, as amended. A municipal civil infraction is not a lesser and included offense of a violation of the Ordinances of the Township, which is deemed a criminal offense.
- E. "Municipal civil infraction action" means a civil action in which the defendant is alleged to be responsible for a municipal civil infraction.
- F. "Municipal civil infraction citation" means a written complaint or notice prepared by an authorized Township official, directing a person to appear at the Suttons Bay Township Municipal Ordinance Violations Bureau regarding the occurrence or existence of a municipal civil infraction violation by the person cited.
- G. "Municipal civil infraction determination" means a determination that a defendant is responsible for a municipal civil infraction by one of the following: (1) An admission of responsibility for the municipal civil infraction, (ii) An admission of responsibility for the municipal civil infraction "with explanation," (iii) A preponderance of the evidence at an

informal hearing or formal hearing, (iv) A default judgment for failing to appear as directed by citation or other notice.

H. "Municipal civil infraction violation notice" means a written notice prepared by an authorized Township official, directing a person to appear at the Suttons Bay Township Municipal Ordinance Violations Bureau and to pay the fine and costs, if any, as authorized under Sections 8396 and 8707(6) of the Act.

I. "Repeat offense" means a municipal civil infraction violation of the same provision of a Township Ordinance committed by a person within twelve (12) months of the date of an earlier municipal infraction violation for which the person either admitted responsibility or was determined to be responsible.

J. "Second or subsequent repeat offense" means a municipal civil infraction violation of the same provision of a Township Ordinance committed by a person within twelve (12) months of the date of the most recent of earlier civil infraction violations for which the person either admitted responsibility or was determined to be responsible.

Section 2. Municipal Civil Infraction Action: Commencement.

A municipal civil infraction may be commenced upon 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 violation notice directing the alleged violator to appear at the Suttons Bay Township Municipal Ordinance Violations Bureau.

Section 3. Municipal Civil Infraction Citations: Issuance and Service.

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

A. The time for appearance specified on a citation shall be within a reasonable time after the citation is issued.

B. The place for appearance specified on a citation shall be the District Court unless the person cited for a municipal civil infraction is under the age of 17 at the time of the occurrence of the violation, in which case the matter shall be referred to the Probate Court.

C. Each citation shall be numbered consecutively, shall be in the form approved by the state court administrator and shall consist of the following parts:

(1) The original, which is a complaint and notice to appear, shall be filed with the District Court;

(2) The first copy shall be retained by the Township and/or the ordinance enforcing agency;

(3) The second copy shall be issued to the alleged violator if the violation is a municipal civil infraction; and

(4) The third copy shall be issued to the alleged violator if the violation is a misdemeanor.

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 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 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 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 an infraction and if the prosecuting attorney or Township attorney approves in writing the issuance of the citation.

G. Municipal civil infraction citations shall be served by an authorized Township official as follows:

(1) Except as provided in subsection 3(g)(2) below, an authorized Township official shall personally serve a copy of the citation upon the alleged violator.

(2) If the municipal civil infraction action involves the use or occupancy of land, a building or other structure, a copy of the municipal civil infraction 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 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 in accordance with this subsection 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 served personally upon a defendant.

Section 4. Municipal Civil Infraction Citations: Contents.

A. A municipal civil infraction citation shall contain the name of the Township and the name and the 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. A municipal civil infraction 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, in person, or by representation by the time specified for appearance.

(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. A party requesting a formal hearing shall notify the court and the Township or other named party or parties of the request at least 10 days before the hearing date, which request may be made in person, by representation, by mail or by telephone.

C. The citation shall also inform the alleged violator of all of the following:

(1) 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.

(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 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 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 entry of a default judgment against the alleged violator 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 citation with an admission of responsibility with explanation and with full payment of applicable civil fines and costs, or timely application to the court for a scheduled date and time for an appearance under subsection 4(c)(1) or a hearing under subsection 4(c)(2) constitutes a timely appearance.

E. If an authorized Township official issues a citation as set forth in this section, the court may accept an admission with explanation or an admission or denial of responsibility without the necessity of a sworn complaint. If the defendant denies responsibility for the municipal civil infraction, further proceedings shall not be held until a sworn complaint is filed with the court. A warrant for arrest for failure to appear on the municipal civil infraction citation shall not be issued until a sworn complaint relative to the municipal civil infraction is filed with the court.

Section 5. Municipal Ordinance Violations Bureau.

A. BUREAU ESTABLISHED. The Township hereby establishes a Municipal Ordinance Violations Bureau (the "Bureau") as authorized under Section 8396 of the Act to accept admissions of responsibility for municipal civil infractions in response to municipal civil infraction violation notices issued and served by authorized Township officials, and to collect and retain civil fines and costs as prescribed by Ordinance. The expenses of operating the Bureau shall be borne by the Township, and the personnel of the Bureau shall be Township employees.

B. LOCATION; SUPERVISION; EMPLOYEES; RULES; AND REGULATIONS. The Bureau shall be located at the Suttons Bay Township Hall and shall be under the supervision and control of the Township Treasurer. The Township Treasurer, subject to the approval of the Township Board, shall adopt rules and regulations for the operation of the Bureau and appoint any necessary qualified Township employees to administer the Bureau.

C. DISPOSITION OF VIOLATION. 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. Nothing in this Chapter 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 a court of appropriate jurisdiction. The unwillingness of any person to dispose of any violation at the Bureau shall not prejudice the person or in any way diminish the person's right, privileges and protection accorded by law.

D. BUREAU LIMITED TO ACCEPTING ADMISSION(S) 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 having committed the offense or who admits responsibility only 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.

Section 6. Municipal Civil Infraction Notices: Contents, Issuance and Service.

A. SERVICE OF NOTICE. An authorized Township official may issue and serve a municipal civil infraction violation notice instead of a citation under the same circumstances and upon the same persons as provided for service of municipal civil infraction citations. In addition to any other information required by this Ordinance or other Ordinances, the violation shall indicate the time by which the alleged violator must appear at the Bureau, the methods by which an appearance may 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.

B. 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 time specified for appearance in the municipal civil infraction violation notice. An appearance may be made by mail, in person, or by representation.

C. PROCEDURE WHERE ADMISSION OF RESPONSIBILITY NOT MADE OR FINE NOT PAID. If an authorized Township official issues and serves a municipal ordinance violation notice and if an admission of responsibility is not made and the civil fine and costs, if any, are not paid at the Bureau, a municipal civil infraction citation may be filed with the District Court and a copy of the citation may be served by first-class mail upon the alleged violator at the alleged violator's last known address. The citation filed with the court does not need to comply in all particulars with the requirements for citations as provided by Sections 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 alleged violator how to respond to the citation.

Section 7. Municipal Civil Infractions: Sanctions, 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, plus any costs, damages, expenses and other sanctions, as authorized under Chapter 87 of Act No. 236 of the Public Acts of 1961, as amended, and other applicable laws.

(1) Unless otherwise specifically provided for a particular municipal civil infraction violation by Ordinance, the civil fine for a violation shall be not less than \$50.00, plus costs and other sanctions, for each infraction.

(2) Increased civil fines may be imposed for repeated violations by a person of any requirement or provision of Ordinance. As used in this Section, "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 12 -month period (unless some other period is specifically provided by Ordinance), and (ii) for which the person admits responsibility or is determined to be responsible. Unless otherwise specifically provided by Ordinance for a particular municipal civil infraction violation, the increased fine for a repeat offense shall be as follows:

(a) The fine for any offense which is a first repeat offense shall be no less than \$250.00, plus costs.

(b) The fine for any offense which is a second repeat offense, or any subsequent repeat offense shall be no less than \$500.00, plus costs.

B. A "violation" includes any act which is prohibited or made or declared to be unlawful or an offense by Ordinance; and any omission or failure to act where the act is required by Ordinance.

C. Each day on which any violation of Ordinance continues constitutes a separate offense and shall be subject to penalties or sanctions as a separate offense.

D. 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 Township Ordinance.

Section 8. Authorized Township Official.

Members of the Leelanau County Sheriff's Department, Township Officials or other personnel of the Township are hereby designated as authorized Township officials to issue municipal civil infraction citations (directing alleged violators to appear in court) or municipal civil infraction violation notices (directing alleged violators to appear at the Suttons Bay Township Municipal Ordinance Violations Bureau) as provided by Township Ordinance(s).

Section 9. Severability and Captions.

This Ordinance and the various parts, sections, subsections, sentences, phrases and clauses thereof are hereby declared to be severable. If any part, section, subsection, sentence, phrase or clause is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of the Ordinance shall not be affected thereby. The captions included at the beginning of each Section are for convenience only and shall not be considered a part of this Ordinance.

Section 10. Repeal.

All resolutions, ordinances, orders or parts thereof in conflict in whole or in part with any of the provisions of this Ordinance are, to the extent of such conflict, are hereby repealed.

Section 11. Administrative Liability.

No officer, agent, employee or member of the Township Board shall render himself or herself personally liable for any damage which may occur to any person or entity as the result of any act or decision performed in the discharge of his or her duties and responsibilities pursuant to this Ordinance.

This ordinance will take effect 30 days after publication.

Approved by the Suttons Bay Township Board _____

Published in the Leelanau Enterprise _____