

THURMONT POLICE DEPARTMENT

GENERAL ORDER	<i>Date Issued:</i> January 22, 2016	<i>Effective Date:</i> January 22, 2016	<i>Order No:</i> Chapter 30.2
<i>Authority: Chief of Police</i> <div style="text-align: center;"><i>Gregory L. Eyer</i></div>		<i>Manual Page No:</i>	
<i>Subject: Code Enforcement</i>		<i>Replaces Page No:</i>	
<i>Accreditation Standard:</i>	<i>Distribution: ALL</i>	<i>Amends:</i>	<i>Number of Pages: 8</i>
<i>Related Documents:</i>		<i>Rescinds:</i> New Order	

This Directive is for internal use only, and other than as contraindicated here this Directive does not create or enlarge this Department's, any of this Department's officers, and/or any other entities' civil, criminal, and/or other accountability in any way. This Directive is not to be construed as the creation of a standard of safety or care in any sense, with respect to any complaint, demand for settlement, or any other form of grievance, litigation, and/or other action. Deviations from this Directive, if substantiated, can only form the basis for intra-Departmental administrative action(s) (including discipline and/or termination).

I. PURPOSE:

Enforcement of all Town Ordinances provides quality living for all residents. It prohibits hazardous conditions and provides safety for all residents and visitors.

II. POLICY:

It is the policy of the Thurmont Police Department to enforce all Town Ordinances in a fair and impartial manner. The Code Enforcement Officer assigned to the agency will proactively and reactively address all code violations. The primary goal will be to gain compliance from residents through resolution with the issuance of a Municipal Citation as the final enforcement action.

III. DEFINITIONS:

- 1. CIVIL CITATION:** A payable civil citation issued for violations of any Town Ordinance designated as a Municipal Infraction.
- 2. COMMISSIONERS:** The Board of Commissioners, including the Mayor (President of the Board of Commissioners).
- 3. ENFORCEMENT OFFICER:** An individual acting in his or her official capacity to enforce the ordinances of the Town, as authorized by the Commissioners.

4. MUNICIPAL INFRACTION: A violation of any ordinance or code provision specifically declared to be punishable as a municipal infraction and not otherwise deemed to be a criminal offense under state or county law; a municipal infraction is a civil offense.

5. TOWN: Town of Thurmont.

IV. VIOLATION OF ORDINANCES AND RESOLUTIONS:

A. Violations of ordinances and resolutions:

The Commissioners shall have power to provide that violations of ordinances and resolutions shall be punishable as misdemeanors, but no penalty shall exceed a fine of \$ 1,000 and imprisonment for 6 months. Imprisonment in default of fine and costs shall be regulated by the provisions of the Md. Code Ann., Cts. & Jud. Proc. Art. §§ 7-504 and 7-505.

B. Municipal infractions:

(1) The Commissioners may provide that violations of any municipal ordinance shall be a "municipal infraction" unless the violation is declared to be a criminal offense by State law.

(2) In addition, the legislative body of a municipality may classify as a "municipal infraction": (a) a violation of any zoning or land use ordinance or regulation authorized to be adopted or enacted by that municipality; and (b) littering within the municipality as prohibited under Md. Code Ann., Crim. Law § 10-110.

(3) For purposes of this article each municipal infraction is a civil offense.

(4) Each day the violation continues shall be deemed a separate civil offense, unless some other time period is specified in the municipal infraction violated.

C. Payment of Civil Citation:

(1) A fine not to exceed \$ 1,000 may be imposed for each municipal infraction. The fine is payable to the Town by the person charged in the citation within 20 calendar days of service of the citation.

D. Authority to issue Civil Citations:

(1) Those officials authorized by the Commissioners to act as enforcement officer may serve a citation on any person whom they believe is committing or has committed a municipal infraction; or on the basis of an affidavit submitted to a designated official of the Town, to be named by the Town, citing the facts of the alleged infraction.

E. Method of Service:

(1) A citation shall be served within the State of Maryland or, when authorized by the laws of the State of Maryland, outside of this State, on the individual defendant, or at the individual defendant's dwelling house or usual place of abode with a resident of suitable age and discretion:

(a) In accordance with Maryland Rule 3-121; or

(b) For real property-related violations, if proof is made by affidavit that good faith efforts to serve the defendant under Maryland Rule 3-121(a) have not succeeded, by: (i) By mailing to the defendant's last known address a citation and all other papers filed with it by certified

mail requesting: “Restricted Delivery – show to whom, date, address of delivery.” Service by certified mail under this Section is complete upon delivery; and (ii) Posting of the citation at the property where the infraction has occurred or is occurring, and, if located within the municipality in which the infraction has occurred or is occurring, at the residence or place of business of the defendant.

V. PROCEDURE:

A. Citation contents:

- (1) The citation shall contain:
 - (a) The enforcement officer's certification:
 - (i) Attesting to the truth of the matter set forth in the citation; or
 - (ii) That the citation is based on an affidavit;
 - (b) The name and address of the person charged;
 - (c) The nature of the infraction;
 - (d) The location and time that the infraction occurred;
 - (e) The amount of the infraction fine assessed;
 - (f) The manner, location, and time in which the fine may be paid to the municipality;
 - (g) The person's right to elect to stand trial for the infraction; and
 - (h) The effect of failing to pay the assessed fine or demand a trial within the prescribed time.
- (2) The enforcement officer shall retain a copy of the citation.

B. Request to stand trial:

- (1) If a citation is served without a summons as provided in paragraph (D) of this subsection, the person charged in the citation may elect to stand trial for the infraction by notifying the Town in writing of the person's intent to stand trial. The written notice shall be given at least 5 days prior to the date of payment as set forth in the citation.
- (2) Upon receipt of the written notice of the intent to stand trial, the Town or Police agency shall forward to the District Court a copy of the citation and the written notice.
- (3) Upon receipt of the citation and the written notice, the District Court shall schedule the case for trial and notify the defendant of the trial date.

C. Assessment of liability:

- (1) If a person charged in a citation fails to pay the fine by the date of payment set forth on the citation and fails to deliver to the Town the written notice of intent to stand trial, the person is liable for the assessed fine.
- (2) The Town may double the fine to an amount not to exceed \$1,000 and request adjudication of the case through the District Court, including the filing of a demand for judgment on affidavit.

- (3) The District Court shall promptly schedule the case for trial and summons the defendant to appear.
- (4) The defendant's failure to respond to such summons shall result in the entry of judgment against the defendant in favor of the Town in the amount then due if a proper demand for judgment on affidavit has been made.

D. Summons to appear in court:

- (1) An enforcement officer may also serve a summons with a citation that requires the person to appear in District Court on a specified date and time.
- (2) The summons shall specify that the person is not required to appear in District Court if the fine is paid as provided in the citation.
- (3) The citation form may contain the summons.
- (4) The enforcement officer shall coordinate the selection of court dates with the appropriate District Court officials.
- (5) If the defendant fails to pay the fine as provided in the citation and fails to appear in District Court as provided in the summons:
 - (a) The Town may double the fine to an amount not to exceed \$1,000; and the Court may enter judgment against the defendant in the amount then due if the proper demand for judgment on affidavit has not been made.
- (6) If any person shall be found by the District Court to have committed a municipal infraction:
 - (a) The District Court shall order the person to pay the fine, including any doubling of the fine, not to exceed the limits under Code of the Town of Thurmont §2-23;
 - (i) The fines imposed shall constitute a judgment in favor of the Town; and
 - (ii) if the fine remains unpaid for 30 days following the date of its entry, the judgment shall be enforceable in the same manner as other civil judgments for money unless the Court has suspended or deferred the payment of the fine as provided under subparagraph (b) of this paragraph;
 - (b) The District Court may suspend or defer the payment of any fine under conditions that the Court sets;
 - (c) The person shall be liable for the costs of the proceedings in the District Court;
 - (d) The Court may order the person to abate the infraction or enter an order permitting a Town to abate any such infraction at the person's expense.

E. Cost of abatement:

- (1) If the Town abates an infraction pursuant to an order of the District Court, the Town shall present the defendant with a bill for the cost of abatement by:
 - (a) Regular mail to the defendant's last known address; or any other means that are reasonably calculated to bring the bill to the defendant's attention.

(b) If the defendant does not pay the bill within 30 days after presentment, upon a motion of the Town, the District Court shall enter a judgment against the defendant for the cost of the abatement.

F. Fines, penalties, or forfeitures:

All fines, penalties, or forfeitures collected by the District Court for a municipal infraction shall be remitted to the Town.

G. Contempt of Court:

If a defendant fails to pay any fine or cost imposed by the District Court without good cause, the District Court may punish the failure as contempt of court.

H. Adjudication:

(1) Adjudication of a municipal infraction, as defined in the Code of the Town of Thurmont §2-22, is not a criminal conviction for any purpose, nor does it impose any of the civil disabilities ordinarily imposed by a criminal conviction.

(2) In any proceeding for a municipal infraction:

(a) It shall be the burden of the Town to prove that the defendant has committed the infraction by clear and convincing evidence, and in any such proceeding, the District Court shall apply the evidentiary standards as prescribed by law or rule for the trial of civil causes;

(b) The District Court shall ensure that the defendant has received a copy of the charges against the defendant and that the defendant understands those charges;

(c) The defendant shall be entitled to cross-examine all witnesses who appear against the defendant, to produce evidence or witnesses in the defendant's own behalf, or to testify in the defendant's own behalf, if the defendant elects to do so;

(d) The defendant shall be entitled to be represented by counsel of the defendant's own selection and at the defendant's own expense; and

(e) The defendant may enter a plea of guilty or not guilty of the infraction as charged, and the verdict of the District Court shall be guilty of a municipal infraction or not guilty of a municipal infraction, or the District Court may, before rendering judgment, place the defendant on probation.

(3) The court costs in a municipal infraction proceeding in which costs shall be in an amount as prescribed by State law, as most recently amended. A defendant may not be liable for payment to the Criminal Injuries Compensation Fund.

(4) The State's Attorney of Frederick County or the Town's attorney is authorized to prosecute a municipal infraction and is authorized to enter a nolle prosequi in such cases or to place such cases on the stet docket.

VI. Administrative Warrants

A. Consent for entry to structure or premises:

When an enforcement officer has probable cause to believe that a municipal infraction has occurred or is continuing to occur on or about any structure or premises in the Town, the enforcement officer may seek consent to enter and inspect the structure or premises.

- (1) Knowing and voluntary consent should be obtained from the property owner or someone at the premises or structure with authority to give consent before an officer enters the premises or structure.
- (2) If the enforcement officer's entry is refused or otherwise not obtained, the Town may seek an administrative search warrant permitting entry.
- (3) Absent consent or exigent circumstances, the enforcement officer may not enter the property without a valid administrative warrant.

B. Exigent circumstances may permit a warrantless right of entry.

- (1) When an enforcement officer has probable cause to believe that (a) there is imminent threat to the safety of others; or (b) there is an imminent threat of destruction of evidence, the enforcement officer, after proper identification and a reasonable opportunity for the resident to respond, may enter the structure or premises for the purpose of inspecting the exigent circumstances and observing immediately apparent code violations.
- (2) The enforcement officer should obtain an administrative warrant if s/he has probable cause to believe that a broader search of the premises is reasonable under the circumstances.

C. Obtaining an administrative search warrant:

- (1) Whenever consent for entry to a structure or premises is not obtained, unless exigent circumstances exist, an enforcement officer is authorized to seek an administrative search warrant, pursuant to the Town's police power duty to carry out the municipal code to prevent conditions which are hazardous to the public health, welfare and/or safety.
- (2) The enforcement officer seeking an administrative warrant must have a reasonable basis to believe that a search of the structure or premises is necessary for the goal of code enforcement.
- (3) A reasonable basis exists if there is probable cause to enter the structure or premises based on the passage of time, nature of the building, or the condition of the entire area. Probable cause does not necessarily depend upon specific information on the condition of a particular building.

D. Right of entry enforcement:

- (1) It is unlawful for any person to interfere with an enforcement officer's performance of his or her duties. Violation of this Article constitutes a municipal infraction. The penalty for each violation shall be the sum of one-thousand (\$1000.00) dollars.
 - (a) Interference includes, but is not limited to: engaging in verbally or physically threatening behavior directed at an enforcement officer;

engaging in or causing any intentional, reckless, or negligent physical contact with an enforcement officer; or refusing, obstructing, hindering, or impeding the enforcement officer's entry onto, or inspection of, the property or premises pursuant to an administrative search warrant.

(b) Each day of violation shall constitute a separate violation.

(c) Each enforcement officer subject to interference shall constitute a separate violation.

(2) Any unreasonable restraint or hindrance caused by any owner, tenant, or agent or any other person to the right of entry as provided for in this section constitutes a violation under Chapter 2-31 of the Town Code.

VII. Reporting:

The Code Enforcement Officer will generate a Case Report Number in ILEADS for all complaints received or self-initiated. Files will be maintained by the Code Enforcement Officer until each complaint has been resolved.

VIII. Responsibility:

The Code Enforcement Officer is responsible for determining if a code violation exists and to pursue resolution of the violation. If a Civil Citation is issued and the recipient requests a court date, the code enforcement officer will coordinate the court appearance with the Town's Attorney or Frederick County State's Attorney as applicable and provide him or her a complete copy of the investigative file and any related documents.

DOCUMENT DATES :

Review By: Powell Flynn, LLP

Review Date: 01/21/2016

Rescinds:

Order Written By: Lt. P.A. Droneburg

Order Edited and Approved By: Chief Gregory L. Eyer

Accreditation Standards Included in this Order

CHAPTER