

**Whitewater Township Board  
Minutes of Regular Meeting held February 13, 2018**

**Call to Order/Pledge of Allegiance**

Supervisor Popp called the meeting to order at 7:02 p.m. at the Whitewater Township Hall, 5777 Vinton Road, Williamsburg, Michigan, followed by the Pledge of Allegiance.

**Roll Call of Board Members**

Board Members present: Benak, Goss, Lawson, Popp

Board Members absent: Hubbell

Others present: Zoning Administrator Dennis Habedank, County Commissioner Carol Crawford, County Road Commissioner Marc McKellar, and approximately 17 others

**Set/Adjust Meeting Agenda**

There were no adjustments.

**Declaration of Conflict of Interest**

None

**Public Comment**

Mike Jacobson, Skegemog Point Road, stated ever since the beginning of Battle Creek Natural Area he has tried to explain to the township that the creek is not called Battle Creek; it is Bottle Creek. In legal land descriptions, it is called Bottle Creek. If it is Bottle Creek in the legal land description, we can surmise that is the legal name of that creek. The natural area is named after a creek that does not exist. If the name of the natural area remains Battle Creek, does that mean we have changed the name of that creek? In the early 1960's, the DNR came and started changing the names of things. Round Lake is no longer called Round Lake. He states he never heard the swamp trail called Lossie Road Trail. His grandfather grew up on the trail. People from Elk Rapids will tell you it was called the swamp trail. The name Battle Creek is a typographical error on a map. He would appreciate it if someone would take a serious look at it and see what we can do to correct it. It is a bit of our heritage and history.

Judith Danford, 1139 NW Silver Lake Road, Traverse City, property owner in Whitewater Township, stated she has been remiss in not providing Goss with a letter about a parcel of land that was deeded to the township by her parents which sits at the corner of Vinton Road and Old M-72. The intent for the gifting of the parcel was for schoolchildren to go there on field trips. It has wetlands, a variety of vegetation, and bird wildlife. She has talked with the people at Mill Creek and they are interested in using the parcel. She is hoping for some type of coordination between the two entities to allow for that. She previously provided Goss with a copy of the quit claim deed. Also, when the board decides on Bottle Creek or Battle Creek, let her know because the headwaters are on their farm.

**Public Hearing – Proposed Adoption of Municipal Civil Infraction Ordinance**

Popp opened the public hearing with the following comments:

- The public hearing on the proposed adoption of Whitewater Township General Ordinance No. 51, Municipal Civil Infraction Ordinance, is open at 7:09 p.m.

- Everyone should sign in.
- Notice of the hearing was posted in the Traverse City Record-Eagle on Sunday, 01/28/2018.
- Written comments were received from MaryLou Baggs, Kim Mangus, Tom McElwee, and Judith Danford.
- For oral comments, come to the podium and state your name and address for the record.

Public comment:

- Mark Bak, 4211 Broomhead Road, thanked the board for looking after the affairs of the township, also thanked MaryLou Baggs and Kim Mangus who he knows through the e-mail he received from the township. He offered various comments in opposition to the ordinance, including that the words “alleged violator” are sprinkled through the document, terminology is loosely worded, no opportunity to be represented at an informal hearing, each day is a separate violation, this will drive a wedge between people.
- Martine Byrne, 766 East South Airport Road, Traverse City, owner of property on which her son placed a shed, recited how she became aware that there was a problem with the shed. Stated she does not have any notice of any legal action taken, zoning administrator wants to be able to issue a ticket, fines would be well over \$100,000 to today or I go to jail for 90 days. Would like due process to remain in place.
- Glenn Frantz, 633 Armstrong Road, Kalkaska, stated MaryLou Baggs is his mother-in-law. He posed several questions and stated the board should do their due diligence, citing the Fourth Amendment of the U.S. Constitution and the Magna Carta.
- Judith Danford, 1139 NW Silver Lake Road, Traverse City, owner of property on Broomhead and Hursh Roads, provided a 3-page writing, made various comments in opposition and asked the board to reconsider the document.
- Rod Challenger, 3811 Broomhead Road, stated he has lived in the township for 36 years, he is totally against Ordinance 51, it is not good for the people.
- Jim Wilson, 9184 Whitney Road, stated he has lived here since 1969, was on the fire and rescue for a few years. Asked about a police power ordinance and whether the township lawyer has looked at it. Hopes the board does not pass it.
- Ted Hooper, 6575 Cook Road, former zoning administrator for Whitewater Township, stated zoning is a necessary evil for us to get along with our neighbors. Difference here is two ways to enforce the law. Process starts with a letter, not with a court case and fines. Does not see this as a way that the zoning administrator is going to look for violations all over the township; just a way for him to do his job.
- Steve Mangus, 1214 Cerro, stated he is against the adoption; he contacted his attorney and asked him what it is about. Are we going to have a system that is traditionally constitutional, or are we going to supersede that? Mangus provided the board with a 3-page document and read it aloud.
- Don Pishney, 7855 Pinedale Drive, Acme, stated he owns Classic Power Equipment and has done business here for about 25 years. Detailed how he was sued by the township for zoning for outside display a number of years ago. Pointed out past overzealous enforcement of the zoning ordinance. Questioned who will be here 5 years from now, who will be interpreting this. Stated the board needs to do a better job of defining what they want to do, and applauds the due process of law from the criminal side.

- Mike Jacobson, Skegemog Point Road, stated the ordinance is way too strict, taking away some of our rights, questioned whether it is constitutional, putting the government heavy handed. Provided numerous other comments in opposition to the ordinance, including that at the very least a lot more deliberation has to be made on this thing. If left intact and the wrong person gets hold of it, a lot of people are going to get hurt.
- Kim Mangus, 1214 Cerro Drive, stated she appreciates the board making a commitment to take every general ordinance to a public hearing, stated she is not in favor of the civil infraction ordinance. She suggested going through our ordinances first, schedule a town hall style meeting, then a survey or a vote of the public. All steps should happen between April and August. The township doesn't have a manual of steps to be taken by the zoning administrator.
- Annette Nesky, 7337 Skegemog Point Road, stated this is not the ordinance that needs to be in place; it needs a public vote, send out a survey, give a deadline. It is unfair for the board to be the only ones to decide how this goes down. Stated she does not want the ordinance to pass the way it is.
- MaryLou Baggs (via e-mail read aloud by Goss) stated she was blown away on hearing of the new ordinance proposal, wants the board to wait until all residents are present, objects to the township issuing tickets, very underhanded, no legal right to undermine constitutional heritage and protection, calls it betrayal.

With no one else expressing a desire to comment, Popp declared the public hearing closed at 8:23 p.m.

### **Reports/Presentations/Announcements/Comments**

#### **County Board of Commissioners Report**

Carol Crawford gave the following report:

- Stated she likes to see public participation and doesn't mind waiting.
- BOC is again looking for a new administrator. Most recent former administrator had family emergencies and had to leave very quickly. They have started the process again with the same search firm. The process has changed a little bit; commissioners will have more input; public will have a chance to meet the final few candidates. They hope to get a new administrator by the end of May.
- Jean Derenzy will be leaving as of 2/28. Nate Alger and Chris Forsyth, along with Dean Bott, will share the duties of the administration until they get a new administrator.
- Talked about Animal Control last week. Will talk about a millage again in May once they get some numbers.
- Commissioner pay is back in for the next term.
- Approved the Commission on Aging COAST bus in cooperation with BATA for the rest of the year at three days of the week.

Staffing changes were briefly discussed.

#### **County Road Commissioner Report**

Marc McKellar gave the following report:

- Phil Masserant is their new finance director as of three weeks ago.

- There will be an invitation for attendance as a local area of government stakeholder in the east-west corridor program. They are in a 12-month study right now. It should be done by the end of December. Out of that will come suggestions from an engineering group regarding the best solutions for an east-west corridor. They hope to get something done within the next 4-5 years.
- McKellar was contacted by a township resident on Elk Lake Road who is getting a lot of RVs in his driveway because they have missed the entrance to the park going north, starting to become pretty problematic and dangerous when they back out onto the road and they are damaging his yard. McKellar reported they have checked on the sign. The sign is owned by the township. They will ask the township to consider a larger sign with larger letters. The existing sign is close to the recommendation as far as location and proximity to Park Road. The township will have to pay for the sign. Road Commission does the installation. If the township does not want to pay for a larger sign, it will be left as is. The estimated cost is \$2,500.
- McKellar provided further information concerning the possibility of an east-west corridor.

**Mobile Medical Response Report** – No one is present from Mobile Medical Response.

### **Planning Commission Report**

Lloyd Lawson gave the following report:

- PC had their meeting on 2/7, had a public hearing with great public involvement. They moved forward to the board the results of the public hearing regarding Whitewater Pines subdivision. Most people assumed condominiums were going in but were told there would be people buying individual lots and building houses. Everybody was pretty much for it.
- Started talking about accessory dwellings and how to define them. Options were lot coverage, square foot ratios, time of rental, percentage of the larger building or the dwelling versus the accessory dwelling.
- They decided to have an extra meeting on 2/21 from 6:00 to 8:00 p.m.

### **Parks & Recreation Advisory Committee Report**

Goss reported she was not able to attend last night's committee meeting but provided them with some requested information and asked them to finalize their budget requests.

### **Grand Traverse Rural Fire Department**

Popp stated there has been no other Grand Traverse Rural Fire Department meeting since the last one; nothing to report.

### **Consent Calendar**

Receive and File

1. Supervisor's Report for February 2018
2. Clerk/Park & Recreation Administrator's Report for January/February 2018
3. Zoning Administrator Yearly Report 2017
4. Mobile Medical Response January 2018 Activity Reports
5. Approved 12/11/2017 Parks & Recreation Advisory Committee Minutes

6. Approved 12/13/2017 Fire Department Subcommittee Minutes
7. Approved 12/21/2017 Zoning Board of Appeals Minutes
8. Approved 01/03/2018 Planning Commission Minutes

#### Correspondence

1. Grand Traverse County Sheriff Department Statistics for January 2018
2. Grand Traverse Rural Fire Board DRAFT Minutes of 01/17/2018 Regular Meeting
3. GTRFD Officers' Meeting Minutes (not available)

#### Minutes

1. Recommend approval of 01/09/2018 and 01/23/2018 regular meeting minutes

#### Bills for Approval

1. Approval of Alden State Bank vouchers # 42369 through 42455
2. Approval of First Community Bank Miami Beach voucher # (none)
3. Approval of First Community Bank WMDLS voucher # (none)

Budget Amendments (none)

Revenue & Expenditure Report (in next Budget Work Session packet)

**Motion by Goss to approve Consent Calendar items as presented; second by Benak.** There was no further discussion. **Roll call vote: Benak, yes; Goss, yes; Hubbell, absent; Lawson, yes; Popp, yes. Motion carried.**

#### Unfinished Business

##### **Establishment of Whitewater Township Fire Department**

##### **a. Review/Approve Proposed Ordinance Establishing Department/Set Public Hearing**

Popp noted that the township board has opted to bring all ordinances in front of the public in a public hearing, even if they are non-controversial, in order to provide clarity and openness. The Rural Fire system is breaking up. The final draft of the ordinance is in front of the board tonight.

Goss consulted the township attorney to get questions answered concerning the ordinance. Under Section 2, Coverage Area, the township attorney confirmed that "other jurisdictions" does apply to the tribal status property within the township; hence, a contract for fire service will need to be in place in order to provide service there, and there will need to be discussion of cost recovery. Attorney Patterson suggested that the township's first step might be to contact the Governor's office tribal liaison.

Under Section 4, Organization, Chain of Command, the position of Safety Officer was eliminated by the attorney's office, but they have advised that it can be added back in. Goss would suggest it be added back in under "Fire Lieutenants."

Under Section 7, Fire Chief Duties, specifically Section 7b, Duties, paragraph 4, Goss suggested, per her discussion with Attorney Patterson, that the first sentence be changed to

read, “As needed, the Fire Chief shall notify the Township Board of major problems or issues that arise.” The remainder of the paragraph would remain unchanged except that the words “and the ratification by” would be removed in the last sentence.

Goss also spoke to Attorney Patterson regarding contents of the personnel files in her office and in the chief’s office. Patterson will provide a list of items for each file.

Under Section 12, Compensation, second sentence, language indicating that time records shall be submitted “to the Township Board for payment by the Fire Chief” should be changed to read “to the Township Clerk for payment.”

Under Section 17, Donations; Firefighters Association, Goss confirmed with Patterson that the Whitewater Emergency Services Auxiliary can also be listed in the ordinance (in addition to the statement referring to “The Whitewater Township Firefighters Association”).

Popp commented that he is disappointed that he wasted all of his time with the Fire Department Subcommittee and he apologized to the first responders who took time off of their paying jobs to help write the ordinance, only to have it thrown essentially completely away.

Goss pointed out that she wishes the board would have thought through the ordinance-writing process a little closer. The board should have asked Patterson’s office to draw up the ordinance from the very beginning. The 10/10/2017 minutes show that Shugart and other responders had already started working on the MTA sample ordinance, apparently at Popp’s direction. The Fire Department Subcommittee met for the first time on November 15. Goss, too, apologized to the firefighters.

Discussion followed. There was no objection to any of Goss’s proposed changes. With regard to Section 17, Benak stated the auxiliary’s name does not need to be listed.

There was consensus that the proposed ordinance establishing the Whitewater Township Fire Department will be set for public hearing at the March 13, 2018, regular meeting.

**b. Affirm 01/23/2018 Motion re: Apparatus and Equipment**

Popp restated the previous offer of \$300,000 to Rural Fire in exchange for possession of the apparatus and equipment on the Metropolitan Appraisal lists, plus 1/3 of the residual equipment located in Kingsley. Benak added that Popp was authorized to offer up to \$350,000. Popp provided details of an offer from Long Lake Township to sell an engine and tanker to Whitewater. Lt. Nick Carpenter provided some details regarding equipment repairs before Chief Weber’s departure, and added that the engine and tanker Long Lake is selling are nearly identical to what we have now. He noted another item to consider is possibly replacing the tanker with something that has a pump unit, in order to have a backup pump. Goss noted it is pretty late in the game to be making a lot of big changes in equipment. Popp stated he will go ahead with what was discussed at our last meeting and is recorded in the minutes.

**c. Approve Job Descriptions/Wages for Fire Chief Consultant, Deputy Fire Chief Consultant, and Fire Captain Consultant**

Popp explained the reason these job positions were created. Goss noted a couple corrections that should be made, i.e., the wording under the heading Salary should be the same for all three descriptions; fix a typographical error in paragraph 3 of the Specific Duties and Responsibilities for Fire Captain (“to the Consultant Fire Chief”); and switch the job titles of the Captain and Deputy Chief job descriptions. It is intended that the captain does the training and the deputy chief oversees the equipment.

**Motion by Popp to approve the Fire Chief Consultant, Deputy Fire Chief Consultant, and Fire Captain Consultant job descriptions as amended; second by Lawson. There was no further discussion. On voice vote, all those present voted in favor, none opposed, Hubbell absent. Motion carried.**

Discussion followed with respect to wages. The Fire Department Subcommittee recommended \$18 per hour for each position.

Goss noted that she has a question about appointing an acting fire chief, if Arbenowske is willing. The Application for Fire Department ID calls for a fire chief signature.

**Motion to change the Fire Chief Consultant, Deputy Fire Chief Consultant, and Fire Captain Consultant job description titles to read as Interim Fire Chief, Interim Deputy Fire Chief, and Interim Fire Captain; second by Goss. Brief discussion followed. On voice vote, all those present voted in favor, none opposed, Hubbell absent. Motion carried.**

Wages were discussed. The Salary/Wage Schedule will be amended to reflect the new job titles. **Motion to accept the wages as written at \$18 an hour for Interim Fire Chief, Interim Deputy Fire Chief, and Interim Fire Captain on the Salary/Wage Schedule 2017/2018 document; second by Benak.** The motion was re-read. There was no further discussion. **Roll call vote: Goss, yes; Hubbell, absent; Lawson, yes; Popp, yes; Benak, yes. Motion carried.**

**Review Zoning Ordinance Amendment No. 73**

Planning Commission Chair Mangus is present.

Issues raised with the amendment text include:

- Under Section 7.10, Permitted Uses, referring to the language “two-family dwellings either attached or detached structures,” Popp stated he is not in favor of two detached structures on the same lot. Mangus countered that they should still be connected on the same septic and well. Popp is okay with it if the word “detached” is taken out.
- Popp stated the home occupation has been eliminated from those zoning districts. Is it still a use by right and covered some other place? Mangus stated they were eliminated because they are already listed as permitted uses in R1, and the first statement is that you can do everything you can do in R1.

- Goss inquired about the definition of “farming of all types” under Section 7.10 and lot sizes in R2. Mangus stated they wanted to refer to the standards for farming in Article 37. Lot sizes vary from 20,000 square feet to 10 or 15 acres. Most people would not be able to have large animals. Popp brought up the issue of cash crops.
- Mangus explained that Article 14, Waterfront Property, was expanded to include language from Article 6 regarding the Boardman River Valley in an attempt to have one place for all waterfront standards. There were some alterations to the Boardman River Valley standards.
- Benak inquired about the movement of Section 6.13 language prohibiting cutting of existing trees and shrubs in the Boardman River managed vegetative strip into Section 14.11B. Mangus stated the items covered in that paragraph have been covered under B, although it is not word for word.
- Referring to the same section, Popp inquired if the township has the authority to remove some of the protections of the Natural Rivers Act. It was noted that this act has been repealed. Any variance from the standards imposed would require permission from the Zoning Board of Appeals.
- Benak inquired about Section 37.60(2), which says, “No fence may be erected between a residence or a business and waterfront of a size or material that obstructs a clear view to the waterfront from an abutting lot of an existing riparian lot owner.” Mangus said the proposed ordinance says that you will not obstruct the view of a fellow riparian waterfront owner; it is meant to replace the line that says you can’t have fences. Benak countered that they do not own the view; if we don’t own the view, how can we put it in an ordinance that you can’t obstruct the view? Mangus replied that they were trying to alter it so that you could have a fence in front of the water. Mangus further noted that fences are not structures, according to the ordinance. Benak stated she does not agree with this; fences make good neighbors. Discussion followed.

The following existing fence standards are also proposed to be eliminated:

“3. Fences shall not exceed a height of 6 feet.”

“4. Prohibited fences include barbed wire, electric charges, or fences with sharp materials located on top.”

Lengthy discussion ensued concerning fences, including pro and con on the 6-foot requirement, whether to require a land use permit, whether to charge for the land use permit.

There was consensus that the fence standards should be moved out of Article III and into Article 37, keep the standards as written, and add a requirement of a land use permit at no charge.

Returning to the “detached” language in Section 7.10B, Goss and Popp prefer to remove the language “either attached or detached structures.” Lawson argued that they are everywhere in the township and county-wide, apartments over garages, bonus rooms, which will eliminate that. Benak pointed out that we are not eliminating anything that is not already there. Mangus stated they are not prohibited, they are not permitted, it is not specified.

Modifications to the amendment were briefly discussed, but Mangus volunteered that it is just as easy for the planning commission to bring it all back to the board, following another public hearing.

It was agreed that Zoning Ordinance Amendment No. 73 will be sent back to the planning commission.

### **New Business**

**Appoint Fire Chief Consultant, Deputy Fire Chief Consultant, and Captain Consultant** (see Page 3067 of these minutes for approval of job title changes to Interim Fire Chief, Interim Deputy Fire Chief, and Interim Fire Captain)

Lt. Carpenter advised that it has not been decided yet who will fill the captain position.

**Motion by Popp to appoint Interim Fire Chief Tim Arbenowske and Interim Deputy Fire Chief Nicholas Carpenter; second by Goss.** There was no further discussion. **Roll call vote: Hubbell, absent; Lawson, yes; Popp, yes; Benak, yes; Goss, yes. Motion carried.**

### **Authorize Supervisor/Clerk/Fire Chief Consultant to Apply for Fire Department ID Number and Execute Other Startup Documents**

Popp stated there are documents to execute, i.e, the application for fire department ID number, documents for Central Dispatch, new box alarms, related to the startup of the fire department. It was agreed that if there are application fees, purchase orders will be issued. **Motion by Benak to authorize the Supervisor/Clerk/Fire Chief Consultant to execute any and all necessary documents, including payment of associated fees and/or expense, to have an operational volunteer fire department in Whitewater Township as of 04/01/2018. Goss suggested Fire Chief Consultant be changed to Interim Fire Chief. Second by Lawson.** There was no further discussion. **Roll call vote: Lawson, yes; Popp, yes; Benak, yes; Goss, yes; Hubbell, absent. Motion carried.**

### **Approve Whitewater Township Park 2018 Dates and Rates**

**Motion by Popp to approve Whitewater Township Park 2018 dates and rates as presented; second by Lawson.** There was no further discussion. **Roll call vote: Popp, yes; Benak, yes; Goss, yes; Hubbell, absent; Lawson, yes. Motion carried.**

### **Obtain/Retain Rural Fire Records for Station 3/Whitewater Township**

Popp stated Rural Fire is looking at what to do with run documents and personnel records for the required retention period. The county clerk says each individual township could have their records separated out and the township could have access to them. Employment records have to have a form signed by each responder.

Discussion followed.

There was consensus that the township will retain the records.

**Ordinance No. 51 – Municipal Civil Infraction Ordinance**

Goss noted that Zoning Administrator Habedank has not had an opportunity to comment; he is the one who proposed that the township adopt the ordinance, and also noted that Habedank provided a document dated today consisting of a 1-page letter along with the township's 4-page Code Enforcement Policy and Procedures Manual.

Habedank stated that the current ordinance defines any violation as a misdemeanor violation, a criminal offense. In 1994, the state allowed townships and municipalities to adopt civil infraction violations to decriminalize those types of activities. A couple cases in point have cost the taxpayers/citizens a considerable sum of money to try to get the violations corrected and it never happened. Under the civil infraction ordinance, if it is adopted, it will be a much better way to address something that should not be a criminal offense to begin with. Ninety percent of the townships in the State of Michigan have done that. He believes all of the townships in Grand Traverse County have adopted civil infractions. It is just a tool.

He added that everybody is excited because you could have somebody who runs amok and charges through the township issuing citations. He stated he does not have the time or desire to do that. Everybody says what if you're gone. He stated yes, he will be gone from here someday, but we need to give him the tools to enforce the ordinance. He can't do it as a misdemeanor violation; it is not going to work. Every month he can come here and say here is what I am doing on the junk complaints; nothing. If you want to spend the money, that's fine. But if you're concerned that somebody is going to cause a lot of problems, keep the ordinance you have. He stated if he wanted to go out and harass somebody, he can harass them with a misdemeanor violation, a criminal record. Not so with civil infraction.

Habedank also pointed out that the board has to hire people that are competent; that is their responsibility. If he goes out and starts issuing civil infraction violations, somebody should grab him by the collar and ask what he is doing. He added that he strongly supports the adoption of this ordinance, and noted that the township has a plan in place already, that has been here for 10 years, on what the procedure is before you even issue the ticket.

Benak stated the Code Enforcement Policy and Procedures Manual is pretty extensive.

Popp questioned whether it has been adopted.

Benak noted that it addresses quite a few of the concerns that many of the citizens had, i.e., neighbor complains, somebody gives me a citation. According to the steps, that is not how it happens. There are seven detailed steps before it ever gets to that point. Benak read aloud the Criteria for Establishing Priority paragraph.

Proceeding to the Initiation of Code Enforcement paragraph, Benak noted that code enforcement can be initiated by the following methods: citizen complaints, anonymous complaints, and township staff.

Benak read aloud the required steps under the Recording and Files paragraph, the Investigation paragraph, and the Enforcement Levels paragraph.

It was noted that the Enforcement Levels paragraph would need to be amended if the civil infraction ordinance was adopted.

Benak explained that one particular case cost the township citizens tens of thousands of dollars, for one person that would not follow the code enforcement, and there was no other choice than to take them to court because we can't write a citation.

Popp said all he is saying is that he didn't know that we were taking some lady to court.

Lawson stated he didn't know either.

Habedank stated that isn't even the case, and this isn't the place to talk about it. He stated she is totally out of line; she does not know the story. Habedank acknowledged that there was a citation issued.

Popp asked if the township board knew about it.

Habedank responded by saying probably not.

Popp then asked: What are the instructions?

Goss answered that Habedank thought there was a municipal civil infraction ordinance in place, attempted first to get voluntary compliance, which was not successful, then issued the citation.

Habedank said he discovered we didn't have one after the citation had been sent. It was not sent to her.

Goss stated there was no case against that lady, and the board should have known about this because Habedank recited it in an e-mail back in November.

Benak stated it was dropped when Habedank found out there was no ordinance.

Popp stated he believes what we have in place has worked well.

Benak countered that it costs the citizens a lot more money.

Popp stated he wonders how many of those citizens would be willing to pay to maintain their rights.

Benak stated she does not understand how it is taking their rights away.

Goss stated it is taking a criminal penalty and reducing it to a civil penalty of fines only. People are objecting that they do not have their right to jury trial; that is true. They do have a right to a formal hearing in front of a judge, but they do not have the right to a jury. Goss stated she did talk to Attorney Chris Patterson about the amount of the costs. Patterson stated the fines alluded

to in the proposed ordinance are what would be imposed if Whitewater Township had its own enforcement bureau and collected fines here. If someone was issued a civil infraction ticket, they would be given a date and time to appear at the magistrate's office. They have their own schedule of fines that apply to all townships.

Goss stated people have said they don't want it; they would rather a violator face a criminal record than a civil fine. Goss stated personally she thinks it is a better option for the people and those present were obviously not given all the information by whoever contacted them and asked them to be here tonight, but they have a responsibility to get their own information. Goss added that there will not be very many people who are cited, whether it is criminal or civil.

Discussion turned to citizens' inability to sell a house because of a neighbor's ordinance violations, following county ordinances, not discussing individual cases, and the process that brought the proposed ordinance to the board.

**Motion by Lawson to not adopt the Civil Infraction Ordinance; second by Popp.**

Discussion followed concerning contact with Attorney Patterson regarding this ordinance and the attempts to get this matter on the board's agenda. The motion was re-read. **The verbiage "and to abandon it" was added to the motion. Roll call vote: Benak, no; Goss, no; Hubbell, absent; Lawson, yes; Popp, yes. Motion failed.**

Benak asked if there is a chance that we could bring this back after budget and after the fire department stuff.

Popp and Lawson stated they have no desire to see it come back. Lawson stated there are too many people who are opposed to it.

Benak stated she heard they want us to look at it closer and to publicize it and to really look at it, not abandon it.

Popp stated if it comes back, it can be proposed through the normal channels.

**Set Date for Review of Fire Chief Applications**

During discussion of a date on which to review fire chief applications, Popp announced that there isn't anybody that sits at this table that is qualified to interview a fire chief, that this board does not have enough expertise to vet out a fire chief. Popp proposed getting a local fire chief to sit in on the interviews. Popp stated he thinks it would be beneficial to have another chief look at all of the applications and chime in on who they think should be interviewed.

Addressing a concern stated by Popp, Goss noted that the fire chief applications will be public record as soon as the board packet goes out.

Tuesday, February 20, at 6:00 p.m. was set to review fire chief applications and begin working on budget.

Popp stated he will attempt to find a person who will help us through the process.

**Set Budget Work Session Dates**

The board declined to set a date beyond February 20, 2018.

**Tabled Items****Review Administrative Policy Section 5 (tabled 10/14/2014)**

This agenda item will remain tabled.

**Review Ordinance 22 Pension Plan (tabled 10/25/2016)**

This agenda item will remain tabled.

**Review Whitewater Township Planning & Zoning Fees (tabled 02/28/2017)**

This agenda item will remain tabled.

**Board Comments/Discussion**

Goss stated she will not give weight to the idea that we need to have things in the summer when the snowbirds are here. The snowbirds are the ones who decided to absent themselves from the community. They can get on the website and read everything. The business of the township does not stop because somebody went to Florida or Arizona for two months. Also, if it is going to be the case that ordinance matters cannot be heard when the snowbirds are gone, then that will apply to zoning ordinance matters as well. Goss also advised that it has been brought up that the zoning ordinance amendments should be sent to the attorney for their input since they are the ones who have to stand up in court and defend it.

**Announcements**

The next meeting date is 02/20/2018 at 6:00 p.m. The next regular meeting is 02/27/2018 at 7:00 p.m.

**Public Comment**

Steve Mangus, 1214 Cerro Drive, pointed out that on a survey done in the township several years ago 84% of people answering said that voters should get a chance to vote on major changes to the zoning ordinance.

Glenn Frantz, 633 Armstrong Road, Kalkaska, accused the board of being dictators, communists and socialists, and stated the township's zoning ordinance is illegal because the township is not incorporated and the township does not have a state charter. He made various other comments, including that the township should only be meeting once a year, where do "you" have the inclination that you can tell somebody what they can and cannot do, that's not biblical, the state of the country, the illegal ratification of the 1963 Constitution, if townships don't own it they can't zone it, and townships aren't allowed to have a private attorney.

Kim Mangus, 1214 Cerro Drive, stated if the township was following those policies and procedures, she and Tim would be the only ones sitting here tonight because this wouldn't have happened.

Mike Jacobson, Skegemog Point Road, stated the system is easily abused and has been abused. You can't take people's rights away. Why is it only okay for rich people to do what they want on their property and the poor guy has all this stuff crammed down his throat? He stated nothing in his yard has ever affected the welfare, health or safety of any of his neighbors. Now, because of Lossie Road Trail, the cops can come to his yard and say he can't have anything in his back yard. He asked: What good is my property to me? I can't live on my own property; I can't have my own lifestyle on my own property. He offered other comments regarding the value of junk, the township taking money out of people's pocketbook, the 50+ years he has lived on his road, new residents on the road disagreeing with his lifestyle, the fact that he does not interfere with their lifestyle, and stated, "it has to be equal; it can't just be for the big guy; it has to be for everybody."

Tim Shaffer, 5309 Moore Road, stated this board needs to start working together again and working as a team.

**Adjournment**

Motion by Popp to adjourn; second by Lawson. Meeting adjourned at 11:25 p.m.

Respectfully submitted,

Cheryl A. Goss  
Whitewater Township Clerk

**Whitewater Township Board**  
**Public Hearing on Proposed Ordinance No. 51**  
**Municipal Civil Infraction Ordinance**

February 13, 2018 at 7:00 p.m.

Whitewater Township Hall  
 5777 Vinton Road  
 Williamsburg, MI 49690

Name	Address
JULIAN DRAPE	1139 N. West Silver Lake Rd TC 49685
VAUGHN W. HARSHFIELD	4404 N. BROOMHEAD RD.
Jed & Teresa Huger	6575 CORK Rd - Wmsburg
Keri Mangus	1214 Cicero St
Steve Meyer	1214 Cicero
Nicholas & Leah M	7031 Skegemog Pt. Rd.
A. Scott	Kalkaska
MARK BARK	Williamsburg
Dora Byrne	766 SS ANDREW Rd TC
Annette Neskey	7337 Skegemog Pt Rd
Donald Pishney	7855 Pinedale Dr Acme
Bob Chozlender	3811 Broomhead Rd. W.I.
DAVID MILLE	4139 W Broomhead Rd
ROBERT CONNELL	9285 Odell Rd.

## Ron Popp

---

**From:** mary lou baggs [REDACTED]  
**Sent:** Wednesday, February 7, 2018 7:37 PM  
**To:** Ron Popp  
**Subject:** Fw: NEW ORDINANCE PROPOSAL

Hello Ron

I was "blown away" on hearing of this new ordinance proposal to be put before Whitewater Twnshp residents Tues Feb 13th and I guess my question would be---

WHY would you not wait until ALL residents are present to hear your presentation on something so important?? Really! promoting & possibly passing this the same night??!! Without all residents knowing what is to hit them? Issuing "tickets" because someone doesn't like what I have in my yard? Is this the new money raiser for the township? What is next? Having to sign a lease to live on our own land like an HOA in the big city subdivisions? Angry? Yes I am .

This is very underhanded.

With the lack of "transparency" in our federal govt this just adds to distrust & negativity that has been rampant these past two years.

You do not have the legal right to undermine our constitutional heritage & protection. What you are proposing is an alteration to the 6th & 7th amendments to our constitution.. You may call it a "Cival infraction ordinance" ...I call it betrayal.

Our forefathers created the Constitution to prevent government from taking control over our lives & to keep it in check. It starts with the townships where we are small enough to fight back but big enough to make our voices heard.

Please read my letter at the public hearing as matter of record.

Thank you

Mary Lou Baggs

**Cheryl A. Goss**

---

**From:** S and K [REDACTED]  
**Sent:** Thursday, February 08, 2018 8:30 PM  
**To:** Ron Popp; Cheryl A. Goss; Della Benak; Lloyd Lawson; Paul Hubbell  
**Subject:** Public Hearing  
**Attachments:** Civil Infraction Ordinance x2.docx

Supervisor Popp,  
I have attached a letter with my concerns regarding the proposed civil infraction ordinance. Please include this correspondence as a formal comment received for your Feb, 13th packet.  
Thank You,  
Kim Mangus

# Proposed Civil Infraction Ordinance

WHITEWATER TOWNSHIP BOARD MEMBERS AND RESIDENTS

2/1/18

This last January 23<sup>rd</sup> I was in attendance when the WWTS Board placed a new Civil Infraction Ordinance on the calendar for a February 13<sup>th</sup>, 7pm public hearing. It was after 10pm and your deliberations lasted no more than 10 minutes. The first time I read through these documents I was uncomfortable. (TB Packet, 1/23/18, Pg. 17, 34-48) When I sat down and did some research, I became very concerned. I am fearful that perhaps the board may not fully understand this comprehensive change to how zoning is addressed within our township. I am not an attorney and I am only speaking for myself, but it is my sincere hope that you will incorporate these concerns into your deliberating process.

It is my sincere hope that this measure will not be adopted in Whitewater Township for the following reasons:

- \*Civil Infraction Ordinances remove a resident's right to trial by a jury of their peers.
- \*Civil Infractions lower the burden of proof. This makes it virtually impossible for a resident to win a case.
- \*Civil Infraction standards, as outlined in this ordinance, are far too punitive. \$100 to \$500 a day is harsh, legal expenses, ridiculous. Will the township pay residents legal expenses if they win?
- \*Civil Infractions streamline the enforcement process to ZA contact and ZA decision. Our current system is slower with more steps but also more oversight. It requires contact from the ZA, a letter from the attorney spelling out the infraction and possible action, presentation of the case to the township board, and their vote determining whether or not the issue is a concern or threat to the general public.

If our Township Board truly believes that this change is in the best interest of our township, the following items should be completed prior to adoption:

- \*All General and Zoning Ordinances should be reviewed for conflicts, errors, and overly aggressive standards. Our Zoning Ordinance, in my opinion, is not currently up to test.
- \*All resident should be informed of the potential change via newsletter and the use of townhall style meetings conducted in the Spring and Summer to encourage maximum participation. Putting the issue to residents by survey or vote would be preferred.
- \*Some form of policy and procedure should be in place to evaluate and address those zoning violations that are a result of hardship such as age, extreme poverty, mental, and/or physical illness.
- \*Some form of oversight, panel, or review procedure should be in place to monitor this system and guard against abuse, unequal application, or even political weaponization of the zoning ordinance.

I understand that it is difficult to find the time to fully research these matters so I have included a side-by-side summary of what I have learned. Please feel free to give me a call if anyone has any questions, 231-631-2326.

Sincerely,

Kim Mangus

Whitewater Township Planning Commission Chair

# Side-by-Side Comparison

<b>Proposed - Civil Infractions</b>	<b>Current - Criminal Infractions</b>
<b>Procedure</b>	
ZA attempts to resolve violation With letter and/or personal visit	
Legal Action taken at <b>Zoning Administrator discretion</b>	Resident receives <b>letter from attorney</b>
	<b>ZA presents case and history to township board</b>
	Legal Action taken by <b>Vote of township board</b> Case must be deemed in the <b>public interest</b>
Result <b>Ticket issued</b>	Result <b>Suit brought in court or issue returned to ZA</b>
Case presented before <b>judge</b> Resident has <b>no right to jury trial</b>	Case presented before <b>judge or jury of peers</b>
Township Represented by <b>ZA</b> Resident represented by <b>self or lawyer</b>	Township Represented by <b>legal council</b> Resident represented by <b>self or lawyer</b>
Decision is a <b>"preponderance of evidence"</b> Lower standard	Decision is <b>"beyond a reasonable doubt"</b> Higher standard
<b>Penalties</b>	
Maximum of <b>\$100 to \$500 per day</b> plus all legal expenses for township (as proposed)	Maximum of <b>\$100 per day</b> and/or <b>90 days in jail</b> (current)
<b>Other Differences</b>	
Sounds less severe	Sounds more severe
Judges rarely rule against municipalities	Juries tend to be more impartial
Streamlines enforcement	Requires more steps, review, and consensus
<b>Complete Change in Enforcement</b>	<b>System in place for 50 plus years</b>
<b>This process amends Constitutional Rights</b>	<b>Preserves all Constitutional Rights</b>

## **Cheryl A. Goss**

---

**From:** Ron Popp <supervisor@whitewatertownship.org>  
**Sent:** Monday, February 12, 2018 9:01 AM  
**To:** Cheryl A. Goss; Della Benak; Lloyd Lawson; Paul Hubbell; Ron Popp  
**Subject:** FW: Civil Infraction Ordinance

Cheryl,

Here is another comment I have received about the public hearing.

Thank you,  
Ron Popp  
Whitewater Township Supervisor

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**From:** Thomas McElwee [REDACTED]  
**Sent:** Sunday, February 11, 2018 9:28 AM  
**To:** Ron Popp <supervisor@whitewatertownship.org>  
**Subject:** Civil Infraction Ordinance

Dear Mr. Popp,

We have been made aware of a proposal to streamline the process for adjudicating "Civil Infraction" violations in Whitewater Township. It sounds as though it has been portrayed as being related to Zoning Violations but does not appear to be limited to those. I always cringe when the more powerful entity demands that their legal fees be covered by the "loser" in a dispute. It sounds, by comparison to the current process, to be expeditious but heavy handed.

I sympathize with the impotent position that the Zoning Administrator may be in with the current process but feel that the proposed change needs to be carefully vetted, researched, amended and discussed widely before being enacted.

Respectfully,

Tom McElwee  
8016 Lakeside Trail  
Williamsburg, MI 49690

Sent from Mail for Windows 10

TO: Whitewater Township Board  
FROM: Judith Danford  
Whitewater Township Land Owner  
Residence: 1139 N. West Silver Lake Road  
Traverse City, MI 49685

DATE: February 13, 2018

SUBJECT: Comments for the Public Hearing for the consideration of the "Proposed Adoption of Municipal Civil Infraction Ordinance".

Thank you for the opportunity to address the Board on the matter of the adoption of the municipal civil infraction ordinance.

Although not specifically stated in the document, the reader may rightfully gleam from such that the rationale for this ordinance seems to point to the enforcement of the Junk Ordinance which, for this areas, was originally established in Grand Traverse County in 1993, although Act 236 of 1961 as set forth in the Michigan Compiled Laws reveals the local governing body's ability to deal with these issues long before 1993. As is the case, modifications, additions, and deletions are made to these documents.

The historical development moves forward from the original 1993 implementation and each township seems to have worked to enforce it. After speaking with the Township Clerk this afternoon, it is apparent that the scope of this ordinance goes well beyond the encompassing of the Junk Ordinance.

More questions and concerns are raised than when I first began this work.

When working within the legal guidelines for this type of ordinance, the challenge is always one of individual rights and personal property rights as guaranteed under the Constitution and then to provide for the health, safety, and welfare of the citizens. Which carries the greatest degree of weight? It is a fine line. ( I believe this was well laid out in Kim Mangus communique to the Board.)

Coupled with this is the responsibility of the governing bodies to provide individuals with the avenue of the due process of the law when "charges" are made against a person or persons in regard to violation of the law. In this case, the charges fall under the category of Civil Infraction, a category unto itself concerning due process.

Upon reading this ordinance, as it is written, it seems to be void of providing for these "rights" – therefore the lack of provision is not governing in the best interest of the health, safety and welfare of

the general public. The loss of personal freedoms and rights is threatened by this ordinance. As is the loss of providing for due process of the law. Yes, it may be written within the bounds of Act 236, but that does not mean it is a “good or fair” document. Question: Does this document adequately serve the Board in carrying out its responsibility to the citizens in this township?

There are additional questions. These questions warrant answers.

1. What is, or was, the background discussion that has precipitated this issue coming to the forefront at this time? Is this the conception of a few? Has a request come from a large number, or perhaps small number, of residents and/or land owners to have the matter addressed? Have the existing laws not provided adequately for the resolve of problems? Why is the matter, which has been in existence for many years, surfacing in THIS WAY now?
2. What is the rationale for the development of an ordinance that does not provide for remediation? The ordinance is punitive in nature. It does not provide for any conflict resolution outside of the Courts. Has there been a mechanism provided which allows for resolution before the ultimate threat of legal proceedings? If so, where is the instrument?
3. What is the history in the township to warrant this type of action? How many existing complaints have been filed to date to support the implementation of such a punitive ordinance? If there are complaints, are they made by the same people or person repeatedly? Are they repeatedly made against the same party or parties? What are the numbers of habitual offenders vs. one time offenders? How have the offenders been approached? Who has approached them? What remedies have been sought? Has there been success with any matters of complaint? Bottom Line: What is the basis for this Ordinance?
4. What are the existing ordinances and/or portions of documents that are to be eliminated – overridden by the implementation of this Ordinance? What research has been conducted to make certain there is no legal conflict with the Grand Travers County Junk Ordinance and/or any other County documents – and for that matter – township ordinances or documents?
5. What are, or where are, the established boundaries, guidelines and/or enumerations, outside of going to Act 236 of 1961, in this document, or in another township document or documents, that identifies the infractions? Who decides? Who defines? Especially after this board and ZA are gone?

6. What are the potential financial repercussions of this ordinance? How costly does all of this get? There is training? Legal fees?
7. What is the safety factor for persons writing and serving tickets? What is the possible danger to those serving the tickets? Risk to enforcers?

**There are too many unanswered questions. The scope of the document is limited. It might restate the existing law, but it does not provided clarity of action to be taken. There are numerous factors which exist outside of the words of this document. The document has to be taken at face value. There is no room for assumptions. It is an incomplete document.**

**I request that the Board reconsider this Ordinance. I further request the Board not to support the passage of this ordinance.**

**Thank you.**

2-13-2018  
Steve Mangus

## Proposed Civil Infraction Ordinance

The question at hand is whether the Whitewater Township Board should adopt a new "**Civil Infraction Ordinance**". **This change would dramatically alter certain rights and protections.**

My research has uncovered these truths to consider:

1. "Because civil infractions aren't criminal, proof beyond a reasonable doubt isn't required. They're controlled by the same "preponderance of the evidence" test applicable to civil lawsuits."
2. "Burden of proof rests with the accuser, just as it is in a civil lawsuit. However, burden of proving affirmative defenses rests with the defendant asserting them."
3. "The ordinances generally deny trial by Jury."

The "Right to a Jury Trial" and requiring "burden proof beyond a reasonable doubt" are very important protections. The Framers of the U.S. Constitution knew this and created the 6th and 7th Amendments to protect U.S. Citizens rights concerning Jury's.

They read as follows:

### **Article [VI]** (Amendment 6 - Rights of Accused in Criminal Prosecutions)

*"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, **by an impartial jury of the State and district** wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence."*

### **Article [VII]** (Amendment 7 - Civil Trials)

*"In Suits at common law, where the value in controversy shall exceed twenty dollars, **the right of trial by jury shall be preserved**, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law."*

Prior to the revolutionary war Jury trials were allowed in the Colonies and helped to protect the Colonists from the tyranny England placed upon them. This was the main

reason the 6<sup>th</sup> and 7<sup>th</sup> Amendments were created, to be the last check against government abusing power. Citizens (a jury of your peers) would have the ultimate decision instead of just a Judge. The Supreme Court while requiring the right to a Jury for Criminal Cases has ruled that they will leave it up to the states to provide for the same in Civil Cases. As a result different states have different laws regarding Jury trials in Civil Courts. In Michigan a "Municipal Civil Infraction Ordinance" would be handled in a Civil Court without allowing a Jury trial. This essentially nullifies the intent of the 7<sup>th</sup> Amendment. The final check on government power by a Jury of your peers can only be preserved by invoking the Criminal courts as it pertains to zoning violations. This way the 6<sup>th</sup> and 7<sup>th</sup> Amendment protections are kept in place. Most would agree that in matters concerning your property and home we should always enjoy the full protections of the Constitution. Thus, by keeping zoning violations "criminal" citizens are fully protected by the right to a Jury and abuses of government power are kept in check. This is likely why our Zoning Ordinance has always been considered "criminal" instead of "civil". It is also why many unreasonable zoning ordinances while actually on the books have in reality never been enforced in Whitewater Township.

The switch from a "Criminal" offense to a "Civil Infraction" has been pursued vigorously by Special Interest Groups. On the surface it sounds good going from criminal to civil and is typically sold as such. As we have just discussed **in truth it actually removes and or effectively alters the constitutional protections such as, burden of proof, reasonable doubt, and trial by jury.** This change greatly diminishes the protections afforded by the U.S. Constitution creating a legal reality that stacks the deck in favor of the Municipality and the special interest groups who profit from the change.

The "**Growing Smart Legislative Guidebook**" outlines such a strategy when crafting Legislation by State governments. The Guidebook was created by a \$4 Million grant to the American Planning Association from the Federal Government.

It states:

*Page 11-34: "A civil action requires that the local government must prove its case only to preponderance (e.g., that it is more likely than not likely that there is or was noncompliance by the accused), **not beyond a reasonable doubt as in criminal cases.** Local governments that have "decriminalized" land-use violations and enforce their land development regulations through civil proceedings have reported good results from this approach."*

I would ask good results for whom?

It goes on to say on page 11-38, ".....the procedure for obtaining a **criminal conviction** is long and has many **safeguards for the defendant**. The foremost of these, from the point of view of a local government seeking conviction, is that the violation, and the intentional nature thereof, **must be proven beyond a reasonable doubt.**"

Conclusion

The "Growing Smart Legislative Guidebook" recommends these legal changes so that Zoning Ordinances can be implemented more easily by removing and or diminishing constitutional protections of property owners. **Since 1850 when Township government was created in Michigan Whitewater Township has had the full protection's of the U.S. Constitution in place.** For the last 50 plus years these same protections have also applied to the Zoning Ordinance.

The "Civil Infraction Ordinance" as applied to local governments such as Townships was created and promoted by special interest groups in order to tip the legal scales in their favor and against property owners allowing them to make money by selling and enforcing their services. This is not government "by the people and for the people" not even close. Ultimately, it is nothing more than the Federal Governments power and the Lobbyists who own them in Washington D.C. reaching all the way into Whitewater Township. Whatever problems that may exist with enforcing ordinances in Whitewater Township this is not the path to take.

**Over 168 years of rights and traditions should not so easily or quickly be extinguished.**

Sincerely,

Steven Mangus

## Cheryl A. Goss

---

**From:** Zoning Administrator <zoning@whitewatertownship.org>  
**Sent:** Thursday, February 08, 2018 3:22 PM  
**To:** Della Benak; Cheryl A. Goss; Paul Hubbell; Lloyd Lawson; Ron Popp; Dean, Mickey; Hooper, Ted; Maclean, Lois; Mangus, Kim; Render, Eric; Savage, Glenn  
**Cc:** Cheryl A. Goss  
**Subject:** Memo regarding Municipal Civil Infraction Ordinance  
**Attachments:** Civil Infraction Ordinance Adoption Memo 02082018.pdf  
  
**Categories:** Extremely Important Information

February 8, 2018

Board of Trustees and Planning Commissioners:

I respectfully request that you read and consider the information contained in the attached document.

Dennis L. Habedank, Zoning Administrator  
Whitewater Township  
P.O. Box 159 – 5777 Vinton Road  
Williamsburg MI 49690  
(231) 267-5141 Ext 21  
(231) 267-9020 (Fax)  
(231) 590-6890 (Cell)  
[zoning@whitewatertownship.org](mailto:zoning@whitewatertownship.org)

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Whitewater Township  
Planning & Zoning  
5777 Vinton Road  
P. O. Box 159  
Williamsburg MI 49690  
(231) 267-5141 Ext. 21  
(231) 267-9020 (F)

To...: Whitewater Township Board of Trustees  
Whitewater Township Planning Commission

From...: Dennis L Habedank, Zoning Administrator

Reference...: Questions concerning Civil Infraction Ordinance Adoption

Date...: February 8, 2018

I am sending this memo in an effort to help clarify two (2) concerns expressed at the Planning Commission meeting last evening.

The first concern that I heard was, *we are a General Law Township and as such, do not have the authority to enact a Municipal Civil Infraction Ordinance.*

There are 1,240 civil townships in 83 Michigan Counties which includes General Law and Charter Townships. All townships are General Law Townships, unless they have incorporated as a Charter Township. Charter Township status is a special township classification created by the Michigan Legislature in 1947 to provide additional powers and streamlined administration for governing a growing community. There are many laws that govern townships, but the two main laws dealing with Township Administration and Governance are:

General Township Laws – the Revised Statutes of 1846, R.S. of 1846 (Chapter 41 of Michigan Compiled Laws) which I have attached for your review;

Charter Township Act – (Chapter 42 of the Michigan Compiled Laws) – not attached

In 1945 the Michigan Legislature adopted P.A. 246 *aka* the Township Ordinance Act – This is the Act that authorizes a township to adopt police power ordinances (i.e. to adopt an ordinance that is not a zoning ordinance). This Act specifically allows a Township to adopt an ordinance to regulate the *public health, safety, and welfare of persons and property*, specifically identifying ordinances concerning fire protection, licensing or use of bicycles, traffic, parking of vehicles, sidewalk maintenance and repairs, licensing of businesses, licensing of public amusements, and regulating public nudity. This Act gives a

specific procedure to adopt a police power ordinance – which is far simpler than that needed to adopt a zoning ordinance.

The Act further allows a township to employ and establish a police department to enforce township ordinance and state laws. If state laws are to be enforced, the township must have a law enforcement department or may, by Resolution, appropriate funds and request the County Sheriff, State Police, or other law enforcement agency to provide police protection and enforce the township ordinances.

**41.181 – Adoption of ordinances by township board.** Sec.1. (1) The township board of a township, at a regular or special meeting by a majority of regular members elect of the township board, may adopt ordinances regulating the public health, safety, and general welfare of the persons and property, including, but not limited to,... (See highlighted attachment)

**41.183 – Sanctions for violations; designation of violation as a civil infraction; civil fine; penalty; act of omission constituting a crime; institution of action in district court; distribution of fines and costs.**

Sec.1. (1) the township board, may provide in a township ordinance a sanction for violation of the ordinance.

(2) Consistent with any of the following statutes, the township board may adopt an ordinance that designates a violation of the ordinance as a civil infraction and provides a civil fine for that violation

(3) The township board may adopt an ordinance that designates a violation of the ordinance as a municipal civil infraction and provides a civil fine for that violation... (See highlighted attachment)

The second concern I heard was, *that the Zoning Administrator may randomly begin the issuance of municipal civil infraction citations for violation of the zoning ordinance as a harassment tactic.*

Personally, I'm offended by the implication that the proposed Ordinance could or would be used for harassment. As a seasoned professional, I have more than 6,000 hours of advanced criminal justice training, a seasoned investigator with 34+ years of experience, along with 500+ hours of training in Zoning/Code Enforcement issues. Much of my criminal justice training has come in handy as a Zoning Administrator – some of which included classes in Recognition of Abnormal Psychology (taught by Dr. Wayne Hill – a township resident), Conflict Resolution, Defusing Dangerous Situations, and other training that I still employ today. I am a trained and certified instructor in police sciences and I've always looked at my enforcement activity as an opportunity to educate the public, which doesn't mean issuing a citation at every contact.

Strangely enough, my method of enforcement mirrors the Whitewater Township Code Enforcement Policy:

- The prioritization of the code enforcement case;
- Investigation of the violation complaints;
- Enforcement of Township Ordinances through VOLUNTARY COMPLIANCE; and

- Prosecution of violators who don't comply

The purpose of adopting the **Municipal Civil Infraction Ordinance** was and is, simply to provide the Zoning Administrator (whoever that is or will be) with an additional tool to obtain compliance with the Township Ordinances. Any thoughts of this as a harassment tool are foreign to me.

I strongly support the adoption of the Municipal Civil Infraction Ordinance because it is less costly to the township and its residents and a quicker way to resolve the issues.

The Whitewater Township Zoning Ordinance currently provides:

#### **21.10 PENALTIES – WHITEWATER TOWNSHIP ZONING ORDINANCE**

*Any person who shall violate any provision of this Ordinance in any particular, or who fails to comply with any of the regulatory measures or conditions of the Board of Appeals adopted pursuant hereto, shall, upon conviction thereof, be fined not to exceed One Hundred (\$100.00) Dollars or may be imprisoned not to exceed ninety (90) days, or may be both fined and imprisoned in the discretion of the Court, and each day such violation continues shall be deemed a separate offense. (Emphasis Added)*

I certainly wouldn't want someone to face the possibility of being imprisoned for violating the zoning ordinance, and I'm sure that is one of the reasons (along with the cost of prosecution) that the laws were changed to recognize these types of ordinance violations as Municipal Civil Infraction Violations and no longer misdemeanor offenses.

Respectfully Submitted,

*Denny* 

Dennis L Habedank, Zoning Administrator  
Whitewater Township

## TOWNSHIP ORDINANCES

### Act 246 of 1945

AN ACT to authorize township boards to adopt ordinances and regulations to secure the public health, safety and general welfare; to provide for the establishment of a township police department; to provide for policing of townships by certain law enforcement officers and agencies; to provide for the publication of ordinances; to prescribe powers and duties of township boards and certain local and state officers and agencies; to provide sanctions; and to repeal all acts and parts of acts in conflict with the act.

**History:** 1945, Act 246, Eff. Sept. 6, 1945;—Am. 1952, Act 224, Eff. Sept. 18, 1952;—Am. 1963, Act 39, Eff. Sept. 6, 1963;—Am. 1989, Act 78, Imd. Eff. June 20, 1989;—Am. 1991, Act 177, Eff. Mar. 30, 1992;—Am. 1994, Act 14, Eff. May 1, 1994.

*The People of the State of Michigan enact:*

#### **41.181 Adoption of ordinances by township board.**

Sec. 1. (1) The township board of a township, at a regular or special meeting by a majority of the members elect of the township board, may adopt ordinances regulating the public health, safety, and general welfare of persons and property, including, but not limited to, ordinances concerning fire protection, licensing or use of bicycles, traffic, parking of vehicles, sidewalk maintenance and repairs, the licensing of business establishments, the licensing and regulating of public amusements, and the regulation or prohibition of public nudity, and may provide sanctions for the violation of the ordinances. The township shall enforce the ordinances and may employ and establish a police department with full power to enforce township ordinances and state laws. If state laws are to be enforced, a township shall have a law enforcement unit or may by resolution appropriate funds and call upon the sheriff of the county in which the township is located, the department of state police, or another law enforcement agency to provide special police protection for the township. The sheriff, department of state police, or other local law enforcement agency shall, if called upon, provide special police protection for the township and enforce local township ordinances to the extent that township funds are appropriated for the enforcement. Special township deputies appointed by the sheriff shall be under the jurisdiction of and solely responsible to the sheriff. Ordinances regulating traffic and parking of vehicles and bicycles shall not contravene the Michigan vehicle code, 1949 PA 300, MCL 257.1 to 257.923.

(2) Ordinances enacted may apply to streets, roads, highways, or portions of the township determined by the township board or may be limited to specified platted lands within the township, and with respect to these lands shall be valid and enforceable whether the roads and streets have been dedicated to public use or not. Township boards of townships enacting ordinances under this section may accept contributions from duly constituted representatives of the platted lands benefited by the ordinances to defray administrative and enforcement costs incident to the enactment of ordinances.

(3) A township may adopt a provision of any state statute for which the maximum period of imprisonment is 93 days or the Michigan vehicle code, 1949 PA 300, MCL 257.1 to 257.923, by reference in an adopting ordinance, which statute shall be clearly identified in the adopting ordinance. Except as otherwise provided in this subsection, a township shall not enforce any provision adopted by reference for which the maximum period of imprisonment is greater than 93 days. A township may adopt section 625(1)(c) of the Michigan vehicle code, 1949 PA 300, MCL 257.625, by reference in an adopting ordinance and shall provide that a violation of that ordinance is a misdemeanor punishable by 1 or more of the following:

- (a) Community service for not more than 360 hours.
- (b) Imprisonment for not more than 180 days.
- (c) A fine of not less than \$200.00 or more than \$700.00.

(4) As used in this section, "public nudity" means knowingly or intentionally displaying in a public place, or for payment or promise of payment by any person including, but not limited to, payment or promise of payment of an admission fee, any individual's genitals or anus with less than a fully opaque covering, or a female individual's breast with less than a fully opaque covering of the nipple and areola. Public nudity does not include any of the following:

- (a) A woman's breastfeeding of a baby whether or not the nipple or areola is exposed during or incidental to the feeding.
- (b) Material as defined in section 2 of 1984 PA 343, MCL 752.362.
- (c) Sexually explicit visual material as defined in section 3 of 1978 PA 33, MCL 722.673.

**History:** 1945, Act 246, Eff. Sept. 6, 1945;—CL 1948, 41.181;—Am. 1952, Act 224, Eff. Sept. 18, 1952;—Am. 1953, Act 87, Eff. Oct. 2, 1953;—Am. 1955, 1st Ex. Sess., Act 5, Imd. Eff. Nov. 10, 1955;—Am. 1959, Act 55, Imd. Eff. June 2, 1959;—Am. 1961, Act 18, Eff. Sept. 8, 1961;—Am. 1963, Act 39, Eff. Sept. 6, 1963;—Am. 1968, Act 300, Imd. Eff. July 1, 1968;—Am. 1969, Act 17, Imd. Eff. June 5, 1969;—Am. 1974, Act 375, Imd. Eff. Dec. 23, 1974;—Am. 1978, Act 590, Imd. Eff. Jan. 4, 1979;—Am. 1989, Act 78, Imd. Eff. Rendered Wednesday, February 7, 2018

June 20, 1989;—Am. 1991, Act 177, Eff. Mar. 30, 1992;—Am. 1994, Act 14, Eff. May 1, 1994;—Am. 1994, Act 315, Imd. Eff. July 21, 1994;—Am. 1999, Act 253, Imd. Eff. Dec. 28, 1999;—Am. 1999, Act 257, Eff. Dec. 29, 1999;—Am. 2012, Act 9, Imd. Eff. Feb. 15, 2012.

#### **41.182 Repealed. 1989, Act 78, Imd. Eff. June 20, 1989.**

Compiler's note: The repealed section pertained to publication of township ordinances.

#### **41.183 Sanctions for violations; designation of violation as civil infraction; civil fine; penalty; act or omission constituting crime; institution of action in district court; distribution of fines and costs.**

Sec. 3. (1) The township board may provide in a township ordinance a sanction for violation of the ordinance.

(2) Consistent with any of the following statutes, the township board may adopt an ordinance that designates a violation of the ordinance as a civil infraction and provides a civil fine for that violation:

(a) The Michigan vehicle code, 1949 PA 300, MCL 257.1 to 257.923.

(b) 1969 PA 235, MCL 257.941 to 257.943.

(c) 1956 PA 62, MCL 257.951 to 257.954.

(3) The township board may adopt an ordinance that designates a violation of the ordinance as a municipal civil infraction and provides a civil fine for that violation. An ordinance shall not designate a violation as a municipal civil infraction if that violation may be designated as a civil infraction under subsection (2). A statute may provide that a violation of a specific type of ordinance is a municipal civil infraction whether or not the ordinance designates the violation as a municipal civil infraction.

(4) An ordinance shall not make an act or omission a municipal civil infraction if that act or omission constitutes a crime under any of the following:

(a) Article 7 or section 17766a of the public health code, 1978 PA 368, MCL 333.7101 to 333.7545 and 333.17766a.

(b) The Michigan penal code, 1931 PA 328, MCL 750.1 to 750.568.

(c) The Michigan vehicle code, 1949 PA 300, MCL 257.1 to 257.923.

(d) The Michigan liquor control code of 1998, 1998 PA 58, MCL 436.1101 to 436.2303.

(e) Part 801 of the natural resources and environmental protection act, 1994 PA 451, 324.80101 to 324.80199.

(f) The aeronautics code of the state of Michigan, 1945 PA 327, MCL 259.1 to 259.208.

(g) Part 821 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.82101 to 324.82160.

(h) Part 811 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.81101 to 324.81150.

(i) Sections 351 to 365 of the railroad code of 1993, 1993 PA 354, MCL 462.351 to 462.365.

(j) Any law of this state under which the act or omission is punishable by imprisonment for more than 93 days.

(5) An ordinance not described in subsection (2) or (3) may provide a penalty for violation of the ordinance consisting of a fine not exceeding \$500.00 or imprisonment not exceeding 90 days, or both. However, unless otherwise provided by law, the ordinance may provide that a violation of the ordinance is punishable by imprisonment for not more than 93 days or a fine of not more than \$500.00, or both, if the violation substantially corresponds to a violation of state law that is a misdemeanor for which the maximum period of imprisonment is 93 days.

(6) An action for the violation of a township ordinance shall be instituted in the district court, unless the person alleged to have violated the ordinance admits responsibility at a parking violations bureau or municipal ordinance violation bureau as otherwise provided and authorized by law. Fines and costs imposed or assessed in such an action shall be distributed in accordance with section 8379 of the revised judicature act of 1961, 1961 PA 236, MCL 600.8379.

**History:** 1945, Act 246, Eff. Sept. 6, 1945;—Cl. 1948, 41.183;—Am. 1969, Act 335, Imd. Eff. Nov. 10, 1969;—Am. 1994, Act 14, Eff. May 1, 1994;—Am. 1996, Act 34, Imd. Eff. Feb. 26, 1996;—Am. 1999, Act 59, Eff. Oct. 1, 1999.

#### **41.183a Recreational trailway; posting of ordinance; prohibited operation of vehicle as municipal civil infraction.**

Sec. 3a. (1) An ordinance regulating a recreational trailway is not effective unless it is posted and maintained near each gate or principal entrance to the trailway.

(2) The operation of a vehicle on a recreational trailway at a time, in a place, or in a manner prohibited by

an ordinance is a municipal civil infraction, whether or not so designated by the ordinance. A civil fine ordered for a municipal civil infraction described in this subsection shall not exceed the maximum amount of a fine provided by the ordinance or \$500.00, whichever is less. An act or omission described in this subsection is not a municipal civil infraction if that act or omission constitutes a violation or crime that section 3 prohibits an ordinance from designating as a municipal civil infraction.

**History:** Add. 1994, Act 90, Eff. Oct. 1, 1994.

#### **41.184 Township ordinance; effective date; publication; adoption by reference.**

Sec. 4. (1) A township ordinance shall contain a provision stating when the ordinance takes effect.

(2) Except as provided in section 22 of the charter township act, 1947 PA 359, MCL 42.22, and section 401 of the Michigan zoning enabling act, 2006 PA 110, MCL 125.3401, a township ordinance shall take effect as follows:

(a) If an ordinance imposes a sanction for the violation of the ordinance, the ordinance shall take effect 30 days after the first publication of the ordinance.

(b) If an ordinance does not impose a sanction for the violation of the ordinance, the ordinance shall take effect the day following the date of the publication of the ordinance or any date following publication specified in the ordinance.

(3) Publication of the ordinance shall be made within 30 days after the passage of the ordinance by inserting either a true copy or a summary of the ordinance once in a newspaper circulating within the township. A summary of an ordinance may be drafted by the same person who drafted the ordinance or by the township board or township planning commission and shall be written in clear and nontechnical language. Each section of an ordinance or a summary of an ordinance shall be preceded by a catch line. If a summary of an ordinance is published, the township shall designate in the publication the location in the township where a true copy of the ordinance can be inspected or obtained.

(4) If an ordinance adopts by reference a provision of any state statute for which the maximum period of imprisonment is 93 days or the Michigan vehicle code, 1949 PA 300, MCL 257.1 to 257.923, a statement of the purpose of the statute shall be published with the adopting ordinance or with the summary of the adopting ordinance under subsection (3). Copies of the statute adopted by the township by reference shall be kept in the office of the township clerk, available for inspection by and distribution to the public. The township shall include in the publication the designation of a location in the township where a copy of the statute can be inspected or obtained. Except as otherwise provided in this subsection, a township shall not enforce any provision adopted by reference for which the maximum period of imprisonment is greater than 93 days. A township may adopt section 625(1)(c) of the Michigan vehicle code, 1949 PA 300, MCL 257.625, by reference in an adopting ordinance and shall provide that a violation of that ordinance is a misdemeanor punishable by 1 or more of the following:

(a) Community service for not more than 360 hours.

(b) Imprisonment for not more than 180 days.

(c) A fine of not less than \$200.00 or more than \$700.00.

**History:** Add. 1989, Act 78, Imd. Eff. June 20, 1989;—Am. 1994, Act 14, Eff. May 1, 1994;—Am. 1999, Act 253, Imd. Eff. Dec. 28, 1999;—Am. 1999, Act 257, Eff. Dec. 29, 1999;—Am. 2012, Act 9, Imd. Eff. Feb. 15, 2012.

**Compiler's note:** Former section 4 of this act was not compiled.

#### **41.185 Township ordinance; recording and filing requirements; fees.**

Sec. 5. (1) Within 1 week after the publication of an ordinance as provided in section 4, the township clerk shall record the ordinance in a book of ordinances kept by him or her for that purpose; record the date of the passage of the ordinance, the names of the members of the township board voting, and how each member voted; and file an attested copy of the ordinance with the county clerk. If the ordinance adopts by reference a provision of any state statute for which the maximum period of imprisonment is 93 days or the Michigan vehicle code, 1949 PA 300, MCL 257.1 to 257.923, the township clerk shall also file a copy of the statute with the county clerk. The township clerk shall certify under the ordinance in a blank space provided the date or dates of publication of the ordinance, the name of the newspaper in which publication was made, and the date of filing with the county clerk.

(2) The county clerk shall maintain separate files for any statute filed under subsection (1) for each township in the county. The county clerk shall make the files readily available to the public.

(3) The provisions of this section with regard to filing with the county clerk do not apply to a township that maintains a township office open to the public during regular hours on each business day.

(4) The county clerk may charge a reasonable fee for the reproduction or furnishing of a copy of an ordinance or statute filed under subsection (1).

**History:** Add. 1989, Act 78, Imd. Eff. June 20, 1989;—Am. 1999, Act 253, Imd. Eff. Dec. 28, 1999;—Am. 1999, Act 257, Eff. Dec. 29, 1999.

**Compiler's note:** Former section 5 of this act was not compiled.

**41.186 Codifying, recodifying, and continuing ordinances in code; publication of ordinance adopting code and subsequent ordinance; amending, repealing, revising, or rearranging ordinances by reference.**

Sec. 6. Each township may codify, recodify, and continue in code its ordinances, in whole or in part, without the necessity of publishing the entire code in full. The ordinance adopting the code, as well as subsequent ordinances repealing, amending, continuing, or adding to the code, shall be published as required by law. The ordinance adopting the code may amend, repeal, revise, or rearrange ordinances or parts of ordinances by reference by title only.

**History:** Add. 1989, Act 78, Imd. Eff. June 20, 1989.

**41.187 Employment, duties, and compensation of attorney.**

Sec. 7. The township board of a township may employ an attorney to represent the township in civil matters and in the prosecution of violations of township ordinances. The attorney shall receive the compensation determined by the township board. In prosecution of a violation of a township ordinance, the township attorney shall countersign the certificates of jurors and witnesses.

**History:** Add. 1989, Act 78, Imd. Eff. June 20, 1989.

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Whitewater Township  
Planning & Zoning  
5777 Vinton Road  
P. O. Box 159  
Williamsburg MI 49690  
(231) 267-5141 Ext. 21  
(231) 267-9020 (F)

February 13, 2018

Whitewater Township Board of Trustees:

The Whitewater Township Zoning Ordinance was written in the early 1970's and was officially adopted and passed by the Board on December 23, 1972. Article 21 of the original Ordinance addressed Violations under Section 21.10 and reads as follows:

- ***Any person who shall violate any provision of this Ordinance in any particular, or who fails to comply with any of the regulatory measures or conditions of the Board of Appeals adopted pursuant hereto, shall, upon conviction thereof, be fined not to exceed \$100.00 or may be imprisoned not to exceed ninety (90) days, or may be fined and imprisoned in the discretion of the Court, and each day such violation continues shall be deemed a separate offense.***

Section 21.10 of our current Ordinance reads as follows:

- ***Any person who shall violate any provision of this Ordinance in any particular, or who fails to comply with any of the regulatory measures or conditions of the Board of Appeals adopted pursuant hereto, shall, upon conviction thereof, be fined not to exceed One Hundred (\$100.00) Dollars or may be imprisoned not to exceed ninety (90) days, or may be both fined and imprisoned in the discretion of the Court, and each day such violation continues shall be deemed a separate offense.***

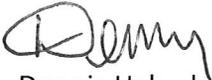
This language for the most part has gone untouched (see underlined portions) for 46 years.

Currently, Zoning Ordinance violations are Misdemeanor Violations that subject the violator to potential imprisonment and fines and cost. Whitewater Township does have a Code Enforcement Policy and Procedures Manual addressing how complaints are handled and has been on the website for at least the five or six years. (Copy attached, it needs revision)

I would like to point out that most recently Article 26 dealing with NOISE was removed from the Ordinance, which leaves us with our Civil Infraction Noise Ordinance – enforced by the Sheriff's Department and our Township Junk Ordinance, also a civil infraction enforced by the Sheriff's Department.

Just as we routinely amend different parts of the Ordinance, we should seriously consider amending the penalty section regarding violations of the Ordinance. The Civil Infraction Ordinance will save the taxpayers of the Whitewater Township considerable expense over the long run. Our purpose is to get voluntary Ordinance compliance before resorting to court action.

Respectfully,

A handwritten signature in black ink, appearing to read "Dennis Habedank". The signature is written in a cursive style with a large initial "D".

Dennis Habedank, Zoning Administrator

# Whitewater Township Code Enforcement Policy And Procedures Manual

## I. Mission

The mission of Code Enforcement is to enhance Whitewater Township's livability by protecting the health, safety and welfare of Township residents and visitors by assuring compliance with the Township's Zoning and General Ordinances. The Township will assure compliance both by encouraging voluntary compliance and by following progressive steps, including legal action for Ordinance violators.

## II. Purpose

The purpose of Whitewater Township's Code Enforcement Policy and Procedures Manual, (hereafter "manual") is to provide written guidelines for:

- The prioritization of code enforcement cases;
- Investigation of violation complaints;
- Enforcement of Township Ordinances through voluntary compliance;
- Prosecution of violators who do not comply.

These written guidelines are intended to assure consistency within the Township's Code Enforcement Program and to educate the Township's citizens and property owners about code enforcement.

## III. Code Enforcement Philosophy

The Township's policy is to achieve compliance with ordinances in cases of reported and discovered violations. However, not all violations have the same degree of severity. As such, the Township has established through this manual priority ranking and procedures. The intent is to allow the level of enforcement that best fits the type and circumstances of the violations within clear and objective criteria, consistent with the established priorities and maximize available resources. It is the Township's policy that code enforcement follows the priority rankings set forth in this manual.

## IV. Priorities For Code Enforcement

It is the Township's policy to investigate and attempt to resolve all reported and discovered violations. There may be times when code violations cannot be given the same level of attention, when some violations may receive no attention at all, or when the Township may be unable to carry out the proactive code enforcement activities outlined in this manual. In such circumstances the most serious violations, as determined through application of the priorities and criteria in this section shall be addressed before the less serious violations are addressed.

### Priority of Violations

1. Violations that present an imminent threat to public health and safety or welfare;
2. Violations affecting storm drainage, wetlands, and/or adjacent areas;
3. Construction of non-permitted structures;
4. Multiple complaints received on the same property;
5. Zoning and Junk violations;
6. All other violations.

#### V. Criteria for Establishing Priority

Violations listed lower in the priority list may be moved to a higher ranking if they have one or more of the following aggravating circumstances:

1. The actions leading to the violation(s) are deliberate;
2. The violation causes economic harm to individuals or the Township as a whole;
3. The alleged violator is receiving significant economic benefit from the continued violation;
4. The physical size or extent of the violation is significant;
5. The violation has existed uncorrected for a significant period of time;
6. There is a previous history of complaints and code enforcement on the subject property and/or with the alleged violator;
7. There is community interest in the violation expressed by the receipt of multiple complaints from separate individuals or by a complaint by a citizens group;
8. After reasonable efforts have been made, there is little likelihood of obtaining voluntary compliance;
9. The violation(s) is flagrant and visible to the public.

#### VI. Applicability

1. General Applicability. The manual applies to all code enforcement carried out by Township employees and/or officials.
2. Non-Applicability to Deeds, Covenants and Restrictions. Many subdivisions, site condominiums and planned unit developments are subject to private deeds, covenants and restrictions. These conditions are enforceable through private legal action and not the Township.

#### VII. Initiation of Code Enforcement

Code Enforcement will be initiated by the following methods:

1. Citizen Complaints. Any resident, property owner or business owner can make a complaint to the Township alleging one or more code violations. The complaint must be filed on a Township complaint form. The form is available at Township Hall and on the Township website. Citizens may attach a supplemental information sheet to the form.
2. Anonymous Complaints: Anonymous complaints will be accepted, but may or may not be investigated at the discretion of the employees/officials depending on the following factors:
  - The reliability of the complaint;
  - Whether the complaint alleges an imminent threat to public health and safety or welfare;
  - The ease or difficulty with which the complaint can be verified.
3. Report by Township Staff or Official. Township staff or officials may report a potential violation. Such complaints shall be filed on the Township complaint form or reported at a Township Board meeting.

#### VIII. Recording and Files

1. To the extent possible, all complaints received shall be recorded in the Township Code Enforcement records. Recording the complaint shall consist of the following:
  - a. An assigned case number;
  - b. Complainant's name and telephone number;
  - c. The subject property address; and
  - d. Type of complaint

2. Files shall be kept within the property files already maintained by the Township and shall consist of the following:
  - a. The complaint form which shall include the report of the field investigation as described within this manual;
  - b. Any supporting documentation.

#### IX. Investigation

1. Before contact or notice of violation is sent, it must be determined whether the complaint, if valid, establishes a violation. If it does not, the case will be closed.
2. Field Investigation. The purpose of a field investigation is to:
  - a. Verify the existence and severity of a code violation;
  - b. Document code violations by means of written notes, photographs, witness interviews, etc. All investigations shall include pictures, if possible.
  - c. If possible, contact and discuss with the property owner, occupant or other responsible person the:
    - The nature of the violation(s);
    - Methods for complying;
    - Timelines for compliance;
    - Enforcement procedures; and
    - Potential consequences for failure to comply.
3. Preparations and Precautions. Employees/officials shall take whatever actions are reasonable and necessary to minimize any potential risk of violent confrontation or injury to themselves when conducting their field investigation.
  - a. Law Enforcement Assistance. When appropriate, Township employees/officials may request law enforcement assistance in conducting the field investigation.
  - b. Entering Upon Property or Premises. Township employees/officials shall not enter upon private property or premises to conduct a field investigation without permission to enter.

Unless permission is granted, the investigation shall be conducted from the right-of-way or property where permission to enter has been granted.
4. Report of Field Investigation. Upon completion of the field investigation, Employee/officials shall enter the information onto or attach to the Code Enforcement Complaint Form. The information shall include:
  - a. Name of the investigator;
  - b. Date, time and place of field visit;
  - c. Violation(s) observed;
  - d. If no violation(s) are observed, an explanation of conditions observed;
  - e. Witnesses, if any interviewed;
  - f. Evidence obtained, if any (photographs, measurements, etc.);
  - g. Discussions, if any, with owners, occupants or other responsible persons;
  - h. Action necessary to correct violation(s);
  - i. Recommended enforcement action and timeline;
  - j. Referrals, if any, to other agencies such as social services, environmental health, construction codes, etc.

#### X. Enforcement Levels

1. Obtaining voluntary compliance after initial contact.
2. Written Notice to Correct.
3. Second Written Notice to Correct.

4. Township Board directs the Grand Traverse County Sheriff's Department to issue a ticket or to file action with the Circuit Court.

#### XI. Enforcement Procedures

1. Initial Contact. When the employee/official determines that there are reasonable grounds to believe a violation did or does occur, based upon the information in the complaint and any field investigation, notice shall be given by the Township. The initial notice may be provided by means of personal contact with the violator, an informal "door hanger" or US mail.
2. Written Notice. If compliance is not met after the initial contact, a written notice shall be sent to the person who is or may be legally responsible for the alleged violation. Separate notice shall also be sent to the property owner(s). This notice shall be sent by certified mail to the best available address for the property owner(s) and other responsible person(s).
3. Follow-up. The date in the notice for corrective action shall be entered in the enforcement records. After the deadline, if the employee/official determines that the required corrections have not been made, a second written notice shall be sent in the matter consistent with the written notice as stated above.
4. Voluntary Compliance Agreement. Under special circumstances, deadlines may be extended. The responsible party shall enter into a Voluntary Compliance Agreement that will be signed by both the responsible party and the Township. The extended deadline shall be determined on a case-by-case basis contingent upon the effort already made to correct the violation, severity and extent of the violation, whether the violation is a repeat offense, weather, etc.
5. Compliance. If the employee/official determines that required corrections have been made, the date and method of compliance shall be noted in the file and the case shall be closed.
6. Permit Requirements. In some cases, corrective action may consist of applying for and obtaining necessary permits. Any violation not related to permitting shall be corrected prior to issuance of a permit.

#### XII. Resolution of Violations

It is the Township's policy to attempt to reach final, satisfactory resolutions of all violation complaints. However, the Township recognizes that not all complaints can be resolved successfully, due to factors outside the Township's control. These factors include the indigence of the violator, the lack of Township resources to assist the violators and the number of complaints received. Where the Township determines that a violation may not be successfully resolved within the established reasonable timelines, the file will either be closed or alternative methods of enforcement pursued.

The Township Board shall review the list of unresolved violations and determine if the file(s) shall be turned over to the Grand Traverse County Sheriff's Department or legal counsel for further action through the Grand Traverse Circuit Court.