

Ordinance No. 20

AN ORDINANCE TO REPEAL SECTION 8 OF THE VILLAGE OF ELBERTA ZONING ORDINANCE AND TO AMEND THE VILLAGE CODE BY ADDING A NEW CHAPTER, WHICH NEW CHAPTER SHALL BE DESIGNATED AS CHAPTER 1002 OF THE VILLAGE CODE.

VILLAGE OF ELBERTA

**CHAPTER 1002
CIVIL INFRACTION ENFORCEMENT ORDINANCE**

THE VILLAGE OF ELBERTA ORDAINS:

1. Short Title. This Ordinance shall be known and may be cited as the “Village of Elberta Civil Infraction Enforcement Ordinance” of May 18, 2006, and shall be known in short form as the “Civil Infraction Ordinance”.

2. Definitions. As used in this Ordinance:

- A. “Act” means Act No. 236 of the Public Acts of 1961, as amended.
- B. “Authorized Village official” means the Village of Elberta Chief of Police, the Village Enforcement Officer, the Frankfort Police Officers or other personnel of the Village of Elberta or City of Frankfort authorized by this ordinance to issue municipal civil infraction citations or municipal civil infraction violation notices.
- C. “Bureau” means the Village of Elberta Municipal Ordinances Violations Bureau as established by this Ordinance.
- D. “Municipal civil infraction action” means a civil action in which the defendant is alleged to be responsible for a municipal civil infraction.
- E. “Municipal civil infraction citation” means a written complaint or notice prepared by an authorized Village official, directing a person to appear in court regarding the occurrence or existence of a municipal civil infraction violation by the person cited.
- F. “Municipal civil infraction violation notice” means a written notice prepared by an authorized Village official, directing a person to appear at the Village of Elberta Municipal Ordinance Violations Bureau and to pay the fine and costs, if any, prescribed for the violation by the schedule of civil fines adopted by the Village of Elberta, as authorized under Sections 8369 and 8707(6) of the Act.

3. Municipal civil infraction action; commencement. A municipal civil infraction action may be commenced upon the issuance by an authorized Village official of (1) a municipal civil infraction

citation directing the alleged violator to appear in court; or (2) a municipal civil infraction violation notice directing the alleged violator to appear at the Village of Elberta Municipal Ordinance Violations Bureau.

4. Municipal civil infraction citations; issuance and service. Municipal civil infraction citations shall be issued and served by authorized Village officials as follows:

- A. The time for appearance specified in a citation shall be within a reasonable time after the citation is issued.
- B. The place for appearance specified in a citation shall be the Benzie County District Court (hereinafter referred to as "District Court").
- C. Each citation shall be numbered consecutively and shall be in a form approved by the state court administrator. The original citation shall be filed with the District Court. Copies of the citation shall be retained by the Village and issued to the alleged violator as provided by Section 8705 of the Act.
- D. A citation for municipal civil infraction signed by an authorized Village official shall be treated as made under oath if the violation alleged in the citation occurred in the presence of the official signing the complaint and if the citation contains the following statement immediately above the date and signature of the official: "I declare under the penalties of perjury that the statements above are true to the best of my information, knowledge and belief."
- E. An authorized Village official who witnesses a person commit a municipal civil infraction shall prepare and subscribe, as soon as possible and as completely as possible, an original and required copies of a citation.
- F. An authorized Village official who does not witness a person commit a municipal civil infraction may still issue a citation to a person if based upon his or her investigation, the official has reasonable cause to believe that the person committed the infraction; and either
 - (1) the official has consulted with the Village attorney; or
 - (2) in the case of a complaint by an alleged witness to the infraction, the prosecuting attorney or Village attorney approves, in writing, the issuance of the citation.
- G. Municipal civil infraction citations shall be served by an authorized Village official as follows:
 - (1) Except as provided in Section 4(G)(2), an authorized Village official shall personally serve a copy of the citation upon the alleged violator.

- (2) If the municipal civil infraction action involves the use or occupancy of land, a building or other structure, a copy of the citation does not need to be personally served upon the alleged violator, but may be served upon an owner or occupant of the land, building or structure by posting the copy on the land or attaching the copy to the building or structure. In addition, a copy of the citation shall be sent by first class mail to the owner of the land, building or structure. In addition, a copy of the citation shall be sent by first class mail to the owner of the land, building or structure at the owner's last known address.

5. Municipal civil infraction citations; comments.

- A. A municipal ordinance citation shall contain the name and address of the alleged violator, the municipal civil infraction alleged, the place where the alleged violator shall appear in court, the telephone number of the court, and the time at or by which the appearance shall be made.
- B. Further, the citation shall inform the alleged violator that he or she may do one of the following:
 - (1) Admit responsibility for the municipal civil infraction by mail, in person or by representation at or by the time specified for appearance.
 - (2) Admit responsibility for the municipal civil infraction with explanation by mail by the time specified for appearance or, in person, or by representation.
 - (3) Deny responsibility for the municipal civil infraction by doing either of the following:
 - a. Appearing in person for an informal hearing before a judge or district court magistrate, without the opportunity of being represented by an attorney, unless a formal hearing before a judge is requested by the Village.
 - b. Appearing in court for formal hearing before a judge, with the opportunity of being represented by an attorney.
- C. The citation shall also inform the alleged violator of all of the following:
 - (1) That if the alleged violator desires to admit responsibility with explanation in person or by representation, the alleged violator must apply to the court in person, by mail, by telephone, or by representation within the time specified for appearance and obtain a scheduled date and time for appearance.

- (2) That if the alleged violator desires to deny responsibility, the alleged violator must apply to the court in person, by mail, by telephone, or by representation within the time specified for appearance and obtain a scheduled date and time to appear for a hearing, unless a hearing date is specified on the citation.
 - (3) That a hearing shall be an informal hearing unless a formal hearing is requested by the alleged violator or the Village.
 - (4) That at an informal hearing the alleged violator must appear in person before a judge or district court magistrate, without the opportunity of being represented by an attorney.
 - (5) That at a formal hearing, the alleged violator must appear in person before a judge with the opportunity of being represented by an attorney.
- D. The citation shall contain a notice in boldfaced type that the failure of the alleged violator to appear within the time specified in the citation or at the time scheduled for a hearing or appearance is a misdemeanor and will result in entry of a default judgment; against the alleged violator on the municipal civil infraction.

6. Municipal ordinance violations bureau.

- A. *Bureau established.* The Village hereby establishes a Municipal Ordinance Violations Bureau ("Bureau") as authorized under Section 8396 of the Act to accept admissions of responsibility for municipal civil infractions in response to municipal civil infraction notices issued and served by authorized Village officials and to collect and retain civil fines and costs as prescribed by the Code or any ordinance.
- B. *Location; supervision; employees; rules and regulations.* The Bureau shall be located at the Village of Elberta Offices and shall be under the supervision and control of the Village Clerk. The Village Clerk, subject to the approval of the Village Council, may adopt rules and regulations for the operation of the Bureau and appoint any necessary qualified Village employees to administer the Bureau.
- C. *Disposition of violations.* The Bureau may dispose only of municipal civil infraction violations for which a fine has been scheduled and for which a municipal civil infraction violation notice (as compared with a citation) has been issued. The fact that a fine has been scheduled for a particular violation shall not entitle any person to dispose of the violation at the Bureau. Nothing in this Chapter shall prevent or restrict the Village from issuing a municipal civil infraction citation for any violation or from prosecuting any violation in a court of competent jurisdiction. No person shall be required to dispose of a municipal civil infraction violation at the Bureau and may have the violation processed before a court of appropriate jurisdiction. The unwillingness of any person to dispose of any violation at the Bureau shall not

prejudice the person or in any way diminish the person's rights, privileges and protection accorded by law.

- D. *Bureau limited to accepting admissions of responsibility.* The scope of the Bureau's authority shall be limited to accepting admissions of responsibility for municipal civil infractions and collecting and retaining civil fines and costs as a result of those admissions. The Bureau shall not accept payment of a fine from any person who denies having committed the offense or who admits responsibility only with explanation, and in no event shall the Bureau determine, or attempt to determine, the truth or falsity of any fact or matter relating to an alleged violation.
- E. *Municipal civil infraction violation notices.* Municipal civil infraction violation notices shall be issued and served by authorized Village officials under the same circumstances and upon the same persons as provided for citations in Section 4(E), (F), and (G) of this Ordinance. In addition to any other information required by this Ordinance or other ordinance, the notice of violation shall indicate the time by which the alleged violator must appear at the Bureau, the methods by which an appearance may be made, the address and telephone number of the Bureau, the hours during which the Bureau is open, the amount of the fine scheduled for the alleged violation, and the consequence for failure to appear and pay the required fine within the required time.
- F. *Appearance; payment of fines and costs.* An alleged violator receiving a municipal civil infraction violation notice shall appear at the Bureau and pay the specified fine and costs at or by the time specified for appearance in the municipal civil infraction violation notice. An appearance may be made by mail, in person, or by representation.
- G. *Procedure where admission of responsibility not made or fine not paid.* If an authorized Village official issues and serves a municipal ordinance violation notice and if an admission of responsibility is not made and the civil fine and costs, if any, prescribed by the schedule of fines for violation are not paid at the Bureau, a municipal civil infraction citation may be filed with the District Court and a copy of the citation may be served by first class mail upon the alleged violator and alleged violator's last known address. The citation filed with the court does not need to comply in all particulars with the requirements for citations as provided by Sections 8705 and 8709 of the Act but shall consist of a sworn complaint containing the allegations stated in the municipal ordinance violation notice and shall fairly inform the alleged violator how to respond to the citation.

7. Schedule of civil fines established.

- A. A schedule of civil fines payable to the Bureau for admissions of a responsibility by persons served with municipal ordinance violation notices is hereby established. The fines for violations of the Code are as follows:

Offense

Fine

First Offense: \$50.00

First repeat offense (a second violation of the same provision within any six (6) month period \$250.00

Second repeat offense (any subsequent violation of the same provision within (6) six months of the first repeat offense \$500.00

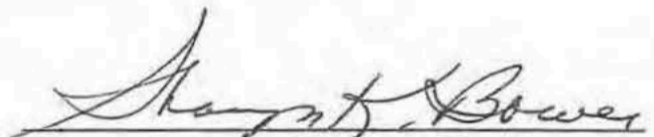
B. A copy of this schedule, as amended from time to time, shall be posted at the Bureau.

8. Saving Clause. The various parts, sections and clauses of this Ordinance are hereby declared to be severable. If any part, sentence, paragraph, section or clause is adjudged unconstitutional, invalid, void or unenforceable, for any reason, by a court of competent jurisdiction, the remaining portions of this Ordinance shall remain in full force and effect.

9. Effective Date. This Ordinance shall become effective immediately upon publication in a newspaper in general circulation within the Village of Elberta. All ordinances or parts of ordinances in conflict with any of the provisions of this Ordinance are hereby repealed.

Adopted: 5.18.06

Posted: 5.31.06


Sharyn Bower, Village Clerk

AN ORDINANCE TO AMEND CHAPTER 1002 THE CIVIL INFRACTION ORDINANCE.

The Village of Elberta Ordains:

Section 2 Definitions shall be amended as follows:

Part B. Authorized Village official” means the Village Enforcement Officer or other personnel of the Village of Elberta, Benzie County Sheriff’s Department, the State Police who are authorized by this ordinance to issue municipal infraction citations or municipal civil infraction violation notices. Animal Control officers are also authorized when enforcing Chapter 9006 - the Dog Ordinance.

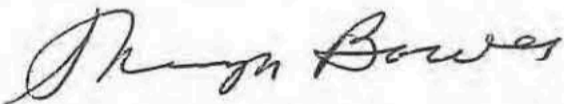
Section 7. Schedule of civil fines established.

Part A. First Offence - \$100.00

Adopted on April 16, 2009

Posted: 4-19-09

Effective date 5-19-09



Sharyn Bower, Clerk
Village of Elberta