

Sponsor: Mayor Dale Rife
First Reading: ___11/7/11___
Second Reading: ___12/5/11___

ORDINANCE #17-11

AN ORDINANCE AUTHORIZING THE TOWN TO EMPLOY VOLUNTARY ASSESSMENT PROCEDURES

WHEREAS, the Town of Wyoming is authorized under section 18.23 of its Town Charter to enact “voluntary assessment procedures” to allow individuals to voluntarily waive trial and pay violations without going to Court; and

WHEREAS, the Town Council has determined it to be in the best interest of the town to employ voluntary assessment procedures;

BE IT HEREBY ENACTED by the Town Council of the Town of Wyoming, a majority thereof concurring in council duly met, that Ordinance #17-11 “An Ordinance Authorizing the Town to Employ Voluntary Assessment Procedures” be and hereby is enacted, as follows to wit:

Section 1. Definitions. The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

Payment means the total amount of the fine and of the costs as provided in this section.

Voluntary assessment agreement means the written agreement or document signed by the violator wherein he agrees to pay by mail the penalty for the violation described therein together with costs. The voluntary assessment agreement shall be substantially in the form as established by the council from time to time.

Section 2. Applicability. Any police officer or administrative code enforcement official of the town who charges any person with a violation of any of the town ordinances designated in subsection 10 of this section may, in addition to issuing a summons or citation for such violation, provide the violator with a voluntary assessment agreement. Such voluntary assessment agreement, when properly executed by the police officer or code enforcement official and the violator, shall allow the violator to dispose of the charge without the necessity of personally appearing in the court to which the summons is returnable.

Section 3. Place and time of payment. Payments made pursuant to this section shall be submitted to "Town of Wyoming, 1 North Railroad Avenue, Wyoming, DE 19934 Attn: Town Clerk—Mail-in Fines" and must be received at the town hall within ten days from the date of issuance of the summons or citation (excluding Saturdays, Sundays and legal holidays) and shall be paid only by check or money order.

Section 4. Offer and acceptance. At the time of issuing a summons or citation for any

violation subject to this section, the police officer or code enforcement official may offer the alleged violator the option of accepting a voluntary assessment. The alleged violator's signature on the voluntary assessment form constitutes an acknowledgement of guilt of the violation stated in the form and an agreement to pay the penalty as provided in this section, together with costs, within ten days from the date of such summons or citation (excluding Saturdays, Sundays and legal holidays), during which time payment must be received at the town hall.

Section 5. Withdrawal of acceptance, request for hearing. The alleged violator, after signing and receiving the voluntary assessment form, may withdraw his or her acceptance of the voluntary assessment and request a hearing on the charge stated in such form, provided the alleged violator, within ten days from the date of such summons or citation (excluding Saturdays, Sundays and legal holidays), personally or in writing notifies the town clerk at the town hall that he or she wishes to withdraw the acceptance of the voluntary assessment and request a hearing on the charge stated in the voluntary assessment form. If the alleged violator notifies the town clerk of such withdrawal and request for hearing as aforesaid, the violator shall be prosecuted for the charge stated in the voluntary assessment form as if such form had not been issued.

Section 6. Penalty; administrative costs; payment. If an alleged violator elects the option of accepting a voluntary assessment in accordance with subsection 4 of this section, the penalty for violation of an ordinance subject to voluntary assessment shall be the minimum monetary amount established for each specific violation charged, and penalties shall be cumulative if more than one violation is charged. In lieu of any other court costs, and provided the offense is not subject to other proceedings under this section, each penalty for a violation under this section shall be subject to an assessment for administrative costs of \$2.50. Payment of the prescribed penalty and administrative costs shall be a complete satisfaction of the violation.

Section 7. Removal from applicability of this section. If a payment due pursuant to this section is not received by the town hall within ten days from the date of such summons or citation (excluding Saturdays, Sundays and legal holidays), the violation shall be prosecuted for the charge on the voluntary assessment form in a manner as if a voluntary assessment form had not been issued. Upon conviction in such prosecution, the court to which the summons or citation is returnable shall impose penalties as provided by the ordinance for the particular violation charged, and the provisions of this section as to payment of fines under voluntary assessments shall not apply. In addition to other applicable penalties imposed, any violator who has elected to make payment pursuant to subsection 4 of this section but who has failed to do so (and who has failed to request a hearing under subsection 5 of this section), within ten days (excluding Saturdays, Sundays and legal holidays) from the date of the summons or citation, may be prosecuted pursuant to subsection 10 of this section.

Section 8. Procedure. After issuing the voluntary assessment agreement and summons or citation, the police officer or code enforcement official shall deliver the same forthwith to the town clerk, which shall record the date of receipt thereof, the name of the alleged violator, the charge, the summons or citation number and the date by which such penalty is due. The summons or citation need not be sworn at the time of delivery to the town hall, provided that the charge recorded on the summons or citation may be dismissed by the court, upon motion, if such summons or citation is not sworn to by the police officer or code enforcement official prior to

trial. If a payment due pursuant to this section is not received by the town hall within ten days from the date of issuance of such summons or citation (excluding Saturdays, Sundays and legal holidays), the town clerk shall, after entering the pertinent information in a log maintained by it, return all papers delivered to it pursuant to this subsection 8 to the police officer or code enforcement official to return forthwith the proper papers to the court to which the summons or citation is returnable at which time he may swear out a warrant for the violator's arrest for violation of subsection 10 of this section.

Section 9. Effect of late payment. Should the town clerk receive payment from the violator after returning the papers to the police officer or code enforcement official but before the date set for trial and before an arrest is made on the warrant, the payment shall be accepted by the town clerk, which shall prepare a mail-in disposition slip consisting of an original and two copies. The original shall remain with the town clerk's office. Both copies shall be forwarded to the police officer or code enforcement official. Any warrant charging failure to make payment or request a hearing under this section shall be withdrawn.

Section 10. Nonexclusive procedure; ordinances subject to voluntary assessment; violations. The procedure prescribed in this section is not exclusive of any other method prescribed by law for prosecution of persons violating any ordinances subject hereto. Unless otherwise specifically indicated in an ordinance, all ordinances shall be subject to the voluntary assessment procedures found herein. Any person who fails to either pay the appropriate fine by the due date or fails to request a hearing by the due date under any voluntary assessment agreement issued by any town police officer or code enforcement official for any violation of the ordinances of the town shall be guilty of a violation and shall be fined, upon conviction, not less than \$10.00 nor more than \$25.00, plus costs, and, for each subsequent offense, he shall be fined not less than \$25.00 nor more than \$50.00.

Synopsis

This ordinance creates procedures whereby an individual alleged to have violated a town ordinance may voluntarily pay the minimum fee associated with the ordinance violation, along with an administrative cost, in lieu of going to court. This ordinance outlines how the voluntary assessment payment is to be made and processed by the town, how one accepts the voluntary assessment, and how a violator may later withdraw the acceptance and request a hearing. This ordinance outlines the effects of failing to pay a voluntary assessment and making a late voluntary assessment payment, including penalties for failing to comply with a voluntary assessment agreement. Voluntary assessment procedures apply to all ordinances in the town unless an ordinance indicates otherwise.

This shall certify that this is a true and correct copy of the ordinance duly adopted by the Town Council of the Town of Wyoming at a duly-noticed and convened meeting at which a quorum was present on December 5, 2011.

So Certifies:

Attest: Paruela B. Haddick
Town Clerk

Frankie Dale Ref
Mayor

This shall certify that a copy of this Ordinance was posted at the Town Hall on
12/7, 2011.

So Certifies:

12/7/11
Date

Paruela B. Haddick