

ORDINANCE NO. _____

**AN ORDINANCE AMENDING TITLE 7
OF THE LOMBARD VILLAGE CODE
IN REGARD TO THE
SEIZURE AND IMPOUNDMENT OF MOTOR VEHICLES**

WHEREAS, the Village President and Board of Trustees of the Village of Lombard (the “Village”) have the authority to adopt ordinances and to promulgate rules and regulations that pertain to its government and affairs and protect the public health, safety, and welfare of its citizens; and

WHEREAS, pursuant to 65 ILCS 5/11-60-2, the President and Board of Trustees of the Village may define, prevent, and abate nuisances; and

WHEREAS, the Village desires to reduce, eliminate and curb the public nuisances created by individuals operating motor vehicles upon the streets and highways of the Village who commit violations of certain laws within the Village as specified herein; and

WHEREAS, the Village declares that a public nuisance is created by individuals operating motor vehicles upon the streets and highways of the Village who commit violations of the laws set forth herein; and

WHEREAS, the fee herein provided is found by the Village to be sufficient and large enough to act as a deterrent to induce motor vehicle owners to refrain from illegal activity in their motor vehicles and for motor vehicle owners to question motor vehicle borrowers about the uses to which the motor vehicle will be put, and to refrain from lending a motor vehicle whenever the owner of the motor vehicle has misgivings about items that may find a temporary home in the motor vehicle, but not so large as to be grossly out of proportion to the activities that the Village is seeking to deter as public nuisances; and

WHEREAS, the fee herein provided will serve as a deterrent for the purposes of reducing, eliminating and curbing illegal drug activity, illegal firearm activity, and illegal driving under the influence and driving while license suspended or revoked in the Village and serve the Police Department’s community caretaking function; and

WHEREAS, an amount of five hundred and no/100 dollars (\$500.00) is a reasonable amount for the Village’s administrative costs incurred in preparing, prosecuting, hearing, and disposing of violations, proportionate to the likely combined costs of administrative proceedings and costs caused by a violator’s use of a motor vehicle to commit a violation, and large enough to function as a deterrent to committing a violation of certain laws within the Village, but not so large as to be grossly out of proportion to the activity the Village is seeking to deter; and

WHEREAS, there is a minimal risk of erroneous deprivation of a protected property interest; and

WHEREAS, requiring an owner of a motor vehicle to pay towing and storage expenses is remedial in nature in that the Village incurs expenses by towing and storing a motor vehicle, and the expenses should be borne by the violator and not the Village and its taxpayers; and

WHEREAS, it is in the best interests of the health, safety and welfare of the residents of the Village that Village police officers have the authority to seize and impound motor vehicles when such vehicles are used in the commission of a crime as defined herein as such use constitutes a public nuisance;

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

SECTION 1: The above recitals are incorporated herein by reference as though fully set forth herein.

SECTION 2: That Title 7 of the Lombard Village Code is amended by adding a new Chapter 74 thereto, which shall read in its entirety as follows:

“CHAPTER 74: SEIZURE AND IMPOUNDMENT OF MOTOR VEHICLES

§74.01 DEFINITIONS.

For the purposes of this Chapter, and the interpretation and enforcement thereof, the following terms, phrases, words and their derivations shall have the meanings given herein, unless the context in which they are used shall indicate otherwise. When not inconsistent with the context, words used in the present tense include the future, words in the singular number include the plural number, and words in the plural number include the singular number. The words “shall” and “will” are mandatory and “may” is permissive. Words not defined shall be given their common and ordinary meaning.

(A) **HEARING OFFICER:** A licensed attorney, 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.

(B) **OWNER OF RECORD:** The record titleholder to a motor vehicle as registered with the Secretary of State of the State of Illinois, or

any other applicable governmental agency.

§74.02 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 Section 130.30 (Firearms) of this Code, as amended, or Section 10-5-2 (Driving Under the Influence) of the Lombard Traffic Code (Ordinance No. 1186), as amended;
- (B) A violation of 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;
- (C) A violation of 625 ILCS 5/11-204 (Fleeing or Attempting to Elude a Peace Officer), as amended; 625 ILCS 5/11-401 (Motor Vehicle Accidents Involving Death or Personal Injuries), as amended; 625 ILCS 5/11-402 (Motor Vehicle Accident Involving Damage to Vehicle), as amended; 625 ILCS 5/11-403 (Duty to Give Information and Render Aid), as amended; 625 ILCS 5/11-404 (Duty Upon Damaging Unattended Vehicle or Other Property), as amended; 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; 625 ILCS 5/11-503 (Reckless Driving or Aggravated Reckless Driving), as amended; or 625 ILCS 5/11-506 (Street Racing), as amended, or 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 (a) operating

a motor vehicle while that person's license was suspended or revoked or (b) operating a motor vehicle while under the influence of alcohol, other drug or drugs, intoxicating compound or compounds or any combination thereof;

- (D) A violation of 720 ILCS 5/11-6 (Indecent Solicitation of a Child), as amended; 720 ILCS 5/12-2 (Aggravated Assault), as amended; 720 ILCS 5/12-4 (Aggravated Battery), as amended; 720 ILCS 5/12-4.2 (Aggravated Battery with a Firearm), as amended; 720 ILCS 5/12-4.3 (Aggravated Battery of a Child), as amended; 720 ILCS 5/12-4.6 (Aggravated Battery of a Senior Citizen), as amended; 720 ILCS 5/16A-3 (Retail Theft), as amended, when the value of the merchandise exceeds one hundred fifty and no/100 dollars (\$150.00); 720 ILCS 5/18-1 (Robbery), as amended; 720 ILCS 5/18-2 (Armed Robbery), as amended; 720 ILCS 5/19-1 (Burglary), as amended; 720 ILCS 5/19-3 (Residential Burglary), as amended; 720 ILCS 5/20-1 (Arson), as amended; 720 ILCS 5/20-1.1 (Aggravated Arson), as amended; 720 ILCS 5/20-2 (Possession of Explosives or Explosive or Incendiary Devices), as amended; 720 ILCS 5/21-1 (Criminal Damage to Property), as amended; or 720 ILCS 5/25-1 (Mob Action), as amended;
- (E) A violation of 720 ILCS 570/401 (Manufacture or Delivery of a Controlled Substance), as amended; 720 ILCS 570/401.1 (Controlled Substance Trafficking), as amended; or 720 ILCS 570/402 (Possession of a Controlled Substance), as amended;
- (F) A violation of 720 ILCS 550/4(d) (Possession of More than 30 Grams of Any Substance Containing Cannabis), as amended; 720 ILCS 550/5 (Manufacture or Delivery of Cannabis), as amended; 720 ILCS 550/5.1 (Cannabis Trafficking), as amended; 720 ILCS 550/5.2 (Delivery of Cannabis on School Grounds), as amended; or 720 ILCS 550/8 (Unauthorized Production or Possession of Cannabis Sativa Plant), as amended;
- (G) A violation of 720 ILCS 5/24-1 (Unlawful Use of Weapons), as amended; 720 ILCS 5/24-3.1 (Unlawful Possession of Firearms and Firearm Ammunition), as amended; or 720 ILCS 5/24-3.3 (Unlawful Sale or Delivery of Firearms on the Premises of any School), as amended; however, this subsection shall not apply when any of the exemptions set forth in 720 ILCS 5/24-2, as amended, are met;

- (H) A violation of 720 ILCS 5/11-14 (Prostitution), as amended; 720 5/11-14.1 (Solicitation of a Sexual Act), as amended; 720 ILCS 5/11-15 (Soliciting for a Prostitute), as amended; 720 ILCS 5/11-15.1 (Soliciting for a Juvenile Prostitute), as amended; 720 ILCS 5/11-18 (Patronizing a Prostitute), as amended; or 720 ILCS 5/11-18.1 (Patronizing a Juvenile Prostitute), as amended;
- (I) The motor vehicle is otherwise subject to seizure and impoundment pursuant to 720 ILCS 5/36-1 (Seizure), as amended; or
- (J) 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).

§74.03 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 motor vehicle is removed or towed, the police officer shall notify any person identifying himself or herself as the owner of record of the motor vehicle or any person who is found to be in control of the motor vehicle at the time of the alleged violation(s), if there is such a person, of the fact of the seizure and of the motor vehicle owner of record's right to request a preliminary hearing as provided in this Chapter. Said motor vehicle shall be impounded pending the completion of the hearings provided for in this Chapter, unless the owner of record of the motor vehicle posts with the Village a cash bond as set forth in Section 74.04 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 74.02(J) above or seizure and impoundment of the motor vehicle is contemplated pursuant to Sections 74.02(A) through (I) above.

§74.04 POSTING A BOND.

If a bond in the amount of five hundred and no/100 dollars (\$500.00) is posted with the Village, the impounded motor vehicle shall be released to the owner of record, upon the payment by the owner of record of the towing and storage costs to the applicable towing company. If an administrative fee is imposed pursuant to Section 74.06(B) below, the bond shall be applied to said fee; provided, in the event that a violation of this Section is not proven, the bond shall be returned to the person posting the bond. All bond money posted pursuant to this Section shall be held by the Village until a hearing officer issues a decision, or, if there is judicial review pursuant to Section 74.10, until a reviewing court issues a final decision.

§74.05 PRELIMINARY HEARING.

Where the owner of record of a motor vehicle seized under the provisions of this Chapter makes a request, in writing and filed with the Chief of Police or the Chief of Police's designee, for a preliminary hearing within twelve (12) hours after the seizure of the motor vehicle, the Chief of Police or the Chief of Police's designee must conduct a preliminary hearing within twenty-four (24) hours after the request for a preliminary hearing is received by the Village; provided that if the date for the preliminary hearing falls on a Saturday, Sunday or legal holiday, the preliminary hearing will be held on the next business day following the Saturday, Sunday or legal holiday. For purposes of this Section, the following shall apply:

- (A) All interested persons shall be given a reasonable opportunity to be heard at the preliminary hearing.
- (B) The formal rules of evidence shall not apply at the preliminary hearing, and hearsay testimony shall be allowed, and shall be admissible.
- (C) If, after the conclusion of the preliminary hearing, the Chief of Police or the Chief of Police's designee determines that

there is probable cause to believe that the motor vehicle was used as provided in Section 74.02 above, the Chief of Police or the Chief of Police's designee shall order the continued impoundment of the motor vehicle, unless the owner of record of the motor vehicle posts a cash bond with the Village in the amount of five hundred and no/100 dollars (\$500.00), and pays the towing and storage costs to the applicable tow company, as set forth in Section 74.04 above.

- (D) If the Chief of Police or the Chief of Police's designee determines that there is not probable cause to believe that the motor vehicle was used as provided in Section 74.02 above, the motor vehicle shall be returned to the owner of record of the motor vehicle without any fees or other costs, but the owner of record shall be responsible to pay any towing or storage charges to the applicable tow company.

§74.06 PLEA HEARING/EVIDENTIARY HEARING.

- (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 of the date, time and location of a plea hearing that shall be conducted, pursuant to this Section 74.06. Such notice shall be mailed by certified mail, return receipt requested, and First Class U.S. Mail to the owner 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 has 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 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 fails to appear, the cause 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 and no/100 dollars (\$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 and no/100 dollars (\$500.00) administrative fee and towing and storage costs to the applicable towing company. If the owner 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 or the owner 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.

- (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 74.02 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 and no/100 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 and no/100 dollars (\$500.00) administrative fee shall be a debt due to the Village. If a cash bond has been posted pursuant to Section 74.04 or Section 74.05(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 and no/100 dollars (\$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 and no/100 dollars (\$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.
- (C) At the evidentiary hearing, the violation citation shall be prima facie evidence that the violation was committed as provided in the citation, and the burden of proof shall be upon the owner of record to prove that the violation was not

committed.

§74.07 DISPOSITION OF IMPOUNDED MOTOR VEHICLES.

- (A) If the administrative fee and other applicable fees are not paid within thirty (30) days after an administrative fee is imposed against an owner of record who defaults by failing to appear at the hearings provided in Section 74.06 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 (30) days after the expiration of time by which administrative review of the hearing officer's determination may be sought pursuant to Section 74.10 below, or within thirty (30) 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.
- (B) Except as otherwise specifically provided by law, no owner of record, lien holder or other person shall be legally entitled to take possession of a motor vehicle impounded under this Chapter until the administrative fee and towing and storage costs to the applicable tow company imposed pursuant to this Chapter have been paid. However, whenever a person with a lien of record against an impounded motor vehicle has commenced foreclosure proceedings, possession of the motor vehicle shall be given to that person if he or she agrees in writing to refund to the Village the amount of the net proceeds of any foreclosure sale, less any amounts required to pay all lien holders of record, not to exceed the administrative fee, plus the applicable towing and storage costs.
- (C) Costs for towing and storage of a motor vehicle pursuant to this Chapter shall be those approved by the Chief of Police for all tow companies authorized to tow for the Police Department.

§74.08 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 the theft was reported to the appropriate police authorities within twenty-four (24) hours after the theft was discovered; (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.

§74.09 USE OF FEES COLLECTED.

All fees collected by the Village pursuant to this Chapter shall only be deposited and used for Village traffic safety and enforcement expenditures and for the expenses of the Village’s administrative adjudication program.

§74.10 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.”

SECTION 3: 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. All ordinances in conflict herewith are hereby repealed to the extent of such conflict.

SECTION 4: 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 _____, 2009.

First reading waived by action of the Board of Trustees this _____ day of _____, 2009.

Passed on second reading this _____ day of _____, 2009,
pursuant to a roll call vote as follows:

AYES: _____

NAYS: _____

ABSENT: _____

APPROVED by me this _____ day of _____, 2009.

William J. Mueller
Village President

ATTEST:

Brigitte O'Brien
Village Clerk

Published by me in pamphlet form this _____ day of _____, 2009.

Brigitte O'Brien
Village Clerk