

CHAPTER 12
NUISANCES

12.01 PUBLIC NUISANCES PROHIBITED. No person shall erect, contrive, cause, continue, maintain or permit to exist, any public nuisance within the Village or within the police jurisdiction of the Village.

12.02 PUBLIC NUISANCES DEFINED.

- A. Generally. A public nuisance is a thing, act, occupation, condition or use of property which shall continue for such length of time as to:
1. Substantially annoy, injure or endanger the comfort, health, repose or safety of the public;
 2. In any way render the public insecure in life or in the use of property;
 3. Greatly offend the public morals or decency;
 4. Unlawfully and substantially interfere with, obstruct or tend to obstruct or render dangerous for passage any street, alley, highway, navigable body of water or other public way.
- B. Public Nuisances Affecting Health. The following acts, omissions, places, conditions and things are hereby specifically declared to be public health nuisances, but shall not be construed to exclude other health nuisances coming within the definition of subsection A of this section:
1. All decaying, harmfully adulterated or unwholesome food or drink sold or offered for sale to the public;
 2. Carcasses of animals, birds or fowl not buried or otherwise disposed of in a sanitary manner within twenty-four (24) hours after death;
 3. Accumulation of decaying animal or vegetable matter including landscape waste, trash, rubbish, rotting lumber, bedding, packing material, abandoned vehicles or machinery, scrap metal or any material in which flies, mosquitoes, disease-carrying insects, rats or other vermin may live or breed; or which may constitute a fire hazard;
 4. All stagnant water in which mosquitoes, flies or other insects can multiply;
 5. The escape of smoke, soot, cinders, noxious acids, fumes, gases, fly ash or industrial dust within the Village limits in such quantities as to endanger the health of persons of ordinary sensibilities or to threaten or cause substantial injury to property;

6. The pollution of any public well or cistern, stream, lake, canal or body of water by sewage, creamery or industrial wastes or other substances;
 7. Any use of property, substances or things within the Village emitting or causing any foul, offensive, noisome, nauseous, noxious or disagreeable odors, effluvia or stench extremely repulsive to the physical senses of ordinary persons which annoy, discomfort, injure or inconvenience the health of any appreciable number of persons within the Village;
 8. All abandoned wells not securely covered or secured from public use; in accordance with County and State Statutes;
 9. Any barn, stable or shed used for keeping animals that is in violation of 12.02 B, paragraph 8;
 10. Any obstruction in or across any water course, drainage ditch or ravine;
 11. The deposit of garbage, rubbish or any offensive substance on any street, sidewalk or public place, or on any private property, except as may be permitted by ordinance;
 12. Any noxious weeds on private property as defined by the Illinois Compiled Statutes.
- C. Public Nuisances Offending Morals and Decency. The following acts, omissions, places, conditions and things are hereby specifically declared to be public nuisances offending public moral and decency, but such enumeration shall not be construed to exclude other nuisances offending public morals and decency coming within the definition of subsection A of this section:
1. All disorderly houses, bawdy houses, houses of ill fame, gambling houses and buildings or structures kept or resorted to for the purpose of prostitution, promiscuous sexual intercourse or gambling;
 2. All gambling devices and slot machines except for video gaming terminals licensed by the Village and State. No offensive or obscene graphics are allowed on any video gaming terminals. All video gaming terminals must be approved by the Illinois Gaming Board and the Village of Johnsburg;
 3. All places where intoxicating liquor or fermented malt beverages are sold, possessed, stored, brewed, bottled, manufactured or rectified without a permit or license as provided for by this Code;
 4. Any place or premises within the Village where ordinances or state laws relating to public health, safety, peace, morals or welfare are openly, continuously, repeatedly and intentionally violated.

D. Public Nuisances Affecting Peace and Safety. The following acts, omissions, places, conditions and things are hereby declared to be public nuisances affecting peace and safety, but such enumeration shall not be construed to exclude other nuisances affecting public peace or safety coming within the provisions of any subsection of this section:

1. All buildings erected, repaired or altered in violation of the provisions of the ordinances of the Village relating to materials and manner of construction of buildings and structures. This includes all storage of construction materials, including but not limited to, lumber, wood, bricks, shingles, concrete, piping, ducts, or any other material and/or equipment that may be used in construction, remodeling or maintenance unless a building permit has been issued and the materials and/or equipment being stored outdoors are for the project in which the building permit was issued for. Materials used for construction with the proper building permit may be stored outdoors only while construction is taking place and only up until such time the building permit expires or final inspection is completed;
2. All unauthorized signs, signals, markings or devices which purport to be or may be mistaken as official traffic control devices placed or maintained upon or in view of any public highway or railway crossing;
3. All trees, hedges, billboards or other obstructions which prevent persons driving vehicles on public streets, alleys or highways from obtaining a clear view of traffic when approaching an intersection or pedestrian crosswalk;
4. All limbs of trees which project over a public sidewalk less than eight (8) feet above the surface thereof or less than ten (10) feet above the surface of a public street;
5. All use or display, or allowed and or permitted use or display by the property owner and/or occupant, of fireworks except as provided by the laws of the State of Illinois and ordinances of the Village;
6. All buildings or structures so old, dilapidated or out of repair as to be dangerous, unsafe, unsanitary or otherwise unfit for human use;
7. All wires over streets, alleys or public grounds which are strung less than fifteen (15) feet above the surface of the street or ground;
8. All loud and discordant noises or vibrations of any kind;
 - a. All off road motor vehicles, including but not limited to motorcycles, mini-bikes, all terrain cycles, snowmobiles or other like or similar motor vehicles, being operated on private property where the noise from which can be heard from a distance of one hundred feet (100') or more from the property line of the source of the noise in such a manner as to disturb the peace and comfort of occupants of neighboring or surrounding properties. Excluded from the provisions of this subsection are agricultural motor vehicles being used for agricultural purposes or work being performed by or on behalf of any public body or work being performed in response to weather emergencies.
 - b. The operation or allowed/permitted operation of any radio or stereo sound amplification system or other sound amplification equipment which: 1.) can be heard at a distance of one hundred feet (100') or more from the source vehicle or 2.) can be heard at a distance of one hun-

dred feet (100') from the property line of the source property, or 3.) which exceeds 70db(a) (slow meter response) at the property line of any neighboring property zoned and used for residential purposes.

9. All obstructions of streets, alleys, sidewalks or crosswalks and all excavations in or under the same, except as permitted by the ordinances of the Village or which, although made in accordance with such ordinances, are kept or maintained for an unreasonable length of time after the purpose thereof has been accomplished;
10. All open and unguarded pits, wells, excavations or unused basements freely accessible from any public street, alley or sidewalk;
11. All abandoned appliances commonly referred to as white goods, including but not limited to, refrigerators, freezer, ice boxes, dehumidifiers, clothes washers, clothes dryers, dishwashers air conditioners, gas ranges, electric ranges, microwaves, water heaters, trash compactors and cooktops.
12. Any unauthorized or unlawful use of property abutting on a public street, alley or sidewalk or of a public street, alley or sidewalk which causes large crowds of people to gather, obstructing traffic and free use of the streets or sidewalks;
13. Any advertisements or signs affixed to any building, wall, fence, sidewalk, street or other private or public property without permission of the owner thereof;
14. Any sign, marquee, or awning which is in an unsafe condition, or which overhangs any roadway, or which overhangs any sidewalk less than eight (8) feet above the sidewalk surface;
15. Any condition or practice constituting a fire hazard;
16. Any nuisance so defined by the Illinois Compiled Statutes;
17. All unsheltered storage of old, unused, stripped, junked, boats, trailers, recreational vehicles, recreational campers and automobiles not in good and safe operating condition, and of any other vehicles, machinery, implements and/or equipment and personal property of any kind which is no longer safely usable for the purposes for which it was manufactured, within the corporate limits of this Village;
 - a. unsheltered storage defined: to allow or maintain an article, from 12.02.D.17, to be kept not inside a permanent structure with foundation.
18. All signs advertising garage sales, yard sales, house sales or other similar sales other than those located on the property on which the sale is being conducted.

12.03 Enforcement

A. Enforcement Officer. This Ordinance shall be primarily enforced by the Village of Johnsburg Building/Code Enforcement and/or by the Village of Johnsburg Police Department.

B. Complaints: Enforcement officers shall have authority to issue non-traffic complaint citations (notices to appear) or ordinance violation citations to any person violating any of the provisions of this ordinance this is not intended as the exclusive means of initiating an action.

C. Notice to Abate Nuisance: With respect to violations of section 12.02 enforcement officers may provide twenty-four (24) hours of notice to violators to abate existing nuisance before issuing any complaint(s). Said notice shall advise the violator of the violation and demand that the violation be removed within twenty-four (24). It shall be sufficient that the notice shall be posted on the violation in plain view. No such advance notice is required with respect to violations of sections 12.02(C)1,2,3,4 or 12.02(D)2,5,8,10,11,12,15,20,21.

1. Abatement by Village. If the nuisance is not abated within the time provided or if the owner, occupant or person causing the nuisance cannot be found, the enforcement officer or another whom the Village President may designate, may cause the abatement or removal of such public nuisance at the cost of such removal or abatement to such person or responsible party causing the nuisance.

D. Violation-Fines: see 12.08

E. Injunctive Relief: When appropriate the enforcement officer may, on behalf of the Village of Johnsburg, seek injunctive relief to prevent or abate a nuisance.

12.04 COST OF ABATEMENT. In addition to the penalty imposed by this Code for the erection, contrivance, creation, continuance or maintenance of a public nuisance, the cost of abating a public nuisance by the Village shall be collected as a debt from the owner, occupant or person causing, permitting or maintaining the nuisance, and if notice to abate the nuisance has been given to the owner, such cost shall be assessed against the real estate as other special taxes.

12.05.01 INOPERABLE VEHICLES

A. Definitions: Terms used in this section mean as follows:

1. For the purpose of this ordinance, certain terms and phrases shall be deemed to have the meaning ascribed to them in this section.

a. Words in the singular number include the plural; those in the plural number include the singular.

b. Words in the present tense include the past and future tenses, and the future, the present tense.

c. The masculine gender shall include the feminine and neuter genders.

d. The word "shall" is mandatory, while the word "may" is permissive.

2. Inoperable Vehicle: As used in this ordinance, the term “inoperable motor vehicle” shall mean any motor vehicle on public or private property from which, for a period of seven (7) days or more, the engine, wheels or other parts have been removed, or on which the engine; wheels or other parts have been altered , damaged or otherwise treated so that the vehicle is incapable of being driven legally, properly and safely under its own motor power, or any motor vehicle which is not duly licensed as required by the Illinois Vehicle Code. This definition shall include engines, wheels or other automotive parts which are detached and separate from a motor vehicle and which have remained on public or private property for seven (7) days or more.
3. Exemptions: an inoperable motor vehicle shall not include the following:
 - a. a motor vehicle which has been rendered temporarily incapable of being driven under its own motor power in order to perform ordinary service or repair operations,
 - b. a motor vehicle that is kept within a permanent structure with foundation when not in use
 - c. a motor vehicle on the premises of an authorized place of business engaged in wrecking or junking of motor vehicles.
 - (1). motor vehicles must be repaired or removed within 180 days.

B. Provisions

1. It shall hereby be declared a nuisance to maintain, store, keep or permit an inoperable motor vehicle on any public or private property within the Village of Johnsburg, McHenry County, Illinois for a period of seven (7) days or more.
2. Upon observation of an inoperable motor vehicle upon public or private property, a Johnsburg Enforcement Officer, as prescribed in Section 12.03 of this ordinance, shall issue a notice directing the owner, occupant or party in control of the real property and/or the owner of the vehicle in question to remove the inoperable motor vehicle within ten (10) days. It shall be sufficient that the notice shall be posted on the violation in plain view. If such inoperable motor vehicle is not removed after the lapse of ten (10) days from the issuance of such notice, the Johnsburg Enforcement Officer is authorized to remove said inoperable motor vehicle. The owner, occupant or party in control of the real property and/or the owner of the vehicle in question shall pay the cost of such removal.

C. Penalties

1. Failure to comply with any of the provisions and requirements of 12.05.01 shall constitute a violation, and any person convicted of the ordinance shall be guilty of a Class B violation. Each day the violation continues shall be considered a separate offense. Proceedings may be commenced by notice to appear, summons, warrant or arrest.

12.06 PARKING MOBILE HOME MOTORHOMES, TRAILERS, and BOATS.

- A. Motor homes, boats, trailers and campers may be parked on driveways and private property limited to one of each type vehicle, when such vehicles have current registration. Motor homes, boats, trailers and campers may be parked on a driveway, side yard or rear yard only.
- B. Persons owning a mobile home motorhome parked on their property within the Village shall register the mobile home motorhome with the Village Clerk. No mobile home motorhome shall be used for sleeping purposes while parked or stored in the Village, except as provided in this section.
- C. Guests of any owner or occupant of any dwelling in the Village may park a mobile home motorhome in the rear yard of such dwelling for not more than five (5) days, provided the mobile home motorhome is used for sleeping purposes only during such period.

Nothing in this Ordinance shall negate or supersede any recorded subdivision restrictive covenant or condition regulating the parking of vehicles, motor homes, campers, trailers and boats.

Penalties: Class A

12.07 NOXIOUS PLANTS, WEEDS AND GRASS.

- A. Noxious Plants and Weeds Declared Nuisance. Any weeds such as or known as jimson, burdock, ragweed, thistle, cocklebur, or other weeds of like kind, and plants or bushes of the species of tall, common or European Barberry, otherwise known as *Barberis Vulgaris*, or its horticultural varieties, found growing in any place or location within the corporate limits of the Village, are declared to be a nuisance. It shall be unlawful for any person to cause or permit any such weeds, plants or bushes to grow or remain in any place or location within the corporate limits of the Village to a height in excess of eight (8) inches. It is also hereby declared to be a nuisance and shall be unlawful for any person to cause or permit grass to grow or remain in any place or location within the corporate limits of the Village to a height in excess of eight (8) inches.
- B. Removal of Noxious Plants and Weeds. It shall be the duty of every owner or occupant of every lot or tract of land within the corporate limits of the Village to cut, destroy or remove, or cause to be cut, destroyed or removed, every such weed, plant or bush or cut any grass as hereinabove described upon every such lot or tract of land in such manner and on or before such time as such weeds, bushes, plants or grass reach or exceed the height of eight (8) inches. Upon the failure of any such owner or occupant so to do, it shall be the duty of a Village of Johnsburg enforcement officer, as defined in 12.03 of this Ordinance, to serve or cause to be served a notice upon any such owner or occupant of any premises upon which any such weeds, plants, bushes or grass are caused or permitted to grow in violation of the provisions of this section, demanding the abatement of such growth as a nuisance, within a period of ten (10) days from the date of such service. Failure of any owner

or occupant to comply with the provisions and demands of such notice shall constitute a violation of the provisions of this section.

C. Composting and Compost Piles

a. Yard waste materials may be placed in a compost pile, provided that such materials are placed in such a way as not to allow them to be blown by winds.

b. The depositing of garbage, pet waste, meat scraps or other materials that may attract animals or vermin to the compost pile or which may provide an obnoxious odor shall be prohibited. A compost pile shall not be placed in any required front yard as defined by the Village Zoning Ordinance and shall be set back a minimum of three feet from the side yard lot line, set back a minimum of five feet from any rear lot line, and shall not be located less than 30 feet from any neighboring residential dwelling structure. In no event shall a compost pile be located in any side or rear yard drainage or utility easement. A compost pile shall be no more than five feet in height and shall not exceed a maximum ground or base area of 100 square feet.

D. Abatement. If, upon the expiration of the ten-day period provided in the notice, any owner or occupant of any premises in the Village upon which any such weeds, plants, bushes or grass are caused or permitted to grow in violation of the provisions of this section, it shall be the duty of the Public Works Department to proceed to the nuisance by cutting, destroying or otherwise removing the weeds, plants, bushes or grass and to keep an account of the expense thereof, and such expense shall be charged to the owner, or the owner and occupant jointly, of the premises, and it shall be the duty of the owner or the owner and occupant jointly to pay such expense.

E. Lien. The Village of Johnsbury shall have a continuing lien upon the premises and real estate upon which any noxious weeds, plants, bushes or grass shall be caused or permitted to grow in violation of the provisions of this section, for or on account of which it is necessary for any expense to be suffered or incurred by the Village for the cutting, destroying or otherwise removing of any weeds, plants, bushes or grass. Every lien shall, upon compliance with the conditions hereinafter set forth, become and be prior and superior to the rights and interests of creditors, encumbrances, purchasers and other parties in interest in such premises and real estate.

Such lien may be preserved and enforced in the following manner: The Village Clerk shall within six (6) months after the accrual of such expense or cost or charge, file or cause to be filed with the appropriate county official a claim for lien, verified by the affidavit of himself/herself or any other officer of the Village having knowledge of the facts, which shall consist of a brief statement of the facts of the claim, the balance due after allowing all credits, and a sufficiently correct description of the lot, lots or tract or tracts of land or real estate to properly identify such land or real estate. No such lien shall be defeated in the proper amount thereof because of error or overcharging on the part of the Village, nor shall any such lien be defeated upon proof that the expense or cost or charge resulted from

or was incurred by reason or fault of any tenant or occupant or other person in possession other than the owner.

- F. **Foreclosure of Lien.** If payment shall not be made as provided in this section of any amount due by virtue of its provisions when the same shall become due, the Village may file or cause to be filed a petition or bill in the appropriate court for foreclosure of such lien, and the Village may proceed in its corporate name to foreclose such lien in like manner and with like effect as provided by the Illinois Compiled Statutes in foreclosure of mortgages. Such suit shall be commenced within two (2) years after the accrual of such expense or cost or charge. Any decree rendered in court may be enforced and collected as other decrees or judgment in such court.

The remedy provided in this section shall not be construed to abridge or in any manner interfere with the right and power of the Village to enforce the collection thereof by an action at law or as otherwise provided in this section, but the remedy herein provided shall be taken and held as an additional means to enforce payment of such delinquent expense or cost or charge.

12.08 SETTLEMENT OF OFFENSES. Unless the Village is seeking injunctive relief, any offense arising under this Chapter 12, for which a specific penalty is not stated may be settled and compromised by the offender by payment to the Village the sum of money stated for a Class A violation in Chapter 1.07-E.

- A. Any person or responsible party who continues to allow or permit any public nuisance to continue as defined in section(s) of 12.02(C)1,2,3,4,12.02(D)2,8,10,11,12,15,20,21 after being issued a complaint(s) or notice(s) by any enforcement officer shall be guilty of a Class D violation as prescribed in Chapter 1.07-E.
- B. Any person or responsible party who permits, or allows to occur, any reoccurrence of a public nuisance, within a 12 month period, as defined from section 12.07 shall be guilty of a Class D violation as prescribed in Chapter 1.07-E.

12.09: SEIZURE AND IMPOUNDMENT OF MOTOR VEHICLES:

- A. Definitions: For the purposes of this Section, and the interpretation and enforcement thereof, the following terms, phrases, words and their derivations shall have the meanings given herein, unless the context in which they are used shall indicate otherwise. When not inconsistent with the context, words used in the present tense include the future, words in the singular number include the plural number, and words in the plural number include the singular number. The words shall and will are mandatory and may is permissive. Words not defined shall be given their common and ordinary meaning.

1. HEARING OFFICER: A licensed attorney, who is not an officer or employee of the Village, designated by the Village Administrator.

2. **OWNER OF RECORD:** The record titleholder to a motor vehicle as registered with the Illinois Secretary of State of the State or any other applicable governmental agency.

B. Public Nuisance Declared: A motor vehicle, operated with the permission, express or implied, of the owner of record, shall be declared a public nuisance and shall be subject to seizure and impoundment under this Section where such motor vehicle is used in the commission of any of the violations set forth in this Section 12.09-B or when the commission of any of the violations set forth in this Section 12.09-B makes impoundment of the motor vehicle reasonably necessary as a community caretaking function so that the motor vehicle does not jeopardize public safety and the efficient movement of vehicular traffic. It shall not be necessary for criminal charges to be filed, prosecuted, and/or proven in order to demonstrate that one or more of the following violations has/have been committed:

1. Section 43.6 (Firearms) of this Code, as amended;
2. 625 ILCS 5/6-303 (Driving While Drivers License, Permit or Privilege to Operate a Motor Vehicle is Suspended or Revoked), as amended, except where said violation is in regard to a person whose driver's license, permit or privilege to operate a motor vehicle is suspended only for a violation of the emissions inspection laws as set forth in 625 ILCS 5/13B-1, *et seq.* and 5/13C-1, *et seq.*, as amended;
3. 625 ILCS 5/11-204 (Fleeing or Attempting to Elude a Peace Officer), as amended;
4. 625 ILCS 5/11-501 (Driving Under the Influence of Alcohol, Other Drug or Drugs, Intoxicating Compound or Compounds or any Combination Thereof), as amended;
5. 625 ILCS 5/11-503 (Reckless Driving or Aggravated Reckless Driving), as amended;
6. 625 ILCS 5/11-504 (Drag Racing), as amended, or the stopping of a person against whom a warrant has been issued by a circuit court for failing to appear to answer charges that the person was (a) operating a motor vehicle while that person's license was suspended or revoked or (b) operating a motor vehicle while under the influence of alcohol, other drug or drugs, intoxicating compound or compounds or any combination thereof;
7. 720 ILCS 5/11-6 (Indecent Solicitation of a Child), as amended;
8. 720 ILCS 5/12-2 (Aggravated Assault), as amended;
9. 720 ILCS 5/12-4 (Aggravated Battery), as amended;
10. 720 ILCS 5/12-4.2 (Aggravated Battery with a Firearm), as amended;
11. 720 ILCS 5/12-4.3 (Aggravated Battery of a Child), as amended;
12. 720 ILCS 5/12-4.6 (Aggravated Battery of a Senior Citizen), as amended;
13. 720 ILCS 5/16A-3 (Retail Theft), as amended, when the value of the merchandise exceeds \$150.00;
14. 720 ILCS 5/18-1 (Robbery), as amended;
15. 720 ILCS 5/18-2 (Armed Robbery), as amended;
16. 720 ILCS 5/19-1 (Burglary), as amended;
17. 720 ILCS 5/19-3 (Residential Burglary), as amended;

18. 720 ILCS 5/20-1 (Arson), as amended;
19. 720 ILCS 5/20-1.1 (Aggravated Arson), as amended;
20. 720 ILCS 5/20-2 (Possession of Explosives or Explosive or Incendiary Devices), as amended;
21. 720 ILCS 5/21-1 (Criminal Damage to Property), as amended; or 720 ILCS 5/25-1 (Mob Action), as amended;
22. A violation of 720 ILCS 570/401 (Manufacture or Delivery of a Controlled Substance), as amended;
23. 720 ILCS 570/401.1 (Controlled Substance Trafficking), as amended;
24. 720 ILCS 570/402 (Possession of a Controlled Substance), as amended;
25. 720 ILCS 550/4(d)-(g) (possession of any substance containing cannabis);
26. 720 ILCS 550/5 (Manufacture or Delivery of Cannabis), as amended;
27. 720 ILCS 550/5.1 (Cannabis Trafficking), as amended;
28. 720 ILCS 550/5.2 (Delivery of Cannabis on School Grounds), as amended;
29. 720 ILCS 550/8 (Unauthorized Production or Possession of Cannabis Sativa Plant), as amended;
30. 720 ILCS 5/24-1 (Unlawful Use of Weapons), as amended;
31. 720 ILCS 5/24-3.1 (Unlawful Possession of Firearms and Firearm Ammunition), as amended;
32. 720 ILCS 5/24-3.3 (Unlawful Sale or Delivery of Firearms on the Premises of any School), as amended; however, this subsection shall not apply when any of the exemptions set forth in 720 ILCS 5/24-2, as amended, are met;
33. 720 ILCS 5/24-1.1, Unlawful Use or Possession of Weapons by Felons or Persons in the Custody of Department of Corrections Facilities;
34. 720 ILCS 5/11-14 (Prostitution), as amended;
35. 720 ILCS 5/11-14.1 (Solicitation of a Sexual Act), as amended;
36. 720 ILCS 5/11-15 (Soliciting for a Prostitute), as amended;
37. 720 ILCS 5/11-15.1 (Soliciting for a Juvenile Prostitute), as amended;
38. 720 ILCS 5/11-18 (Patronizing a Prostitute), as amended;
39. 720 ILCS 5/11-18.1 (Patronizing a Juvenile Prostitute), as amended;
40. The motor vehicle is otherwise subject to seizure and impoundment pursuant to 720 ILCS 5/36-1 (Seizure), as amended;
41. 625 ILCS 5/6-101 (Drivers Must Have Licenses or Permits), as amended; (a) Except a person who had a valid driver's license that is expired for less than six months; (b) except a person who is less than 17 years of age operating a motor vehicle on any street or highway when in violation of the Child Curfew Act (720 ILCS 550/0.01 *et seq.*)
42. 720 ILCS 5/24.1.1 (Aggravated Discharge of a Firearm);
43. 720 ILCS 5/24-1.5 (Aggravated Discharge of a Machine Gun or a Firearm Equipped with a Device Designed or Used for Silencing the Report of a Firearm);
44. 625 ILCS 5/11-502(a) (Illegal Transportation of Alcohol by a Driver);
45. 720 ILCS 5/24.1-5 (Reckless Discharge of a Firearm);
46. Any violation of a similar Village ordinance as those set forth in this Section; or

47. Any other circumstances under which the vehicle may be towed pursuant to this Code, the Police Department Operating Procedures or the Police Department's Administrative Procedures.

C. Seizure and Impoundment of Motor Vehicles:

1. Whenever a police officer has probable cause to believe that a motor vehicle is subject to seizure and impoundment pursuant to this Section, the police officer shall cause the motor vehicle to be removed or towed to a facility authorized by the Village. When the motor vehicle is removed or towed, the police officer shall notify any person identifying himself or herself as the owner of record of the motor vehicle or any person who is found to be in control of the motor vehicle at the time of the alleged violation(s), if there is such a person, of the fact of the seizure and of the motor vehicle owner of record's right to request a preliminary hearing as provided in this Section. Said motor vehicle shall be impounded pending the completion of the hearings provided for in this Section, unless the owner of record of the motor vehicle posts with the Village a cash bond as set forth in Section 12.09-D.
2. A police officer who has probable cause to believe that a motor vehicle is subject to seizure and impoundment pursuant to this Section shall first ascertain whether the seizure and impoundment is necessary and reasonable under the circumstances. If in the judgment of the police officer then present, a person authorized by the owner of record or the operator of the motor vehicle is present and capable to provide for the lawful immediate removal of the motor vehicle, and said motor vehicle is not required to be held as evidence in regard to the violation, the police officer shall allow that individual to promptly remove the motor vehicle without it being subject to seizure and impoundment if seizure and impoundment of the motor vehicle is discretionary pursuant to Section 12.09-B(10) or seizure and impoundment of the motor vehicle is contemplated pursuant to Section 12.09-B.

- D. Posting a Bond: If a bond in the amount of \$500.00 is posted with the Village, the impounded motor vehicle shall be released to the owner of record, upon the payment by the owner of record of the towing and storage costs to the applicable towing company. If an administrative fee is imposed pursuant to Section 12.09-F(2), the bond shall be applied to said fee; provided, in the event that a violation of this Section is not proven, the bond shall be returned to the person posting the bond. All bond money posted pursuant to this Section shall be held by the Village until a hearing officer issues a decision, or, if there is judicial review pursuant to subsection J, until a reviewing court issues a final decision.

- E. Preliminary Hearing: Where the owner of record of a motor vehicle seized under the provisions of this Section makes a request, in writing and filed with the Chief of Police or his/her designee, for a preliminary hearing within 24 hours after the seizure of the motor vehicle, the Chief of Police or his/her designee must conduct a preliminary hearing within 24 hours after the request for a preliminary hearing is received by the Village; provided

that if the date for the preliminary hearing falls on a Saturday, Sunday or legal holiday, the preliminary hearing will be held on the next business day following the Saturday, Sunday or legal holiday. For purposes of this Section 12.09-E, the following shall apply:

1. All interested persons shall be given a reasonable opportunity to be heard at the preliminary hearing.
2. The formal rules of evidence shall not apply at the preliminary hearing, and hearsay testimony shall be allowed if it is the type commonly relied upon by reasonably prudent persons in the conduct of their affairs.
3. If, after the conclusion of the preliminary hearing, the Chief of Police or his/her designee determines that there is probable cause to believe that the motor vehicle was used as provided in Section 12.09-B, the Chief of Police or his/her designee shall order the continued impoundment of the motor vehicle, unless the owner of record of the motor vehicle posts a cash bond with the Village in the amount of \$500.00, and pays the towing and storage costs to the applicable tow company, as set forth in Section 12.09-D.
4. If the Chief of Police or his/her designee determines that there is not probable cause to believe that the motor vehicle was used as provided in Section 12.09-B, the motor vehicle shall be returned to the owner of record of the motor vehicle without any fees or other costs, but the owner of record shall be responsible to pay any towing or storage charges to the applicable tow company.

F. Plea Hearing/Evidentiary Hearing:

1. Notice of Hearing. Within 10 days after a motor vehicle is impounded pursuant to this Section, the Village shall notify the owner of record of the date, time and location of a plea hearing that shall be conducted, pursuant to this Section 12.09-F. Such notice shall be mailed by certified mail, return receipt requested, to the owner of record, as shown on the records of the Illinois Secretary of State. Notice by certified mail need not be given when the owner of record of the motor vehicle has been personally served with notice, in written form, of the time, date and location of the plea hearing. The plea hearing shall be conducted by a hearing officer, designated by the Village Administrator. The owner of record shall appear at a plea hearing and enter a plea of guilty or not guilty. If a plea of guilty is entered, or if the owner of record fails to appear, the cause shall be disposed of at that time, with an order/default order in favor of the Village, which order/default order shall require the payment to the Village of the \$500.00 administrative fee and towing and storage costs to the applicable tow company, and the continued impoundment of the motor vehicle until the owner of record pays to the Village the \$500.00 administrative fee and towing and storage costs to the applicable towing company. If the owner of record pleads not guilty, an evidentiary hearing shall be scheduled and held no later than 45 days after the motor vehicle was impounded,

unless continued by the hearing officer. All interested persons shall be given a reasonable opportunity to be heard at the evidentiary hearing. At any time prior to the evidentiary hearing date, the hearing officer may, at the request of either the Village or the owner of record, direct witnesses to appear and give testimony at the evidentiary hearing. The formal rules of evidence shall not apply at the evidentiary hearing, and hearsay evidence shall be admissible if it is the type commonly relied upon by reasonably prudent persons in the conduct of their affairs.

2. If, after the evidentiary hearing, the hearing officer determines, by a preponderance of the evidence, that the motor vehicle was used in connection with a violation set forth in Section 12.09-B, the hearing officer shall enter an order finding the owner of record of the motor vehicle civilly liable to the Village for an administrative fee in the amount of \$500.00, and require the motor vehicle to continue to be impounded until the owner of record pays the administrative fee to the Village, plus applicable towing and storage costs to the applicable tow company. If a cash bond has been posted pursuant to Section 12.09-D or E(3), the bond shall be applied to the administrative fee. If the owner of record fails to appear at the evidentiary hearing, the hearing officer shall enter a default order in favor of the Village, which order shall require the payment to the Village of the \$500.00 administrative fee and towing and storage costs to the applicable tow company, and the continued impoundment of the motor vehicle until the owner of record pays to the Village the \$500.00 administrative fee and towing and storage costs to the applicable towing company. The \$500.00 administrative fee shall be a debt due to the Village and the Village may seek to obtain a judgment on the debt and enforce such judgment as provided by law. If the hearing officer finds no such violation occurred, the hearing officer shall order the immediate return of the owner of record's motor vehicle without any fee or other costs, or, if a cash bond had previously been posted, the cash bond shall be returned.
3. At the evidentiary hearing, the violation citation shall be prima facie evidence that the violation was committed as provided in the citation, and the burden of proof shall be upon the owner of record to prove that the violation was not committed.

G. Disposition of Impounded Motor Vehicles:

1. If the administrative fee and other applicable fees are not paid within 30 days after an administrative fee is imposed against an owner of record who defaults by failing to appear at the hearings provided in Section 12.09-F, or who admits guilt at the plea hearing, the motor vehicle shall be deemed unclaimed and shall be disposed of in the manner provide by law for the disposition of unclaimed motor vehicles pursuant to 625 ILCS 5/1-100, *et seq.* as amended. In all other cases, if the administrative fee and applicable towing and storage costs to the applicable tow company are not paid within 30 days after the expiration of time by which administrative review of the hearing officer's determination may be sought pursuant to Section 12.09-J, or within 30 days after an action seeking administrative review

has been resolved in favor of the Village, whichever is applicable, the motor vehicle shall be deemed unclaimed and shall be disposed of in the manner provide by law for the disposition of unclaimed motor vehicles pursuant to 625 ILCS 5/1-100, *et seq.* , as amended.

2. Except as otherwise specifically provided by law, no owner of record, lien holder or other person shall be legally entitled to take possession of a motor vehicle impounded under this Section until the administrative fee and towing and storage costs to the applicable tow company imposed pursuant to this Section have been paid. However, whenever a person with a lien of record against an impounded motor vehicle has commenced foreclosure proceedings, possession of the motor vehicle shall be given to that person if he or she agrees in writing to refund to the Village the amount of the net proceeds of any foreclosure sale, less any amounts required to pay all lien holders of record, not to exceed the administrative fee, plus the applicable towing and storage costs.
 3. Costs for towing and storage of a motor vehicle pursuant to this Section shall be those approved by the Chief of Police for all tow companies authorized to tow for the Police Department.
- H. **Applicability of Other Laws:** This Section is in addition to and shall not replace or otherwise abrogate any existing State or Federal laws or any ordinance that relates to the seizure or impoundment of motor vehicles, and any fee provided for in this Section shall be in addition to any and all penalties that may be assessed or imposed by a court for any criminal charges. This Section shall not apply: (1) if the motor vehicle used in the violation was stolen at the time of the violation and the theft was reported to the appropriate police authorities within 24 hours after the theft was discovered; (2) if the motor vehicle is operated as a common carrier as defined by applicable law and the violation occurs without the knowledge of the person in control of the motor vehicle; or (3) if the motor vehicle is subject to successful forfeiture proceedings under 725 ILCS 150/1, *et seq.* as amended (Drug Asset Forfeiture Procedure Act); 720 ILCS 5/36-1, *et seq.* as amended (Seizure and Forfeiture of Vessels, Vehicles and Aircraft); or other state or federal forfeiture laws.
- I. **Use of Fees Collected:** All fees collected by the Village pursuant to this Section shall only be deposited and used for Village traffic safety and enforcement expenditures.
- J. **General Regulations:**
1. This Section shall not replace or otherwise abrogate any existing state or federal laws or Village ordinance pertaining to vehicle seizure and impoundment, and these penalties shall be in addition to any penalties that may be assessed by a court for any criminal charges.
 2. This Section shall not apply if the vehicle used in the violation was stolen at that

time and the theft was reported to the appropriate police authorities within 24 hours after the theft was discovered.

3. Fees for towing and storage of a vehicle under this Section shall be those approved by the Chief of Police for all towers authorized to tow for the Police Department.

K. Administrative Review: Any owner of record, lien holder or other person with a legal interest in the motor vehicle, shall have the right to appeal the decision of the hearing officer to the Circuit Court for the 22nd Judicial Circuit, McHenry County, Illinois, pursuant to the Administrative Review Act, 735 ILCS 5/3-101, *et seq.* as amended. Any respondent seeking review of a final decision shall be required to reimburse the Village for the costs of preparing and certifying the record of proceedings. Failure of the respondent to reimburse the Village shall be grounds for the dismissal of a complaint for administrative review pursuant to 735 ILCS 5/3-109. In the event the reviewing court reverses the findings, decision and order of the Administrative Law Judge, the Village will reimburse the respondent for the costs for preparing and certifying the record of proceedings.

A finding of “not guilty” following a trial in the 22nd Judicial Circuit Court for the underlying violation wherein the motor vehicle as 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 and shall include in the request a certified disposition of “not guilty” following a trial from the Circuit Clerk. An order of dismissal or a negotiated disposition on the underlying charge(s) shall not result in a refund of the administrative fee.