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December 21, 2017

Chief Talkington,

As you may know, on April 21, 2017, the Iowa Legislature passed SF374 which makes cities responsible for a defendant's court appointed attorney's fees for city code violations. Specifically, SF374 requires the State Public Defender to seek reimbursement from cities for court appointed attorney's fees it incurs representing persons charged with a violation of a city ordinance, if the city charge carries the possibility of imprisonment. This legislation takes effect January 1, 2018.

To avoid getting charged for a defendant's attorney's fees, we are recommending that all of our cities remove jail as a possibility from their city code for all city code violations. The city can still seek jail for various offenses; however, in those cases where the city will want jail to remain a possibility, you will want to charge the violation under the state code rather than under City Code, to avoid the attorney's fees getting assessed to the City. Attached is a draft of the city code revisions removing jail as a possibility for your review. In addition to amending the city code, we are recommending that our cities have their prosecuting attorney(s) inform the magistrates and court administration that the city will no longer be seeking jail as a possibility for city code violations.

This way we reduce the likelihood that the court will inadvertently appoint an attorney.

Finally, if possible, we are recommending that cities instruct their officers to charge simple misdemeanors under the state code for the interim period until the city code revisions removing jail as a possibility become effective.

After you had a chance to review, let me or Matt know if you have any questions.

Hope you have a good holiday.

Thanks,
Michael W. Heilman

ORDINANCE NO. ____

AN ORDINANCE AMENDING VARIOUS PROVISIONS OF THE CITY CODE OF MUSCATINE TO REMOVE THE POSSIBILITY OF IMPRISONMENT FOR CITY CODE VIOLATIONS

WHEREAS, on April 21, 2017, the Iowa Legislature passed SF374

WHEREAS, SF374 requires the State Public Defender to seek reimbursement from cities for court appointed attorney's fees and expenses paid by the State Public Defender toward the representation of indigent persons charged with a violation of a local ordinance for which there was a possibility of imprisonment; and

WHEREAS, removing the possibility of imprisonment for city code violations will prevent the City from being charged with such defense costs.

NOW, THEREFORE, BE IT ORDAINED, by the City Council of Muscatine, Iowa as follows:

SECTION 1. AMENDMENT. TITLE 1 ADMINISTRATIVE, CHAPTER 2 CITY CODE of the City Code of Muscatine Section 1-2-14 is amended as follows:

1-2-14 Standard Penalty.

Unless another penalty is expressly provided for violation of any particular provision, section or chapter, any person failing to perform a duty or obtain a license required by this Code of Ordinances or violating any provision of this Code of Ordinances or any rule or regulation adopted herein by reference shall, upon conviction, be subject to a fine of at least sixty-five dollars (\$65.00) but not to exceed six hundred twenty-five dollars (\$625.00).

SECTION 2. AMENDMENT. TITLE 5 BUSINESS REGULATIONS, CHAPTER 10 PEDDLERS, SOLICITORS, AND TRANSIENT MERCHANTS of the City Code of Muscatine Section 5-10-13 is amended as follows:

5-10-13 Penalty.

Anyone violating any of the provisions of this Ordinance shall, upon conviction, be subject to a fine not exceeding one hundred dollars (\$100.00). Each day that a violation continues to exist shall constitute a separate offense.

SECTION 3. AMENDMENT. TITLE 6 POLICE AND PUBLIC SAFETY, CHAPTER 3 GENERAL OFFENSES of the City Code of Muscatine Section 6-3-1 is amended as follows:

6-3-1 Penalty.

Except as otherwise provided, a violation of any of the provisions of this Chapter is a simple misdemeanor and shall be punished as provided in Section 1-2-14 of this Code of Ordinances.

SECTION 4. AMENDMENT. TITLE 6 POLICE AND PUBLIC SAFETY, CHAPTER 5 MINORS of the City Code of Muscatine Section 6-5-4 is amended as follows:

6-5-4 Penalty.

A violation of any of the provisions of this Chapter is a simple misdemeanor and is punishable as provided in Section 1-2-14 of this Code of Ordinances.

SECTION 5. AMENDMENT. TITLE 5 BUSINESS REGULATIONS, CHAPTER 2 ALCOHOL CONTROL of the City Code of Muscatine Section 5-2-7 is amended as follows:

5-2-7 Consumption in Public Places; Possession of Open Containers; Intoxication.

A person shall not use or consume alcoholic liquor, wine, or beer upon the public streets or highways. A person shall not use or consume alcoholic liquor in any public place except premises covered by a liquor control license. A person shall not possess or consume alcoholic liquors, wine, or beer on public school property or while attending a public or private school-related function. A person shall not be intoxicated in a public place. A person shall not simulate intoxication in a public place. A person violating this Subsection is guilty of a simple misdemeanor punishable as provided in Section 1-2-14 of this Code of Ordinances.

SECTION 6. AMENDMENT. TITLE 5 BUSINESS REGULATIONS, CHAPTER 2 ALCOHOL CONTROL the City Code of Muscatine Section 5-2-9(D) is amended as follows:

5-2-9 Persons Under the Legal Age in Licensed or Permitted Establishments.

A. Penalties.

1. A person under the legal age who violates the provisions of Subsection A of this Section is guilty of a simple misdemeanor punishable as provided in Section 1-2-14 of this Code of Ordinances.
2. Violation of the provisions of Subsection C of this Section shall be a municipal infraction and subject to a civil penalty as provided in Title 1 Chapter 3 of this Code of Ordinances.

SECTION 7. AMENDMENT. TITLE 5 BUSINESS REGULATIONS, CHAPTER 2 ALCOHOL CONTROL of the City Code of Muscatine Section 5-2-12 is amended as follows:

5-2-12 Penalties.

1. Any person who violates any provision of this Chapter or any provision of Iowa Code, Section 123.49 shall be guilty of a simple misdemeanor punishable as provided in Section 1-2-14 of this Code of Ordinances.
2. Any violation of Subsection P of Section 5-2-5 shall be subject to a civil penalty as provided in the Schedule of Penalties in Appendix A to this Code of Ordinances.

SECTION 8. AMENDMENT. APPENDIX A SCHEDULE OF PENALTIES of the City Code of Muscatine Section is amended as follows:

III. Simple Misdemeanor

A. Standard Penalty:

A person convicted of a simple misdemeanor under this Code of Ordinances shall be subject to a fine of no less than \$65.00 and no more than \$625.00.

B. Specified Penalties:

| CODE SECTION NO. | OFFENSE | FIRST OFFENSE | REPEAT OFFENSES |
|-------------------------|---|----------------------|--|
| 3-8 | Failure to Comply with Levees Ordinance | \$100 | \$100 |
| 3-9-2 | Failure to Comply with Notice to Trim | \$100 | \$100 |
| 5-2-8 [c] | Violation of Persons Under legal age | Not to Exceed \$100 | Not to Exceed \$100 |
| 5-10 | Violation of Peddlers, Solicitors, and Transient Merchant Ordinance | Not to Exceed \$100 | Not to Exceed \$100 |
| 5-15-7 | Failure to License; salvage or junk yard or refuse or garbage collector | Not to Exceed \$100 | Not to Exceed \$100 |
| 6-8 | Failure to Comply with Animal Regulations | \$65 | \$100, unless animal is altered within 30 days, then \$35 shall be waived. |
| 6-11 | Violations of Noise Regulations | Not to Exceed \$100 | Not to Exceed \$100 |

| | | | |
|-------------------|--|---------------------|---|
| Title 7.1 et seq. | All State of Iowa Traffic Violations that are incorporated by reference in the City Code shall be prosecuted as criminal offenses and all State Code scheduled fines shall apply | | |
| Title 7.1 et seq. | Speed regulations shall be prosecuted as simple misdemeanors with scheduled fines adopted from State Code | | |
| 7-11 | Violation of Load and Weight Restrictions | \$65 | Second: \$75 Third and subsequent: \$100 |
| 13.6.11.3[A] | Willful or negligent violation of Sewer Use Regulations | Not to Exceed \$100 | Not more than \$100 |
| 13.6.11.3[B] | Willful or negligent Introduction of substance into POTW | No less than \$100 | Not more than \$100 |
| 13.6.11.3[C] | False Statements or representation | Not More than \$100 | Not more than \$100 |

SECTION 9. REPEALER. All ordinances or parts thereof in conflict with the provisions of this ordinance are hereby repealed.

SECTION 10. SEVERABILITY CLAUSE. If any section, provision, or part of this ordinance shall be adjudged invalid or unconstitutional, such adjudication shall not affect the validity of this ordinance as a whole or any section, provision or part thereof not adjudged invalid or unconstitutional.

SECTION 11. WHEN EFFECTIVE. This ordinance shall be effect from and after its final passage, approval and publication as provided by law.

Passed First Reading by the City Council of Muscatine, Iowa, ___ day of _____, 2017.

Passed Second Reading by the City Council of Muscatine, Iowa, the ___ day of _____, 2017.

PASSED AND ENACTED by the City Council of Muscatine, Iowa, the ___ day of _____, 2017.

ATTEST:

Diana Broderson, Mayor

Gregg Mandsager, City Administrator

1st Reading –

Motion by Council Member __, seconded by Council Member __, first reading of Ordinance No. ____ (2017/2018).

AYES: –

NAYS: –

ABSENT: –

2nd Reading –

Motion by Council Member __, seconded Council Member __, to approve the second reading of Ordinance No. ____ (2017/2018).

AYES: –

NAYS: –

ABSENT: –

3rd Reading –

Motion by Council Member __, seconded by Council Member __, to approve the third reading of Ordinance No. ____ (2017/2018)

AYES: –

NAYS: –

ABSENT: –

The Mayor declared Ordinance No. ____ (2017/2018) was passed on _____.

I certify that the foregoing was published as Ordinance No. ____ (2017/2018) on the __ day of ____ 2017.

Gregg Mandsager, City Administrator