

Torch Lake Township

Municipal Civil Infraction Ordinance

Ordinance No. 2016-02

An ordinance providing for municipal civil infractions of certain township ordinances and penalties pursuant thereto; establishing procedures relating thereto; authorization of which township officials can issue civil infractions tickets and appearance tickets; penalties; and procedures relating to such matters.

Section 1. Title

This ordinance shall be known as the “Torch lake Township Municipal Civil Infraction Ordinance.”

Section 2. Definitions

- **Act** No. 236 of the Public Acts of 1961, as amended, and Public Acts 12-26 of 1994, as amended.
- **Authorized Township Official** A township official, Ordinance Enforcement Officer or other personnel or agent of the township authorized by this ordinance or any ordinance to issue municipal civil infraction citations.
- **Municipal Civil Infraction Action** A civil action in which the defendant is alleged to be responsible for a municipal civil infraction.
- **Municipal Civil Infraction Citation** A written complaint or notice prepared by and authorized township official, directing a person to appear in court regarding the occurrence or existence of a municipal civil infraction violation by the person cited.
- **Township** Torch Lake Township

Section 3: Municipal Civil Infraction Action: Commencement

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

Section 4: 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 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 that has jurisdiction over Torch Lake Township.
- 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 Section 8705 of 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 and if the citation contains the following statement immediately above the date and signature to 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:
 - a) Based upon investigation, the official has reasonable cause to believe that the person is responsible for a municipal civil infraction; or
 - b) 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 infractions shall be served by an authorized township official as follows:
 - a) Except for parking and zoning ordinance violations, an authorized township official shall personally serve a copy of the citation to the alleged violator. Parking violations may be personally served to the alleged violator or may be attached to the vehicle or trailer. All citations sent to the court will have an attached report from the

township official who issued the citation that may include pictures, name and contact information of witnesses, or any other pertinent information.

- b) 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 a 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.

Section 5: Municipal Civil Infraction Citations; Contents

- A. A municipal ordinance 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:
 - a) Admit responsibility for the municipal civil infraction by mail, in person, or by representation, at or by the time specified for appearance.
 - b) Admit responsibility for the municipal civil infraction "with explanation" by mail by the time specified for appearance or, in person, or by representation.
 - c) Deny responsibility for the municipal civil infraction by doing either of the following:
 - 1. 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.
 - 2. 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:

- 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.
- 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.

Section 6. General Penalties and Sanctions for Violations of Township Ordinances; Continuing Violations; Injunctive Relief

- A. Unless a violation of an ordinance of the Township of Torch Lake is specifically designated in the ordinance as a municipal civil infraction, the violation shall be deemed to be a criminal misdemeanor.
- B. The sanction for a violation which is a municipal civil infraction shall be a civil fine in the amount as provided by the ordinances involved, 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, Public Acts 12-26 of 1994, as amended, and other applicable laws.
 - a) Unless otherwise specifically provided for a particular municipal civil infraction violation by an ordinance (or if the ordinance involved is silent, as set by the Township Board by resolution), the civil fine for a municipal civil infraction violation shall be not less than \$100.00, plus costs and other sanctions, for each infraction.
 - b) Increased civil fines may be imposed for repeated violations by a person of any requirement or provision of an ordinance. As used in this

Ordinance, “repeat offense” means a second (or any subsequent) municipal civil infraction violation of the same requirement or ordinance (i) committed by a person within any twelve (12) month period (unless some other period is specifically provided by an Ordinance) and (ii) for which the person admits responsibility or is determined to be responsible. Unless otherwise specifically provided by an ordinance for a particular municipal civil infraction violation, the increased fine for a repeat offense shall be as follows:

1. The fine for any offense which is a first repeat offense shall be not less than \$100, plus costs.
 2. The fine for any offense which is a second repeat offense or any subsequent repeat offense shall be not less than \$200, plus costs.
- C. A “violation” includes any act which is prohibited or made or declared to be unlawful or an offense by an ordinance, and any omission or failure to act where the act is required by an ordinance.
- D. Each day on which any violation of an ordinance continues constitutes a separate offense and shall be subject to penalties or sanctions as a separate offense.
- E. 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 any Township ordinance.

Section 7: Authorized Persons-Civil Infractions Tickets

Unless prohibited by state law or unless otherwise provided by specific provisions of a particular Torch Lake Township ordinance to the contrary, the following officials are hereby designated as the authorized Township officials to issue and serve municipal civil infraction citations for violations of Township Ordinances which provide for a municipal civil infraction for a violation thereof:

The Supervisor

The Township Zoning Administrator

The Township Fire Chief

The Township Emergency Services Director

A Township Ordinance Enforcement Officer

The Township Treasurer

Section 8: Applicability of the Act

If this Ordinance is silent as to given procedural requirements or in any way conflicts with the Act, the Act shall govern.

Section 9: 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 10: Effective Date

This Ordinance shall become effective thirty (30) days after its publication (or publication of a summary thereof) in a newspaper in general circulation within Torch Lake Township.

This Ordinance was offered for adoption by Township Board Member Charles Goossen and was seconded by Township Board Member Alan Martel, the roll call vote being as follows:

- 1. Amos 2. Goossen 3. Schultz 4. Windiate 5. Martel

Total: 5Yeas 0 Nays Motion: Passed

ABSENT/ABSTAIN: None

ORDINANCE DECLARED ADOPTED.

Kathy S. Windiate

Township Clerk

CERTIFICATION

I hereby certify that the above is a true copy of an ordinance adopted by the Torch Lake Township Board at a regular meeting held at the Torch Lake Township Hall on July 19, 2016, at 7:00 p.m., pursuant to the required statutory notice and procedures.