

Village of Estral Beach

ORDINANCE NO. 1057A

MUNICIPAL CIVIL INFRACTIONS

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

THE VILLAGE OF ESTRAL BEACH, MONROE COUNTY, MICHIGAN, ORDAINS:

Section 1. Definitions.

As used in this Chapter:

- 1.1 "Act" means Act No. 236 of the Public Acts of 1961, as amended, and Public Acts 1226 of 1994, as amended.
- 1.2 "Authorized Village official" means a Village official, police officer or other personnel or agent of the Village authorized by this Ordinance or any ordinance to issue municipal civil infraction citations.
- 1.3 "Municipal civil infraction" means an act or omission that is prohibited by Ordinance of the Village, but which is not a crime under this Ordinance or other Ordinances of the Village, 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 included offense of any violation of the Ordinances of the Village, which is a criminal offense.
- 1.4 "Municipal civil infraction action" means a civil action in which the defendant is alleged to be responsible for a municipal civil infraction.
- 1.5 "Municipal civil infraction citation" means a written complaint or notice prepared by an authorized Village official, directing a person to appear in court regarding the occurrence or existence of a municipal civil infraction violation by the person cited.
- 1.6 "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 the evidence at an informal hearing or formal hearing; or (iv) a default judgment for failing to appear as directed by citation or other notice.
- 1.7 "Village" means the Village of Estral Beach.

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Section 2. Municipal Civil Infraction Action; Commencement

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

Section 3. Municipal Civil Infraction Citations; Issuance and Service

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

- 3.1 The time for appearance specified in a citation shall be within a reasonable time after the citation is issued.
- 3.2 The place for appearance specified in a citation shall be the 1st District Court that has jurisdiction over Village 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 Monroe County Probate Court.
- 3.3 Each citation shall be numbered consecutively, shall be in the form approved by the state court administrator and shall consist of the following parts:
 - A. The original, which is a complaint and notice to appear, shall be filed with the 1st District Court;
 - B. The first copy shall be retained by the Village and/or the ordinance enforcing agency;
 - C. The second copy shall be issued to the alleged violator if the violation is a municipal civil infraction;
 - D. The third copy shall be issued to the alleged violator if the violation is a misdemeanor.
- 3.4 A citation for a municipal civil infraction signed by an authorized Village 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."
- 3.5 An authorized Village 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.

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- 3.6 An authorized Village 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 Village attorney approves in writing the issuance of the citation.
- 3.7 Municipal civil infraction citations shall be served by an authorized Village official as follows:
- A. Except as otherwise provided below, an authorized Village official shall personally serve a copy of the citation upon the alleged violator.
 - B. 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

- 4.1 A municipal civil infraction citation shall contain the name of the Village 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.
- 4.2 A municipal civil infraction 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.

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- 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 Village.
 - ii. Appearing in court for a formal hearing before a judge, with the opportunity of being represented by an attorney.
- 4.3 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 Village.
 - 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.
- 4.4 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.

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Section 5. Penalties and Sanctions for Violations of Village Ordinances; Continuing Violations, Injunctive Relief

- 5.1 Unless a violation of an ordinance of the Village of Estral Beach is specifically designated in the ordinance as a misdemeanor, the violation shall be deemed to be a municipal civil infraction.
- 5.2 Unless a different schedule of civil fines is provided for by an applicable ordinance, the civil fines payable upon admissions of responsibility by persons served with municipal ordinance violation notices shall be determined pursuant to the following schedule and on the basis of the of the date of the violation(s):
- | | |
|--|-------|
| First violation | \$100 |
| Second violation within a 3-year period | \$250 |
| Third or subsequent violation within a 3-year period | \$500 |
- 5.3 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.
- 5.4 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.
- 5.5 In addition to any remedies available at law, the Village may bring an action for an injunction or other process against a person to restrain, prevent or abate any violation of any Village ordinance.

Section 6. Authorized Persons-Civil Infractions Tickets

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

- The Village building official/inspector
- The Monroe County Sheriff and all other deputy county sheriffs of said county
- The Village President
- The Village ordinance and/or zoning enforcement officer (e.g., Council)

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- Any certified officers of a private company or companies contracted with the Village for enforcement purposes.
- Village Fire Chief.

Section 7. 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 8. 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 9. Administrative Liability.

No officer, agent, or employee of the Village or member of the Village Council 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.

Section 10. Repeal.

10.1 In the event of conflict between those regulations stipulated in other Village ordinances, those regulations found in this Ordinance shall take precedent.

10.2 This ordinance repeals Ordinance 1057 in its entirety.

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Section 11. Effective Date.

This ordinance shall take effect 30 days after the publication of this ordinance. All ordinances or parts of ordinances in conflict with any of the provisions of this ordinance are hereby repealed.

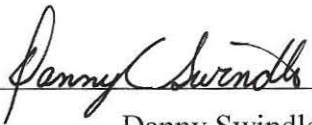
Ordinance declared adopted on November 12, 2019

YEAS: (3) Debby Dare, Greg Knierim, Chris Mulligan

NAYS: (1) Jim Wiegand

ABSENT: (2) Adam Younglove, Jennifer Metcalf

Ordinance declared adopted on November 12, 2019.



Danny Swindle
President, Village of Estral Beach

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CERTIFICATION OF ADOPTION AND PUBLICATION

I, Carol Vandercook, the duly elected Village Clerk, certify that the foregoing ordinance was properly enacted by the Village Council of the Village of Estral Beach, Monroe County, Michigan on October 29, 2019 and that it was published in the Monroe Evening News on November 12, 2019.

Carol A. Vandercook

Carol Vandercook

Village Clerk

AFFIDAVIT OF PUBLICATION

STATE OF MICHIGAN
COUNTY OF MONROE

SS

NOTICE VILLAGE OF
ESTRAL BEACH

The Village of Estral Beach revised ordinances 1057 "Municipal Civil Infractions" and 1052, "Flood Control Device Ordinance". These ordinances can be viewed in full at the Village Hall by appointment with the Village Clerk at 586-8380.
November 20, 2019

Patricia O'Brien being first duly sworn, says that she is the Principal Clerk of The Monroe News, a newspaper published in the English language for the dissemination of local or transmitted news and intelligence of a general character and legal news and which is a duly qualified newspaper, published and circulated in the County of Monroe. The annexed notice is a printed copy contained in said newspaper, and has been duly published in said newspaper for one insertions, and that the first publication thereof was on the 20th day of November A.D. 2019 and the last publication thereof was on the 20th day of November A.D. 2019.

P. O'Brien

Sworn to and subscribed before me this 3rd day of December
A.D. 2019.

JANET LATONDRESS

Notary Public, Monroe County, Mich.

NOTARY PUBLIC - STATE OF MICHIGAN

COUNTY OF MONROE

My Commission Expires January 25, 2025

Acting in the County of _____