

Ordinance #137

7-1-2 Penalty

In addition to those code sections specifically identified as municipal infractions, violations of the following code sections are hereby designated as municipal infractions and subject to civil penalties as specified in section 1-4-1.

7-1-3 Designated Offenses

The following Title 61, M.C.A. offenses adopted and incorporated by reference into the Ennis Town Code are hereby designated a municipal infraction:

- A. All violations of Title 61, chapter 3 known as *Vehicle Registration* shall be assessed the following fines:
 - 1. The penalty for a violation of Title 61, chapter 3 MCA shall be fifty-dollars (\$50.00) unless otherwise specified.
 - 2. The penalty for a violation of Title 61, chapter 3 shall be reduced to twenty-five dollars (\$25.00) if the offender brings proof of compliance into Ennis City Court that he or she has corrected the violation and is now in compliance with state law.
 - 3. Violations of MCA 61-3-603, 61-3-604, and 61-3-607, which are designated as felony offenses by state statute, will be prosecuted as state statute violations and not a municipal infraction.

- B. All violations of Title 61, chapter 4 MCA known as *Vehicle Dealer Licensing* shall be assessed the following fines:
 - 1. The penalty for a violation of Title 61, chapter 4 shall be two hundred dollars (\$200.00).
 - 2. Violations of MCA 61-4-403 is designated as a felony by state statute and shall be prosecuted as a state statute and not a municipal infraction.

- C. All violations of Title 61, chapter 5 known as *Driver Licensing* shall be assessed the following fines:
 - 1. The penalty for a violation of Title 61, chapter 5 MCA and MCA 61-2-302 violations of restrictions imposed on probationary licenses shall be fifty dollars (\$50.00) unless otherwise specified.
 - 2. The penalty for a violation of Title 61, chapter 5 shall be reduced to twenty-five dollars (\$25.00) if the offender brings proof of compliance into Ennis City Court that he or she has corrected the violation and is now in compliance with state law.
 - 3. Violations of MCA 61-5-210, 61-5-212, and 61-11-213 will be prosecuted as a violation of state statute and not as a municipal infraction.
 - 4. Violations of MCA 61-5-133 and MCA 61-5-134 shall be charged and prosecuted as a state statute violation.

- D. All violations of Title 61, chapter 6 known as *Financial Responsibility (Insurance)* shall be prosecuted as a state statute violation.

- E. All violations of Title 61, chapter 7 known as *Crash/Accident Reporting* shall be prosecuted as a state statute violation.
- F. All violations of Title 61, chapter 8 known as *Traffic Regulations* shall be assessed the following fines:
1. The penalty for a violation of Title 61, chapter 8 MCA shall be fifty-dollars (\$50.00) unless otherwise specified.
 2. The following violations of the Montana Code Annotated shall be charged and prosecuted as a state statute violation:
 - a. 61-8-301 Reckless Driving
 - b. 61-8-302(2) Careless Driving involving death or serious bodily injury
 - c. 61-8-308 Holding or engaging in a speed contest
 - d. 61-8-316 Flee from or eluding a peace officer
 - e. 61-8-401 D.U.I.
 - f. 61-8-406 D.U.I. Per Se
 - g. 61-8-410 Under 21 years of age operating a motor vehicle with a BAC of 0.02% or greater.
 - h. 61-8-422 Transfer/Sell/Encumber vehicle that is to be seized
 - i. 61-8-713 Tamper/Damage/Interfere with traffic control device
 - j. 61-8-812 Commercial motor vehicle out of service violations
 3. The penalty for a violation of MCA 61-8-303, 61-8-309, 61-8-310, 61-8-312, 61-8-314, otherwise known as exceeding the speed limit, shall be twenty-five dollars (\$25.00) plus three dollars for every mile per hour over the speed limit.
 - a. Whenever any police officer engaged in the enforcement of the motor vehicle laws of this town uses an electronic, electrical, mechanical, or other device used to determine the speed of a motor vehicle on any highway, road, street, or other public way, such device shall be of a type approved by the police department and shall have been tested to determine that it is operating accurately. Tests for this purpose shall be made not less than once each 12 months, according to procedures and at regular intervals of time prescribed by the department.
 - b. Any police officer, upon receiving information relayed to him or her from a fellow officer stationed on the ground or in the air operating such a device that a driver of a vehicle has violated the speed laws may arrest the driver for violation of said laws where reasonable and proper identification of the vehicle and the speed of same has been communicated to the arresting officer.
 - c. A witness otherwise qualified to testify shall be competent to give testimony against an accused violator of the traffic laws when such testimony is derived from the use of such an electronic, electrical, mechanical, or other device used in the calculation of speed, upon showing that the speed calculating device which was used had been tested. However, the operator of any visual average speed computer device shall first be certified as a competent operator of such device by the department.
 - d. Upon the production of a certificate, signed and witnessed, showing that such device was tested within the time period specified and that such device was working properly, a presumption is established to that effect unless the contrary shall be established by competent evidence.
 - e. Any person accused pursuant to the provisions of this section shall be entitled to have the officer actually operating the device appear in court and testify upon oral or written motion.

4. The penalty for a violation of MCA 61-8-351 or 61-8-352 shall be two hundred dollars (\$200.00).
- G. All violations of Title 61, chapter 9 known as *Vehicle Equipment* shall be assessed the following fines:
1. The penalty for a violation of Title 61, chapter 9 MCA shall be fifty-dollars (\$50.00) unless otherwise specified.
 2. The penalty for a violation of Title 61, chapter 9 shall be reduced to twenty-five dollars (\$25.00) if the offender brings proof of compliance into Ennis City Court that he or she has corrected the equipment violation and is now in compliance with state law.
- H. All violations of Title 61, chapter 10 known as *Gross Vehicle Weight and Size* and Title 69, *Motor Carriers* shall be one hundred dollars (\$100.00) with the following exceptions:
1. The penalty for a violation of MCA 61-10-124, triple vehicle combinations, shall be three hundred (\$300.00) dollars.
- I. All violations of MCA 61-13-103, known as *seat belt* violations, shall be twenty-five (\$25.00) dollars.
- J. All violations of MCA 61-9-420, known as the *child restraint* violations, shall be one hundred dollars (\$100.00).
- K. All violations of 49 CFR, known as the *Federal Motor Carrier Regulations* shall apply to all commercial motor vehicles operated within the town limits of Ennis. Police officers with the Ennis Police Department are authorized to enforce violations of 49 CFR. For the purposes of enforcing this part, violations are considered municipal infractions. The fine for a violation is one hundred dollars (\$100.00).

Adopted: 12/08/2011

Ordinance #137

Title 1 Administration Chapter 4 General Penalty

1-4-1:

Penalty: Whenever in any provision of this code or other ordinance of the town any act is prohibited or is made or declared to be unlawful, or whenever in any such provision or ordinance the doing of any act is required or the failure to do any act is declared to be unlawful, where no specific penalty is otherwise provided, any person, upon conviction for the violation of any such provision of this code or ordinances, shall be liable of a municipal infraction and punished as follows:

(Reference MCA 7-1-4150, 7-1-4151, and 7-1-4152).

(1) A municipal infraction is a civil offense punishable by a civil penalty of not more than \$300 for each violation or if the infraction is a repeat offense, a civil penalty not to exceed \$500 for each repeat violation.

(2) Statutory surcharges must be imposed, as provided in MCA 3-1-317(1)(a), 3-1-318(1), and 46-18-236(6)(a), on municipal infractions that are criminal offenses under state law, and the amounts must be distributed as provided in those sections.

(3) A person may not be proceeded against for the same act or omission to act under both a municipal infraction ordinance and the corresponding state law criminal offense on which the municipal infraction ordinance is based.

(4) An officer who is authorized by the Town of Ennis to enforce a municipal code or regulation may issue a civil citation to a person who commits a municipal infraction. The citation may be served by personal service, by certified mail addressed to the defendant at the defendant's last-known mailing address, return receipt requested, or by publication, as provided in Rule 4D(5), M.R.Civ.P. A copy of the citation must be retained by the issuing officer and one copy must be sent to the clerk of the city court. The citation must serve as notification that a municipal infraction has been committed and must contain the following information:

- (a) the name and address of the defendant;
- (b) the name or description of the infraction attested to by the officer issuing the citation;
- (c) the location and time of the infraction;
- (d) the amount of civil penalty to be assessed or the alternate relief sought, or both;
- (e) the manner, location, and time in which the penalty may be paid;
- (f) the time and place of court appearance; and
- (g) the penalty for failure to appear in court.

(5) Each day any violation of any provision of any ordinance shall continue shall constitute a separate offense.

1-4-2:

Municipal Infractions- Procedure:

(1) In municipal infraction proceedings:

(a) the matter must be tried before a city court judge pursuant to the Montana Uniform Rules for Justice And City Courts.

(b) the city has the burden of proof that the municipal infraction occurred and that the defendant committed the infraction. The proof must be by clear and convincing evidence.

(c) the court shall ensure that the defendant has received a copy of the charges and that the

defendant understands the charges. The defendant may question all witnesses who appear for the municipality and produce evidence or witnesses on the defendant's behalf.

(d) the defendant may be represented by counsel of the defendant's own choosing and at the defendant's own expense;

(e) the defendant may answer by admitting or denying the infraction;

(f) if a municipal infraction is proven, the court shall enter a judgment against the defendant. If the infraction is not proven, the court shall dismiss the charges. Each day that a violation occurs or is permitted to exist by the defendant constitutes a separate infraction.

(2) All penalties or forfeitures collected by the court for municipal infractions must be remitted to the municipality in the same manner as fines and forfeitures collected for criminal offenses. If the person named in the citation is served as provided in MCA 7-1-4150 and fails without good cause to appear in response to the civil citation, judgment must be entered against the person.

(3) A person against whom judgment is entered shall pay court costs and fees as in small claims court under Title 25, chapter 35. If the action is dismissed by the court, the municipality is liable for the court costs and court fees.

(4) In addition to a civil penalty, the Town may seek alternative relief from the court in the same action.

(5) When judgment has been entered against a defendant, the court may do any of the following:

(a) impose a civil penalty by entry of a judgment against the defendant;

(b) direct that payment of the civil penalty be suspended or deferred under conditions imposed by the court;

(c) grant appropriate alternative relief ordering the defendant to abate or cease the violation;

(d) authorize the municipality to abate or correct the violation;

(e) order that the municipality's costs for abatement or correction of the violation be entered as a judgment against the defendant or assessed against the property where the violation occurred, or both.

(6) If a defendant willfully violates the terms of an order imposed by the court, the failure is contempt.

1-4-3:

Municipal Infractions- Jurisdiction and Appeal:

(1) A city court judge has jurisdiction to assess or enter judgment for costs of abatement or correction in any amount not to exceed the jurisdictional amount for a money judgment in a civil action pursuant to MCA 3-11-103. If the municipality seeks abatement or correction costs in excess of that amount, the matter must be referred to the district court for hearing and entry of an appropriate order. The procedure for hearing in the district court shall be the same procedure as that for a small claims appealed under MCA 25-35-803.

(2) The defendant or the municipality may file a motion for a new trial or may appeal the decision to district court. A factual determination made by the trial court, supported by substantial evidence as shown in the record, is binding for purposes of appeal relating to the violation at issue, but is not admissible or binding as to any future violations for the same or similar ordinance provision by the same defendant.

(3) Except for willful or wanton misconduct on the part of the municipality, the issuance of a civil citation for a municipal infraction or the ensuing court proceedings do not provide an action for false arrest, false imprisonment, or malicious prosecution.

(4) An action brought pursuant to this section for a municipal infraction that is an environmental violation does not preclude, and is in addition to, any other enforcement action that may be brought under state law.

1-4-4:

Construction and Interpretation:

In the construction and interpretation of this section, the revocation of a license or permit shall not be considered as a recovery or penalty so as to bar any other penalty being enforced.

Adopted 12/08/2011

Ordinance #137

Title 1 Administration Chapter 13 Police Department

1-13-1:

Definitions

As used in this ordinance, unless the context requires otherwise, the following definitions apply:

"Arrest" means taking a person into custody in the manner authorized by law.

"Auxiliary officer" means an unsworn, part-time, volunteer member of a law enforcement agency who may perform but is not limited to the performance of such functions as civil defense, search and rescue, office duties, crowd and traffic control, and crime prevention activities.

"Charge" means a written statement that accuses a person of the commission of an offense, that is presented to a court, and that is contained in a complaint, information, or indictment.

"General law enforcement duties" means patrol operations performed for detection, prevention, and suppression of crime and the enforcement of criminal and traffic codes of this state and its local governments.

"Law enforcement agency" means a law enforcement service provided directly by a local government.

"Law enforcement officer" means a sworn, full-time, employed member of a law enforcement agency who is a peace officer, as defined in MCA 46-1-202, and has arrest authority, as described in MCA 46-6-210. The term peace officer and law enforcement officer are considered the same.

"MCA" means the Montana Code Annotated.

"Notice to appear" means a written direction that is issued by a peace officer and that requests a person to appear before a court at a stated time and place to answer a charge for the alleged commission of an offense.

"Offense" means a violation of any penal statute of this state or any ordinance of its political subdivisions. Also includes a violation of the provisions of Title 49 of the United States Code and regulations that have been adopted under Title 49 regarding motor carrier enforcement.

"Peace officer" means any person who by virtue of the person's office or public employment is vested by law with a duty to maintain public order and make arrests for offenses while acting within the scope of the person's authority. Also includes the term "public safety officer".

"Reserve officer" means a sworn, part-time, volunteer member of a law enforcement agency who is a peace officer, as defined in MCA 46-1-202, and has arrest authority, as described in MCA 46-6-210, only when authorized to perform these functions as a representative of the law enforcement agency.

Reference MCA 7-32-201 MCA 46-1-202, MCA 46-6-210, MCA 61-10-154.

1-13-2:

Police department authorized and required.

There shall be a police department which shall be organized, managed, and controlled as provided in this part and it shall be known as the Ennis Police Department. The Mayor shall appoint a Chief of Police to manage and direct the police department.

Reference MCA 7-32-4101.

1-13-3:

Supervision of police department.

The Mayor has charge of and supervision over the police department. The Mayor shall appoint all the members and officers of the department. Subject to the provisions of this part, the Mayor may suspend or remove any member or officer of the force. The Mayor shall make rules, not inconsistent with the provisions of this part, the other laws of the state, or the ordinances of the town commission, for the government, direction, management, and discipline of the police force.

Reference MCA 7-32-4103.

1-13-4:

Duties of chief of police.

(1) The Chief of Police:

- (a) shall execute and return all process issued by the city judge or directed to the Chief of Police by any legal authority and must be present and shall assist the city court regularly;
- (b) shall arrest all persons guilty of a breach of the peace or for the violation of any local ordinance, state law, or federal law or any applicable local, state, or federal administrative rule and bring them before the city judge for trial;
- (c) must have charge and control of all police officers, subject to rules that may be prescribed by ordinance, and report to the Mayor all delinquencies or neglect of duty or official misconduct of police officers for action of the Mayor;
- (d) shall perform other duties that the Mayor may prescribe.

(2) The Chief of Police has the same powers as a constable in the discharge of duties, but the Chief of Police may not serve a process in a civil action or proceeding except when a city or town is a party.

(3) Quotas for investigative stops, citations, or arrests may not be established and may not be used in evaluating police officers.

Reference MCA 7-32-4105

1-13-5:

Qualifications of police officers.

A member of a police department on the active list of the Town at the time of appointment under this part may not be less than 18 years of age, must be a citizen of the United States, and must meet the minimum qualifying standards for employment as a peace officer promulgated by the Montana Public Safety Officer Standards (POST) and established in the Montana Code Annotated.

Reference MCA 7-32-4112 and MCA 2-15-2029.

1-13-6:

Probationary period and confirmation of appointment.

(1) Every applicant who has passed the examination and received the certificate referred to in MCA 7-32-4108 must first serve for a probationary term of not more than 1 year. At any time before the end of such probationary term, the Mayor may revoke such appointment.

(2) After the end of such probationary period and within 30 days thereafter, the appointment of such applicant must be submitted to the Mayor, and if such appointment is confirmed by the Mayor, such applicant becomes a member of the police force and shall hold such position during good behavior unless suspended or discharged as provided by law.

Reference MCA 7-32-303 and MCA 7-32-4113.

1-13-7:

Exemptions of members of police force.

No member of the police force shall be liable to military or jury duty or to arrest on civil process while actually on duty.

Reference MCA 7-32-4115.

1-13-8:

Reserve officers .

The Mayor and Chief of Police may authorize reserve police officers. A reserve officer must meet the qualifications and training for appointment as a reserve police officer as prescribe in the Montana Code Annotated for reserve police officers. Reserve police officers are subject to the limitations and restrictions imposed by the Montana Code Annotated. Reserve police officers serve at the pleasure of the Chief of Police and may be terminated at any time by the Chief of Police by written notification without any cause.

Reference MCA 7-32-211 through 7-32-222.

1-13-9:

Regulations governing arrest authorized.

The town commission authorizes the police of the Town to make arrests of persons charged with crime:

(1) within the limits of the city or town;

(2) within 5 miles thereof; and

(3) along the line of water supply of the city or town.

Reference MCA 7-32-4301.

Adopted: 12/08/2011