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HIAWATHA POLICE DEPARTMENT

Memo

To: Council Members

From: Chief Dennis Marks,

Date: September 18, 2017

Re: Public Defender Defense Fund

As Kim mentioned in her earlier city administrator reports our Iowa legislation passed bills in their last session that will affect our community and its budget. SF 374 the Public Defender Indigent Defense Fund was one of those bills that were passed and will be in effective January 1st, 2018. A six-month delay was built in to the bill so local jurisdictions could review the impact this new law may have. The new sections affecting local jurisdictions are providing legal counsel at public's expense and seeks reimbursement from the local political subdivision.

The take-away is that anytime someone is charged with a violation of a city ordinance and the possibility of imprisonment is present, they are entitled to have legal representation. The State Public Defender's Office will then seek reimbursement from the local jurisdiction for compensation and expenses incurred.

City Attorney Mark Parmenter, City Administrator Kim Downs, City Clerk Kelly Kornegor and I meet to discuss a few weeks ago. In reviewing our local ordinance, the following section outlines the penalty for a violation of city code:

1.10 Standard Penalty

Unless another penalty is expressly provided by this Code of Ordinances for any particular provision, section or chapter, any person failing to perform a duty, or obtain a license required by, 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 and a term of imprisonment provided for a misdemeanor violation under Iowa Code Section 903.1, subsection 1, paragraph "a". (Ord. 837 – Oct. 15 Supp.) (Code of Iowa, Sec. 364.3[2])

During our discussion with the city attorney we were all in agreement that removing ….*and a term of imprisonment*…. would be appropriate. We have not sent anyone to jail for a violation of a city ordinance and have no future intentions to do so. Even when the city attorney specifies they are not seeking jail time, the possibility of imprisonment is sufficient to grant legal counsel at city expense.

We are asking council set this matter for public hearing to discuss removing the possibility of imprisonment from section 1.10 of the Hiawatha Code of Ordinances.

If you have any questions regarding this matter, please contact Kim or I with any questions you may have.

Thank you for your consideration to this matter.

DRAFT

ORDINANCE NO. _____

AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE CITY OF HIAWATHA, IOWA, 1996, BY AMENDING CHAPTER 1 CODE OF ORDINANCES §1.10 STANDARD PENALTY

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HIAWATHA, IOWA:

SECTION 1. Chapter 1, Section 1.10 Standard Penalty, of the Code of Ordinances of the City of Hiawatha, Iowa, 1996, is hereby amended as follows:

1.10 STANDARD PENALTY. Unless another penalty is expressly provided by this Code of Ordinances for any particular provision, section or chapter, any person failing to perform a duty, or obtain a license required by, or violating any provision of this Code of Ordinances, or any rule or regulation adopted herein by reference shall, upon conviction, be subject to only a monetary fine ~~only and a term of imprisonment~~ as provided for a misdemeanor violation under Iowa Code Section 903.1, subsection 1, paragraph "a".

SECTION 2. 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 the ordinance as a whole or any section, provision or part thereof not adjudged invalid or unconstitutional.

SECTION 3. WHEN EFFECTIVE. This ordinance shall be in effect from and after its final passage, approval and publication as provided by law.

PASSED AND APPROVED this 18th day of October, 2017.

_____
Bill Bennett, Mayor

ATTEST:

_____
Kelly Kornegor, City Clerk

DRAFT

I, Kelly Kornegor, City Clerk of the City of Hiawatha, Iowa, do hereby certify that the foregoing ORDINANCE was PASSED and APPROVED by the City Council of the City of Hiawatha, Iowa, on the 18th day of October, 2017, and was posted as Ordinance No. _____ on the _____ day of October, 2017.

_____
Kelly Kornegor, City Clerk

DRAFT

RESOLUTION NO. 17-
City Council

RESOLUTION SETTING A PUBLIC HEARING DATE TO CONSIDER AMENDING HIAWATHA CODE OF ORDINANCES CHAPTER 1 CODE OF ORDINANCES §1.10 STANDARD PENALTY

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF HIAWATHA, IOWA to direct staff to proceed with notification of a public hearing that will be held in the Hiawatha Council Chambers, 101 Emmons Street, before the Hiawatha City Council on Wednesday, October 18, 2017 at 5:30 P.M. regarding amending Hiawatha Code of Ordinance Chapter 1 Code of Ordinances §1.10 by removing term of imprisonment from misdemeanor violation under Iowa Code Section 903.1

AYES:
NAYS:
ABSENT:

PASSED AND APPROVED this 4th day of October, 2017.

_____
Bill Bennett, Mayor

ATTEST:

_____
Kelly Kornegor, City Clerk