

Ordinance No. 2019-03

AN ORDINANCE OF THE VILLAGE OF WEST DUNDEE, KANE COUNTY, ILLINOIS, AMENDING THE WEST DUNDEE MUNICIPAL CODE RELATING TO ADMINISTRATIVE ADJUDICATION OF ORDINANCE VIOLATIONS

WHEREAS, the Village of West Dundee, Kane County, Illinois (the “Village”) is a duly organized and validly existing home-rule municipality created in accordance with the Constitution of the State of Illinois of 1970 and the laws of the State; and,

WHEREAS, The General Assembly has provided in 65 ILCS 5/1-2.1-1 et seq. for Administrative Adjudication by municipalities that are home rule units; and,

WHEREAS, the Village pursuant to its home rule powers has the authority to exercise any power and perform any function pertaining to its government and affairs including the power to regulate for the protection of the public health, safety and welfare and may enforce ordinance regulations by an administrative adjudication system; and,

WHEREAS, the Village believes it to be in the best interests of its residents to amend the West Dundee Municipal Code as it relates to administrative adjudication.

NOW, THEREFORE, BE IT ORDAINED by the President and Board of Trustees of the Village of West Dundee, Kane County, Illinois, as follows:

Section 1: That the West Dundee Municipal Code, as amended, be and is hereby amended by deleting subsection 6-8-1.B. in its entirety and inserting in lieu thereof the following:

“B. Creation: There is hereby established a department of the municipal government to be known as the village of West Dundee ordinance enforcement department to have the power to enforce compliance with all municipal ordinances as from time to time are authorized by the village board, except for any offense under the Illinois vehicle code (adopted by the village under title 7 of this code) that is a traffic regulation governing the movement of vehicles other than a notice of violation pursuant to an automated traffic law enforcement system which shall be enforced pursuant to this chapter and except for any reportable offense under section 6-204 of the Illinois vehicle code. The establishment of the West Dundee ordinance enforcement department does not preclude the village board from using any legal system or other method to enforce ordinances of the village. Unless the context clearly indicates otherwise, any references throughout this Chapter to “village code”, “this code”, “code”, or “ordinance” shall be a reference to the West Dundee Municipal Code, as amended, or to any municipal ordinance as from time to time authorized by the village board.”

Section 2: That the West Dundee Municipal Code, as amended, be and is hereby amended by deleting subsection 6-8-2A. in its entirety and inserting in lieu thereof the following:

“A. Organization: The village of West Dundee’s ordinance enforcement department shall be composed of a hearing officer, an ordinance enforcement administrator and such other personnel as deemed necessary and as appointed by the president, with the power and authority as hereinafter set forth.”

Section 3: That the West Dundee Municipal Code, as amended, be and is hereby amended by deleting subsection 6-8-2B.2. in its entirety and inserting in lieu thereof the following:

“2. The hearing officer shall have the following duties:

- a. Preside over all adjudicatory hearings to determine whether or not a village code violation exists and administer oaths and affirmations;
- b. Hear testimony and accept evidence that is relevant to the existence of a village code violation;
- c. At any time prior to the hearing date, the hearing officer assigned to hear the case may, at the request of either party, direct witnesses to appear and give testimony at the hearing or produce relevant documents;
- d. Preserve and authenticate the record of the hearing and all exhibits and evidence introduced at the hearing;
- e. Issue and sign a written finding, decision and order stating whether a village code violation exists;
- f. Impose penalties and sanctions or such other relief consistent with applicable provisions of this code and assess costs upon finding a party liable for the charged violation, except, however, that in no event shall the hearing officer have the authority to impose a penalty of incarceration;
- g. Upon a finding of liable a twenty-five dollar (\$25.00) penalty is to be imposed by the hearing officer as an administrative adjudication hearing cost. This additional penalty shall not be construed as part of the fine for the purposes of any reduction made in the fine for compliance.

Section 4: That the West Dundee Municipal Code, as amended, be and is hereby amended by adding the following subsection to subsection 6-8-2B:

“4. The hearing officer shall be employed as an independent contractor of the village and shall not be considered an employee of the village. A hearing officer may be removed with or without cause by the village president or his or her designee.”

Section 5: That subsections 6-8-2D and 6-8-2E of the West Dundee Municipal Code, as amended, are hereby repealed.

Section 6: That the West Dundee Municipal Code, as amended, be and is hereby amended by deleting Subsection 6-8-3B.1. in its entirety and inserting in lieu thereof the following:

“1. The violation notice shall contain, but not be limited to, the following information:

- a. The name and address of the party violating the ordinance, if known;
- b. The date and time of the violation (date of issuance);

- c. The type and nature of the violation and the ordinance violated;
- d. Vehicle make and state registration number (if applicable);
- e. The names of any witnesses to the violation;
- f. The signature and identification number of the person issuing the notice;
- g. The date and location of the adjudication hearing of ordinance violations which date shall be not less than sixteen (16) nor more than sixty (60) days after the date of the violation notice. The legal authority under which the hearing is to be held and the penalties for failure to appear at the hearing;
- h. The fine and penalty which may be assessed for late payment;
- i. In the case of a violation pertaining to real property, the address of the property where the violation is observed; and,
- j. If applicable to the violation in question, the amount of the fine that may be paid by a party upon a written admission of a violation and waiver of a hearing, which fine shall be no less than the minimum fine set by this code relative to the violation at issue.”

Section 7: That the West Dundee Municipal Code, as amended, be and is hereby amended by deleting Subsection 6-8-3B.3. in its entirety and inserting in lieu thereof the following:

“3. Parties shall be served with process in a manner reasonably calculated to give them actual notice including, as appropriate, personal service of process upon a party or its employer or agent; service by mail at a party’s address; or notice that is posted upon the property where the violation is found where the party is the owner or administrator of the property as follows:

- a. The original or a facsimile of the violation notice shall be retained by the ordinance enforcement administrator where a docket number shall be stamped on all copies and a hearing date noted;
- b. The notice shall be kept as a record in the ordinary course of business by the ordinance enforcement administrator and shall be a part of the hearing record;
- c. One copy of the violation notice shall be returned to the person issuing the notice so that he or she may prepare evidence for presentation at the hearing on the date indicated;
- d. One copy of the violation notice shall be served to the alleged violator along with a summons commanding the alleged violator to appear at the hearing;
- e. In the case of a violation pertaining to real property, if the village has an ordinance requiring property owners, meaning the legal beneficial owner(s) of a structure, to register with it, service may be made on the owner by mailing the notice and summons to the property owner’s address registered with the village;
- f. In the case of a violation pertaining to real property, if the name of the property owner cannot be ascertained or if service on the owner cannot be made by mail, service may be

made on the owner by posting or nailing a copy of the violation notice form on the front door of the structure where the violation is found, not less than sixteen (16) days before the hearing is scheduled.”

Section 8: That the West Dundee Municipal Code, as amended, be amended by deleting Subsection 6-8-4A in its entirety and re-lettering the following Subsections of Section 6-8-4.

Section 9: That the West Dundee Municipal Code, as amended, be and is hereby amended by adding the following Subsection to the newly numbered Section 6-8-4B:

“5. A hearing officer may set aside any judgment entered by default and set a new hearing date, upon a petition filed within twenty-one days after the issuance of the order of default, if the hearing officer determines that the petitioner's failure to appear at the hearing was for good cause or at any time if the petitioner establishes that the municipality did not provide proper service of process. If any judgment is set aside pursuant to this subsection, the hearing officer shall have authority to enter an order extinguishing any lien which has been recorded for any debt due and owing the municipality as a result of the vacated default judgment.”

Section 10: That the West Dundee Municipal Code, as amended, be and is hereby amended by deleting the current Subsection 6-8-4D. in its entirety and inserting in lieu thereof the following as Section 6-8-4C:

“C. Findings, Decision And Order:

1. At the conclusion of the hearing, the hearing officer shall make a determination on the basis of the evidence presented at the hearing as to whether or not a Code violation exists.

2. The determination shall be in writing and shall be designated as findings, decision and order, including the fine, penalty or action with which the defendant must comply.

3. The findings, decision and order shall include:

a. The hearing officer's findings of fact;

b. A decision of whether or not a code violation exists based upon the findings of fact;

c. In the case of a code violation only, an order that states the sanction or dismisses the case if a code violation is not proved.

d. In the case of a building code violation only, an order ordering the owner to correct the building code violation or dismissing the case if a building code violation is not proved; and

e. In the case of a building code violation only, if a building code violation is proved, the order may also impose the sanctions that are provided in the building code for the building code violation proved.

4. A monetary sanction under this Chapter shall be consistent with applicable village code provisions with a maximum of \$50,000.00 for all code violations.
5. The maximum monetary fine imposed under the village code shall be exclusive of costs of enforcement or costs incurred by the village to secure compliance with the village code, and shall not be applicable to cases to enforce the collection of any tax imposed and collected by the village.
6. A copy of any findings, decisions, or orders shall be served on the alleged violator within five days after it is issued. Service shall be made in person or by first class mail.
7. Payment of any penalty or fine and the disposition of any fine money shall be in the manner as set forth in the village code.
8. In the case of a building code violation only, the order to correct a building code violation and the sanctions 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 property owner 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 property takes subject to the findings, decision and order of a hearing officer under this Chapter.”

Section 11: That the West Dundee Municipal Code, as amended, be and is hereby amended by deleting Subsection 6-8-5A. in its entirety and inserting in lieu thereof the following:

“A. Debt Due Village:

1. 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 Administrative Review Law (735 ILCS 5/3-101 et seq.) shall be a debt due and owing the village and, as such, may be collected in accordance with applicable law.
2. After expiration of the period within which judicial review under the Administrative Review Law (735 ILCS 5/3-101 et seq.) may be sought for a final determination of the code violation, unless stayed by a court of competent jurisdiction, the findings, decision and order of the hearing officer may be enforced in the same manner as a judgment entered by a court of competent jurisdiction.
3. In any case in which a defendant has failed to comply with a judgment ordering a defendant 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, including, but not limited to, attorney's fees, court costs, and costs related to property demolition or foreclosure, after they are fixed by a court of competent jurisdiction or a hearing officer, 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 a hearing officer pursuant to this subsection, the village shall provide notice to the defendant that states that the defendant shall appear at a hearing before the administrative hearing officer to

determine whether the defendant has failed to comply with the judgment. The notice shall set the date for such a hearing, which shall not be less than seven days from the date that notice is served. If notice is served by mail, the seven-day period shall begin to run on the date that the notice was deposited in the mail.

4. Upon being recorded in the manner required by Article XII of the Code of Civil Procedure or by the Uniform Commercial Code, a lien shall be imposed on the real estate or personal estate, or both, of the defendant in the amount of any debt due and owing the village under this section. The lien may be enforced in the same manner as a judgment lien pursuant to a judgment of a court of competent jurisdiction.

5. A notice of impending suspension of a person's driver's license shall be sent to any violator determined to be liable for the payment of any fine or penalty that remains due and owing on ten (10) or more vehicular standing or parking regulation violations:

a. The notice shall state that the failure to pay the fine or penalty owing within forty five (45) days of the date of the notice will result in the village notifying the secretary of state that the person is eligible for initiation of suspension proceedings under 625 Illinois Compiled Statutes 5/6-306.5, incorporated herein by reference.

b. The notice of impending driver's license suspension shall be sent by first class mail, postage prepaid, to the address recorded with the secretary of state.

c. A warning that failure to pay the fine and any penalty due and owing the village within the time specified may result in proceeding with collection procedures in the same manner as a judgment entered by any court of competent jurisdiction.

d. A warning that the vehicle owned by the person and located within the village may be immobilized and impounded for failure to pay fines or penalties for ten (10) or more vehicular standing or parking regulation violations.”

Section 12: This Ordinance shall be in full force and effect upon its passage, approval, and publication as provided by law.

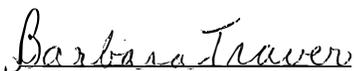
PASSED this 4th day of February, 2019.

AYES: Trustees Price, Hanley, Yuscka, Wilbrandt and Kembitzky

NAYS: None

ABSENT: Trustee Anderley

ATTEST:



Barbara Traver
Village Clerk



Christopher Nelson
Village President