

ORDINANCE 19-2006

ORDINANCE OF THE BOROUGH OF MADISON AMENDING VARIOUS PROVISIONS OF THE BOROUGH CODE TO PERMIT THE MUNICIPAL JUDGE DISCRETION TO IMPOSE PENALTIES UP TO THE MAXIMUM ALLOWED BY LAW

WHEREAS, the Borough Administrator has recommended the Borough Code be amended to permit the imposition of penalties, for certain violations of the Madison Borough Code, up to the maximum permitted by law; and

WHEREAS, N.J.S.A.40:49-5, entitled "Penalties for Violating Ordinances" permits the governing body to prescribe penalties for the violations of ordinances it has passed by one or more of the following: a fine not exceeding \$2,000; and to create a cure period prior to any housing or zoning code violation with a fine exceeding \$1,250; and to impose a penalty for unlawful solid waste disposal at a minimum of \$2,500 and a maximum penalty of \$10,000; and

WHEREAS, the Borough Council has determined to amend certain provisions of the Borough Code to grant the Municipal Judge discretion to impose penalties, for certain violations of the Madison Borough Code, up to the maximum permitted by law.

NOW, THEREFORE, BE IT ORDAINED, by the Council of the Borough of Madison, County of Morris, State of New Jersey that:

SECTION 1: Sections 58-12, 70-6, 79-9, 109-5, 111-4, 120-15A, 136-35, 155-10A, 177-5 and 183-5 of the Borough Code, all entitled "Violations and Penalties," are amended to read as follows:

Any person, firm, corporation or other organization found guilty of violating any provision of this chapter shall, upon conviction thereof, be punishable by one or more of the following in the discretion of the Judge: a fine of not to exceed \$2,000; or by imprisonment for a term not exceeding 90 days; or by a period of community service not exceeding 90 days. In the event that a fine is imposed, pursuant to this section, such fine shall be no less than \$100.

SECTION 2: Section 1-15A of the Borough Code entitled "Violations of Code; penalties" is amended to read as follows:

A. Unless a specific penalty is provided elsewhere in Parts I and II of this Code, in state law or in other ordinances of the Mayor and Council for a particular violation, any person, firm, partnership, association of persons, club, corporation or other organization, including any agent,

servant or employee thereof, found guilty of violating any provision of Parts I or II of this Code, or any supplement thereto, or who shall engage in or exercise any business or occupation or do anything for which a license or permit is required thereby without having a valid license or permit therefore as required, shall upon conviction thereof, be punishable by one or more of the following: a fine of not to exceed \$2,000; by imprisonment for a term not exceeding 90 days; or by a period of community service not exceeding 90 days. In the event that a fine is imposed, pursuant to this section, such fine shall be no less than \$100.

SECTION 3: Section 36-8 of the Borough Code entitled "Violations and penalties" is amended to read as follows:

Any person, firm, association of persons or corporation found guilty of violating any of the provisions of this chapter shall, upon conviction thereof, be punishable by one or more of the following in the discretion of the Judge: a fine of not to exceed \$2,000; or by imprisonment for a term not exceeding 90 days; or by a period of community service not exceeding 90 days. In the event that a fine is imposed, pursuant to this section, such fine shall be no less than \$100. Each day that a violation occurs shall be considered a separate offense.

SECTION 4: Section 45-15 of the Borough Code entitled: "Violations and penalties." is amended to read as follows:

Any person, firm or corporation who shall violate any of the provisions of this chapter shall be liable, upon conviction thereof, to a fine of not less than \$100 nor more than \$2,000 or imprisonment in the county jail for a period not to exceed 90 days, or community service not to exceed 90 days or a combination of fine, imprisonment and/or community service in the discretion of the judge, for each violation hereof. Each 24 hours of continuous violation of any of the provisions hereof shall be considered a separate offense and shall be punishable accordingly.

SECTION 5: Section 54-9 of the Borough Code entitled "Violations and penalties" is amended to read as follows:

Any person, firm, corporation or other organization, found guilty of violating any provision of this chapter, for which there is no specific penalty set forth in this chapter, shall upon conviction thereof, be punishable by one or more of the following in the discretion of the Judge: a fine of not to exceed \$2,000; or by imprisonment for a term not exceeding 90 days; or by a period of community service not exceeding 90 days. In the event that a fine is imposed, pursuant to this section, such fine shall be no less than \$100.

SECTION 6: Section 56-9 of the Borough Code entitled "Violations and penalties" is amended to read as follows:

Any person, firm, partnership, association of persons, club, corporation or other organization, including any agent, servant or employee thereof, found guilty of violating any provision of this chapter, shall upon conviction thereof, be punishable by one or more of the following in the discretion of the Judge: a fine of not to exceed \$2,000; or by imprisonment for a term not exceeding 90 days; or by a period of community service not exceeding 90 days. In the event that a fine is imposed, pursuant to this section, such fine shall be no less than \$100.

SECTION 7: Section 56-14 of the Borough Code entitled "Violations and penalties" is amended to read as follows:

Any person, firm, corporation or other organization, found guilty of violating any provision of this Article, shall upon conviction thereof, be punishable by one or more of the following in the discretion of the Judge: a fine of not to exceed \$2,000; or by imprisonment for a term not exceeding 90 days; or by a period of community service not exceeding 90 days. In the event that a fine is imposed, pursuant to this section, such fine shall be no less than \$100.

SECTION 8: Section 73-5 of the Borough Code entitled "Violations and penalties" is amended to read as follows:

In addition to any other provision or penalties herein set forth any person, firm, corporation or other organization thereof, who shall refuse or neglect to cut any brush, hedges or other plant life in the manner and within the time provided shall, upon conviction thereof, be punishable by one or more of the following in the discretion of the Judge: a fine of not to exceed \$2,000; or by imprisonment for a term not exceeding 90 days; or by a period of community service not exceeding 90 days. In the event that a fine is imposed, pursuant to this section, such fine shall be no less than \$100.

SECTION 9: Section 73-9 of the Borough Code entitled "Violations and penalties" is amended to read as follows:

Any owner or owners, tenant or tenants, who shall neglect to cut and remove such ragweed, poison ivy, poison sumac or other noxious or poisonous weeds injurious to health as directed by this chapter, or who shall fail, neglect or refuse to comply with the provisions of any notice herein provided for, or who shall violate any of the provisions of this chapter, or who shall resist or obstruct the Borough of Madison or its employees in the cutting and removal of ragweed, poison ivy, poison sumac or other noxious or poisonous weeds, shall, upon conviction thereof be punishable by one or more of the following in the discretion of the Judge: a fine of not to exceed

\$2,000; or by imprisonment for a term not exceeding 90 days; or by a period of community service not exceeding 90 days. In the event that a fine is imposed, pursuant to this section, such fine shall be no less than \$100. Each day on which such violation continues shall constitute a separate offense.

SECTION 10: Sections 75-13 A (3) and 75-13 B of the Borough Code entitled "Violations and penalties" are amended to read as follows:

A. (3). Makes a false or misleading written statement or omits any required information or statement in any application or request for approval to the Building Official shall be subject to a penalty of not more than \$2,000.

B. Anyone who knowingly refuses entry or access to an inspector lawfully authorized to inspect any premises, building or structure pursuant to this chapter or who unreasonably interferes with such an inspection shall be subject to a fine of not more than \$2,000.

SECTION 11: Section 93-8 of the Borough Code entitled "Violations and penalties" is amended to read as follows:

Any person, firm, corporation or other organization found guilty of violating any provision of this chapter or who shall fail to comply with any order made thereunder shall, upon conviction thereof, be punishable by one or more of the following in the discretion of the Judge: a fine of not to exceed \$2,000; or by imprisonment for a term not exceeding 90 days; or by a period of community service not exceeding 90 days. In the event that a fine is imposed, pursuant to this section, such fine shall be no less than \$100.

SECTION 12: Section 98-5 of the Borough Code entitled "Violations and penalties" is amended to read as follows:

Any person violating this chapter or these rules and regulations, upon conviction thereof, shall be punished by a fine not exceeding \$2,000 per day or by imprisonment in the county jail for a term not exceeding ninety days, or both. A separate offense shall be deemed committed on each day during or on which a violation occurs or continues.

SECTION 13: Section 101-12 of the Borough Code entitled "Violations and penalties" is amended to read as follows:

The penalties for violations of this chapter shall be as set forth in the Uniform Fire Code for all violations of the provisions of said code as enforced by this chapter. Any person, firm or corporation who shall violate any of the provisions of this chapter not covered by the Uniform Fire Code shall be subject to a fine punishable by one or more of the following in the discretion of the Judge: a fine of not to exceed \$2,000; or by imprisonment for a term not exceeding 90 days; or by a period of community service not exceeding 90 days. In the event that a fine is imposed, pursuant to this section, such fine shall be no less than \$100.

SECTION 14: Section 103-7 of the Borough Code entitled "Violations and penalties" is amended to read as follows:

Any person, firm, corporation or other organization, violating section 103-5 of the Borough Code shall be subject to a penalty of \$38.00 for the first offense and a penalty of \$58.00 for the second offense. Any person, firm, corporation or other organization, who violates section 103-5 more than twice or who violates any other provision of this chapter, shall make a court appearance, and shall upon conviction thereof be punishable by one or more of the following in the discretion of the Judge: a fine of not to exceed \$2,000.00; or by imprisonment for a term not exceeding 90 days; or by a period of community service not exceeding 90 days. In the event that a fine is imposed, pursuant to this section, such fine shall be no less than \$100.00.

SECTION 15: Section 107-11 of the Borough Code entitled "Violations and penalties" is amended to read as follows:

Any person, firm, corporation or other organization which violates any provisions of this chapter or any regulations promulgated and enacted pursuant thereto shall, upon conviction thereof, be punishable by a fine of not less than \$100 nor more than \$10,000. Each day such violation shall be continued shall be deemed to be a separate and distinct offense.

SECTION 16: Section 113-13 of the Borough Code entitled "Violations and penalties" is amended to read as follows:

A. Any person, firm, corporation or other organization found guilty of violating any of the provisions of this chapter shall, upon conviction thereof, be punishable by one or more of the following in the discretion of the Judge: a fine of not to exceed \$2,000; or by imprisonment for a term not exceeding 90 days; or by a period of community service not exceeding 90 days. In the event that a fine is imposed, pursuant to this section, such fine shall be no less than \$100. Each violation of any of the provisions of this chapter and each day the same is violated shall be deemed and taken to be a separate and distinct offense.

B. If a fine in an amount greater than \$1,250 is administered upon an owner for a housing violation, then a 30-day period shall be provided in which the owner shall be afforded the opportunity to cure or abate the condition and shall also be afforded an opportunity for a hearing before a court of competent jurisdiction for an independent determination concerning the violation. Subsequent to the expiration of the 30-day period, a fine greater than \$1,250 may be imposed if a court has not determined otherwise, or upon reinspection of the property, it is determined that the abatement has not been substantially completed.

SECTION 17: Section 122-3 of the Borough Code entitled "Violations and penalties" is amended to read as follows:

Any person who shall violate any of the provisions of this chapter shall be subject to a fine not exceeding \$2,000 or to imprisonment for a term not exceeding 90 days, or both.

SECTION 18: Section 145-18 of the Borough Code entitled "Violations and penalties" is amended to read as follows:

A. Where any owner, operator or occupant fails to comply with an order issued pursuant to this chapter, he shall be deemed in violation of this chapter and shall be subject to the penalties provided herein. It shall be the duty of the enforcement officer to cause a summons to be issued from the Municipal Court for such violation, but nothing contained herein shall limit the power of the enforcement officer to take such further action under the criminal and civil laws of this state through any court of competent jurisdiction as may be necessary to remove or abate any nuisance.

...

D. If a fine in an amount greater than \$1,250 is administered upon an owner for a housing violation, then a 30-day period shall be provided in which the owner shall be afforded the opportunity to cure or abate the condition and shall also be afforded an opportunity for a hearing before a court of competent jurisdiction for an independent determination concerning the violation. Subsequent to the expiration of the 30-day period, a fine greater than \$1,250 may be imposed if a court has not determined otherwise, or upon reinspection of the property, it is determined that the abatement has not been substantially completed.

SECTION 19: Section 146-1.5 of the Borough Code entitled "Violations and penalties" is amended to read as follows:

Each violation of any of the provisions of this chapter and each day that the violation exists shall constitute a separate and distinct offense and shall be punishable by a fine not to exceed \$2,000 per day and per offense, levied against the owner, operator or occupant, with a minimum fine of \$100 per day.

SECTION 20: Section 170-5 of the Borough Code entitled "Violations and penalties" is amended to read as follows:

Any person, firm or corporation violating any of the provisions of this chapter may, upon conviction thereof, be liable to a fine not exceeding \$2,000 or imprisonment for a term not exceeding 90 days, or both, in the discretion of the Judge before whom said conviction was obtained. Each day during which any violation of this chapter shall continue shall be deemed to constitute a separate violation hereof.

SECTION 21: Section 173-37 of the Borough Code entitled "Violations and penalties" is amended to read as follows:

Any person, firm, corporation or other organization found guilty of violating any provision of this chapter shall upon conviction thereof, be punishable by one or more of the following in the discretion of the Judge: a fine of not to exceed \$2,000; or by imprisonment for a term not exceeding 90 days; or by a period of community service not exceeding 90 days. In the event that a fine is imposed, pursuant to this section, such fine shall be no less than \$100. Each 24 hours of continuous violation of any of the provisions hereof shall be considered a separate offense and shall be punishable accordingly.

SECTION 22: Section 191-6 of the Borough Code entitled "Violations and penalties" is amended to read as follows:

After a first offense in accordance with § 191-3 of this chapter, any person or business who thereafter violates the water use restrictions imposed pursuant to this chapter shall be fined or imprisoned in accordance with this section. For a second offense, the fine imposed shall be \$500 or imprisonment for 10 days, or both. For a third and subsequent offense, the fine imposed shall be \$2,000 or imprisonment for 90 days, or both.

SECTION 23: Section 195-44 (M) of the Borough Code entitled "Violations and penalties" is amended to read as follows:

...

M. Any person, firm or corporation who or which shall violate any provision of this section shall be liable to a fine not exceeding \$2,000 or to imprisonment for a term not exceeding 90 days, or both. Each day such violation continues shall constitute a separate violation or offense.

SECTION 24: This Ordinance shall take effect as provided by law.

ADOPTED AND APPROVED

May 8, 2006

ELLWOOD R. KERKESLAGER, Mayor

Attest:

MARILYN SCHAEFER, Borough Clerk

Introduced and passed: April 24, 2006

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