

VILLAGE OF SHABBONA

ORDINANCE NO. 2024-05-20(B)

AN ORDINANCE AMENDING TITLE 4,
“PUBLIC SAFETY,”
OF THE MUNICIPAL CODE OF SHABBONA

ADOPTED BY THE
VILLAGE BOARD
OF THE
VILLAGE OF SHABBONA
THIS ____ DAY OF ____, 2024

FIRST READING

**Published in pamphlet form by authority of the Village Board of the Village of Shabbona,
DeKalb County, Illinois, this ____ day of ____, 2024 A.D.**

ORDINANCE NO. 2024-05-20(B)

AN ORDINANCE AMENDING TITLE 4, "PUBLIC SAFETY," OF THE MUNICIPAL CODE OF SHABBONA TO CREATE A NEW CHAPTER 5, "ADMINISTRATIVE ADJUDICATION OF NON-VEHICULAR CODE VIOLATIONS."

NOW, THEREFORE, BE IT ORDAINED by the Board of Trustees for the Village of Shabbona as follows:

SECTION 1. That Title 4, "PUBLIC SAFETY," be amended by adding a new Chapter 5 entitled "ADMINISTRATIVE ADJUDICATION OF NON-VEHICULAR CODE VIOLATIONS," thereto as follows:

CHAPTER 5

ADMINISTRATIVE ADJUDICATION OF NON-VEHICULAR CODE VIOLATIONS

SECTION:

4-5-1: Purpose; Reservation of Right; Authority

4-5-2: Administrative Composition

4-5-3: Procedures

4-5-4: Administrative Hearings

4-5-5: Representation at Hearings

4-5-6: Schedule of Fines/Penalties

4-5-7: Judicial Review

4-5-8: Judgment and Collection

4-5-9: Election of Remedies Non-Exclusive

4-5-1: PURPOSE; RESERVATION OF RIGHT; AUTHORITY: The purpose of this chapter is to provide a fair and efficient method of enforcing the Village's regulations through administrative adjudication of charges of non-vehicular violations of this code. All provisions of this Code may be enforced through the administrative adjudication system, provided the system shall have no authority to impose a penalty of incarceration or adjudicate an offense under the Illinois Motor Vehicle Code which is a traffic regulation governing moving vehicles, or to impose a fine in excess of Fifty Thousand Dollars (\$50,000.00). The Village reserves its right to employ all other means and methods available under the law to enforce this code, including direct application to the courts.

4-5-2: ADMINISTRATIVE COMPOSITION: The Village of Shabbona ordinance enforcement department for non-vehicular regulations violations shall be composed of a code hearing unit which shall be comprised of a hearing officer, and may

include any one or more of the following: an administrator, a computer operator/system coordinator, and hearing room personnel (deputy), with the power, authority, and limitations as are hereinafter set forth:

The Village President is hereby authorized to appoint all hearing officers of this Village, all other persons to hold the positions hereinafter set forth below, and such other personnel as needed. Compensation for each of the hereinbefore mentioned persons shall be approved by the Village President and the Village Board.

A. Powers of the Hearing Officer: The hearing officer shall have all of the powers granted to hearing officers under state law, set forth at Section 1-2.1-4 of the Illinois Municipal Code, as amended, the provisions of which are incorporated herein by this reference, including the power to:

1. Preside over all administrative hearings called to determine whether or not a code violation exists, as the adjudicator.
2. Administer oaths.
3. Hear testimony and accept evidence that is relevant to the existence of the code violation.
4. Issue subpoenas to secure the attendance of witnesses and the production of relevant papers or documentation upon the request of the parties or their representatives.
5. Rule upon objections and the admissibility of evidence.
6. Preserve and authenticate the record of the hearing and all exhibits and evidence introduced at the hearing.
7. Issue a determination, based on the evidence presented at the hearing, of whether a village code violation exists. The determination shall be in writing and shall include a written finding of fact, decision, and order setting forth the fine, penalty, or action with which the person found liable must comply.
8. Impose penalties consistent with applicable code provisions and assess costs upon finding a party liable for the charged violation. Notwithstanding those violations for which the Illinois municipal

code, as amended, limits the fine or penalty to Seven Hundred Fifty Dollars (\$750.00), the hearing officer shall have the authority to impose fines and penalties up to Fifty Thousand Dollars (\$50,000.00). When applicable, each day a code provision is found to have been violated by the defendant shall constitute a separate offense, and each separate offense subjects the respondent to the penalty provided by the governing penalty provision. In addition to imposing penalties consistent with applicable code provisions and assessing costs upon finding a party liable for the charged violation, the hearing officer may:

- a. Impose, in addition to fines, administrative and/or enforcement costs, and when applicable, impose costs incurred by the Village for effecting compliance with code provision(s) for which a defendant has been found liable.
- b. Order, notwithstanding fines imposed or costs assessed, the defendant to comply with code provision(s) found to have been violated, and, if appropriate, order the respondent to post a compliance bond as provided by Section 4-5-6 of this chapter.
- c. Order, regardless of fines imposed or costs assessed, the defendant to perform a term of community service.

9. In no event shall a hearing officer have the authority to:

- a. Impose a penalty of incarceration.
- b. Impose a fine in excess of Fifty Thousand Dollars (\$50,000.00).

The maximum monetary fine under Subsection (A)(9)(b) of this section shall be exclusive of costs of enforcement or costs imposed to secure compliance with this code and shall not be applicable to cases to enforce the collection of any tax imposed and collected by the Village.

B. Powers of the Administrator: The ordinance enforcement administrator shall be empowered and is authorized and directed to:

1. Operate and manage the system of administrative adjudication of Village of Shabbona non-vehicular code violations as may be permitted by law and directed by ordinance.
2. Adopt, distribute, and process code violation notices and other notices as may be required to carry out the purpose of this chapter.
3. Collect and monitor monies paid as fines and/or penalties assessed after a final determination of a code violation.
4. Promulgate rules and regulations reasonably required to operate and maintain this administrative adjudication system.
5. Collect unpaid fines and penalties and otherwise pursue all post-judgment remedies available under the law.
6. Compromise or otherwise settle violation notices prior to a hearing date. However, any such compromise should be made of record by the administrator on the date the violation notice was scheduled to appear for hearing, with an explanation by the administrator as to the reasons for such compromise. The hearing officer is also required to approve any such compromise or settlement at the hearing.

C. Powers of the System Coordinator: The system coordinator/computer operator shall operate and maintain computer programs for the administrative adjudication system of the Village of Shabbona created hereunder, on a day-to-day basis, including, but not limited to:

1. Input of violation notice information.
2. Establishment and input of hearing and notice dates.
3. Issue subpoenas ordering witnesses and violators to appear in adjudication court as needed or directed by the hearing officer.
4. Input of fine and penalty assessments and payments.
5. Issuance of receipts for payment.

6. Issuance of succeeding notices of hearing dates or court dates and/or final determination of liability as directed by the administrator or by the hearing officer in accordance with the provisions hereinafter set forth.
7. Maintenance of accurate records of appearances and nonappearances at administrative hearings, pleas entered, fines and penalties assessed and paid.

D. Selection and Appointment of Personnel: The persons who shall hold the positions of hearing officer, administrator, computer operator/systems coordinator, and hearing room personnel under this chapter shall be selected and appointed according to the following procedures:

1. Hearing Officer Appointment: The hearing officer shall be appointed by the Village President and shall serve pursuant to the terms set forth in an employment agreement for such services as determined by the Village President. Hearing officers shall be subject to removal at the sole discretion of the Village President.
2. Information Considered: In making selections, the Village President shall consider all pertinent information, including at a minimum:
 - a. Candidate's ability to comply with the job descriptions as set forth herein; and
 - b. Background and performance data made available to Village President on file with the Village, or otherwise obtained by the Village; and
 - c. Whether the candidate meets the statutory criteria as an attorney licensed to practice law in the state of Illinois for at least three (3) years.
3. Administrator, System Coordinator and Hearing Room Personnel:
 - a. The Village President shall assign the duties of administrator, system coordinator and hearing room personnel to Village employees.

E. Compensation: The compensation to be paid for the hearing officer shall be established annually by the Village President and the Village Board.

F. Training of Personnel: Prior to a hearing officer conducting these administrative adjudication proceedings, the hearing officer must:

1. Be an attorney licensed to practice law in the state of Illinois for at least three (3) years; and
2. Successfully complete a formal training program pursuant to section 1-2.1-4(c) of the Illinois municipal code, as amended. A person who has served as a judge in Illinois is not required to fulfill the requirement of this section F(2).

4-5-3: PROCEDURES: The system of administrative adjudication of non-vehicular regulations violations shall be conducted in accordance with the following procedures to assure defendants are afforded due process of law:

A. Issuance of Violation Notices: Code violation notices may be issued by any authorized person under this code and shall contain information and shall be served, certified and have evidentiary value as hereinafter stated. Any individual authorized hereby to issue ordinance citations and violation notices and who detects an ordinance violation authorized to be adjudicated under this chapter or a violation of any section of any village ordinance is authorized to issue a notice of violation or ordinance citation thereof and shall make service thereof as is hereinafter set forth.

1. The violation notice shall contain, but shall not be limited to, the following information:
 - a. The name and address of the person charged, if known.
 - b. The date, time, and place of the violation (date of issuance).
 - c. The type and nature of the ordinance violated.
 - d. The common address of the building or property alleged to be in violation (the "cited property"), if applicable.

- e. The names and witnesses of the violation.
- f. The signature and identification number of the person issuing the notice.
- g. The docket or citation number, date, and location of the adjudication hearing of the ordinance violations, if applicable, the legal authority and jurisdiction under which the hearing is to be held. This date shall be no less than fifteen (15) days after the date of service of the violation notice. A hearing may be set at a date less than fifteen (15) days after the date of service of the violation in an emergency situation where the violation constitutes a threat to public interest, safety, or welfare.
- h. Failure to pay or appear may result in a default judgment being entered and the imposition of the maximum fine provided by law for each alleged offense cited plus court costs.

B. Authorization: All full-time and auxiliary police officers and other specifically appointed individuals, including, but not limited to, specifically appointed code enforcement officers and building inspectors, shall have the authority to issue violation notices. For the purposes of this section and for the purposes of any inspections relating to the enforcement of any Village ordinances or codes, authorized designees shall also include, but not be limited to, any person retained by the Village pursuant to a contract to perform ordinance/code enforcement or inspection-related services.

C. Detection of Violations: Any individual authorized to issue a violation notice who detects a violation of any non-vehicular regulation shall issue a notice of violation thereof and shall serve the violation notice as herein provided.

E. Service of Violation Notices: Service of violation notices shall be made in a manner reasonably calculated to give the defendant actual notice by:

1. Handing a copy of the violation notice to the person charged; or
2. Delivering a copy of the violation notice to the person charged by first-class mail to the address of the person charged. Such service shall be completed as of the date of deposit in the United States mail.

3. If a property violation of this code is alleged where the person charged is an owner or manager of property, posting a copy on the cited property.

F. Certification: The correctness of facts contained in the violation notice shall be certified by the issuing person by:

1. Signing his or her name to the violation notice at the time of issuance; or
2. In the case of a violation notice produced by a computer device, by signing a single certificate, to be kept by the administrator, attesting to the correctness of all violation notices produced by the device while under his/her control.

G. Business Records: The original or complete copy of the violation notice shall be retained and kept as a record in the ordinary course of Village business.

H. Prima Facie Evidence: Any violation notice issued, signed, and served in accordance herewith, or a complete copy of the notice, shall be deemed prima facie correct and shall be considered prima facie evidence of the facts alleged therein.

I. Admissibility: The violation notices shall be admissible in any subsequent administrative or legal proceeding.

4-5-4: ADMINISTRATIVE HEARINGS: An administrative hearing shall be held to adjudicate an alleged code violation on its merits, or to contest the validity of a violation notice. Specifically, hearings shall be held to adjudicate alleged violations of all code sections except those that are excluded by law from the Village's administrative adjudication system:

A. Time and Date: Hearings shall be on the date, time and place as set forth in the violation notice issued and served.

B. Recording: Hearings shall be audibly recorded.

C. Nonappearance: If on the date set for the hearing the person or entity or his or her attorney fails to appear, the hearing officer may find the person or entity in

default and shall proceed with the hearing and accept evidence relevant to the existence of a code violation.

D. Hearing Rights: Persons appearing to contest an alleged code violation may be represented by counsel of their own choice at their own expense, may present witnesses, may present testimony and documents, may cross examine opposing witnesses, and may request the issuance of subpoenas to compel the appearance of relevant witnesses or the production of relevant documents.

E. Evidentiary Standard: The formal and technical rules of evidence do not apply in an administrative hearing conducted in compliance with this chapter. Evidence, including hearsay, may be admitted, pursuant to state law set forth at Section 1-2.1-6 of the Illinois Municipal Code, as amended, only if it is of the type commonly relied upon by reasonably prudent persons in the conduct of their affairs.

F. Determination of Liability: Hearings shall culminate in a determination of liability or nonliability or default judgment made by the hearing officer, who shall consider facts and/or testimony without the application of the formal or technical rules of evidence. When a person fails to appear at the administrative to contest the alleged violation on the date and time and place specified in a prior served or mailed notice pursuant to this chapter, the hearing officer's determination of liability shall become final either upon a denial of a timely petition to set aside that determination or upon the expiration of the period for filing a petition without a filing having been made.

A notice of final determination of liability shall be provided following the conclusion of an administrative hearing or sent by U.S. Mail within five (5) days after the final determination of liability is made, as is hereinafter set forth and shall contain, but not be limited to, the following information and warnings:

1. The findings, decision and order of the hearing officer.
2. A date by which the violation must be brought into compliance with this code.
3. A statement that the unpaid fine and any penalty assessed is a debt due and owing the Village.

4. A warning that 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. In the case in which a defendant fails to comply with a judgment ordering the correction of a code violation or imposing any fine or other sanction as a result of the code violation, a statement that any expenses incurred by the Village to enforce the judgment, including, but not limited to, attorney fees, court costs and costs related to property demolition or foreclosure, shall be a debt due and owing the Village and may be collected in accordance with applicable law.
5. A notice of judgment entered by default shall be forwarded to any person who fails to appear and shall contain the same information as a determination of liability, but shall also state that the judgment may be set aside by the hearing officer if, within twenty-one (21) days of issuance of the judgment, a petition is received stating what the hearing officer determines is good cause for failure to appear. The hearing officer, upon making a determination of good cause, shall, within the twenty-one (21) day period, provide the petitioner with notice of a new hearing date or denial of the petition. The default judgment shall state that it shall constitute a final determination of liability if such petition is not received, if the petition is denied, or if, after setting a new hearing date, the person fails to appear.

G. Final Determination: The determination of liability shall constitute a final determination for purposes of judicial review and shall be subject to review under the Illinois administrative review law, as amended.

4-5-5: REPRESENTATION AT HEARINGS:

A. Village Representation: The case for the Village may be presented by a Village employee, or by an attorney designated by the corporation counsel, but not by an employee or other representative of the code hearing unit, subject to the following exception: Documentary evidence prepared by another department of the Village and submitted to the code hearing unit may be presented at the hearing by the hearing officer.

B. Defendant Representation: The case for the defendant may be presented by the defendant or by an attorney or agent of the defendant. An attorney or agent

appearing at an administrative hearing on behalf of a defendant shall present the hearing officer with a signed appearance form stating, on oath or affirmation, that he or she has been authorized by the defendant to represent the defendant at the hearing.

4-5-6: SCHEDULE OF FINES/PENALTIES:

A. All fines and other monies to be paid to the Village in accordance with this chapter shall be remitted to the Village and deposited in the appropriate Village account as designated by the Village President, or his or her designee.

B. Fines and penalties shall be imposed in accordance with this Code, or where no fine or penalty is expressed in this Code, the hearing officer may impose a fine or penalty according to his or her judgment.

C. Any person who pleads guilty or liable or is found guilty or liable shall be responsible for paying the costs of adjudication of fifty dollars (\$50.00) in addition to a fine. If a fine is imposed for a continuing violation, and each day constitutes a separate offense, the costs of adjudication shall also be assessed for each day of the continuing offense.

D. In addition to or in lieu of a fine and costs, the hearing officer may also require a person who pleads guilty or is found guilty or liable for an offense to perform community service of not more than two hundred fifty (250) hours per offense.

4-5-7: JUDICIAL REVIEW: Any final determinations that a code violation does or does not exist issued by the hearing officer under this chapter shall constitute a final determination for purposes of judicial review and shall be subject to review under the provisions of the Illinois Administrative Review Law (735 ILCS 5/3-101 *et seq*), as amended.

4-5-8: JUDGMENT AND COLLECTION:

A. Any fine, other sanction, or costs imposed, or part of any fine, other sanction, or costs imposed, remaining unpaid after the exhaustion of or the failure to exhaust judicial review procedures under the Illinois Administrative Review Law are a debt due and owing the Village and may be collected in accordance with applicable law.

B. Enforcement: Upon expiration of the period in which judicial review under the Illinois administrative review law may be sought for a final determination of a code violation, unless stayed by a court of competent jurisdiction, the findings, decision, and order of the hearing officer may be enforced in the same manner as a judgment entered by a court of competent jurisdiction.

C. Court Costs, Attorney Fees, and Costs of Collection: In any case in which a person has failed to comply with a hearing officer's judgment ordering the correction of 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 fees, court costs, and costs related to property clean-up, demolition or foreclosure, after they are fixed by a court of competent jurisdiction or by the hearing officer shall be a debt due and owing the Village and may be collected in accordance with applicable law.

1. Prior to any expenses being fixed by the hearing officer pursuant to this subsection, the Village shall provide notice to the person that states that the person shall appear at a hearing before the hearing officer to determine whether the person has failed to comply with the judgment. The notice shall set the date for such hearing, which shall not be less than seven (7) days from the date that notice is served. If notice is served by mail, the seven (7) day period shall begin on the date the notice was deposited in the mail.

D. Upon being recorded in the manner required by Article 12 of the Code of Civil Procedure, as amended, or by the Uniform Commercial Code, as amended, a lien shall be imposed on the real estate or personal estate, or both, of the person 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 would be enforced in a court of competent jurisdiction.

E. A default in the payment of a fine or penalty or any installment of a fine or penalty may be collected by any means authorized for the collection of monetary judgments. The municipal attorney of the municipality in which the fine or penalty was imposed may retain attorneys and private collection agents for the purpose of collecting any default in payment of any fine or penalty or installment of that fine or penalty. Any fees or costs incurred by the municipality with respect to attorneys or private collection agents retained by the municipal attorney under this Section shall be charged to the offender.

4-5-9: ELECTION OF REMEDIES NONEXCLUSIVE: Nothing contained in this chapter shall prevent the Village from pursuing all available remedies, allowed by law, to collect money judgments.

SECTION 2. That each section, paragraph, sentence, clause, and provision of this Ordinance is separable and if any provision is held unconstitutional or invalid for any reason, such decision shall not affect the remainder of this Ordinance nor any part thereof, other than the part affected by such decision.

SECTION 3. That except as to the amendments heretofore mentioned, all chapters and sections of the Municipal Code of Shabbona, Illinois, shall remain in full force and effect.

SECTION 4. That this Ordinance shall, by authority of the Village Board of the Village of Shabbona, Illinois, be published in pamphlet form. From and after ten days after said publication, this Ordinance shall be in full force and effect.

PASSED BY THE Board of Trustees of the Village of Shabbona this ____ day of ____, 2024, and approved by the President and the Board of Trustees this ____ day of ____, 2024.

AYES:

NAYS:

ABSTAIN:

APPROVED: _____

ATTEST:

Village President – Donald J. Goncher

Village Clerk – Jennifer Morrison

CERTIFICATE

STATE OF ILLINOIS)
) SS.
COUNTY OF DEKALB)

I, Jennifer Morrison, certify that I am the duly appointed and acting Village Clerk of the Village of Shabbona, DeKalb County, Illinois.

I further certify that on _____, 2024, the Corporate Authorities of such municipality passed and approved Ordinance No. 2024-05-20(B), entitled AN ORDINANCE AMENDING TITLE 4, "PUBLIC SAFETY," OF THE MUNICIPAL CODE OF SHABBONA including a cover sheet thereof prepared, and a copy of such Ordinance was posted in the Village Hall, commencing on _____, 2024, and continuing for at least ten days thereafter. Copies of such Ordinance were also available for public inspection upon request of the municipal clerk.

Dated at Shabbona, Illinois, this ____ day of _____, 2024.

(SEAL)

Jennifer Morrison, Village Clerk

FIRST READING