

## Chapter 12

### **NUISANCES**

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#### **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** *Amended, 4-2-13*

A. Generally: A public nuisance is a thing, act, occupation, condition, or use of property that shall continue for such length of time as to:

1. Substantially annoy, injure or endanger the comfort, health, repose, or safety of the public; or
2. In any way render the public insecure in life or in the use of property; or
3. Greatly offend the public morals or decency; or
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 Section 12.02-A:

1. All decayed, 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 24 hours after death;
3. Accumulations of decayed animal feces or vegetable matter, 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 breed, or that constitute a fire hazard;

4. Any accumulation of stagnant or impure water that affords or might afford a breeding place for mosquitoes or other insects;
5. Garbage cans that are not fly-tight;
6. 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;
7. The pollution of any public well or cistern, stream, lake, canal or body of water by sewage, creamery or industrial wastes, or other substances;
8. 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 that annoy, discomfort, injure, or inconvenience the health of any appreciable number of persons within the Village;
9. All abandoned wells not securely covered or secured from public use;
10. Any barn, stable, or shed used for keeping animals;
11. Any obstruction in or across any watercourse, drainage ditch, or ravine, unless prior approval of the Village has been obtained; and
12. 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.

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 morals and decency, but such enumeration shall not be construed to exclude other nuisances offending public morals and decency coming within the definition of Section 12.02-A:

1. All disorderly houses, bawdy houses, house of ill fame kept or resorted to for the purpose of prostitution or promiscuous sexual intercourse;
2. All gambling devices and slot machines except as permitted pursuant to the Illinois Video Gaming Act (230 ILCS 40/1 *et seq.*) and applicable regulations;
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 by this Code; and
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 Section 12.02-A.

1. All buildings erected, repaired, or altered in violation of the provision of the ordinances of the Village relating to materials and manner of construction of buildings and structures;
2. All unauthorized signs, signals, markings, or devices that purport to be or may be mistaken as official traffic control devices placed or maintained upon or in view of any public highway;
3. All trees, hedges, billboards, or other obstructions that 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 that project over a public sidewalk less than 8 feet above the surface thereof or less than 10 feet above the surface of a public street;
5. All use or display of fireworks except as provided by the laws of the State 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 that are strung less than 15 feet above the surface of the street or ground;
8. All loud and discordant noises or vibrations of any kind;
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 that, 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 refrigerators or freezers from which the doors and other covers have not been removed or that are not equipped with a device for opening from the inside by pushing only with the strength of a small child;
12. Any unauthorized or unlawful use of property abutting on a public street, alley, or sidewalk or of a public street, alley, or sidewalk that 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 that is in an unsafe condition, or that overhangs any roadway, or that overhangs any sidewalk less than 8 feet above the sidewalk surface;
15. Any condition or practice constituting a fire hazard; and
16. Any nuisance so defined by the Illinois Compiled Statutes.

### 12.03 ABATEMENT OF PUBLIC NUISANCES

A. Inspection of Premises: Whenever a complaint is made to the Village that a public nuisance exists or has existed within the Village boundaries, notice shall be provided to the Chief of Police, Building Commissioner, or other designee who shall forthwith inspect, or cause to be inspected, the premises.

B. Summary Abatement:

1. Notice to Owner: If the inspecting officer shall determine that a public nuisance exists on private property, and there is great and immediate danger to the public health, safety, peace, morals or decency, the Chief of Police, Building Commissioner, or other designee shall serve a notice on the owner or, if the owner cannot be found, on the occupant or person causing, permitting, or maintaining such nuisance and to post a copy of the notice on the premises. Such notice shall direct the owner, occupant, or person causing, permitting, or maintaining the same, as the case may be.
2. 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 Chief of Police, Building Commissioner, or other designee shall cause the abatement or removal of such public nuisance.
3. Abatement by Court Action: If the inspecting officer determines a public nuisance exists on private premises but the nature of such nuisance is not such as to threaten great and immediate danger to the public health, safety, peace, morals, or decency, the inspecting officer shall cause an action to abate such nuisance to be commenced in the name of the Village.

### 12.04 COST OF ABATEMENT

In addition to any other penalty imposed by this Chapter 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 or result in the placement of a lien on the property.

## 12.05 ABANDONED VEHICLES

A. Definitions: The terms used in this Section are defined in Appendix A and Chapter 625 of the Illinois Compiled Statutes.

B. Abandonment Prohibited: The abandonment of a vehicle or any part thereof on any highway in the Village is unlawful and subject to penalties as set forth herein. The abandonment of a vehicle or any part thereof on private or public property, other than a highway, in view of the general public, anywhere in the Village is unlawful. A vehicle or any part thereof so abandoned on private property may be authorized for removal by or upon the order of the Chief of Police after a waiting period of 7 days or more has expired or may be removed immediately if determined to be a hazardous dilapidated vehicle under 625 ILCS 5/11-40-3.1.

C. Notice to Police: When an abandoned, lost, stolen, or unclaimed vehicle comes into the temporary possession or custody of a person in this Village who is not the owner of the vehicle, such person shall immediately notify the Police Department when the vehicle is within the corporate limits of the Village.

Upon receipt of such notification, the Chief of Police shall authorize a towing service to remove and take possession of the abandoned, lost, stolen, or unclaimed vehicle.

The towing service will safely keep the towed vehicle and its contents, maintain a record of the tow until the vehicle is claimed by the owner, or any other person legally entitled to possession thereof, or until it is disposed of as provided by this Section.

D. Removal of Vehicles:

1. When a vehicle is abandoned on a street in the Village for 10 hours or more, its removal by a towing service may be authorized by order of the Chief of Police.
2. When an abandoned, unattended, wrecked, burned, or partially dismantled vehicle is creating a traffic hazard because of its position in relation to the highway, or its physical appearance is causing the impediment of traffic, its immediate removal from the street by a towing service may be authorized by order of the Chief of Police.
3. When a vehicle is removed from either public or private property authorized by order of the Chief of Police, the owner of the vehicle shall be responsible for all towing and storage costs.

E. Records of Vehicle Removed: When a vehicle is authorized to be towed away, the Police Department shall keep and maintain a record of the vehicle towed, listing the color, year of the manufacture, manufacturer's trade name, manufacturer's series name, body style, vehicle identification number, license plate year and number, and registration sticker year and number displayed on the vehicle. The record shall also include the date and hour of tow, location towed from, location towed to, reason for towing, and the name of the officer authorizing the tow.

F. Search for Owner: When the Police Department does not know the identity of the registered owner or other legally entitled person, it will cause the State motor vehicle registration records to be searched for the purpose of obtaining the required ownership information.

The Police Department shall cause the stolen vehicle files of the Illinois State Police to be searched by a directed communication to the Illinois State Police for stolen or wanted information on the vehicle. When the Illinois State Police files are searched with negative results, the information contained in the National Crime Information Center (NCIC) files will be searched by the Illinois State Police.

The information determined from these record searches will be used by the Police Department in sending a notification by certified mail to the owner or legally entitled person advising where the vehicle is held, requesting a disposition to be made, and setting forth public sale information.

G. Notice to State Police: When the registered owner, lien holder, or other person legally entitled to the possession of a vehicle cannot be identified from the registration files of this state or from the registration files of a foreign state, if applicable, the Police Department shall notify the Illinois State Police for the purpose of identifying the vehicle's owner or other person legally entitled to the possession of the vehicle.

H. Reclaiming Vehicles: Any time before a vehicle is sold at a public sale or disposed of, as provided herein, the owner, lien holder, or other person legally entitled to its possession may reclaim the vehicle by presenting to the Police Department proof of ownership or proof of the right to possession of the vehicle.

No vehicle shall be released to the owner or other person under this Section until all towing, processing, and storage charges have been paid.

I. Sale of Vehicle:

1. Whenever an abandoned, lost, stolen, or unclaimed vehicle 7 years of age or newer remains unclaimed by the registered owner, lien holder, or other person legally entitled to its possession for a period of 30 days after notice has been given as provided herein, the Police Department having possession of the vehicle shall cause it to be sold at public sale to a person licensed as an automotive parts recycler, rebuilder or scrap processor pursuant to Chapter 625 of the Illinois Compiled Statutes or the towing operator that towed the vehicle.

Notice of the time and place of the sale shall be posted in a conspicuous place for at least 10 days prior to the sale on the premises where the vehicle has been impounded.

At least 10 days prior to the sale, the Police Department shall cause a notice of the time and place of the sale to be sent by certified mail to the registered owner, lien holder, or other person legally entitled. Such notice shall contain a complete description of the vehicle to be sold and what steps must be taken by any legally entitled person to reclaim the vehicle. If the vehicle displays dealer plates, notice shall also be sent to the dealer.

In instances where the certified notification specified herein has been returned by the postal authorities to the Police Department due to the addressee having moved or being unknown at the address obtained from the registration records of this state, the sending of a second certified notice will not be required.

When the identity of the registered owner, lien holder, or other legally entitled person of an abandoned, lost, or unclaimed vehicle of 7 years of age or newer cannot be determined by any means provided for in this Section, or the vehicle is towed at the owner's request and subsequently abandoned, the vehicle may be sold as provided herein or disposed of in the manner authorized by this Section without notice to any person whose identity cannot be determined.

2. When an abandoned vehicle of more than 7 years of age is impounded as specified by this Section, it will be kept in custody or storage for a minimum of 10 days for the purpose of determining the identity of the registered owner, lien holder, or other legally entitled person and contacting the registered owner, lien holder, or other legally entitled person by the U.S. mail, public service, or in person for a determination of disposition, and an examination of the Illinois State Police stolen motor vehicle files for theft and wanted information.

At the expiration of the 10-day period, without the benefit of disposition information being received from the registered owner, lien holder, or other legally entitled person, the Chief of Police will authorize the disposal of the vehicle as junk or salvage.

A motor vehicle or other vehicle classified as an antique vehicle, custom vehicle, or street rod may be sold to a person desiring to restore it.

J. Records: When a motor vehicle or other vehicle in the custody of the Police Department is reclaimed by the registered owner, lien holder, or other legally entitled person, or when the vehicle is sold at public sale or otherwise disposed of as provided in this Section, a record of the transaction shall be maintained by the Police Department for a period of 1 year from the date of the sale or disposal.

K. Disposition of Sale Proceeds: Except as provided in 625 ILCS 5/4-107, when a vehicle located within the corporate limits of the Village is authorized to be towed away by the Chief of Police and disposed of as set forth in this Section, the proceeds of the public sale or disposition after the deduction of towing, storage, and processing charges shall be deposited in the municipal treasury.

L. Liability of Officers: Any police officer, towing service owner, operator, or employee shall not be held to answer or be liable for damages in any action brought by the registered owner, former registered owner or his legal representative or lien holder, or any other person legally entitled to the possession of a motor vehicle or other vehicle when the vehicle was processed and sold or disposed of as provided by this Section or 624 ILCS 5/4-201 *et seq.*

M. Penalty: Any person, firm, or corporation violating any provision of this Section shall be subject to a fine as set forth in Appendix B and be responsible for the Village's cost of prosecution, including reasonable attorneys' fees, and payment of all towing, storage, and processing charges and collection costs. Each day that a violation continues shall be considered a separate offense.

## 12.06 LEAVING OR ABANDONING VEHICLES

A. Definitions: The terms used in this Section are defined in Appendix A and Chapter 625 of the Illinois Compiled Statutes.

B. Abandonment of Vehicles: No person shall abandon any vehicle within the Village, and no person shall leave any vehicle at any place within the Village for such time and under such circumstances as to cause such vehicle reasonably to appear to have been abandoned.

C. Wrecked, Non-Operating Vehicles on Streets: No person shall leave any partially dismantled, non-operating, wrecked, or junked vehicle on any street in the Village.

D. Inoperable Vehicles Declared to be a Nuisance: Except as provided herein, inoperable vehicles or parts thereof, whether on public or private property, are hereby declared to be a nuisance. A vehicle or part thereof that is completely enclosed within a building in a lawful manner, where it is not visible from the street or other public or private property, and operable antique, custom, or street rod vehicles shall not be considered nuisances.

E. Disposal: All persons are required to dispose of any inoperable vehicles under their control upon written notice received from the corporate authorities or from the Chief of Police, or any member of the department designated by the Chief of Police commending such disposition of such inoperable vehicle.

F. Impounding: The Chief of Police or any member of the department designated by the Chief of Police is authorized to remove or have removed any vehicle left at any place within the Village that reasonably appears to be in violation of this Section or that reasonably appears to be lost, stolen, unclaimed, or that is an inoperable vehicle. Such vehicle shall be impounded until lawfully claimed or disposed of in accordance with 625 ILCS 5/4-201 *et seq.*

G. Repair Shops and Service Centers:

1. No person shall abandon or fail to remove any vehicle at any repair shop or service center:
  - a. After refusing service or failing to authorize service on the vehicle; or
  - b. After service is performed, failing to remove the vehicle from the shop or service center.
2. Shop and Service Center Notice: All repair shops and service centers in the Village shall be required to post the following notice in at least one inside and one outside location that is clearly visible to any person entering such facility. Such notice shall state in bold, black 1-inch letters on a white background:

IT IS UNLAWFUL TO ABANDON OR REFUSE TO REMOVE ANY VEHICLE, TRAILER, RECREATIONAL VEHICLE OR SIMILAR VEHICLE LEFT ON THIS PROPERTY LONGER THAN 7 DAYS WHEN REPAIR SERVICE HAS NOT BEEN AUTHORIZED OR 15 DAYS AFTER REPAIR SERVICE HAS BEEN PERFORMED. SUCH PERSONAL PROPERTY SHALL BE REPORTED TO THE POLICE DEPARTMENT AS ABANDONED AND TOWED AWAY AT THE OWNER'S EXPENSE.



3. When a vehicle remains unclaimed, after being left for the purpose of garaging, repairing, parking, or storage, for a period of 15 days, the operator shall, within 5 days after the expiration of that time period, report the vehicle as abandoned to the Police Department.

H. Penalty: Any person, firm or corporation violating any provision of this Section shall be subject to a fine as set forth in Appendix B and be responsible for the Village's cost of prosecution, including reasonable attorneys' fees, and payment of all towing, storage and processing charges, and collection costs. Each day that a violation continues shall be considered a separate offense.

## 12.07 FIRE HAZARDS

No person shall create or maintain a fire hazard on any property contrary to the provisions of 425 ILCS 25/9, or the regulations of the State Fire Marshal or otherwise, or maintain or fail to remove a fire hazard on any property owned or occupied by the owner. Specific conditions in conformity with the regulations of the State Fire Marshal or with current fire prevention regulations of the American Insurance Association shall be evidence of compliance with this Section.

## 12.08 FLAMMABLE LIQUIDS

A. The storage of all flammable liquids and the transportation and use thereof shall be done under the regulations of the State Fire Marshal.

B. Upon written application to the Village Board, the Village Board may, in its discretion, grant permits upon such terms and conditions as it may prescribe to the applicant to construct tanks or structures for the purpose of storing flammable liquids.

C. If any person shall construct any tank or structure for the purpose of storing any flammable liquids without first having obtained a permit therefore, such tank or structure is declared a nuisance and shall be abated as such.

## 12.09 NOXIOUS PLANTS AND WEEDS *Amended, 23-O-45, 2015-O-43*

A. Noxious Plants and Weeds Declared a Nuisance: Any weeds on the Village's approved Noxious Weed List (on file at the Public Works Department), found growing in any place or location within the corporate limits of the Village, are declared to be a nuisance, except in designated Protected Natural Areas.

It shall be unlawful for any person to cause or permit any such noxious 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 8 inches.

It is 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 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, including all adjacent public right of ways, in

such manner and on or before such time as such weeds, bushes, plants, or grass reach or exceed the height of 8 inches. Upon the failure of any such owner or occupant so to do, it shall be the duty of the Chief of Police or Building Commissioner 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 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. The notice shall be in force for the remainder of the calendar year. In the event grass and/or noxious vegetation is again allowed to grow in excess of 8 inches in the same calendar year, the Village shall have the right to issue a court citation and to abate the nuisance without additional notification.

C. Abatement: If, upon the expiration of the 10-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 Chief of Police or Building Commissioner to proceed to abate 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.

D. Lien: The Village 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 interest 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 Clerk shall, within 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 the Clerk or any other officer of the Village having knowledge of the facts, that 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.

E. 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 of 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 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 judgments 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.

## 12.10 ILLICIT DISCHARGE OF NON-STORMWATER SUBSTANCES

A. Definitions: In addition to the terms defined in Appendix A, the following definitions, whether capitalized or not, are applicable to this Section:

**Stormwater Facilities (SF)**: All ditches, channels, conduits, bridges, culverts, levees, ponds, natural and man-made impoundments, wetlands, riparian environment, tile, swales, sewers, or other natural or artificial structures or measures that serve as a means of draining surface water and ground water from land.

**Stormwater**: Water runoff, snow melt runoff, and naturally occurring surface runoff and drainage.

B. Illicit Discharge of Water: No person shall cause or allow any non-stormwater discharge or flow onto or into a stormwater facility. Such a flow or discharge may be referred to as an illicit discharge. By way of example, but not a limitation of the foregoing, illicit discharges shall include sanitary wastewater, effluent from septic tanks, car wash wastewater, improper oil and paint disposal, radiator flushing disposal, laundry wastewater, spills from roadway accidents, and improper disposal of auto or household toxins. The following discharges are excepted from this Section:

1. Water line flushing
2. Landscape irrigation and irrigation water
3. Diverted stream flows
4. Rising ground waters
5. Uncontaminated ground infiltration (as defined in Title 40 Code of Federal Regulations, subpart 2005 of part 35 [40 CFR 35.2 005])
6. Uncontaminated pumped ground water
7. Discharge from potable water sources
8. Foundation drains
9. Air-conditioning condensation
10. Springs
11. Uncontaminated water from crawl space or basement pumps
12. Footing drains
13. Individual residential car washing
14. Discharges or flows from firefighting activities
15. Street wash water
16. Dechlorinated swimming pool water.

C. Penalty: If any person, firm, corporation or other entity violates any provision of this Section, the Village may exercise any or all of the remedies and penalties available under law, including but not limited to the remedies set forth herein. Further, the owner of any property from which an illicit discharge is made shall be jointly and severally liable for the violation and is subject to all fines and other remedies set forth in this Section.

1. A fine as set forth in Appendix B for each offense. A separate offense shall be deemed committed upon each separate discharge of water and/or on each day during which such a violation occurs or continues. Violators shall, in addition to said fines, pay the Village's cost of enforcement, including, but not limited to, reasonable attorneys' fees.

2. A violation of this Section constitutes a nuisance, and the Village may, but is not obligated to, take summary steps to abate the nuisance and charge the violator, and/or the owner or a beneficial owner of the property from which illicit discharges are made, for the cost of abating said nuisance, including, but not limited to, its attorneys' fees. The Village may record a lien against the property from which the illicit discharge was made for the cost of the abatement.

## 12.11 ABATEMENT OF CHRONIC NUISANCE PROPERTIES

A. **Definitions:** In addition to those terms defined in Appendix A of this Code, the following definitions, whether capitalized or not, are applicable to this Section:

**Chief:** The Chief of Police or designee.

**Chronic nuisance property:** Chronic nuisance property shall be property upon which three or more of the following nuisance activities have occurred during any 12-month period, as a result of any three separate factual events that have been independently investigated by any law enforcement agency:

1. Disorderly conduct, as defined in 720 ILCS 5/26-1, and Section 43.01 of this Code;
2. Unlawful use of weapons, as defined in 720 ILCS 5/24-1 *et seq.*, and Section 43.05 of this Code;
3. Mob action, as defined in 720 ILCS 5/25-1;
4. Discharge of firearm, as defined in 720 ILCS 5/24-1.2 and 1.5;
5. Gambling, as defined in 720 ILCS 5/28-1;
6. Possession, manufacture, or delivery of controlled substances, as defined in 720 ILCS 570/401 *et seq.*;
7. Public indecency, as defined in 720 ILCS 5/11-9, and Section 43.31 of this Code;
8. Assault or battery or any related offense, as defined in 720 ILCS 5/12-1 *et seq.*, and Sections 43.03 and 43.04 of this Code;
9. Sexual abuse or related offense, as defined in 720 ILCS 5/12-15 *et seq.*;
10. Prostitution, as defined in 720 ILCS 5/11-14 *et seq.*;
11. Criminal damage to property, as defined in 720 ILCS 5/21-1 *et seq.*;
12. Possession, cultivation, manufacture, or delivery of cannabis, as defined in 720 ILCS 550/3 *et seq.*;
13. Illegal consumption or possession of alcohol, as defined in 235 ILCS 5/6-16 *et seq.*, and Sections 43.24 and 43.26; and

14. Violation of any sections in this Chapter or Chapter 13, Refuse, Yard Waste and Recycling, of this Code.

**Control:** The ability to regulate, restrain, dominate, counteract or govern conduct that occurs on that property.

**Owner:** Any person, agent, firm, or corporation having any legal or equitable interest in the property. Owner includes, but is not limited to:

1. A mortgagee in possession in whom is vested:
  - A. All or part of the legal title to the property,
  - B. All or part of the beneficial ownership and the right to the present use and enjoyment of the premises.
2. An occupant who can control what occurs on the property.

**Permit:** To suffer, allow, consent to, acquiesce by failure to prevent, or expressly assent or agree to the doing of an act.

**Person:** Any natural person, association, partnership, or corporation capable of owning or using property in the Village.

**Person in charge:** Any person in actual or constructive possession of a property, including, but not limited to, an owner, occupant of property under his or her domain, ownership or control.

**Property:** Any real property, including land, that is affixed, incidental or pertinent to land, including, but not limited to, any premises, room, house, building or structure, or a separate part or portion thereof, whether permitted or not.

B. Violation:

1. Any property within the Village that becomes a chronic nuisance property is in violation of this Section and subject to its remedies.
2. Any person in charge who permits property under his or her ownership or control to be a public nuisance property is in violation of this Section and subject to its remedies.

C. Remedy:

1. In the event a court determines property to be a chronic nuisance property, the court may order that the property be closed and secured against all use and occupancy for a period of not less than 30 days, but not more than 180 days, or the court may employ any other remedy deemed by it to be appropriate to abate the nuisance.
2. In addition to the remedy provided in Section 12.11-C-1, the court may impose upon the property owner a civil penalty in the amount set forth in Ap-

pendix B, payable to the Village, for each day the owner had actual knowledge that the property was a chronic nuisance property and permitted the property to remain a chronic nuisance property.

3. In determining what remedy or remedies shall be employed, the court may consider evidence of other conduct that has occurred on the property, including, but not limited to:
  - a. The disturbance of neighbors;
  - b. The recurrence of loud and obnoxious noises; and
  - c. Repeated consumption of alcohol in public.

D. Abatement of Nuisance: The Village Attorney may commence an action against the chronic public nuisance property as provided herein. Upon being satisfied by affidavits or other sworn evidence that an alleged chronic nuisance property exists, the court may, without notice or bond, enter a temporary restraining order or a preliminary injunction to enjoin any defendant from maintaining such nuisance and may enter an order restraining any defendant from removing or interfering with all property used in connection with the public nuisance.

E. Procedure: When the Chief receives one or more police reports documenting the occurrence of a nuisance activity on or within a property, the Chief shall independently review such reports to determine whether they describe violations of this Section. Upon such findings, the Chief may:

1. Notify the person in charge, in writing, that the property is in danger of becoming a chronic nuisance property. The notice shall contain the following information:
  - a. The street address or a legal description sufficient for identification of the property.
  - b. A statement that the Chief has information that the property may be a chronic nuisance property, with a concise description of the nuisance activities that may exist or that have occurred. The Chief shall offer the person in charge an opportunity to propose a course of action that the Chief agrees will abate the nuisance activities giving rise to the violation.
  - c. Demand that the person in charge respond to the Chief within 10 days to discuss the nuisance activities.
2. If, after complying with the notification procedures, the Chief receives a police report documenting the occurrence of a third nuisance activity at or within a property and determines that the property has become a chronic nuisance property, the Chief shall:

- a. Notify the person in charge, in writing, that the property has been determined to be a chronic nuisance property. The notice shall contain the following information:
  - (1) The street address or legal description sufficient for identification of the property;
  - (2) A statement that the Chief has determined the property to be a chronic nuisance property with a concise description of the nuisance activities leading to such findings; and
  - (3) Demand that the person in charge respond within 10 days to the Chief and propose a course of action that the Chief agrees will abate the nuisance activities giving rise to the violation.
- b. Service shall be made either personally or by first class mail, postage prepaid, return receipt requested, addressed to the person in charge at the address of the property believed to be a chronic nuisance property, or such other place that is likely to give the person in charge notice of the Chief's determination.
- c. A copy of the notice shall be served on the owner at such address as shown on the county tax rolls, and/or the occupant, at the address of the property, if these persons are different than the person in charge, and shall be made either personally or by first class mail, postage prepaid.
- d. A copy of the notice shall also be posted at the property after the 10 days have elapsed from the service or mailing of the notice to the person in charge and the person in charge has not contacted the Chief.
- e. The failure of any person to receive notice that the property may be a chronic nuisance property shall not invalidate or otherwise affect the proceedings under this Section.
- f. If, after the notification, but prior to the commencement of legal proceedings by the Village pursuant to this Section, a person in charge stipulates with the Chief that the person in charge will pursue a course of action that parties agree will abate the nuisance activities giving rise to the violation, the Chief may agree to postpone legal proceedings for a period of not less than 10 nor more than 30 days. If the agreed course of action does not result in the abatement of the nuisance activity or if no agreement concerning abatement is reached within 30 days, the Chief shall request authorization for the Village Attorney to commence a legal proceeding to abate the nuisance.
- g. When a person in charge makes a response to the Chief as required herein, any conduct or statements made in connection with the furnishing of that response shall not constitute an admission that any nuisance activities have or are occurring. This Section does not re-

quire the exclusion of any evidence that is otherwise admissible or offered for any other purpose.

F. Commencement of Action; Burden of Proof:

1. In an action seeking closure of a chronic nuisance property, the Village shall have the initial burden of showing, by preponderance of the evidence, that the property is a chronic nuisance property.
2. It is a defense to an action seeking the closure of a chronic nuisance property that the owner of the property at the time in question could not, in the exercise of reasonable care or diligence, determine that the property had become a chronic nuisance property, or could not, in spite of the exercise of reasonable care and diligence, control the conduct leading to the findings that the property is a chronic nuisance property.
3. In establishing the amount of any civil penalty requested, the court may consider any of the following factors if it finds appropriate and shall cite those found applicable:
  - a. The actions or lack of action taken by the person in charge to mitigate or correct the problem at the property;
  - b. Whether the problem at the property was repeated or continuous;
  - c. The magnitude or gravity of the problem;
  - d. The cooperation of the person in charge with the Village; and
  - e. The cost of the Village investigating and correcting or attempting to correct the condition.

G. Emergency Closing Procedures:

1. In the event it is determined that the property is an immediate threat to the public safety and welfare, the Village may apply to the court for such interim relief as is deemed by the Chief to be appropriate. In such an event, the notification provision set forth in this Section need not be complied with. However, the Village shall make a diligent effort to notify the person in charge prior to a court hearing.
2. In the event the court finds the property constitutes a chronic nuisance property, the court may order the remedy as provided herein. In the event the court also finds a person in charge had knowledge of activities or conditions of the property constituting or violating this Section and permitted the activities to occur, the court may assess a civil fine as provided in this Section.
3. The court may authorize the Village to physically secure the property against use or occupancy in the event the owner fails to do so within the time specified by the court. In the event the Village is authorized to secure the property,



all costs reasonably incurred by the Village to affect the closure shall be made and assessed as a lien against the property. Costs shall include those costs actually incurred by the Village for the physical securing of the property, as well as tenant relocation costs and attorneys' fees.

4. The Community Development Department employee affecting the closure shall prepare a statement of costs, and such statement shall be submitted to the court for its review. If no objection of the statement is made within the period described by the court, a lien in such amount may be recorded against such property.
5. A tenant is entitled to reasonable relocation costs, as those are determined by the court if, without actual notice, the tenant moved into the property, after either:
  - a. The owner or tenant received notice of the Chief's determination;
  - b. Unknown owner or other agent received notice of an action brought pursuant to this Section.
6. Any person who is assessed with costs of closure and/or civil penalty by the court shall be personally liable for the payment to the Village.