

ORDINANCE NO. 8-06

AN ORDINANCE DETERMINING CIVIL PENALTIES FOR PARKING INFRACTIONS IN THE VILLAGE OF SPENCER

NOW, THEREFORE, BE IT ORDAINED by the Council of the Village of Spencer, Ohio, three-fourths (3/4) of its members concurring herein as follows:

- Section 1 Definitions.
- Section 2 Decriminalization; impoundment and immobilization of vehicle.
- Section 3 Parking ticket; service and liability.
- Section 4 Parking Violations Bureau.
- Section 5 Answers to charge; judgments.
- Section 6 Failure to Answer.
- Section 7 Hearings.
- Section 8 Nonliability of owner.
- Section 9 Parking ticket form.
- Section 10 Parking infraction fines.

SECTION 1 DEFINITIONS.

As used in this chapter:

- (a) "Bureau" means the Parking Violations Bureau of the Village of Spencer, unless specifically identified as another bureau, in which cases it means the bureau so identified.
- (b) "Court" or "Municipal Court" means the Medina Municipal Court, unless specifically identified as another court, in which case it means the court so identified.
- (c) "Law Enforcement officer" includes all police officers hired by the Village of Spencer.
- (d) "Local authority" means every county, municipal corporation, township or other local board or body having authority to adopt policy regulations pursuant to the Constitution and laws of the State.

(e) "Parking infraction" means a violation of any of the Village of Spencer parking ordinances.

(f) "Motor Vehicle" has the same meaning as it is defined in the Ohio Revised Code.

**SECTION 2 DECRIMINALIZATION; IMPOUNDMENT AND
IMMOBILIZATION OF VEHICLE.**

(a) The commission of a parking infraction shall not be considered a criminal offense for any purpose.

(b) A vehicle involved in three or more parking infractions in which judgments or default judgments have been filed with the Clerk of the Medina Municipal Court pursuant to Section 7(c) is subject to impoundment or immobilization by law enforcement officers of the Village or their agent. Impoundment or immobilization, pursuant to this section, is permitted without regard to whether or not the vehicle, at the time of impoundment or immobilization, is legally parked. The owner of a vehicle impounded pursuant to this chapter shall be liable for impoundment fees and storage charges as provided in Section 7.

(c) A vehicle so impounded or immobilized shall be released to the owner upon the owner's presenting a valid certificate of title to the vehicle to the Violations Clerk of the Parking Violations Bureau, upon the owner's either paying the fines, penalties, fees and costs due on the judgments or default judgments that led to the impoundment or immobilization or posting a bond equal to or exceeding the amount of such fines, penalties, fees and costs. In no case, however, shall the owner of a vehicle impounded or immobilized pursuant to this chapter be required to post a bond in excess of One Thousand Dollars (\$1,000.00) to obtain release of the vehicle.

(d) Notwithstanding divisions (b), (c) and (e) of this section, a vehicle parked, stopped or standing on a public street or highway in commission of a parking infraction is subject to impoundment if the law enforcement officer issuing the parking infraction determines that the vehicle is substantially impeding or hindering the movement of other traffic.

(e) The impoundment or immobilization of a motor vehicle pursuant to this chapter shall occur only after the expiration of the ten (10) day period authorized by Section 7(c) for the payment of a civil judgment or default civil judgment.

SECTION 3 PARKING TICKET; SERVICE AND LIABILITY.

(a) The parking ticket form adopted in Section 9 shall be used by law enforcement officers in all cases in which a person is charged with committing a parking infraction within the Village of Spencer. The parking ticket shall be the summons and complaint for purposes of this chapter.

(b) A law enforcement officer who issues a parking ticket for a parking infraction shall complete the ticket by identifying the parking infraction charge; recording the license plate number and the type, make or model of the vehicle; and indicating the date, time and place of the charged parking infraction. The officer shall sign the ticket, affirm the facts it contains and file a copy with the

Violations Clerk. If the operator of the vehicle is present, the officer shall also record on the ticket the name of the operator (in a space provided on the ticket for identification of the offender) and then shall personally serve the parking ticket upon the operator. If the operator of the vehicle is not present, the officer shall insert the word "owner" in the space provided on the ticket for identification of the offender and then shall constructively serve the parking ticket upon the owner of the vehicle by affixing the ticket to the vehicle in a conspicuous place.

Constructive service of a parking ticket upon an owner of a vehicle by such affixation or the procedure described in subsection (d) hereof has the same force and effect as if the parking ticket were personally served on both the owner and operator of the vehicle at the time of the violation and potentially subjects both the owner and the operator of the vehicle, whose act or omission resulted in the parking infraction, if different, to the same fine and the same penalties, fees and costs for failure to timely answer or to appear, if a hearing is requested.

(c) The original of a parking ticket issued pursuant to this section or any true copy thereof shall be considered a record kept in the ordinary course of business of the Village of Spencer and of the law enforcement agency whose officer issued it, and shall be prima-facie evidence of the facts it contains.

(d) An operator of a vehicle who is not the owner of the vehicle, but who operates it with the express or implied permission of the owner, is the agent of the owner for purposes of the receipt of a parking ticket served in accordance with this section. Personal service of a parking ticket upon the operator, in accordance with this section, constitutes constructive service upon the owner for purposes of this chapter. The operator of a rented or leased vehicle whose act or omission resulted in an alleged parking infraction shall not be considered an agent of the owner if the owner is engaged in the business of renting and leasing vehicles pursuant to a written rental or lease agreement and if the owner follows the procedures set forth in Section 8.

(e) Except as provided in Section 8, when a parking ticket is issued for a parking infraction and is served pursuant to this section, the operator of the vehicle whose act or omission resulted in the parking infraction for which the ticket was issued and the owner of the vehicle involved in the parking infraction, if different, are jointly liable for the parking infraction and for any fine, penalty, fees or costs arising out of the parking infraction. Any owner of a vehicle who pays any fine, penalty, fees or costs imposed for a parking infraction pursuant to this chapter may recover the amount so paid from the operator of the vehicle whose act or omission resulted in the parking infraction.

(f) No person who is served with a parking ticket pursuant to this section shall be arrested as a result of the commission of a parking infraction.

SECTION 4 PARKING VIOLATIONS BUREAU.

A Parking Violations Bureau is hereby established pursuant to Ohio Revised Code § 4521.04.

(a) The Bureau shall be a division within the Spencer Village Police Department. The Bureau has jurisdiction over each parking infraction that occurs within the Village. Notwithstanding any other provision of law to the contrary, each parking infraction that occurs within the Village of

Spencer and the enforcement of such parking infraction shall be handled pursuant to and governed by this chapter.

(b) The operating costs of the Parking Violations Bureau shall be paid by the Village of Spencer. The Mayor shall appoint a Violations Clerk, necessary clerical employees and hearing examiners. No person shall be employed as a hearing examiner unless such person is an attorney admitted to the practice of law in the State of Ohio or is a former law enforcement officer.

(c) The fines, penalties, fees and costs established for a parking infraction shall be collected, retained and disbursed by the Violations Clerk. The Clerk shall issue tickets for law enforcement officers for the Village of Spencer and shall describe conditions for issuance and accounting procedures.

(d) The Mayor may contract with any non-governmental entity to provide services in processing, collecting and enforcing parking tickets issued by law enforcement officers and civil judgments and default civil judgments entered pursuant to this chapter.

SECTION 5 ANSWERS TO CHARGE; JUDGMENTS.

(a) A person who is personally or constructively served with a parking ticket charging the commission of a parking infraction may answer the charge by appearing personally before the Traffic Violations Bureau or by mail. An answer shall be made within ten (10) days from the date of the infraction and shall be in one of the following forms:

(1) An admission that the person committed the parking infraction by payment of any fine arising out of the infraction;

(2) An admission that the person committed the parking infraction, with an explanation of the circumstances surrounding the parking infraction; or

(3) A denial that the person committed the parking infraction and a request for a hearing relative to the infraction. If the person desires the presence, at the hearing, of the law enforcement officer who issued the parking ticket, the person must request the officer's presence in his or her answer.

(b) A person who admits that he or she committed a parking infraction shall, and a person who admits that he or she committed a parking infraction with explanation may, when he or she makes his or her answer, pay the fine arising out of the infraction admitted to the Violations Clerk.

(c) A person who admits that he or she committed a parking infraction with explanation shall submit evidence to the Parking Violations Bureau that explains the circumstances surrounding the parking infraction. The evidence may be submitted in person or, to avoid the necessity of personal appearance may be sent as affidavits and other documentary evidence by mail. The Bureau, when it receives an answer admitting that a person committed a parking infraction with explanation, shall promptly determine whether or not the explanation mitigates the fact that the person committed the parking infraction and shall notify the person, in writing, of its determination.

If the Bureau determines that the explanation mitigates the fact that the person committed the parking infraction, the Bureau shall eliminate or reduce the amount of the fine arising out of the parking infraction. If the fine is eliminated or reduced and the person has previously paid the fine, the amount paid in excess of the revised fine shall be returned to the person. If the fine is eliminated or reduced and the person has not previously paid the fine, the person shall pay only the amount of the revised fine.

If the Bureau determines that the explanation does not mitigate the fact that the person committed the parking infraction, the person owes the entire amount of the fine arising out of the parking infraction, and if the person has not previously paid the fine, the person shall pay the entire amount of the fine. If a person admits the he or she committed a parking infraction with explanation and the person fails to pay the amount of the fine due within ten (10) days after receiving notice of the Bureau's determination and the amount of the fine due shall be considered a judgment and shall be treated as if it were a judgment rendered subsequent to a hearing held pursuant to Section 7.

(d) A person who denies that he or she committed a parking infraction shall be granted a hearing concerning the infraction. The Bureau shall set a date for the hearing and notify the person, in writing, of the date, time and place of the hearing. The hearing shall be conducted by a hearing examiner of the Parking Violations Bureau in accordance with Section 7.

(e) If a person who is personally or constructively served with a parking ticket charging the commission of a parking infraction fails to timely answer the charge, as provided in division (a) of this section, the Parking Violations Bureau shall issue the proper notification of infraction, pursuant to Section 6 and proceed according to such section. Failure to timely answer a charge may result in the imposition of an additional penalty of Five Dollars (\$5.00).

(f) The issuance of a parking ticket; the filing of or failure to file an answer by a person personally or constructively served with the ticket; the substance of an answer; the payment of any fine, penalty, fee or cost; and any other relevant information shall be entered in the records of the Parking Violations Bureau.

SECTION 6 FAILURE TO ANSWER.

(a) When a person is personally or constructively served with a parking ticket charging the commission of a parking infraction in accordance with Section 3, and the person fails to answer the charge within the time specified in Section 5, the Parking Violations Bureau shall send a notification of infraction as follows:

(1) If the person who fails to answer was the operator of the vehicle involved in the parking infraction at the time of the commission of the infraction and was personally served with the parking ticket, a notification of infraction shall be sent to that person and, additionally, if such person is not the owner of the vehicle as determined from the records of the Bureau of Motor Vehicles, a notification of infraction also shall be sent to the owner at his or her most recent address appearing in such records;

(2) If the person who fails to answer was the owner of the vehicle and was constructively served with the parking ticket, a notification of infraction shall be sent to the owner at his or her most recent address appearing in the records of the Bureau of Motor Vehicles.

(b) A notification of infraction shall be sent by first class mail within twelve (12) months after the expiration of the time specified in Section 5 for the making of an answer, and shall contain all of the following:

(1) An identification of the parking infraction with which the person was charged and the time and date of the infraction, which identification may be a copy of the parking ticket charging the parking infraction that was personally or constructively served upon the person;

(2) An identification of the amount of the fines, penalties, fees and costs that are due arising out the parking infraction;

(3) A warning that the person must answer the parking infraction charged in the ticket within thirty (30) days or a default civil judgment in the amount of the fines; penalties, fees and costs due may be entered against the person;

(4) A description of the allowable answers that may be made and notification that the person will be afforded a hearing before the Bureau if he or she denies in his or her answer that he or she committed the parking infraction;

(5) An identification of the manner in which and the entity to which an answer may be made;

(6) A warning that if the person fails to appear at a requested hearing, a default civil judgment in the amount of the fines, penalties, fees and costs due may be entered against the person; and

(7) A warning that the registration of the vehicle involved in the parking infraction, if the vehicle is registered in the State, may not be renewed or transferred if a civil judgment or a default civil judgment is entered against the person, until the judgment is paid or until it is otherwise finally disposed of as provided by law.

(c) A person who receives notification of infraction pursuant to this section may answer the parking infraction with which he or she is charged, and that is identified in the notification of infraction, by any of the means provided in Section 5(a) for answers to parking infractions charged in a parking ticket. Such answer shall be made within thirty (30) days after the date on which the notification of infraction was mailed, and shall be in one of the forms specified in Section 5(a) for answers to parking infractions charged in a parking ticket, except that if the answer includes payment of the fine arising out of the parking infraction, any penalty arising out of such infraction also shall be paid. The answer shall be governed by the provisions of Section 5(b) through (d) for answers relative to parking infractions charged in a parking ticket, except that any determination of the amount to be paid under an answer admitting the commission of the parking infraction with explanation also shall consider any penalty, fee or cost arising out of such infraction.

(d) If a person who is issued a notification of infraction fails to timely answer, as provided in division (c) of this section, the failure to answer shall be considered an admission that the person committed the parking infraction, and a default civil judgment, in the amount of the fines, penalties and costs due may be entered against the person. Failure to timely answer the parking infraction identified in the notification of infraction may result in the imposition of an additional penalty of Five Dollars (\$5.00) and a judgment against such person for the court costs incurred.

(e) The sending of a notification of infraction; the filing of or failure to file an answer by the person to whom it is sent; the substance of an answer; the payment of any fine, penalty, fee or cost; and any other relevant information shall be entered in the records of the Bureau.

SECTION 7 HEARINGS.

(a) If a person is personally or constructively served with a parking ticket charging the commission of a parking infraction or receives a notification of infraction and, in his or her answer to the charge, denies that he or she committed the infraction, the Parking Violations Bureau shall conduct a hearing to determine if the person committed the parking infraction. Each hearing shall be conducted by a hearing examiner of the Bureau in such manner as the hearing examiner considers appropriate. Rules regarding the admissibility of evidence shall not be strictly applied in the hearing, but all testimony shall be under oath.

At the hearing, the Village of Spencer has the burden of proving, by a preponderance of the evidence, that the person for whom the hearing is being conducted committed the parking infraction.

If the person, in his or her answer, denies that he or she committed the parking infraction and requests the presence at the hearing of the law enforcement officer who issued the parking ticket, such officer shall be required to attend the hearing, unless the hearing examiner determines that the officer's presence is not required. If the officer's presence at the hearing has been requested and the officer is unable to attend the hearing on the date and at the time scheduled, the hearing examiner may grant a reasonable continuance.

The person whom the hearing is being conducted may present any relevant evidence and testimony at the hearing. The person does not have to attend the hearing if he or she submits documentary evidence to the hearing examiner prior to the day of the hearing.

The Village of Spencer shall submit the original parking ticket that was personally or constructively served on the person, or a true copy of that ticket, and information from the Bureau of Motor Vehicles that identifies the owner of the vehicle. The ticket and the information in proper form is prima-facie evidence that the registered owner of the vehicle was the person who committed the parking infraction. The Village must present additional evidence and testimony at the hearing and does not have to be represented at the hearing by an attorney.

(b) If a person for whom a hearing is to be conducted under division (a) of this section appears at the scheduled hearing or submits evidence in accordance with such division, the hearing examiner shall consider all evidence and testimony presented and shall determine whether or not the Village of Spencer has established, by a preponderance of the evidence, that the person committed the

parking infraction. If the hearing examiner determines that the person committed the infraction, an order indicating the determination as a judgment against the person and requiring the person to pay the appropriate fine and any additional penalties, fees and costs shall be entered in the records of the Parking Violations Bureau.

If a person for whom a hearing is to be conducted under division (a) of this section fails to appear at the scheduled hearing and fails to submit evidence in accordance with such division, the hearing examiner, if he or she determines, from a preponderance of the evidence and testimony presented at the hearing, that the person committed the parking infraction, shall enter a default judgment against the person and require the person to pay the appropriate fine and any additional penalties, fees and costs. A default judgment entered under this division shall be entered in the records of the Parking Violations Bureau.

If a person who is sent a notification of infraction pursuant to Section 5 does not timely answer, as provided in Section 5(e), the hearing examiner of the Parking Violations Bureau, if he or she determines from a preponderance of the evidence and testimony presented to him or her by the local authority that the person committed the parking infraction, shall enter a default judgment against the person and require the person to pay the appropriate fine and any additional penalties, fees and costs. A default judgment entered under this division shall be entered in the records of the Bureau.

If the hearing examiner does not determine, by a preponderance of the evidence, that a person in any of the classes described in this division committed the parking infraction, the hearing examiner shall enter judgment against the Village of Spencer, shall dismiss the charge of the parking infraction against the person and shall enter the judgment and dismissal in the records of the Parking Violations Bureau.

A default judgment entered under this section may be vacated by the hearing examiner who entered it if all of the following apply:

(1) The person against whom the default judgment was entered files a motion with the Parking Violations Bureau within one (1) year of the date of entry of the judgment;

(2) The motion sets forth a sufficient defense to the parking infraction out of which the judgment arose; and

(3) The motion sets forth excusable neglect as to the person's failure to attend the hearing or answer the notification of infraction.

(c) Payment of any judgment or default judgment entered against a person pursuant to this section shall be made to the Violations Clerk within ten (10) days of the date of entry of such judgment. All money paid in satisfaction of a judgment or default judgment shall be disbursed by the Violations Clerk and the Clerk shall enter the fact of payment of the money and its disbursement in the records of the Bureau. If payment is not made within this time period, the judgment or default judgment shall be filed with the Clerk of the Medina Municipal Court and, when so filed, shall have the same force and effect as a money judgment in a civil action rendered in such Court.

As required by Ohio Revised Code § 4521.08(C), judgments and default judgments filed with the Medina Municipal Court pursuant to this division shall be maintained in an index and judgment roll separate from other judgments rendered in such Court. Computer printouts, microfilm, microdot, microfiche or other similar data recording techniques may be utilized to record such judgments. When a judgment or default judgment is filed with the Court, execution may be levied and such other measures may be taken for its collection as are authorized for the collection of an unpaid money judgment in a civil action rendered in the Medina Municipal Court. The Court may assess costs against the judgment debtor of not more than ten dollars (\$10.00) for each parking infraction, to be paid upon satisfaction of the judgment.

(d) Any person against whom a judgment or default judgment is entered pursuant to this section, and the City, if a judgment is entered against the Village pursuant to this section, may appeal the judgment or default judgment to the Medina Municipal Court by filing notices of appeal with the Parking Violations Bureau and the Court within fifteen (15) days of the date of entry of the judgment and by the payment of such reasonable costs as the Court requires. The Village, however, shall be exempt from such costs. Upon the filing of such an appeal, the Court shall schedule a hearing date and notify the parties of the date, time and place of the hearing. The hearing shall be held by the Court in accordance with the rules of the Court. Service of a notice of appeal under this division by a person does not stay enforcement and collection of the judgment or default judgment from which appeal is taken by the person unless the person who files the appeal posts bond with the Parking Violations Bureau in the amount of the judgment, plus courts costs, at or before service of the notice of appeal.

Notwithstanding any other provision of law, the judgment on appeal to the Medina Municipal Court is final, and no other appeal of the judgment of the Parking Violations Bureau or an appeal of the judgment of the Court may be taken.

(e) A default judgment entered pursuant to this section may be filed with the Court under division (c) of this section at any time within three (3) years after the date of issuance of the parking ticket, charging the parking infraction out of which the judgment arose. This division applies to any ticket issued for an offense that would be a parking infraction on or after the effective date of this section, if the ticket was issued within three (3) years prior to the effective date of this section and a warrant has not been issued and served on the operator or owner of the vehicle involved in the offense.

SECTION 8 NONLIABILITY OF OWNER.

(a) An owner of a vehicle is not jointly liable with an operator of such vehicle whose action or omission resulted in a parking infraction or any fine, penalty, fee or cost arising out of the parking infraction under this chapter if either of the following applies:

(1) The owner answers the charge of the parking infraction under Sections 5 or 6 and in such answer denies that he or she committed the infraction and requests a hearing concerning the infraction. Further, the owner additionally asserts, and provides reasonable evidence at the time to prove, that the vehicle at the time of the commission of the parking infraction was used by the operator without the owner's express or implied consent, and the Parking Violations Bureau determines that the vehicle was being so used. If the Bureau does not so determine, it shall conduct the hearing concerning the infraction according to Section 7.

(2) The owner answers the charge of the parking infraction under Sections 5 or 6 and in such answer denies that he or she committed the parking infraction; the owner submits evidence at the time that proves that, at the time of the alleged commission of the infraction, the owner was either engaged in the licensed taxicab business or otherwise engaged in the business of renting or leasing vehicles under written rental or lease agreements; and the owner submits evidence that proves that, at the time of the alleged commission of the parking infraction, the vehicle in question was in the care, custody or control of a person other than the owner, either pursuant to an employment relationship, if the owner was engaged in the licensed taxicab business, or pursuant to a written rental or lease agreement. If the owner does not so prove, the Parking Violations Bureau shall conduct a hearing relative to the infraction according to Section 7.

(b) An owner of a vehicle who is either engaged in the licensed taxicab business or otherwise engaged in the business of renting or leasing vehicles under written rental or lease agreements, but who does not satisfy the additional requirement of subdivision (a)(2) of this section, is not liable for any penalties arising out of a parking infraction involving the vehicle, if at the time of the commission of the parking infraction, the vehicle was in the care, custody or control of a person other than the owner, either pursuant to an employment relationship; if the owner was engaged in the licensed taxicab business, or otherwise pursuant to a written rental or lease agreement; and if the owner answers the charge of the parking infraction by denying that he or she committed the parking infraction or by paying the fine arising out of the parking infraction within thirty (30) days of the actual receipt of the parking ticket charging the infraction or, if the owner did not receive the parking ticket, within thirty (30) days after receipt of the notification of infraction.

Proof that the vehicle was in the care, custody or control of a person other than the owner, pursuant to a written rental or lease agreement, at the time of the alleged parking infraction shall be established by sending a true copy of the rental or lease agreement or an affidavit to that effect of the Parking Violations Bureau within thirty (30) days after the date of receipt by the owner of the parking ticket charging the infraction or, if the owner did not receive the parking ticket, within thirty (30) days after receipt of the notification of infraction. The submission of a true copy of a written rental or lease agreement or affidavit shall be prima-facie evidence that a vehicle was in the care, custody or control of a person other than the owner. In addition, any information required by subdivision (a)(2) of this section may be provided on magnetic tape or another computer-readable medium in a format acceptable to the Village.

SECTION 9 PARKING TICKET FORM.

Parking ticket forms which are used for the enforcement of this Traffic Code shall contain the following items of information pertaining to each alleged violation:

- (a) The license plate number of the vehicle;
- (b) The vehicle type, make, model or color;
- (c) A description of the parking infraction;

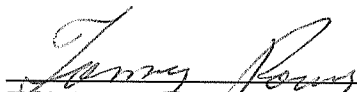
- (d) The section number of the Codified Ordinances alleged to be violated;
- (e) The fine applicable;
- (f) The date of the violation;
- (g) The time of the violation;
- (h) The location of the violation;
- (i) The officer's number; and
- (j) An explanation which reasonably informs the offender of the procedure for paying or challenging the ticket.

SECTION 10 PARKING INFRACTION FINES.

Any person who has been accused of committing a Spencer Village parking violation may settle and compromise the accusation by paying the sum of Fifteen Dollars (\$15.00) to the Village within forty-eight (48) hours from the time such offense is alleged to have been committed or by paying the sum of Twenty-five Dollars (\$25.00) to the Village, after forty-eight (48) hours from the time such offense is alleged to have been committed. Police officers are authorized to delay prosecution of the violation until forty-eight (48) hours have passed.

All other ordinances in conflict with this ordinance are hereby repealed.

PASSED: November 8, 2006



TOMMY RAMEY, Mayor

ATTEST:



MARTHA EVANS, Village Fiscal Officer