

## **ORDINANCE # 358**

AN ORDINANCE NAMING CERTAIN OFFENSES AS CIVIL INFRACTIONS AND PROVIDING FOR PROCEDURE AND PUNISHMENT FOR SAID CIVIL INFRACTIONS.

THE CITY OF NILES ORDAINS:

Section 1. Definitions.

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

“Authorized city official” means a police officer or other personnel of the City authorized by this Code or any ordinance to issue municipal civil infraction citations or municipal civil infraction violation notices.

“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 violation notice” means a written notice prepared by an authorized City official, directing a person to appear in District Court and to pay the fine and costs, if any, prescribed for the violation by the schedule of civil fines under Section 5 as authorized under Sections 8396 and 8707(6) of the Act.

“Municipal Civil Infraction” shall include the following offenses set forth in the City of Niles Code of Ordinances as follows:

- A. Posting of bills, notices, advertisements; Section 15-57
- B. Rummage sales; Sections 22-47 through 22-65
- C. Numbering of Buildings; Section 6-318 through 6-326
- D. Accumulation of junk, trash, vehicles, etc., Section 10-32 through 10-40
- E. Rat control; Section 20-1 through 20-14
- F. Burning; Sections 9-30 through 9-35
- G. Obstructing free, uninterrupted passage of others; Section 15-77
- H. Obstructions prohibited; Section 25-1

Upon enactment of this Ordinance, said civil infraction offenses shall no longer constitute misdemeanor criminal offenses.

Section 2. Municipal civil infraction action; commencement.

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 District Court.

Section 3. Municipal civil infraction citations; issuance and service.

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 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. Copies of the citation shall be retained by the City 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 City 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 City 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 City 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 commit 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 City Attorney approves in writing the issuance of the citation.
- G. Municipal civil infraction citations shall be served by an authorized City official as follows:
  - 1. Except as provided by Section 3(G)(2), an authorized City 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 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 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 4. Municipal civil infraction citations; contents.

- A. A municipal civil infraction 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:
  - 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 by the time specified for appearance or, 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 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 City.
  - (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:
- 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 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 a 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 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 or District Court Magistrate, without 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 5. Penalties and sanctions continuing violations; injunctive relief.

- A. Unless a violation of this Code or any ordinance of the city is specifically designated in the Code or ordinance as a municipal civil infraction, the violation shall be deemed to be a misdemeanor.
- B. The penalty for a misdemeanor violation shall be a fine not exceeding \$500.00 (plus costs of prosecution), or imprisonment not exceeding 90 days, or both, unless a specific penalty is otherwise provided for the violation by this Code or any ordinance.
- C. The sanction for a violation which is a municipal civil infraction shall be a civil fine in the amount as provided by this Code or any ordinance, 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 this Code or any 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 this Code or any 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 6 month period (unless some other period is specifically provided by this Code or any ordinance) and (ii) for which the person admits responsibility or is

determined to be responsible. Unless otherwise specifically provided by this Code or any 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.

D. A “violation” includes any act which is prohibited or made or declared to be unlawful or an offense by this Code or any ordinance; any omission or failure to act whether the act is required by this Code or any ordinance.

E. Each day on which any violation of this Code or any ordinance continues constitutes a separate offense and shall be subject to penalties or sanctions as a separate offense.

F. In addition to any remedies available at law, the city may bring an action for an injunction or other process against a person to restrain, prevent or abate any violation of this Code or any city ordinance.

Section 6. 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 effected thereby.

### ***Section 7. Effective Date***

This Ordinance shall take effective twenty (20) days after its enactment.

Proposed by Councilmember Michael McCauslin

Supported by Councilmember Joseph Arnold

Roll Call: Ayes: Patricia Gallagher, Michael McCauslin, Joseph Arnold, Robert Knoll,  
James Wegner, Penny Brazo, Scott Gray

Nays: NONE

Abstain: NONE

Absent: NONE

**ORDINANCE DECLARED ENACTED.**

The foregoing Ordinance was enacted by the City Council of the City of Niles, State of Michigan, on the 23<sup>rd</sup> day of January, 1995, and approved by its Mayor and Clerk on said date.

## **CITY OF NILES**

By: Daniel D. Eycleshymer

and Ruth Harte, Clerk