

**ORDINANCE NO. 6679**

**AN ORDINANCE AMENDING  
TITLE 7, CHAPTER 75 OF THE LOMBARD VILLAGE CODE  
IN REGARD TO VEHICLE SEIZURE AND IMPOUNDMENT**

**BE IT ORDAINED** by the President and Board of Trustees of the Village of Lombard, DuPage County, Illinois, as follows:

**SECTION 1:** That Title 7, Chapter 75, Section 75.01, Subsection (A), of the Lombard Village Code is hereby amended, to require that a "Hearing Officer" be licensed to practice law in the State of Illinois for a minimum of three (3) years, and shall read in its entirety as follows:

"(A) HEARING OFFICER: An attorney licensed to practice law in the State of Illinois for a minimum of three (3) years, who is not an officer or employee of the Village, designated by the Village Manager, including, but not limited to, the individual designated by the Village Manager to serve as the hearing officer in regard to the Village's administrative adjudication programs."

**SECTION 2:** That Title 7, Chapter 75, Section 75.02 of the Lombard Village Code is hereby amended to read in its entirety as follows:

**"§ 75.02 PUBLIC NUISANCE DECLARED**

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

(A) A violation of:

1. 625 ILCS 5/6-303 (Driving While Driver's License, Permit or Privilege to Operate a Motor Vehicle is Suspended or Revoked), as

amended, except where said violation is in regard to a person whose driver's license, permit or privilege to operate a motor vehicle is suspended only for a violation of the emissions inspection laws as set forth in 625 ILCS 5/13C-1, *et seq.*, as amended or for an unpaid citation (parking or moving);

2. 625 ILCS 5/11-501 (Driving Under the Influence of Alcohol, Other Drug or Drugs, Intoxicating Compound or Compounds or any Combination Thereof), as amended;

(B) The stopping of a person against whom a warrant has been issued by a circuit court for failing to appear to answer charges that the person was:

1. operating a motor vehicle while that person's license was suspended or revoked in violation of 625 ILCS 5/6-303, as amended;

2. operating a motor vehicle while under the influence of alcohol, other drug or drugs, intoxicating compound or compounds or any combination thereof in violation of 625 ILCS 5/11-501, as amended; or

3. operating a motor vehicle without having a valid driver's license or permit, in violation of 625 ILCS 5/6-101, as amended;

(C) A violation of:

1. 720 ILCS 5/11-6 (Indecent Solicitation of a Child), as amended;

2. 720 ILCS 5/12-2 (Aggravated Assault), as amended;

3. 720 ILCS 5/12-3.05 (Aggravated Battery), as amended;

4. 720 ILCS 5/16-1 (Theft), as amended;

5. 720 ILCS 5/16-2 (Theft of Lost or Mislaid Property), as amended;

6. 720 ILCS 5/16-3 (Theft of Labor or Services or Use of Property), as amended;

7. 720 ILCS 5/16-5 (Theft from Coin Operated Machine), as amended;

8. 720 ILCS 5/16-18 (Tampering with Communication Services; Theft of Communication Services), as amended;

9. 720 ILCS 5/16-25 (Retail Theft), as amended;

10. 720 ILCS 5/18-1 (Robbery), as amended;

11. 720 ILCS 5/18-2 (Armed Robbery), as amended;

12. 720 ILCS 5/19-1 (Burglary), as amended;

13. 720 ILCS 5/19-3 (Residential Burglary), as amended;

14. 720 ILCS 5/20-1 (Arson), as amended;

15. 720 ILCS 5/20-1.1 (Aggravated Arson), as amended;

16. 720 ILCS 5/20-2 (Possession of Explosives or Explosive or Incendiary Devices), as amended;

17. 720 ILCS 5/21-1 (Criminal Damage to Property), as amended; or

18. 720 ILCS 5/25-1 (Mob Action), as amended;

(D) The operation or use of a motor vehicle:

1. in the commission of, or in the attempt to commit, a violation of the Cannabis Control Act 720 ILCS 550/1 *et seq.*, as amended;
2. in the commission of, or in the attempt to commit, a violation of the Illinois Controlled Substance Act, 720 ILCS 570/100 *et seq.*, as amended; or
3. while soliciting, possessing, or attempting to solicit or possess cannabis or a controlled substance, as defined by the Cannabis Control Act 720 ILCS 550/1 *et seq.*, as amended, or the Illinois Controlled Substance Act, 720 ILCS 570/100 *et seq.*, as amended;

(E) A violation of:

1. 720 ILCS 5/24-1 (Unlawful Use of Weapons), as amended;
2. 720 ILCS 5/24-1.5 (Reckless Discharge of a Firearm), as amended;
3. 720 ILCS 5/24-3.1 (Unlawful Possession of Firearms and Firearm Ammunition), as amended; or
4. 720 ILCS 5/24-3.3 (Unlawful Sale or Delivery of Firearms on the Premises of any School), as amended;

This subsection shall not apply when any of the exemptions set forth in 720 ILCS 5/24-2, as amended, are met;

(F) A violation of:

1. 720 ILCS 5/11 -14 (Prostitution), as amended;
2. 720 ILCS 5/11-14.1 (Solicitation of a Sexual Act), as amended;
3. 720 ILCS 5/11-14.3 (Promoting Prostitution), as amended;
4. 720 ILCS 5/11-14.4 (Promoting Juvenile Prostitution), as amended;
5. 720 ILCS 5/11-18 (Patronizing a Prostitute), as amended; or
6. 720 ILCS 5/11-18.1 (Patronizing a Juvenile Prostitute), as amended;

(G) The motor vehicle is otherwise subject to seizure and impoundment pursuant to 720 ILCS 5/36-1 (Seizure), as amended; or

(H) A violation of 625 ILCS 5/6-101 (Drivers Must Have Licenses or Permits), as amended, except where the violation is for a license which has been expired for less than twelve (12) months or for a license which is invalid because of curfew (as in the case of a graduated license).”

**SECTION 3:** That Title 7, Chapter 75, Section 75.03, of the Lombard Village

Code is hereby amended to read in its entirety as follows:

**“§ 75.03 SEIZURE AND IMPOUNDMENT OF MOTOR VEHICLES**

(A) Whenever a police officer has probable cause to believe that a motor vehicle is subject to seizure and impoundment pursuant to this Chapter, the police officer shall cause the motor vehicle to be removed or towed to a facility authorized by the Village. When the vehicle is towed, the Village shall notify or make a reasonable attempt to notify the owner of record, lessee, or person identifying himself or herself as the owner or lessee of the vehicle, if there is such a person, of the fact of the seizure and of the owner of record's or lessee's right to request a preliminary hearing and to participate in a plea/evidentiary hearing, as provided in this Chapter. The Village shall also provide notice that the motor vehicle shall be impounded pending the completion of the hearings provided for in this Chapter, unless the owner of record or lessee of the motor vehicle, or a lien holder of record of the motor vehicle, posts with the Village a cash bond and pays all towing and storage fees, as set forth in Section 75.04 below.

(B) A police officer who has probable cause to believe that a motor vehicle is subject to seizure and impoundment pursuant to this Chapter shall first ascertain whether the seizure and impoundment is necessary and reasonable under the circumstances. If in the judgment of the police officer then present, a person authorized by the owner of record or the operator of the motor vehicle is present and capable to provide for the lawful immediate removal of the motor vehicle, and said motor vehicle is not required to be held as evidence in regard to the violation, the police officer shall allow that individual to promptly remove the motor vehicle without it being subject to seizure and impoundment if seizure and impoundment of the motor vehicle is discretionary pursuant to Section 75.02(H) above or seizure and impoundment of the motor vehicle is contemplated pursuant to Sections 75.02(A) through (H) above.”

**SECTION 4:** That Title 7, Chapter 75, Section 75.06, Subsection (A), of the Lombard Village Code is hereby amended, to require that, in addition to notice and an opportunity to be heard being provided to the owner of record, notice and an opportunity to be heard shall be provided to any lessee and any lien holder of record, and shall read in its entirety as follows:

“(A) Notice of Hearing. Within ten (10) days after a motor vehicle is impounded pursuant to this Chapter, the Village shall notify the owner of record, any lessee and any lien holder of record, of the date, time and location of a plea hearing that shall be conducted, pursuant to this section. Such notice shall be mailed by certified mail, return receipt requested, and

First Class U.S. Mail to the owner of record, any lessee and any lien holder of record, as shown on the records of the Illinois Secretary of State. Notice by certified mail or First Class U.S. Mail need not be given when the owner of record of the motor vehicle, any lessee and any lien holder of record have been personally served with notice, in written form, of the time, date and location of the plea hearing. The plea hearing shall be conducted by a hearing officer, designated by the Village Manager. The owner of record, any lessee and any lien holder of record shall appear at a plea hearing and enter a plea of guilty or not guilty. If a plea of guilty is entered, or if the owner of record, any lessee and any lien holder of record fail to appear, the case shall be disposed of at that time, with an order/default order in favor of the Village, which order/default order shall require the payment to the Village of the five hundred dollar (\$500.00) administrative fee and towing and storage costs to the applicable tow company, and the continued impoundment of the motor vehicle until the owner of record, any lessee or lien holder of record pays to the Village the five hundred dollar (\$500.00) administrative fee and towing and storage costs to the applicable towing company. If the owner of record, any lessee or any lien holder of record pleads not guilty, an evidentiary hearing shall be scheduled and held no later than forty-five (45) days after the motor vehicle was impounded, unless continued by the hearing officer. All interested persons shall be given a reasonable opportunity to be heard at the evidentiary hearing. At any time prior to the evidentiary hearing date, the hearing officer may, at the request of either the Village, the owner of record, any lessee or lien holder of record, direct witnesses to appear and give testimony at the evidentiary hearing. The formal rules of evidence shall not apply at the evidentiary hearing, and hearsay evidence shall be admissible.”

**SECTION 5:** That Title 7, Chapter 75, Section 75.06, Subsection (B), of the Lombard Village Code is hereby amended by adding a sentence to the end of said Subsection regarding the requirement that all orders entered by the hearing officer be in writing, and shall read in its entirety as follows:

“(B) If, after the evidentiary hearing, the hearing officer determines, by a preponderance of the evidence, that the motor vehicle was used in connection with a violation set forth in Section 75.02 above, the hearing officer shall enter an order finding the owner of record of the motor vehicle civilly liable to the Village for an administrative fee in the amount of five hundred dollars (\$500.00), and require the motor vehicle to continue to be impounded until the owner of record pays the administrative fee to the Village, plus applicable towing and storage costs to the applicable tow company. The five hundred dollar (\$500.00) administrative fee shall be a debt due to the Village. If a cash bond has been posted pursuant to Section 75.04 or Section 75.05(c) above, the bond shall be applied to the administrative fee. If the

owner of record fails to appear at the evidentiary hearing, the hearing officer shall enter a default order in favor of the Village, which order shall require the payment to the Village of the five hundred dollar (\$500.00) administrative fee and towing and storage costs to the applicable tow company, and the continued impoundment of the motor vehicle until the owner of record pays to the Village the five hundred dollar (\$500.00) administrative fee and towing and storage costs to the applicable towing company. If the hearing officer finds no such violation occurred, the hearing officer shall order the immediate return of the owner of record's motor vehicle without any fee or other costs, or, if a cash bond had previously been posted, the cash bond shall be returned, but the owner of record shall be responsible for any towing or storage charges to the applicable tow company. All orders entered by the hearing officer under this Subsection shall be in writing."

**SECTION 6:** That Title 7, Chapter 75, Section 75.07, Subsection (A), of the Lombard Village Code, is hereby amended, to remove all references to "thirty (30) days," and replace said references with "thirty-five (35) days," and shall read in its entirety as follows:

"(A) If the administrative fee and other applicable fees are not paid within thirty-five (35) days after an administrative fee is imposed against an owner of record who defaults by failing to appear at the hearings provided in Section 75.06 above, or who admits guilt at the plea hearing, the motor vehicle shall be deemed unclaimed and shall be disposed of in the manner provide by law for the disposition of unclaimed motor vehicles pursuant to 625 ILCS 5/1-100, *et seq.*, as amended. In all other cases, if the administrative fee and applicable towing and storage costs to the applicable tow company are not paid within thirty-five (35) days after the expiration of time by which administrative review of the hearing officer's determination may be sought pursuant to Section 75.10 below, or within thirty-five (35) days after an action seeking administrative review has been resolved in favor of the Village, whichever is applicable, the motor vehicle shall be deemed unclaimed and shall be disposed of in the manner provide by law for the disposition of unclaimed motor vehicles pursuant to 625 ILCS 5/1-100, *et seq.*, as amended."

**SECTION 7:** That Title 7, Chapter 75, Section 75.08 of the Lombard Village Code is hereby amended, by deleting a subsection that states stolen vehicles must be reported to police authorities within twenty-four (24) hours after the theft was discovered, and shall read in its entirety as follows:

## **“§ 75.08 APPLICABILITY OF OTHER LAWS**

This Chapter is in addition to and shall not replace or otherwise abrogate any existing State or Federal laws or any ordinance that relates to the seizure or impoundment of motor vehicles, and any fee provided for in this Chapter shall be in addition to any and all penalties that may be assessed or imposed by a court for any criminal charges. This Section shall not apply:

(A) if the motor vehicle used in the violation was stolen at the time of the violation and verifiable proof of the theft is provided to the Village;

(B) if the motor vehicle is operated as a common carrier as defined by applicable law and the violation occurs without the knowledge of the person in control of the motor vehicle; or

(C) if the motor vehicle is subject to successful forfeiture proceedings under 725 ILCS 150/1, *et seq.*, as amended (“Drug Asset Forfeiture Procedure Act”); 720 ILCS 5/36-1, *et seq.*, as amended (“Seizure and Forfeiture of Vessels, Vehicles and Aircraft”); or other State or Federal forfeiture laws.”

**SECTION 8:** That Title 7, Chapter 75, Section 75.10 of the Lombard Village Code is hereby amended, by adding a sentence to the end of said Section regarding the enforcement of any unpaid fine, penalty or administrative fee, and shall read in its entirety as follows:

### **“§ 75.10 ADMINISTRATIVE REVIEW**

Any owner of record, lien holder or other person with a legal interest in the motor vehicle shall have the right to appeal the decision of the hearing officer to the Circuit Court for the Eighteenth Judicial Circuit, DuPage County, Illinois, pursuant to the Administrative Review Act, 735 ILCS 5/3-101, *et seq.*, as amended. Unless stayed by a court of competent jurisdiction, any fine, penalty, or administrative fee imposed under this chapter which remains unpaid in whole or in part after the expiration of the deadline for seeking judicial review under the Administrative Review Act, may be enforced in the same manner as a judgment entered by a court of competent jurisdiction.”

**SECTION 9:** That this Ordinance shall be in full force and effect from and after its passage, approval and publication in pamphlet form as provided by law.

Passed on first reading this \_\_\_ day of \_\_\_\_\_, 2012.

First reading waived by action of the Board of Trustees this 16<sup>th</sup> day of February, 2012.

Passed on second reading this 16<sup>th</sup> day of February, 2012, pursuant to a roll call vote as follows:

**AYES:** Trustees Gron, Giagnorio, Wilson, Breen and Fitzpatrick

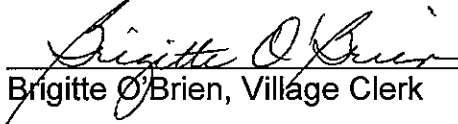
**NAYS:** None

**ABSENT:** Trustee Ware


**APPROVED** by me this 16<sup>th</sup> day of February, 2012.

  
\_\_\_\_\_  
William J. Mueller, Village President

ATTEST:

  
\_\_\_\_\_  
Brigitte O'Brien, Village Clerk

Published by me in pamphlet form this 17<sup>th</sup> day of February, 2012.

  
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Brigitte O'Brien, Village Clerk