

CITY OF BROOKLYN, OHIO
ORDINANCE NO. 2016 – 87

INTRODUCED BY: *Tanski, Paulitzky, Van Kirk, Demanzer, Tomuski, Pucci, Balbiar*

AMENDING SECTION 951.99, "PENALTY," AND ENACTING
NEW SECTION 951.98, "CIVIL INFRACTIONS AND PENALTY,"
OF THE CODIFIED ORDINANCES OF THE CITY OF BROOKLYN

WHEREAS, THE CODIFIED ORDINANCES STAND TO BE AMENDED TO PERMIT A CIVIL INFRACTION SYSTEM FOR THE ENFORCEMENT OF REFUSE-RELATED CODE AND REGULATIONS;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF BROOKLYN, COUNTY OF CUYAHOGA AND STATE OF OHIO:

SECTION 1. That Section 951.99, "Penalty," of the Codified Ordinances of the City of Brooklyn, Ohio, which reads as follows:

951.99 PENALTY.

- (a) Residents will be given a maximum of two warnings, via a Notice of Noncompliance, which shall be posted on the recycling bin, a regular garbage container, or at the side door of the residential unit where the noncompliance occurs.
- (b) On the third and fourth violations, the occupant shall be guilty of a minor misdemeanor and be fined not more than one hundred dollars (\$100.00). Each violation shall be considered a separate offense, carrying separate penalties.
- (c) The fifth violation shall invoke a termination of all refuse collection and disposal services to the residential unit where the violation occurs with written notice of said termination to be delivered to the residential unit occupant by certified mail and regular mail, and by posting on the door of the residential unit. Following fifteen days receipt of said notice, the occupant of the residential unit in noncompliance must take appropriate measures to dispose of its household waste in a manner so as not to pose a threat to the public health, safety and welfare. At the minimum, household refuse must be disposed of on a bi-weekly basis and records of such collection should be maintained by the property owner should a question or complaint arise.

is hereby amended, and as amended shall read as follows:

951.99 CRIMINAL PENALTY.

A person who has violated this chapter shall be guilty of a minor misdemeanor and be fined not more than \$100.00. Each violation shall be considered a separate offense, carrying separate penalties.

SECTION 2. That new Section 951.98, "Civil Infractions and Penalty," of the Codified Ordinances of the City of Brooklyn, Ohio, shall be enacted to read as follows:

951.98 CIVIL INFRACTIONS AND PENALTY.

- (a) *Civil Enforcement System Established.* The City hereby adopts a civil enforcement system for the infractions established by this section. This civil enforcement system imposes monetary liability on the responsible parties as defined in division (m).

In addition to any other means of enforcement provided for in these Codified Ordinances, each of the following sections may be enforced through the issuance of a ticket to the responsible parties as defined in division (m):

- (1) Section 951.03, division (b), and Section 521.16, division (a), relating to the early set out of waste.
- (2) Section 521.16, division (b), relating to failing to remove a waste container after collection.
- (3) Section 951.03, divisions (b) and (c), relating to automated waste collection and recycling infractions.
- (4) Section 951.03, division (a), relating to special collections.
- (5) Section 951.05, relating to the placement of recyclable materials.

Any person who violates any of the foregoing prohibitions has committed an infraction for which liability is imposed by division (b) upon the responsible parties as defined in division (m).

- (b) *Liability Imposed.* Each owner of a parcel at which an infraction has occurred is liable to the City of Brooklyn in the amounts established in divisions (f) and (g).
- (c) *Noncriminal Offense; No Conviction.* The infractions established by this section are noncriminal. The imposition of liability upon the responsible parties under this section shall not be deemed a conviction for any purpose.
- (d) *Other Costs and Penalties Not Abrogated.* Nothing in this section shall be construed as altering or limiting the effects of any other section of these Codified Ordinances, the criminal penalties imposed by any such other section, or the ability of a law enforcement officer to enforce those sections.
- (e) *Tickets; Service; Contents.* If a violation of division (a) is observed by an employee of the Service Department or any other City employee whose duties include the enforcement of this section, then the Service Director shall cause the responsible parties to be issued a warning. An employee of the Service Department shall leave a notice at the side or back door of the residential unit where the violation occurred. If a violation of division (a) is observed at least 24 hours after the warning was issued by an employee of the Service Department or any other City employee whose duties include the enforcement of this section, then the Service Director shall cause the responsible parties to be issued a ticket. The ticket shall be served by sending it via regular U.S. mail, postage prepaid, to the parcel owner(s) at the tax mailing address shown in the records of the county fiscal officer.

The date of mailing of the ticket shall be deemed to be the date of issuance of the ticket. If the mailing is unreturned, then it shall establish that the respondents were given actual or constructive notice of the imposition of liability under this section.

The ticket shall identify the parcel owner(s) as respondents. The ticket shall state that the respondents are responsible parties for the commission of a civil infraction under this section.

The ticket shall inform the respondents of the procedure to file an appeal and the time frame for filing it. The ticket shall state that failure to appeal the ticket or pay the costs imposed not later than 20 days from the date of issuance of the ticket shall constitute a waiver of the right to contest the ticket and shall be considered an admission. The ticket shall further state that if the ticket is not appealed or paid in that time frame, then a default finding of civil liability shall be imposed upon respondents for the costs established in divisions (f) and (g).

The ticket may be in any format that includes all of the elements required by this section.

- (f) *Penalties Established.* The costs imposed by this section upon the responsible parties for the commission of an infraction contrary to division (a) shall be assessed in accordance with the following schedule:

Section	Civil Penalty
951.03, division (b); 521.16, division (a), 521.16, division (b); 951.03, divisions (b) and (c); 951.03, division (a); 951.04	\$25.00 for the first offense; \$50.00 for the second offense; and \$100.00 for the third offense and beyond.

The costs established by this section are imposed upon the responsible parties both as civil penalties and to reimburse the City for a portion of the costs incurred by it in the enforcement of infractions, and for some infractions, the increased costs of solid waste disposal.

- (g) *Late Penalties.* Late penalties shall be assessed in accordance with the following schedule:

- (1) If the costs established in division (f) remain unpaid 20 days after the ticket is issued or 20 days after the conclusion of all appeals, an additional \$20.00 shall be assessed; and
- (2) If the costs established in division (f) remain unpaid 40 days after the ticket is issued or 40 days after the conclusion of all appeals, an additional \$40.00 shall be added to the \$20.00 assessed under division (g)(1) for a total additional penalty of \$60.00 in such a case.

- (h) *Appeals; Timing.* Any respondent or other person who is potentially liable for the costs imposed by this section may appeal the imposition of liability to the Service Director or his or her designee. As used in divisions (h), (i) and (j) of this section, "Director" means the Service Director or his or her designee.

The appeal shall be taken not later than 20 days from the date of issuance of the ticket. Failure to appeal the ticket or pay the costs imposed within this time period shall constitute a waiver of the right to contest the ticket and shall be considered an admission.

- (i) *Appeal; Process.* The Director shall establish an administrative appeal process for persons to appeal tickets issued under this section. The administrative appeal process shall allow the appellant the right to present appellant's case in person and may allow for evidence to be presented ex-parte. The strict rules of evidence applicable to courts of law shall not apply in any administrative hearing or ex-parte review. The ticket charging the offense shall constitute prima facie evidence that the offense identified in the ticket occurred and that the parcel owner(s) to whom the ticket was mailed are the responsible parties as defined in division (m) and are liable to the City for the costs imposed by this section.

If the Director finds by a preponderance of evidence that an appellant is liable under this section for the costs assessed, then the Director shall dismiss the appeal and order the appellant to pay the costs identified in the ticket.

If the Director finds by a preponderance of evidence that an appellant is liable under this section for the costs assessed but that there are reasons for the commission of the infraction that mitigate the offense, then the Director shall dismiss the appeal and order the appellant to pay the costs identified in the ticket, but may in the interest of equity reduce the costs assessed.

If the Director finds by a preponderance of evidence that the appellant is not liable under this section for the costs assessed, then the Director shall dismiss the ticket and grant the appeal.

- (j) *Appeal of the Director's Decision.* Any person subject to an adverse decision of the Director may appeal that decision to the Board of Zoning Appeals. The notice of appeal shall be in writing and shall be filed with the Board of Zoning Appeals within 10 days of the decision of the Director. The Board shall approve, modify or annul the finding from which the appeal is taken.
- (k) *Collection.* The costs imposed by this section may be enforced and collected by means of a civil action or any other means provided for in these Codified Ordinances or the Ohio Revised Code.
- (l) *Rules and Regulations.* The Director may issue rules and regulations to carry out the provisions of these sections.
- (m) *Definitions.* As used in this section:
 - (1) "Director" means the Service Director and in the case of appeals, the Service Director or his or her designee.
 - (2) "Owner" or "parcel owner" mean the person(s) shown in the records of the county fiscal office as having legal title to the parcel on which someone has failed to adhere to division (a).
 - (3) "Person" includes an individual, corporation, business trust, estate, trust, partnership, and association.
 - (4) "Responsible party" and "responsible parties" has the same meaning as "owner" or "parcel owner."

SECTION 3. That all former Ordinances or parts herein conflicting or inconsistent with the provisions of this Ordinance, or any part hereof, is hereby repealed.

SECTION 4. That it is found and determined that all formal actions of the Council of the City of Brooklyn concerning and relating to the adoption of this Ordinance were adopted in an open meeting of such body, and that all deliberations of the Council of the City of Brooklyn and any of its committees that resulted in such formal action were in meetings open to the public, in compliance with all legal requirements including Section 121.22 of the Ohio Revised Code.

SECTION 5. That this Ordinance is hereby declared to be an emergency measure dealing with the daily operation of the City of Brooklyn, and provided it receives the affirmative vote of two-thirds (2/3) of all members elected to Council, it shall take effect and be in force on April 1, 2017, otherwise it shall take effect and be in force from and after the earliest date allowed by law.

ADOPTED: 1/23/17

ATTESTED:

Mary-jo Barish
Clerk of Council

APPROVED:

Karim Hallagan
MAYOR
R. C. [Signature]
PRESIDENT OF COUNCIL

Approved as to legal form

[Signature]
Law Director

filed: 1/24/17