



Legislation Details (With Text)

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Title: An Ordinance to Amend Sections 2:12 and 2:13 of Chapter 26 (Solid Waste Management) of Title II of the Code of the City of Ann Arbor Increasing Fines, Regulating Owner Fine Charge Back to Occupants and Certain Administrative Changes (Ordinance No. ORD-10-26)

Sponsors: Christopher Taylor, John Hieftje

Indexes:

Code sections:

Attachments: 1. ORD-10-26 Briefed & Approved, 2. ORD-10-26 Chpt 26 Briefed, 3. Ordinance to Amend Chpt 26 Sections 2.12 and 2.13.DOC, 4. Public hearing Notices for Solid Waste, Employees Retirement and Pedestrian Safety, 5. 10-26 Solid Waste Management Approval Notice

Date	Ver.	Action By	Action	Result
7/19/2010	1	City Council	Held and Closed	
7/19/2010	1	City Council	Adopted on Second Reading	Pass
7/6/2010	1	City Council	Approved on First Reading	Pass

An Ordinance to Amend Sections 2:12 and 2:13 of Chapter 26 (Solid Waste Management) of Title II of the Code of the City of Ann Arbor Increasing Fines, Regulating Owner Fine Charge Back to Occupants and Certain Administrative Changes (Ordinance No. ORD-10-26)

This ordinance amendment to Code Sections 2:12 and 2:13 broadens responsibility for ensuring solid waste on a property is properly stored in solid waste containers. It extends the ‘look back’ period to determine prior offenses to encourage long-term compliance. It also corrects an existing problem where new tenants can be required by their landlords to reimburse the landlord for the higher fines incurred on tickets for second or subsequent offenses when in fact the first offense at the property was committed by previous, unrelated tenants.

The current section 2:12 consists of one section, which is labeled subsection (a) in the ordinance amendment. Community Standards officers often use this ordinance to compel the clean-up of any type of solid waste strewn about on the exterior premises of a property. Solid waste includes, but is not limited to, party-related debris, paper, cardboard, building materials, appliances, and other solid waste. The amendment only makes minor grammatical changes. Also, because officers generally issue a violation notice, which provides a time by which the owner to correct the violation and avoid a ticket, the amendment adds subsection (b) to clarify that where notice is given, failure to comply with it is an ordinance violation.

Subsections (c) and (d) of the amendment to Section 2:12 clarify that a “person” who is responsible for complying with the ordinance includes not only owners, but also landlords, tenants, agents who manage the property, occupants, etc. These sections serve to expand the set of persons liable for

tickets in an effort to incentivize tenants, occupants and agents to maintain the property.

Subsection (e) limits the extent to which property owners may pass on to their tenants the fines for tickets written to the property owner. Many property owners require in their leases that tenants must pay the costs incurred by the property owner for tickets issued to the owner. While this is a reasonable practice, it creates a situation where an owner who receives a ticket for a second or subsequent offense at the property -- and the increased fine that accompanies such a charge -- requires new tenants to pay the higher fine although they were not responsible for the first offense. We believe that the inherent unfairness of this practice may lead to 'down-charging' by judicial officers. Subsection (f) requires the owner to inform tenants of their rights pursuant to subsection (e).

The ordinance also amends Section 2:13 by increasing the fines for first and subsequent offenses. The amendment extends the 'look back' period in which to determine prior offenses. This provision works Section 2:12(e), which prevents the passing down of fees to tenants based upon prior-tenant's actions, to encourage landlords and agents to self-police their property. Additionally, the amendment makes the fines absolute amounts, rather than maximums, because often the fines imposed under the current ordinance have been significantly lower than the amount allowed under the current ordinance

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Reviewed by: Stephen K. Postema, City Attorney

Approved by: Roger W. Fraser, City Administrator

ORDINANCE NO. ORD-10-26

First Reading : July 6, 2010

Approved: July 19, 2010

Public Hearing : July 19, 2010

Published: July 22, 2010

Effective: August 1, 2010

SOLID WASTE MANAGEMENT

AN ORDINANCE TO AMEND SECTION 2:12 AND SECTION 2:13 OF CHAPTER 26 (SOLID WASTE MANAGEMENT) OF TITLE II OF THE CODE OF THE CITY OF ANN ARBOR.

The City of Ann Arbor Ordains:

Section 1. That Section 2:12 of Chapter 26 of the Code of the City of Ann Arbor be amended to read as follows:

2:12. Illegal storage of solid waste.

(a) No person shall store solid waste or solid waste containers at locations **on property** other than **except at locations as** permitted by this chapter or regulations implementing this chapter. No property owner or person in control **person** shall permit solid waste or solid waste containers to remain on or **in the right of way** adjacent to the property in violation of this section.

(b) No person shall fail to comply with the requirements of a notice of violation issued under this Chapter, which was mailed or delivered to the person or posted on the property.

(c) For purposes of this section, "person" shall mean any legal **person**, and shall include but not be limited to, a property owner, landlord, **tenant**, occupant, guest, lessee, and an agent of the foregoing entities. Each person is individually and separately liable and each person may be found responsible for the same

conditions on the property that violate this section.

(d) For purposes of this section, "agent" shall mean any person with real or apparent authority to act on behalf of another person, and shall include but is not limited to a person who manages or operates the property for the owner, receives notices or process for the owner, acts in any other way as the representative of the owner, or is designated as an agent or representative in the registry of owners and premises kept by the City pursuant to Chapter 105 (Housing Code) of the Ann Arbor Code of Ordinances.

(e) No property owner, landlord, or agent who incurs fines and costs for a violation of this section shall require tenant(s) or occupant(s) to pay fines and costs for or reimburse the owner, landlord, or agent for payment of fines and costs, except in keeping with the following requirements:

- (1) For a first violation within the period of time that the tenant(s) or occupant(s) reside(s) on the property, the owner, landlord, or agent shall not require the tenant(s) or occupant(s) to pay more than \$200.
- (2) For a second violation within the period of time that the tenant(s) or occupant(s) reside(s) on the property, the owner, landlord, or agent shall not require the tenant(s) or occupant(s) to pay more than \$400.
- (3) For each additional or subsequent offense within the period of time that the tenant(s) or occupant(s) reside(s) on the property, the owner, landlord, or agent shall not require the tenant(s) or occupant(s) to pay more than \$1,000.

(f) A property owner, landlord, or agent who requires the tenant or occupant to pay for or reimburse the owner, landlord or agent for fines and costs incurred by the owner, landlord or agent, at the time of entering into a written lease agreement, shall provide to each tenant a copy of this entire section separate from the written lease agreement, until such time that this ordinance is incorporated into the "Rights and Duties of Tenants" booklet. If there is no written lease, then the property owner, landlord, or agent shall provide a copy of this entire section, upon which is written the term of the current unwritten lease, to each tenant, until such time that this ordinance is incorporated into the "Rights and Duties of Tenants" booklet.

Section 2. That Section 2:13 of Chapter 26 of the Code of the City of Ann Arbor be amended to read as follows:

2:13. Penalties.

(1) Authority. The primary authority and responsibility for the enforcement of the provisions of this chapter shall be vested in the Administrator or his/her designee(s). Upon a determination that a person is in violation of this chapter, the City shall give notice or issue a citation that indicates the person is in violation of a section in this chapter.

(2) Upon a finding that a section of this chapter has been violated, the violator shall be subject to one or more of the penalties provided in this section. The following classifications, when used in this chapter, shall determine the penalty for any violation of any provision of this chapter.

(3) Each violation of this chapter shall be a civil infraction punishable by a civil fine of up to \$1,000.00, plus costs and all other remedies available by statute. Violation of this chapter shall be punishable by a civil fine of not less than \$100.00 \$200 for the first offense, not less than \$250.00 and up to \$500.00 \$400 for the second offense, and not less than \$500.00 and up to \$1,000 for each additional or subsequent offense within a 2-year five (5) year time period, plus costs and all other remedies available by statute. The maximum fine for any offense shall not exceed \$1,000.00. Each day of violation shall be a separate violation except in a case when the maximum fine is levied. If the penalty is not paid within 45 days, it may be assessed against the parcel under Section 1:292 of this Code.

(4) The City Administrator shall establish procedures, incorporated into the regulations for this chapter, establishing progressive enforcement programs applicable to specific sections of this chapter, designed to assure compliance over a specified time period with the provisions of this section. Enforcement actions in each progressive enforcement program may include designated time periods for technical assistance and dispute resolution prior to violation notices consistent with subsection 2:13(3) of this chapter.

Section 3. That this Ordinance shall take effect on the tenth day following legal publication.