

CHAPTER 28 ADMINISTRATIVE ADJUDICATION

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28.1 ADOPTION OF STATE STATUTES

The Village adopts 65 ILCS 5/1-2.1-1, *et seq.*, which authorizes a home rule municipality to create and implement a system of Administrative Adjudication for code violations and 625 ILCS 5/11-208.3, *et seq.*, which authorizes a municipality to create and implement a system of Administrative Adjudication of Violations of Traffic Regulations Concerning the Standing, Parking, and Condition of Vehicles. The adoption of these statutes shall not preclude the Village from using other methods to enforce Village ordinances.

28.2 OFFICE OF ADMINISTRATIVE ADJUDICATION

A. CREATION: An Office of Administrative Adjudication is established pursuant to the authority of 65 ILCS 5/1-2.1-1, *et seq.* and 625 ILCS 5/11-208.3, *et seq.*, the function of which is to administer a system of administrative adjudication provided for in this Chapter. The Office of Administrative Adjudication shall administer, manage and conduct administrative adjudication proceedings in the manner provided for in this Chapter. The creation of the Office of Administrative Adjudication shall not preclude the Village from using other methods to enforce Village ordinances. The Office of Administrative Adjudication shall be comprised of the following individuals appointed by the Village Administrator:

1. Hearing officer, who may also be referred to as an administrative law judge;

2. The Director of Public Safety or designee;
3. The Village Administrator;
4. A code administrator; and
5. Any person or persons deemed necessary for the efficient administration of the Office of Administrative Adjudication.

B. **JURISDICTION:** The Office of Administrative Adjudication shall have the authority to conduct the administrative adjudication of charges of all code violations of this Code, as amended, and vehicular standing, parking and compliance violations, except the following:

1. Any offense under the Illinois Vehicle Code or this Code governing the movement of vehicles;
2. Any reportable offense under 625 ILCS 5/6-204;
3. Violations punishable by a penalty of incarceration; and
4. Violations punishable by a fine in excess of \$50,000 per violation excluding allowable costs, provided, however, that the maximum fine amount of \$50,000 does not apply to cases brought to enforce the collection of any tax imposed and collected by the Village.

C. **ADJUDICATION OF MATTERS:** Charges of violations of this Code, as amended from time to time, and any other matter falling within the jurisdiction of the Office of Administrative Adjudication shall be heard and adjudicated by an Administrative Law Judge.

28.3 DIRECTOR

The director of the Office of Administrative Adjudication shall be the Village Administrator or designee, or an independent contractor or agency contracted by the Village to perform such duties as enumerated herein. The director is authorized, empowered and directed to:

1. Operate and manage the system of administrative adjudication of vehicular standing and parking regulation violations, vehicle compliance violations, vehicle license or sticker requirement violations, building, fire and health code violations, and all other Village ordinance violations as may be permitted by law and directed by ordinance or this Code.
2. Adopt, distribute and process all notices as may be required under this Chapter or Code, or as may reasonably be required to carry out the purpose of this Chapter.
3. Collect moneys paid as fines and/or penalties assessed after a final determination of liability.

4. Certify copies of final determinations of building, fire and health code violations or any other ordinance violation adjudicated pursuant to this Chapter and Code.
5. If also appointed as Traffic Compliance Administrator pursuant to Section 28.15, certify copies of final determinations of vehicular standing and parking regulation violation liability, vehicle compliance violations, vehicle license or sticker requirement violations, and any factual reports verifying the final determination of any violation liability which were issued in accordance with this Chapter or the laws of the State, including 625 ILCS 5/11-208.3, as from time to time amended; and also certify reports to the Secretary of State concerning initiation of suspension of driving privileges in accordance with the provisions of this Chapter and those of 625 ILCS 5/6-306.5.
6. Promulgate rules and regulations reasonably required to operate and maintain the system of administrative adjudication hereby established.
7. Collect unpaid fines and penalties through private collection agencies that may be retained by the Village or by filing citations in the 22nd Judicial Circuit Court, or by selecting or appointing an individual or agency to act on behalf of the Village in filing citations, seeking judgments for unpaid fines or penalties and pursuing all post-judgment remedies available under current law.
8. Operate and maintain, or delegate the operation and maintenance of any computer program(s) for the system of administrative adjudication hereby established, on a day-to-day basis, including, but not limited to:
 - A. Inputting of violation notice information;
 - B. Establishing hearing dates and notice dates;
 - C. Recording fine and penalty assessment and payments;
 - D. Issuing payment receipts;
 - E. Issuing succeeding notices of hearing dates and/or final determination of liability, issuing notices of immobilization, issuing notices of impending impoundment, and issuing notices of impending driver's license suspension as may be required, in accordance with the Illinois Vehicle Code; and
 - F. Keeping accurate records of appearances and non-appearances at administrative hearings, pleas entered and fines and other penalties assessed and paid.

28.4 COMPLIANCE ADMINISTRATORS

The Village Administrator, or designee, shall appoint Compliance Administrators who are authorized to issue Code violation notices and citations. Compliance Administrators are any and all police and

community service officers, building code and property maintenance inspectors, supervisors in the Public Works Department and any other person appointed to issue Code violation notices and citations.

28.5 ADMINISTRATIVE LAW JUDGE

A. APPOINTMENT: The Village Administrator, with advice and consent of the Village Board, shall appoint an Administrative Law Judge to hear all matters under this Chapter. The Administrative Law Judge must be an attorney licensed to practice law in this State for at least three years. In the event the Administrative Law Judge is unavailable for any regular or special court date, the Village Administrator shall appoint a temporary Administrative Law Judge. The temporary appointee must be an attorney licensed to practice law in this State for at least three years.

B. TRAINING: Prior to conducting proceedings under this Chapter, Administrative Law Judges shall successfully complete a formal training program that includes the following:

1. Instruction on the rules of procedure of the hearings which they will conduct;
2. Orientation to each subject area of the Code violations they will adjudicate;
3. Observation of administrative hearings; and
4. Participation in hypothetical cases, including ruling on evidence and issuing final orders.

C. POWERS AND DUTIES: The powers and duties of the Administrative Law Judge shall include:

1. Hearing testimony and accepting evidence that is relevant to the existence of the Code violation;
2. Administering oaths and affirmations to witnesses;
3. Issuing subpoenas, at the request of any party or on the Administrative Law Judge's own motion for the appearance of witnesses or for the production of relevant books, records or other information, subject to Section 28.11;
4. Regulating the course of the hearing in accordance with this Chapter, the rules and regulations adopted by the Office of Administrative Adjudication or other applicable law;
5. Preserving and authenticating the record of the hearing and all exhibits and evidence introduced at the hearing;

6. Holding conferences for the settlement or simplifications of issues;
7. Issuing a determination, based on the evidence presented at the hearing, of whether a Code violation exists. The determination shall be in writing and shall include the fine, penalty or action with which the respondent must comply;
8. Imposing penalties consistent with applicable Code provisions and assessing costs upon finding a party liable for the charged violation. However, in no event shall the Administrative Law Judge have authority to (i) impose a penalty of incarceration, or (ii) impose a fine in excess of \$50,000, or at the option of the Village, such other amount not to exceed the maximum amount established by the Mandatory Arbitration System as prescribed by the Rules of the Illinois Supreme Court from time to time for the 22nd Judicial Circuit. The maximum monetary fine under this Section shall be exclusive of costs of enforcement or costs imposed to secure compliance with the Village's ordinances and shall not be applicable to cases to enforce the collection of any tax imposed and collected by the Village;
9. Ordering a respondent to comply with the appropriate relevant Code section(s) that the respondent has been found liable of violating during the course of the administrative hearing;
10. Imposing, in addition to fines and costs assessed, costs related to the enforcement of this Code's provisions for which the respondent has been found liable; and
11. Granting equitable relief as otherwise authorized by law or local ordinance.

28.6 NOTICE OF VIOLATION (NON-VEHICULAR)

The form and manner of notice for a vehicular parking, standing and compliance violation shall be as provided in Section 28.15. All matters, excepting vehicular parking, standing and compliance violations, to be adjudicated by the Office of Administrative Adjudication shall be commenced against the party alleged to have violated one or more Code provision(s) by issuing and serving upon that party a charging document in accordance with the following procedures:

1. **ISSUANCE OF CITATION:** The charging document for a violation of any provision of this Code subject to the system of administrative adjudication provided in this Chapter, other than vehicular parking, standing and compliance violations, shall be issued by a Village officer or employee as authorized in Section 28.04, and served as provided for in Section 28.07.
2. **CONTENTS:** The charging document shall contain the following information:

- A. The name, Village department and identification number, if applicable, of the person issuing the charging instrument;
 - B. The name and address of the person or entity being charged with the violation;
 - C. The name and address of the person to whom the charging document is served upon if that person is not the respondent;
 - D. The section(s) of the Code alleged to have been violated;
 - E. The date, time and place of the alleged violation(s);
 - F. A legally sufficient description of the activity or conduct alleged to constitute a violation of each Code section set forth in the charging document; and
 - G. The name of the complaining witness(es) if the violation was not witnessed by the Village officer or employee issuing the charging document.
3. CERTIFICATION: The Village officer or employee issuing the charging document shall certify the correctness of the information required by this Section by signing his or her name to the charging document.
4. PRIMA FACIE EVIDENCE: Charging documents which comply with this Section will be sufficient to establish a prima facie case of liability for the Code violation charged.
5. HEARING INFORMATION: A charging document issued pursuant to this Section shall also set forth:
- A. The date, time and place of the adjudication hearing to be held with respect to the violation;
 - B. The legal authority and jurisdiction under which the hearing will be held;
 - C. The penalties for failure to appear at the hearing; and
 - D. The fine to be paid within the time frame set forth in Section 1.12, Citations or Hang-On Tickets, of this Code, and/or noting that appearance is required on the hearing date.

28.7 SERVICE (NON-VEHICULAR)

- A. The form and manner of service for a vehicular parking, standing and compliance violation shall be as provided in Section 28.15. A proceeding before the Administrative Law Judge shall be instituted upon the filing of a written sworn pleading or citation by any authorized official of the

Village, including police officers, code enforcement officers and such other employees as authorized with the Office of Administrative Adjudication.

B. Respondents shall be served with a copy of the written sworn pleading or citation along with a notice of the hearing in any manner reasonably calculated to give them actual notice of the proceeding instituted against them including:

1. Personal service upon a party or its employees or agents;
2. Service by first class mail, certified mail return receipt requested, or express mail at the party's last known address; or
3. Service by posting a copy of the sworn pleading or citation upon the property when a structure is involved where the violation is found if service on the owner cannot be made by mail. Posting shall be on the front door of the structure not less than 20 days before the hearing is scheduled. However, notice by posting shall not be effective notice if the property at issue is a vacant lot or a vacant building.

28.8 ADMINISTRATIVE HEARINGS

A. Hearings shall be scheduled with reasonable promptness, provided that for hearings scheduled in all non-emergency situations, if requested by the respondent, the respondent shall have at least 15 days after service of process to prepare for a hearing. For purposes of this Section, "non-emergency situation" means any situation that does not reasonably constitute a threat to the public interest, safety, health or welfare. If service is provided by mail, the 15-day period shall begin to run on the day the notice is deposited in the mail.

B. All hearings shall be open to the public, shall be recorded, and shall be conducted before an Administrative Law Judge.

C. Documentary evidence, including the notice of violation, citation and attached exhibits, may be presented to the Administrative Law Judge.

D. Respondents appearing at the hearing and their authorized agent or counsel shall file with the Office of Administrative Adjudication a written appearance on a form provided by the Office of Administrative Adjudication.

E. All testimony shall be given under oath or affirmation.

F. The formal and technical rules of evidence shall not apply in an adjudicatory hearing authorized under this Chapter. Evidence, including hearsay, may be admitted only if it is of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs.

G. Parties shall be provided with an opportunity for a hearing during which they may be

represented by counsel, present witnesses and cross-examine opposing witnesses. Parties may request the Administrative Law Judge to issue subpoenas to direct the attendance and testimony of relevant witnesses and the production of relevant documents; however issuance of the subpoena shall be at the discretion of the Administrative Law Judge where it is determined the witness or documents are material and do not constitute a needless presentation of cumulative or repetitive evidence.

H. Continuances may be granted at the discretion of the Administrative Law Judge upon a finding of good cause.

I. Upon the conclusion of a hearing the Administrative Law Judge shall issue a final determination of liability or no liability. No violation may be established except by proof by a preponderance of the evidence.

J. Upon issuing a determination of liability, the Administrative Law Judge may impose penalties and/or fines that are consistent with applicable provisions of this Code, impose a term of community service, assess costs of fifty dollars (\$50.00) related to instituting the administrative adjudication proceeding, if applicable, order the respondent to immediately correct the violation, and impose any other penalties or remedies available at law. *Amended 578*

K. Payment in full of any fine or penalty resulting from a violation shall constitute a final disposition of that violation.

28.9 DEFENSES TO A BUILDING CODE VIOLATION

Except for violations of the International Property Maintenance Code (as adopted in Section 23.01 of this Code, as amended), it shall be a defense to a building code violation charged if the owner, his attorney or any other agent or representative proves to the Administrative Law Judge's satisfaction that:

1. The building code violation alleged in the citation does not in fact exist or, at the time of the hearing, the violation has been remedied or removed;
2. The building code violation has been caused by the current property occupants and, in spite of reasonable attempts by the owner to maintain the dwelling free of such violation, including filing civil action to evict current occupants, the current occupants continue to cause the violation;
3. An occupant or resident of the dwelling has refused entry to the owner or his agent to all or part of the dwelling for the purpose of correcting the building code violation.

28.10 SANCTIONS APPLICABLE TO OWNER; PROPERTY

The order to correct a building code violation and the sanction imposed by the Village as the result of a finding of a building code violation under this Chapter, shall attach to the property as well as to the owner of the property so that a finding of a building code violation against one owner cannot be

avoided by conveying or transferring the property to another owner. Any subsequent transferee or owner of the subject structure or property shall be subject to the findings, decision and order of a hearing officer.

28.11 SUBPOENAS

A. **ISSUANCE:** Issuance of a subpoena shall be at the discretion of the Administrative Law Judge and shall only be enforceable for the attendance of persons or the production of books, records or other documents that have a relevant evidentiary connection with the: 1) subject matter, and 2) facts which are relevant to the case and relate to a contested issue in the case. A party's request to an Administrative Law Judge for a subpoena must be timely. Service of subpoenas shall be made in the same manner as summons in a civil action. Issuance shall be based upon whether the evidence sought is relevant and necessary to the defense of a violation, where without the issuance of the subpoena, the defense could not otherwise be established by the requesting party.

B. **CONTENT:** A subpoena issued under this Chapter shall identify:

1. The person to whom it is directed;
2. The documents or other items sought by the subpoena, if any; and
3. The date, time and place for the appearance of the witnesses and the production of the documents or other items described in the subpoena.

C. **APPEARANCE:** The date identified for the appearance of the witnesses or the production of the documents or other items shall not be less than seven days after subpoena service.

D. **CONTESTING A SUBPOENA:** Within five business days of being served with a subpoena issued in accordance with this Chapter, the person or entity to whom the subpoena is directed may contest the issuance of the subpoena by filing a written motion with the Office of Administrative Adjudication, and with proper notice to all parties. The motion shall specify the grounds therefore, and shall be heard by an Administrative Law Judge on the return date indicated on the subpoena, or at the next hearing date scheduled for the case, whichever occurs earlier.

28.12 DEFAULT; MOTION TO SET ASIDE DEFAULT JUDGMENT

A. **DEFAULT:** The Administrative Law Judge may find a respondent in default if the respondent, his attorney or authorized representative fails to appear at a hearing where proper service of notice of the hearing has been provided to the respondent, in accordance with this Chapter, and where there is not a finding of good cause by the Administrative Law Judge for the respondent's absence. Upon a finding of default, the hearing shall then proceed in absence of the respondent and evidence may be accepted relevant to the Code violation. A copy of the findings, decision and order resulting from the hearing shall be served on the respondent within 5 days after it is issued.

B. **MOTION TO SET ASIDE DEFAULT JUDGMENT:** The Administrative Law Judge

may set aside any judgment entered by default and set a new hearing date, upon a petition filed by the respondent within 21 days after the issuance of the order of default, if the Administrative Law Judge determines that the respondent's failure to appear at the hearing was for good cause, or at any time if the respondent establishes, by a preponderance of the evidence, that the Village did not provide proper service of process. If any judgment is set aside pursuant to this Section, the Administrative Law Judge shall have authority to enter an order extinguishing any lien which has been recorded for any debt due and owing the Village as a result of the vacated default judgment. When a judgment is vacated, the Administrative Law Judge shall proceed immediately with a new hearing on the underlying violation(s) as soon as practical.

28.13 JUDICIAL REVIEW

Any final decision by an Administrative Law Judge that a Code violation does or does not exist shall constitute a final determination for purposes of judicial review and shall be subject to review under the Illinois Administrative Review Law (735 ILCS 5/3-101 *et seq.*).

28.14 ENFORCEMENT OF JUDGMENT

Any fine, other sanction, or costs imposed, or part of any fine, other sanction, or costs imposed, remaining unpaid after the exhaustion of or the failure to exhaust judicial review procedures under the Illinois Administrative Review Law are a debt due and owing the Village and may be collected in accordance with applicable law. Additionally, after expiration of the period in which judicial review under the Illinois Administrative Review Law may be sought for a final determination of a Code violation, unless stayed by a court of competent jurisdiction, the findings, decision and order of the Administrative Law Judge may be enforced in the same manner as a judgment entered by a court of competent jurisdiction.

1. **FAILURE TO COMPLY; COSTS OF ENFORCEMENT:** In any case in which a respondent has failed to comply with a judgment ordering that respondent to correct a Code violation or imposing any fine or other sanction as a result of a Code violation, any expenses incurred by the Village to enforce the judgment entered against that respondent, including, but not limited to, attorneys' fees, court costs and costs related to property demolition or foreclosure, repair and/or enclosure of dangerous or unsafe buildings or uncompleted and abandoned buildings, costs for the removal of garbage, debris and other hazardous, noxious or unhealthy substances or materials from buildings or other real property after they are fixed by a court of competent jurisdiction or an Administrative Law Judge, shall be a debt due and owing the Village and may be collected in accordance with applicable law. Prior to any expenses being fixed by the Administrative Law Judge pursuant to this Section, the Village shall provide a notice to the respondent that states the respondent shall appear at a hearing before the Administrative Law Judge to determine whether the respondent has failed to comply with the judgment. The notice shall set the date for such hearing, which shall not be less than 7 days from the date that notice is served. If notice is served by mail, the 7-day period shall begin to run on the date the notice was deposited in the mail.

2. **LIEN:** Upon being recorded in the manner required by Article XII of the Illinois Code of Civil Procedure (735 ILCS 5/12-10 1, *et seq.*), or by the Uniform Commercial Code (810 ILCS 5/1-101, *et seq.*), a lien shall be imposed on the real estate or personal estate, or both, of the respondent in the amount of any debt due and owing the Village under this Code. The lien may be enforced in the same manner as a judgment lien pursuant to a judgment of a court of competent jurisdiction.
3. **DENIAL OF SERVICES:** If the respondent fails to pay any debt due and owing the Village as described in this Section within 14 days after service of the notice of debt, the Village may take the following actions in addition to any debt collection authorized by law:
 - A. Decline to issue, renew or provide any license, permit, zoning variance or permission applied for or requested by respondent under any Code or ordinance of the Village until the respondent pays such debt; or
 - B. Decline to issue or renew residential parking permits, temporary residential parking permits or passes, or any other permit required and applied for by the respondent under any Code or ordinance of the Village, until the respondent pays such debt.

28.15 PARKING AND STANDING OF VEHICLES AND THE CONDITION AND USE OF VEHICLE EQUIPMENT

- A. This Section shall be applicable to violations of Village ordinances regulating the parking and standing of vehicles and the condition and use of vehicle equipment.
- B. **DEFINITIONS:** In addition to the definitions found in Appendix A of this Code, terms used in this Section, whether capitalized or not, shall have the following meanings:

Compliance violation: A violation of a Village ordinance or code governing the condition or use of equipment on a vehicle.

Traffic Compliance Administrator: The Village Administrator or designee.

Vehicle Code: The Illinois Vehicle Code, 625 ILCS 5/1-100, *et seq.*

Violation notice: A violation notice issued pursuant to 625 ILCS 5/11-208.3 and the provisions of this Section.

- C. **TRAFFIC COMPLIANCE ADMINISTRATOR:** Unless otherwise designated by the Village Administrator, the director of the Office of Administrative Adjudication shall serve as the Traffic Compliance Administrator. The Traffic Compliance Administrator shall:

1. Operate an administrative adjudication system for the adjudication of violations of Village ordinances regulating the parking and standing of vehicles and the condition and use of vehicle equipment;
2. Adopt, distribute and process violations of Village ordinances regulating the parking and standing of vehicles and the condition and use of vehicle equipment and other notices required by 625 ILCS 5/11-208.3; and
3. Collect money paid as fines and penalties for violations of Village ordinances regulating the parking and standing of vehicles and the condition and use of vehicle equipment
4. Make a certified report to the Secretary of State pursuant to 625 ILCS 5/6-306.5. Any such certified report shall contain the information required under 625 ILCS 5/6-306.5(c).

D. **ADMINISTRATIVE LAW JUDGE:** The adjudication of all notices of violation of Village ordinances regulating the parking and standing of vehicles and the condition and use of vehicle equipment shall be conducted by an Administrative Law Judge conforming to all provisions of this Chapter.

E. **ISSUANCE OF CITATION:** Police and community service officers shall have the authority to issue notices of violation for any vehicular parking, standing or compliance violation.

F. **NOTICE REQUIREMENTS:** A violation notice shall include:

1. The date, time and place of the violation;
2. The particular regulation violated;
3. The fine and any penalty that may be assessed for late payment;
4. The vehicle make and state registration number;
5. The identification number of the person issuing the notice;
6. That the payment of the indicated fine, and any applicable penalty for late payment, shall operate as a final disposition of the violation;
7. Information on the availability of a hearing in which the violation may be contested on its merits; and
8. The time and manner in which a hearing will be held.

G. SERVICE:

1. The original or a facsimile of the notice shall be affixed to the vehicle or by handing the notice to the operator of a vehicle if present.
2. When Traffic Compliance Administrators issue violation notices they shall certify to the correctness of the facts on the violation notice by signing their name to the notice at the time of service. The original or a facsimile of the violation notice shall be retained by the Traffic Compliance Administrator. A record of the proceeding shall be kept in the ordinary course of business.
3. A violation notice issued, signed and served in accordance with this Section, or a copy of the notice, shall be prima facie correct and shall be prima facie evidence of the correctness of the facts shown on the notice. The notice shall be admissible in any subsequent administrative or legal proceedings.
4. Service of additional notices may be sent by first class United States mail, postage prepaid, to the address of the registered owner of the cited vehicle as recorded with the Secretary of State, or, under 625 ILCS 5/11-1306, to the lessee of the cited vehicle at the last address known to the lessor of the cited vehicle at the time of lease. If notice to that address is returned as undeliverable, service shall be to the last known address recorded in a United States postal service database. The service shall be deemed complete as of the date of deposit with the United States postal service.
5. SECOND VIOLATION NOTICE: A second notice of violation shall include:
 - a. The date and location of the violation cited in the violation notice;
 - b. The particular regulation violated;
 - c. The vehicle make and state registration number;
 - d. The fine and any penalty that may be assessed for late payment;
 - e. The method in which a hearing to contest the violation on its merits may be obtained by the respondent, and the time and manner in which the hearing may be requested;
 - f. A statement that failure either to pay the fine and any applicable penalty or to appear at the scheduled hearing will result in a final determination of violation liability for the cited violation in the amount of the fine and penalty indicated; and

g. A statement that, upon the occurrence of a final determination of violation liability for the failure, and the exhaustion of, or failure to exhaust, available administrative or judicial procedures for review, any unpaid fine or penalty will constitute a debt due and owing the Village.

6. **FINAL NOTICE OF DETERMINATION:** A notice of final determination of parking, standing and compliance violation liability shall be issued following a final determination of parking, standing and compliance violation liability and the conclusion of the judicial review procedures taken pursuant to this Section. The notice shall:

a. State the unpaid fine or penalty is a debt due and owing the Village; and

b. Contain warnings that failure to pay any fine or penalty due and owing the Village within the time specified may result in the Village filing a petition in the 22nd Judicial Circuit Court to have the unpaid fine or penalty rendered a judgment as provided by this Section, or may result in suspension of the person's drivers license for failure to pay fines or penalties for 10 or more parking violations under 625 ILCS 5/6-306.5.

7. **DRIVER'S LICENSE SUSPENSION:** A notice of impending driver's license suspension shall:

a. Be sent to the person liable for any fine or penalty that remains due and owing on 10 or more parking violations;

b. State that failure to pay the fine or penalty owing within 45 days of the notice's date will result in the Village notifying the Secretary of State that the person is eligible for initiation of suspension proceedings under 625 ILCS 5/6-306.5;

c. State that the person may obtain a photostatic copy of an original ticket imposing a fine or penalty by sending a self-addressed, stamped envelope to the Village with a request for a copy; and

d. Be sent by first class United States mail, postage prepaid, to the address recorded with the Secretary of State or, if any notice to that address is returned as undeliverable, to the last known address recorded in a United States postal service approved database.

H. **EVIDENCE RULES:** An opportunity for a hearing for the registered owner of the ve-

hicle cited in the violation notice in which the owner may contest the merits of the alleged violation, and during which formal or technical rules of evidence shall not apply; provided, however, that under 625 ILCS 5/11-1306, the lessee of a vehicle cited in the violation notice shall be provided an opportunity for a hearing as afforded the registered owner.

I. DEFENSES: For matters relating to parking and standing of vehicles and the condition and use of vehicle equipment, the Administrative Law Judge may consider in defense of a violation:

1. The motor vehicle, or registration plates, of the motor vehicle was stolen before the violation occurred and not under the control of or in the possession of the owner at the time of the violation;
2. The relevant required signs prohibiting or restricting parking were missing or obscured;
3. The facts alleged in the parking, standing or compliance violation notice are not correct, are materially inconsistent or do not support a finding that the specified regulation was violated; and
4. Any other evidence or issues provided by Village ordinance.

To demonstrate that the motor vehicle, or the registration plates, was stolen before the violation occurred and was not under the control or possession of the owner at the time of the violation, the owner must submit proof that a report concerning the stolen motor vehicle or registration plates was filed with a law enforcement agency in a timely manner.

J. FINAL DETERMINATION OF VIOLATION LIABILITY: A final determination of violation liability shall occur following failure to pay the fine and any applicable penalty, or to appear at a hearing on the merits, and upon the exhaustion of the administrative review procedures. When a person fails to appear at his/her scheduled hearing to contest an alleged violation, the Administrative Law Judge's determination of violation liability shall become final (i) upon denial of a timely petition to set aside that determination; or (ii) upon expiration of the period for filing the petition without a filing having been made.

K. APPEALS: A petition to void a determination may be filed by a person owing an unpaid fine or penalty and shall be filed within 30 days of the finding of liability and shall be ruled upon by the Administrative Law Judge. The grounds for such a petition are limited to:

1. The person was not the owner or lessee of the cited vehicle on the date the violation notice was issued; or
2. The person had paid the fine or penalty for the violation in question; or

3. Excusable failure to appear at or request a date for a hearing.

When it has been determined there is just cause, the registered owner shall be provided with a hearing on the merits for the violation.

L. **PROCEDURES FOR NON-RESIDENTS:** If an alleged violator does not reside within the Village, the violation may be contested in writing pursuant to the notice of violation. In such circumstances, the non-resident may submit his or her position, in writing, signed and under oath, to the Administrative Law Judge, setting forth the reasons why a finding of liability should not be entered and why the issuance of the violation was improper. Said written challenge must be submitted not less than 14 days prior to the hearing as noted on the notice of violation.

28.16 ELECTION OF REMEDIES

In no case may the Office of Administrative Adjudication conduct an administrative adjudication proceeding for an alleged violation of this Code where the remedy provided is a punishment of imprisonment; provided, however, where a violation of the Code is punishable by fines and other penalties in addition to imprisonment, the Village may elect to institute an action with the Office of Administrative Adjudication and waive any imprisonment for the Code violation. Nothing in this Section, however, shall preclude the Village from seeking the remedy of imprisonment in a court of competent jurisdiction.

28.17 FINES APPLICABLE TO ALL OFFENSES

Ordinance and Code violations that may be heard in an administrative adjudication as set forth in this Chapter shall carry the fines listed in this Code, with the maximum fines being \$1,000 or as provided for in the State statutes, whichever is greater.

28.18 VEHICLE IMPOUNDMENT *Ord. 578*

- A. Violations Authorizing Seizure: A motor vehicle, operated with the permission, express or implied, of the owner of record, that is used in connection with the following violations, shall be subject to seizure and impoundment by the Village, and the owner of record of said vehicle shall be liable to the Village for an administrative penalty of \$500, in addition to costs of prosecution and any towing and storage fees as hereinafter provided:
1. Operation or use of a motor vehicle in the commission of, or in the attempt to commit, an offense for which a motor vehicle may be seized and forfeited pursuant to 720 ILCS 5/36-1; or
 2. Driving under the influence of alcohol, another drug or drugs, an intoxicating compound or compounds, or any combination thereof, in violation of 625 ILCS 5/11-501; or

3. Operation or use of a motor vehicle in the commission of, or in the attempt to commit, a felony or in violation of the Cannabis Control Act (720 ILCS 550/1 *et seq.*); or
4. Operation or use of a motor vehicle in the commission of, or in the attempt to commit, an offense in violation of the Illinois Controlled Substances Act (720 ILCS 570/100 *et seq.*); or
5. Operation or use of a motor vehicle in the commission of, or in the attempt to commit, an offense in violation of 720 ILCS 5/24-1 (Unlawful Use of Weapons), 720 ILCS 5/24-1.5 (Reckless Discharge of a Firearm) or 720 ILCS 5/24-3.1 (Unlawful Possession of Firearms and Firearm Ammunition); or
6. Driving while a driver's license, permit or privilege to operate a motor vehicle is suspended or revoked pursuant to 625 ILCS 5/6-303; except that vehicles shall not be subjected to seizure or impoundment if the suspension is for an unpaid citation (parking or moving) or due to failure to comply with emission testing; or
7. Operation or use of a motor vehicle while soliciting, possessing, or attempting to solicit or possess cannabis or a controlled substances, as defined by the Cannabis Control Act (720 ILCS 550/1 *et seq.*) or the Illinois Controlled Substances Act (720 ILCS 570/100 *et seq.*); or
8. Operation or use of a motor vehicle with an expired driver's license, in violation of 625 ILCS 5/6-101, if the period of expiration is greater than one year; or
9. Operation or use of a motor vehicle without ever having been issued a driver's license or permit, in violation of 625 ILCS 5/6-101, or operating a motor vehicle without ever having been issued a driver's license or permit due to a person's age; or
10. Operation or use of a motor vehicle by a person against whom a warrant has been issued by a circuit clerk in Illinois for failing to answer charges that the driver violated 625 ILCS 5/6-101, 6/303 or 11-501; or
11. Operation or use of a motor vehicle in the commission of, or in the attempt to commit, an offense in violation of 720 ILCS 5/16 *et seq.* or 720 ILCS 5/16A *et seq.*; or
12. Operation or use of a motor vehicle in the commission of, or in the attempt to commit, an offense in violation of 625 ILCS 5/11-204 (fleeing or attempting to elude); or
13. Operation or use of a motor vehicle in violation of 625 ILCS 5/11-503 (obedience to police officers):
 - a. While the vehicle is part of a funeral procession; or
 - b. In a manner that interferes with a funeral procession.
14. Any other circumstances under which the vehicle may be towed pursuant to this Code, the Village of Prairie Grove Police Department Operations Procedures, or the Village of Prairie Grove Police Department Administrative Procedures.

B. General Regulations:

1. All administrative fees and towing storage charges shall be imposed on the registered owner of the motor vehicle or the agents of that owner.
2. The administrative fees shall be in addition to (i) any other penalties that may be assessed by a court of law for the underlying violations; and (ii) any towing or storage fees, or both, charged by the towing company.
3. This Section shall not replace or otherwise abrogate any existing State or Federal laws or Village ordinance pertaining to vehicle seizure and impoundment.
4. The fees imposed shall be uniform for all similarly situated vehicles.
5. Following payment of the impoundment fee of \$500 to the Village, the Village shall provide written notice to the owner of record along with the receipt for payment that any request for refund, provided for herein, must be submitted within thirty (30) days of the finding of not guilty.
6. The towing or storage fees, or both, shall be collected by and paid to the person, firm, or entity that tows and stores the impounded vehicle.
7. An impounded vehicle shall be released to the owner of record, lessee, or a lienholder of record upon payment of all administrative fees and towing and storage fees.
8. For purposes of this Section, the “owner of record” of a vehicle is the record title holder as required with the Illinois Secretary of State.

C. Notice of Impoundment:

1. Whenever a police officer has cause to believe that a motor vehicle is subject to impoundment, the officer shall provide for the towing of the vehicle to a facility authorized by the municipality.
2. At the time the vehicle is towed, the municipality shall notify or make a reasonable attempt to notify the owner, lessee, or person identifying himself or herself as the owner or lessee of the vehicle, or any person who is found to be in control of the vehicle at the time of the alleged offense, of the fact of the seizure, and of the vehicle owner’s or lessee’s right to an administrative hearing.
3. The Village shall also provide notice that the motor vehicle will remain impounded pending the completion of an administrative hearing, unless the owner or lessee of the vehicle or a lienholder posts with the Village a bond equal to the administrative fee as provided by this Section and pays for all towing and storage charges.

D. Notice of Hearing: The Village shall provide notice of hearing to the registered owner or lessee of the vehicle and any lienholder of record, said notice shall:

1. Be served upon the owner, lessee, and any lienholder of record either by personal service or by first class mail to the interested party's address as registered with the Secretary of State;
2. Be served upon interested parties within ten (10) days after a vehicle is impounded by the Village; and
3. Contain the date, time, and location of the administrative hearing. The initial hearing shall be scheduled and convened no later than 45 days after the date of the mailing of the notice of hearing.

E. Administrative Hearing: A hearing shall be provided pursuant to 625 ILCS 5/11-208.3(b)(4) and Section 28.08 of this Chapter.

F. Decision:

1. At the conclusion of the administrative hearing, the hearing officer shall issue a written decision either sustaining or overruling the vehicle impoundment.
2. If, after the hearing, the Administrative Law Judge determines by a preponderance of evidence that the vehicle was used in connection with a violation set forth in this Section, the Administrative Law Judge shall enter a written order finding the owner of record of the vehicle civilly liable to the Village for an administrative penalty as provided in this Section and requiring the vehicle to continue to be impounded until the owner pays the administrative penalty plus costs of prosecution to the Village plus fees to the tower for the towing and storage of the vehicle. If the basis for the vehicle impoundment is sustained by the administrative hearing officer, any administrative fee posted to secure the release of the vehicle shall be forfeited to the Village. If the owner of record fails to appear at the hearing, the Administrative Law Judge shall enter a default order in favor of the Village.
3. If, after the hearing, the Administrative Law Judge does not determine by a preponderance of the evidence that the vehicle was used in such violation, the Administrative Law Judge shall enter a written order finding for the owner and for the immediate return of the owner's vehicle or cash bond without fees.
4. All final decisions of the administrative hearing officer regarding the impoundment shall be subject to review under the provisions of the Administrative Review Law.

G. Stolen Vehicle: The administrative fee shall be waived by the Village upon verifiable proof that the vehicle was stolen at the time it was impounded.

- H. Release of Vehicle: Unless the administrative hearing officer overturns the basis for the vehicle impoundment, no vehicle shall be released to the owner, lessee, or lienholder of record until all administrative fees and towing and storage charges are paid.
- I. Failure to Retrieve Vehicle: Vehicle not retrieved from the towing facility or storage facility within 35 days after the administrative hearing officer issues a written decision shall be deemed abandoned and disposed of in accordance with the provisions of 625 ILCS 5/4-201 *et seq.*
- J. Enforcement: Unless stayed by a court of competent jurisdiction, any fine, penalty, or administrative fee imposed under this Section which remains unpaid in whole or in part after the expiration of the deadline for seeking judicial review under the Administrative Review Law may be enforced in the same manner as a judgment entered by a court of competent jurisdiction.
- K. Administrative Fee Refund: A finding of not guilty following a trial in the 22nd Judicial Circuit Court for the underlying violation(s) for which the motor vehicle was impounded, shall entitle the owner of record to a full and complete refund of any administrative fee imposed under this Section. However, the owner of record must request the refund in writing from the Village within thirty (30) days of the finding of not guilty and include in the request a certified disposition of not guilty following a trial from the 22nd Circuit Court Clerk. The Village shall have thirty (30) days from the date of the written request for a refund to refund the money.

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