

**ORDINANCE 10-28**  
**An Ordinance Amending Section 6-8-8 of**  
**the Code of Ordinances of the Village of West Dundee**

WHEREAS, the Village of West Dundee, Kane County, Illinois, is a home rule municipality as contemplated under article VII, Section 6, of the Constitution of the State of Illinois, and the passage of this Ordinance constitutes an exercise of the Village's home rule powers and functions as granted in the Constitution of the State of Illinois;

WHEREAS, the Village President and Board of Trustees passed Ordinance 07-52 on December 3, 2007, which Ordinance established procedures for administrative adjudication for certain offenses; and

WHEREAS, Public Act 96-1016 effective January 1, 2011 necessitates the amendment of Sec. 6-8-8 thereof;

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

Section 1. That Sec. 6-8-8, of the Municipal Code of the Village of West Dundee is hereby amended to read as follows:

**6-8-8 AUTOMATED TRAFFIC LAW ENFORCEMENT SYSTEM**

**A. DEFINITIONS:**

**AUTOMATED TRAFFIC LAW ENFORCEMENT SYSTEM** means a device within the Village with one or more motor vehicle sensors working in conjunction with a red light signal to produce recorded images of motor vehicles entering an intersection against a steady or flashing red signal indication in violation of Section 11-306 of the Illinois Vehicle Code ("Code"), 625 ILCS 5/11-306, or similar violation of the Village Municipal Code.

**DISREGARDING A TRAFFIC CONTROL DEVICE** means failure to stop and remain stopped before an intersection that is controlled by a red signal as provided for in Section 11-306 of the Code.

**NO TURN ON RED** means where the motor vehicle comes to a complete stop and does not enter the intersection as defined by Section 1-132 of the Code, during the cycle of red signal indication unless one of more pedestrians are present, even if a motor vehicle stops at the point past a stop line or crosswalk where a driver is required to stop, as specified in subsection (c) of Section 11-306 of the Code or this Ordinance.

**ILLEGAL RIGHT HAND TURN** means a right hand turn in violation of a sign prohibiting such a turn as further defined in Section 11-306(c)3 of the Code.

**RECORDED IMAGES** means images produced by the automated traffic law enforcement system, which consist of either 2 or more photographs; 2 or more microphotographs; 2 or more electronic images; or, a video recording showing the motor

vehicle and, on at least one image or portion of the recording, clearly identifying the registration plate number of the motor vehicle.

TRAFFIC COMPLIANCE ADMINISTRATOR means the person appointed as such through Article 25 of the Code and shall have the following additional powers: adopt, distribute and process automated traffic law violation notices and other notices required by this Article, collect money paid as fines and penalties, operate the automated traffic law enforcement system, make certified reports to the Secretary of State as required by this Article and review and approve determinations of violations made by any technician.

**B. VIOLATIONS:** It shall be a violation of this Article for a vehicle to disregard a traffic control device or turn on red in violation of Section 11-306 of the Code.

**C. DEFENSES:** The following may be considered defenses by a Hearing Officer for a violation of Section 6-8-8-B:

1. that the motor vehicle or registration plates of the motor vehicle were 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. that the driver of the vehicle passed through the intersection when the light was red either (i) in order to yield the right-of-way to an emergency vehicle or (ii) as part of a funeral procession.

3. To demonstrate that the motor vehicle or the registration plates were stolen before the violation occurred and were 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.

**D. NOTICES OF VIOLATION:**

1. When the automated traffic law enforcement system records a motor vehicle entering an intersection in violation of Section 6-8-8-B, the Village shall issue a written Notice of Violation to the registered owner or lessee of the vehicle, which shall be delivered by U.S. mail within 30 days after the Illinois Secretary of State notifies the Village of the identity of the registered owner or lessee of the vehicle, and in no event later than 90 days following the violation. The Village shall only be required to notify a lessee if the leasing company/lessor provides the lessee's name by an affidavit and a copy of the lease within 60 days of the notice's issuance. If the driver information is not provided within 60 days, the leasing company/lessor may be found liable. If any notice to an address is returned as undeliverable, a second notice shall be sent to the last known address recorded in a United States Post Office approved database of the owner or lessee of the cited vehicle. The second notice shall be made by first class mail postage prepaid.

2. A Notice of Violation associated with an automated traffic law violation shall require a review of the associated recorded image by the Traffic Compliance Administrator, who shall inspect the image and determine whether the motor vehicle was being operated in violation of Section 6-8-8-B, or whether one of the

3. The Notice of Violation shall include the following information:

defenses enumerated in Section 6-8-8-C is visibly applicable upon inspection. Upon determination that the recorded image captures a violation and that no defense applies, the notice of violation shall be served upon the registered vehicle owner in the manner provided for above. The Traffic Compliance Administrator shall retain a copy of all violation notices, recorded images and other correspondence mailed to the owner of the vehicle. Each Notice of Violation shall constitute evidence of the facts contained in the notice and is admissible in any proceeding alleging a violation of the above-noted statutory and local provisions and shall be *prima facie* evidence of a violation, subject to rebuttal on the basis of the defenses established in this Article.

- a. the name and address of the registered owner or lessee of the vehicle, as indicated by the records of the Secretary of State, or, if such information is outdated or unattainable, then the last known address recorded in a United States Post Office approved database;
- b. the make (only if discernable) and registration number of the motor vehicle involved in the violation;
- c. the violation charged;
- d. the location where the violation occurred;
- e. the date and time of the violation;
- f. a copy of the recorded images;
- g. the amount of the civil penalty and the date by which the penalty should be paid (14 days from the date of issuance), if a hearing is not requested, and a statement that the payment of the fine shall operate as a final disposition of the violation;
- h. a statement that a failure to pay the civil penalty by the date noted may result in an additional late fee being assessed against the owner or lessee;
- i. the amount of the late fee;
- j. a statement that the failure to pay by the date specified will result in a final determination of liability and may result in the suspension of driving privileges for the registered owner of the vehicle;
- k. a statement that the recorded images constitute *prima facie* evidence of a violation;
- l. a statement that the person may elect to proceed by paying the fine or challenging the charge in court, by mail or by administrative hearing; and
- m. a statement of how an administrative hearing may be requested.

E. HEARING:

1. The owner of a vehicle being operated in violation of Section 6-8-8-B may request a hearing by the respond-by date on the Notice of Violation (14 days from the date of issuance), to challenge the evidence or set forth an applicable defense. The Notice of Violation shall constitute evidence of the facts contained in the notice and is admissible in any proceeding alleging a violation of Section 6-8-8-B. The Notice of Violation shall be *prima facie* evidence of a violation, subject to rebuttal on the basis of the defenses established in Section 6-8-8-C.
2. The owner's failure to appear at the hearing will result in a finding of liability. In the event of a failure to appear, a "Findings, Decision and Order" letter will be sent to the owner. The owner's failure to pay the amount by the date specified in that letter will result in a final determination.

F. NON-RESIDENTS: Where the registered owner or lessee of the cited vehicle is not a resident of the Village but seeks to contest the merits of the alleged violation, such person may contest the charges using the same available defenses as stated above, but rather than attend the administrative hearing, they may submit any and all documentary evidence to the Traffic Compliance Administrator no later than the hearing date, together with a written statement reflecting that they are Non-Residents of the Village. The Traffic Compliance Administrator shall forward all timely-submitted materials to the Hearing Officer for review and determination.

G. FINAL DETERMINATION A final determination of an automated traffic law violation(s) liability shall occur:

- A. Following the failure to pay the total assessed fine or penalty after the hearing officer's determination of vehicular standing, parking, compliance regulation or automated traffic law violation(s) liability within the required 25 days and the exhaustion of or the failure to exhaust any administrative review procedures hereinafter set forth, or
- B. Where a person fails to appear at a prior requested administrative hearing provided to contest the alleged standing, parking or compliance regulation violation(s) on the date and at the time and place specified in a prior served or mailed notice, or fails to appear at the hearing for an automated traffic law violation on the date and at the time and place specified in a prior mailed notice, the hearing officer's determination of vehicular standing, parking, compliance regulation or automated traffic law violation(s) liability shall become final upon the exhaustion of or the failure to exhaust any administrative or judicial review procedures hereinafter set forth:

1. Upon denial of a timely petition to set aside that determination, or
2. Upon the expiration of the period for filing a petition without a filing having been made.

H. NOTICE OF DETERMINATION OF LIABILITY: A determination of Automated Traffic Law Violation liability shall occur following failure to pay the fine or penalty, or to contest the alleged violation within fourteen (14) days of the Notice of Violation. Where a person fails to appear at a hearing to contest the alleged violation in the time and manner specified in a prior mailed notice, the Hearing Officer will enter Findings,

Decision and Order's determination of Automated Traffic Law Violation Liability shall become final: (a) upon denial of a timely petition to set aside that determination, or (b) upon expiration of the period for filing such a petition without a filing having been made. If a person appears at a hearing and is found liable or contests the Violation by mail and is found liable, the Hearing Officer will enter Findings, Decision and Order, which is a final determination of Automated Traffic Law Violation Liability that is a final, appealable order.

1. NOTICE OF FINAL DETERMINATION: A Notice of Final Determination shall be sent following the final determination of automated traffic law violation liability and the conclusion of judicial review. The Notice of Final Determination shall include the following information:

1. a statement that the unpaid fine is a debt due and owing to the Village of West Dundee

2. a warning that a failure to pay any fine due and owing to the Village of West Dundee within 14 days may result in a petition to the Circuit Court of Kane County to have the unpaid fine rendered as a judgment or may result in the suspension of the person's drivers license for failure to pay fines or penalties for 5 or more violation under this Article.

J. PETITIONS TO SET ASIDE DETERMINATION: A Petition to Set Aside Determination of an automated traffic law violation must be filed with or mailed to the Traffic Control Administrator within 14 days of the date of mailing of the Notice of Determination of Liability. The grounds for the 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;

2. the person having already paid the fine for the violation in question; and

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

Upon receipt of a timely petition to set aside the determination of liability, the Hearing Officer shall review the petition to determine if cause has been shown to set aside the determination. If cause has been shown, the Village shall forward the petitioner a new hearing date on which the petitioner must appear to present his case. The Village shall notify the petitioner of the Hearing Officer's decision to grant a hearing or deny the petition within 14 days of the Village's receipt.

K. NOTICE OF IMPENDING DRIVERS LICENSE SUSPENSION: A Notice of Impending Drivers License Suspension shall be sent to the person liable for any fine or penalty that remains due and owing on 5 or more violations of this Article. The Notice of Impending Drivers License Suspension shall state the following information:

1. the failure to pay the fine 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 Section 6-306.5 of the Code;

Any person receiving notice from the Secretary of State that their driving privileges may be suspended at the end of a specified period may challenge the accuracy of the certified report prepared by the Traffic Compliance Administrator. The person shall, within 7 days after having received notice from the Secretary of State, request an opportunity to speak with the Traffic Compliance Administrator to challenge the accuracy of the certified report. If the Traffic Compliance Administrator determines that the original report was in error due to the fact that the person challenging the report was not the owner or lessee of the vehicle or that the person has already paid their fine for the 5 or more traffic violations, the

3.

The Traffic Compliance Administrator shall notify the Secretary of State whenever a person named in the certified report has paid the previously recorded fine or penalty or whenever the municipality determines that the original report was in error. A certified copy of such notification shall also be given upon request and at no additional charge to the person named therein.

2.

a statement that a Notice of Impending Driver's License Suspension has been sent to the person named in the report at the address recorded with the Secretary of State or at the last address known to the lessor of the cited vehicle at the time of the lease or, if any notice sent under this Article is returned as undeliverable at the last known address recorded at a United States Post office approved database; the date on which such notice was sent; and address to which such notice was sent.

c.

b. the name of the municipality making the report pursuant to this section; and

b.

a. the name, last known address as recorded with the Secretary of State, as provided by the lessor of the cited vehicle at the time of lease, or as recorded in a United States post office approved database if any notice sent under this Article is returned as undeliverable, and driver's license number of the person who failed to pay the fine or penalty and the registration number of any vehicle known to be registered to such person in a state;

a.

1. The Traffic Compliance Administrator, by certified report, shall request that the Secretary of State suspend the driving privileges of an owner of a registered vehicle who has failed to pay any fine or penalty due and owing as a result of automated traffic violations. The report shall be certified and contain the following:

1.

DRIVERS LICENSE SUSPENSION:

L.

The Notice of Impending Drivers License Suspension shall be sent by first class 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 Post Office approved database.

2. a statement that the person may obtain a copy of the original ticket imposing a fine by sending a self-addressed, stamped envelope to the Village along with a request for the copy.

2.

Traffic Compliance Administrator shall immediately notify the Secretary of State of such error in a subsequent certified report.

M. PENALTY: Any person violating Section 6-8-8-20 shall be fined \$100 for each offense. Failure to pay the original fine within 14 days of the issuance of the Notice of Final Determination shall result in an additional \$100 late payment fine.

Section 2: If any section, paragraph, clause or provision of this ordinance shall be held invalid, the invalidity thereof shall not affect any of the other provisions of this ordinance.

Section 3: All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed insofar as they conflict herewith.

Section 4: This ordinance shall be immediately in full force and effect after passage, approval and publication. This ordinance is authorized to be published in pamphlet form.

**PASSED** this 20th day of December, 2010, by the President and Board of Trustees of the Village of West Dundee, Illinois, on a roll call vote as follows:

AYES: Trustees Gilliam, Price, Osth, Hanley, Yuscka and Voss  
NAYS: None  
ABSENT: None  
ABSTAIN: None

ATTEST:

Henry Hill  
Village President

Stephan Tauer  
Village Clerk