

**CITY OF LOWELL
KENT COUNTY, MICHIGAN**

ORDINANCE NO. 09- 01

**AN ORDINANCE TO AMEND SUBSECTION (A) OF SECTION 1-13,
“GENERAL PENALTY,” OF CHAPTER 1, “GENERAL PROVISIONS,”
OF, AND TO ADD CHAPTER 27, “MUNICIPAL CIVIL INFRACTIONS,”
TO, THE CODE OF ORDINANCES OF THE CITY OF LOWELL**

Councilmember Ellison , supported by Councilmember LaPonsie , moved the adoption of the following ordinance:

THE CITY OF LOWELL ORDAINS:

Section 1. Amendment to Section 1-13 of Chapter 1. Subsection (a) of Section 1-13, “General Penalty,” of Chapter 1, “General Provisions,” of the Code of Ordinances of the City of Lowell is amended to read as follows:

(a) Except as provided in chapter 27 hereof with respect of municipal civil infractions or unless another penalty is expressly provided in this Code for any particular provision or section, every person convicted of a violation of any provisions of this Code or any rule, regulation or order adopted or issued in pursuance thereof, shall be punished by a fine of not more than five hundred dollars (\$500) and costs of prosecution or by imprisonment of not more than ninety-three (93) days, or by both such fine and imprisonment in the discretion of the court. Each act of violation and every day upon which any such violation shall occur shall constitute a separate offense.

Section 2. Addition of Chapter 27. Chapter 27, “Municipal Civil Infractions,” is added to the Code of Ordinances of the City of Lowell to read as follows:

Chapter 27

MUNICIPAL CIVIL INFRACTIONS

Sec. 27-1. Definitions.

As used in this chapter the following words and terms shall have the following meanings:

(a) “Authorized city official” means a police officer or other officer or employee of the city authorized by this Code, state law or any other ordinance to

issue municipal civil infraction citations or municipal civil infractions violation notices.

(b) “Bureau” means the municipal ordinance violations bureau, as currently existing or as may be established.

(c) “Municipal civil infraction action” means a civil action in which the defendant is alleged to be responsible for a municipal civil infraction.

(d) “Municipal civil infraction citation” means a written complaint or notice prepared by an authorized city official, directing a person to appear in 63rd District Court regarding the occurrence or existence of a municipal civil infraction violation by the person cited and to answer to the allegations contained in the citation.

(e) “Municipal civil infraction determination” means a determination that a defendant is responsible for a municipal civil infraction by one of the following:

(i) 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 evidence at an informal hearing or formal hearing pursuant to Michigan Compiled Laws, Section 600.8719 or 600.8721, respectively; or

(iv) a default judgment for failing to appear as directed by a citation or other notice at a scheduled appearance pursuant to Michigan Compiled Laws Sections 600.8715(3)(b) or (4), at an informal hearing pursuant to Section 600.8719, or at a formal hearing under Section 600.8721.

(f) “Municipal civil infraction violation notice” means a written notice, prepared by an authorized city official, directing a person to appear at a municipal ordinance violations bureau now existing or hereafter established to answer to the allegations made in the municipal civil infraction violation notice and to pay the fine and costs, if any, prescribed for the violation by the schedule of civil fines adopted by the city, as authorized by state law.

(g) “State law” means the statutory law enacted by the State of Michigan, including but not limited to, the Home Rule City Act, Act 279 of the Public Acts of Michigan of 1909, as amended (Michigan Compiled Laws Section 117.1 et seq.), the Revised Judicature Act, Act 236 of the Public Acts of Michigan

of 1961, as amended (Michigan Compiled Laws Section 600.1 et seq.) and the City and Village Zoning Act, Act 207 of the Public Acts of Michigan of 1921, as amended (Michigan Compiled Laws Section 125.581 et seq.)

Sec. 27-2. Adoption and Incorporation of State Law by Reference.

As provided for in state law, the city hereby adopts and incorporates the provisions of state law enabling municipalities to adopt and enforce ordinances declared to be municipal civil infractions to the fullest extent possible.

Sec. 27-3. Commencement of Municipal Infraction Action.

A municipal civil infraction action may be commenced upon the issuance by an authorized city official of a municipal civil infraction citation directing the alleged violator to appear in 63rd District Court or a municipal civil infraction violation notice directing the alleged violator to appear at the municipal ordinance violations bureau.

Sec. 27-4. Issuance and Service of Municipal Civil Infraction Citations.

Municipal civil infraction citations shall be issued and served by authorized city 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 63rd 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 63rd District Court and copies of the citation shall be retained by the city and issued to the alleged violator as provided for in state law.

(d) A citation for a municipal civil infraction signed by an authorized city official shall be treated as if it were made under oath if the violation alleged in the citation occurred in the presence of the official signing the citation and if the citation contains the following statement 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 city official may issue a citation to a person if:

(i) based upon investigation, the official has 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 the city attorney approves in writing the issuance of the citation.

(f) Municipal civil infraction citations shall be served by an authorized city official as follows:

(1) Except as provide immediately below, an authorized city official shall personally serve a copy of the citation upon the alleged violator.

(2) If the municipal civil infraction 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 a 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.

Sec. 27-5. Contents of Municipal Civil Infraction Citations.

(a) A municipal civil infraction citation shall contain the name and address of the alleged violator, the municipal civil infraction(s) 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(s) by mail, in person or by representation, at or by the time specified for appearance.

(2) Admit responsibility for the municipal civil infraction(s) "with explanation" by mail by the time specified for appearance 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 63rd District Court judge or magistrate without the opportunity of being represented by an attorney, unless a formal hearing before a judge is requested by the city.

(B) Appearing in 63rd District 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 desires to admit responsibility “with explanation” in person or by representation, the alleged violator must apply to the 63rd District 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 63rd District 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 the hearing shall be an informal hearing unless a formal hearing is requested by the alleged violator or the city.

(4) That at an informal hearing the alleged violator must appear in person before a 63rd District Court judge or 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 63rd District Court judge and will have the opportunity of being represented by an attorney retained at his or her own expense.

(d) The citation shall contain a notice in boldfaced type stating 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.

Sec. 27.6. Municipal Ordinance Violations Bureau.

(a) Establishment. There is hereby established a municipal ordinance violations bureau, as authorized by state law, to accept responsibility for municipal civil infractions in response to municipal civil infraction violation notices issued and served by authorized city officials and to collect and retain civil fines.

(b) Location and Supervision. The bureau shall be located at city hall and be under the supervision and control of the city treasurer.

(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, and not a municipal civil infraction citation, has been issued. The fact that a fine has been scheduled for a particular violation shall not entitle a person to dispose of the violation at the bureau. Nothing in this chapter shall prevent or restrict the city from issuing a municipal civil infraction citation for any violation or from taking other action permitted by law. No person shall be required to dispose of a municipal civil infraction violation at the bureau and may have the violation processed by the 63rd District Court. The unwillingness of a person to dispose of a violation at the bureau shall not prejudice the person or in any way diminish the person's rights, privileges and protections accorded by law.

(d) Scope of Authority. The scope of the bureau's authority shall be limited to accepting admissions of responsibility for municipal civil infractions and collecting and retaining scheduled 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 related to an alleged violation.

(e) Municipal Civil Infraction Violation Notices. Municipal civil infraction violation notices shall be issued and served by authorized city officials under the same circumstances and upon the same persons as are provided for citations in this chapter. In addition to any other information required by this Code, the notice of 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 for the alleged violation and the consequences for failure to appear and pay the required fine within the required time.

(f) Appearance and Payment of Fine and Costs. An alleged violator receiving a municipal civil infraction violation notice shall appear at the bureau and pay the specified fine and costs on or before the time specified for appearance in the municipal civil infraction violation notice. An appearance may be made by mail, in person or by representation.

(g) Procedure Where Admission of Responsibility Not Made or Fine Not Paid. If an authorized city official issues and serves a municipal civil infraction violation notice and if an admission of responsibility is not made and the fine and costs prescribed by the schedule of fines set forth in this chapter are not paid for the violation at the bureau, a municipal civil infraction citation shall be filed with the 63rd District Court and a copy of the citation shall 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 state law, but shall consist of a sworn complaint containing the allegations stated in the municipal civil infraction violation notice and shall fairly inform the alleged violator how to respond to the citation.

Sec. 27-7. Schedule of Municipal Civil Infraction Fines.

(a) A schedule of civil fines payable to the bureau for admissions of responsibility served with municipal civil infraction violation notices is hereby established as follows:

(1) For violation of violations listed in section 27-8 with letters A, B, C, D, E, F, G, I, J, K, L, M, N, O and Q:

Initial offense - \$50.00
First repeat offense - \$100.00
Second or any subsequent repeat offense - \$200.00

(2) For violation of violations listed in section 27-8 with the letters H and P:

Initial offense - \$100.00
First repeat offense - \$200.00
Second or any subsequent repeat offense - \$500.00

(b) A copy of the schedule, as amended from time to time by resolution of the City Council, shall be posted at the bureau.

Sec. 27-8. Violations Constituting Municipal Civil Infractions.

A municipal civil infraction shall include the following offenses set forth in this Code:

- A. Violations of Chapter 5, "Animals," of this Code.
- B. Violations of Chapter 6, "Auctions and Auctioneers," of this Code.
- C. Violations of Chapter 7, "Buildings and Building Regulations," of this Code.
- D. Violations of Chapter 9, "Cemeteries," of this Code.
- E. Violations of Chapter 10, "Fire Prevention and Protection" of this Code except for section 10-5.

- F. Violations of Chapter 11, “Garbage, Trash and Refuse,” of this Code.
- G. Violations of Chapter 11.5, “Historic District,” of this Code.
- H. Violations of Chapter 12, “Nuisances,” of this Code.
- I. Violations of Chapter 13, “Offenses,” of this Code except sections 13-2, 13-3, 13-4, 13-21, 13-22, 13-23, 13-42, 13-43, 13-44, 13-61, 13-63, 13-64, 13-65, 13-66, 13-67, 13-68, 13-86, 13-87, 13-108, 13-133, 13-151, 13-152, 13-153, 13-154, 13-155, 13-156, 13-176, 13-177, 13-178, 13-179, 13-180, 13-196 and 13-198.
- J. Violations of Chapter 14, “Parks and Recreation,” of this Code except section 14.55.
- K. Violations of Chapter 15, “Peddlers, Solicitors and Transient Merchants,” of this Code.
- L. Violations of Chapter 19, “Streets, Sidewalks and Other Public Places,” of this Code.
- M. Violations of Chapter 21, “Traffic and Motor Vehicles,” of this Code.
- N. Violations of Chapter 23, “Vegetation,” of this Code.
- O. Violations of Chapter 24, “Vehicles for Hire,” of this Code.
- P. Violations of Chapter 25, “Water and Sewage Disposal Service,” of this Code.
- Q. Violation of Appendix A, “Zoning,” of this Code except chapter 17A.

Upon the effective date of this chapter, the offenses noted above are municipal civil infractions only and shall no longer constitute misdemeanor criminal offenses or subject the violator to any criminal sanctions, except as provided for by state law. This, however, shall not affect the sanctions provided for by state law or this chapter for a violator's or alleged violator's failure to comply with an order or judgment of the 63rd District Court nor shall this section limit or restrict the authority of the court to enforce its orders by appropriate sanctions or actions. This section shall not restrict, limit or bar any action permitted under any other provision of law.

Sec. 27-9. Miscellaneous Municipal Civil Infraction Provisions.

(a) If a person is cited as a minor, he or she shall be permitted to appear in court or to admit responsibility for a civil infraction without the necessity of the appointment of a guardian. A court having jurisdiction over a municipal civil infraction shall have jurisdiction over the minor and may proceed in the same manner as if he or she were an adult.

(b) A municipal civil infraction action is a civil action in which the defendant is alleged to be responsible for a municipal civil infraction as defined by state law and this Code. The plaintiff in a municipal civil infraction action shall be the city if the alleged civil infraction is a violation of this Code, any other city ordinance designating the violation as a municipal civil infraction or a state law designating a violation as a municipal civil infraction.

(c) Each act of violation and every day upon which any violation is permitted or suffered to exist or continue shall constitute a separate violation and shall be subject to a separate fine upon admission or determination of responsibility. The fines provided by this chapter shall apply to any amendment or addition to this chapter or to the provisions elsewhere in this Code defining a municipal civil infraction whether or not such fines are reenacted in the amendment or addition.

(d) Municipal civil infractions shall be disposed of as follows:

(1) If a defendant is determined to be responsible or responsible "with explanation" for a municipal civil infraction, the 63rd District Court judge or magistrate may order the defendant to pay a civil fine, costs as provided by law and, if applicable, damages and expenses as provided in Michigan Compiled Laws Section 600.8733(2). In the order of judgment, the judge or magistrate may grant a defendant permission to pay a civil fine, costs and damages and expenses within a specified period of time or in specified installments; otherwise the civil fine, costs and damages and expenses are due immediately.

(2) If a defendant is ordered to pay a civil fine, the judge or magistrate shall determine the costs of the action, which are not limited to the costs taxable in ordinary civil actions and may include all expenses, direct and indirect, to which the city has been put in connection with the municipal civil infraction up to the entry of a judgment, of not less than \$25.00 or more than \$500.00. Except as otherwise provided by state law, costs shall be payable to the general funds of the city.

(3) In addition to ordering the defendant to pay a civil fine, costs and damages and expenses, the judge or magistrate may issue a writ or order under Michigan Compiled Laws Section 600.8302.

(4) A judge or magistrate may impose the sanctions permitted under subsections (1) and (3) above only to the extent expressly authorized by the chief judge of the 63rd District Court.

(5) The schedule of civil costs and fines and costs to be imposed for municipal civil infractions shall be posted at city hall and readily available for public inspection. The schedule need not include all municipal civil infractions, but shall be regularly updated.

(6) A default in the payment or the payment of an installment of a civil fine, costs or damages and expenses may be collected by any means authorized for enforcement of a judgment under state law.

(7) If a defendant fails to comply with an order or judgment issued pursuant to state law within the time prescribed by the judge or magistrate, the 63rd District Court may proceed under Michigan Compiled Law Sections 600.8729, 600.8731 or 600.8733, as applicable.

(8) A defendant who fails to answer a notice to appear or citation for a municipal civil infraction is guilty of a criminal misdemeanor as provided for in state law.

(e) The following shall apply with respect to the default in the payment of fines, costs, damages and expenses:

(1) If a defendant defaults in the payment or the payment of an installment of a civil fine, costs or, if applicable, damages and expenses as provided in state law, upon the motion of the city or upon its own motion, the court 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.

(2) If a corporation, partnership, limited liability company or other entity is ordered to pay a civil fine, costs or damages and expenses, the individual authorized to make disbursement on behalf of such entity shall timely pay the fine, costs or damages and expenses and his or her failure to do so shall be civil contempt unless he or she makes the showing in subsection (3) below.

(3) Unless the defendant shows to the satisfaction of the court 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 imprisoned until all or a specific part, as determined by the court, of the amount due is paid.

(4) If it appears to the court that the default in the payment of a fine, costs or damages and expenses does not constitute civil contempt, the court may enter an order allowing the defendant additional time for payment, reducing the amount of the payment or of any installment(s), or revoking the fine, costs or damages and expenses.

(5) The term of imprisonment on civil contempt for nonpayment of a civil fine, costs or damages and expenses shall be specified in the order or commitment and shall not exceed 1 day for each \$50.00 due. A person imprisoned for nonpayment of a civil fine, costs or damages and expenses shall be given credit toward payment for each day of imprisonment at the rate of \$50.00 per day.

(6) A defendant committed to imprisonment for civil contempt for nonpayment of a civil fine, costs, or damages and expenses shall not be released from custody until one of the following occurs:

(A) the defendant is credited with the amount due pursuant to subsection (5) above;

(B) the amount due is collected through execution of process or otherwise; or

(C) The amount due is satisfied pursuant to a combination of (A) and (B) above.

(7) The civil contempt shall be purged by the court upon satisfaction of subsection (6) above.

Section 3. Publication. After its adoption, the City Clerk shall publish this ordinance, or a summary thereof, as permitted by law, along with the date of its adoption in the *Lowell Ledger*, a newspaper of general circulation in the City at least ten (10) days before its effective date.

Section 4. Effective Date. This ordinance shall take effect on March 1, 2009, after it or a summary thereof, as permitted by law, along with the date of its adoption, is published as provided in Section 2 above.

YEAS: Councilmembers Altoft, Ellison, LaPonsie, Pfaller and Mayor Hodges.

NAYS: Councilmembers none.

ABSTAIN: Councilmembers none.

ABSENT: Councilmembers none.

ORDINANCE DECLARED ADOPTED.

Dated: January 20, 2009

Betty R. Morlock
City Clerk

CERTIFICATION

I, the undersigned City Clerk of the City of Lowell, Michigan, certify that the above ordinance is a true and complete copy of an ordinance adopted at a regular meeting of the Lowell City Council held January 20, 2009, pursuant to notice given in compliance with Act 267 of the Public Acts of Michigan of 1976, as amended, and notice of its adoption, including the full ordinance or a summary of its contents, was published in the *Lowell Ledger* on January 28, 2009. I further certify that the above ordinance was entered into the Ordinance Book of the City on January 20, 2009, and was effective March 1, 2009, at least ten (10) days after its publication.

Dated: January 20, 2009

Betty R. Morlock
City Clerk