

**CHAPTER 39:
ORDINANCE ENFORCEMENT THROUGH ADMINISTRATIVE ADJUDICATION**

Section

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§39.01 PURPOSE:

The purpose of this Chapter is to provide for fair and efficient enforcement of Village of Port Barrington ("Village") ordinances as may be allowed by law and directed by ordinance, through an administrative adjudication of violations of Village ordinances thereby expediting the prosecution and correction of Code violations.

§39.02 PORT BARRINGTON ORDINANCE ENFORCEMENT HEARING DEPARTMENT AND ADMINISTRATIVE ADJUDICATION SYSTEM ESTABLISHED:

- A. Pursuant to the authority granted to the Village by the Illinois Municipal Code and the Illinois Vehicle Code, including but not limited to 65 ILCS 5/1-2.2-1, et seq. and 65 ILCS 5/11-31.1-1, et seq., and 625 ILCS 5/11-208.3, there is hereby established an "ordinance enforcement hearing department" as an administrative adjudication system for the Village of Port Barrington (hereinafter, the "Port Barrington Ordinance Enforcement Hearing Department", "Ordinance Enforcement Hearing Department", or "the Department"). The Port Barrington Ordinance Enforcement Hearing Department and Administrative

Adjudication System as established by this Chapter shall either be a separate agency within the Village government or, in the alternative, shall be the administrative adjudication system of another municipality, the use of which shall be authorized by an intergovernmental agreement. For purposes of this and related Sections of the Village Code, the terms herein shall have the same meaning as ascribed by the Illinois Municipal Code.

- B. The Port Barrington Ordinance Enforcement Hearing Department shall have the power to enforce compliance with all Village ordinances as from time to time are authorized by the Corporate Authorities of the Village, except for any reportable offense under 65 ILCS 5/6-204, and except for any offense which is based upon a traffic regulation governing the movement of vehicles and prohibited from local adjudication under 65 ILCS 5/1-2.2-5. The establishment of the Ordinance Enforcement Hearing Department does not preclude the Corporate Authorities of the Village from using any other legal system or other lawful method to enforce ordinances of the Village.

§39.03 USE OF THE ORDINANCE ENFORCEMENT HEARING DEPARTMENT AND/OR ADMINISTRATIVE ADJUDICATION SYSTEM OF ANOTHER MUNICIPALITY AUTHORIZED:

Notwithstanding anything contained in this Chapter to the contrary, with the prior approval of the Corporate Authorities of this Village, pursuant to an intergovernmental agreement, the ordinance enforcement department and/or administrative adjudication system of another municipality may be used by the Village to implement this Chapter and to serve in all respects as the Ordinance Enforcement Hearing Department and the Administrative Adjudication system of this Village as herein established. The establishment of the Port Barrington Ordinance Enforcement Hearing Department does not preclude the Corporate Authorities of the Village from using any other lawful method to enforce this Code and any other Village ordinances.

§39.04 JURISDICTION:

The Ordinance Enforcement Hearing Department shall have the authority and jurisdiction to adjudicate matters arising out of alleged violations of any provisions of this Code or other Village ordinance, including, but not limited to, building code violations that must be adjudicated, pursuant to Division 31.1 of Article 11 and/or pursuant to other provisions of the Illinois Municipal Code, and any offense under the Illinois Vehicle Code or similar local ordinance, except any offense that is based upon a traffic regulation governing the movement of vehicles and except for any offense or similar local ordinance which is a reportable offense under Section 6-204 of the Illinois Vehicle Code. The Ordinance Enforcement Hearing Department shall be administered in accordance with 65 Illinois Compiled Statutes 5/1-2.1-1 et seq., and 5/11-31.1-1, et seq.

§39.05 ORGANIZATION OF ORDINANCE ENFORCEMENT HEARING DEPARTMENT:

The Ordinance Enforcement Department shall be composed of a Hearing Officer, an Ordinance Enforcement Administrator, System Coordinator, and hearing room personnel. The Hearing Officer shall be appointed by the Village President, with the power and authority as hereinafter set forth. Such appointment shall be subject to the advice and consent of the Village Board of Trustees. Said appointment shall be terminable at the will of the Village President and the Board of Trustees. The Ordinance Enforcement Administrator, System Coordinator and other hearing room personnel shall be appointed or assigned by the Village President. Such appointments or assignments shall be terminable at the pleasure of the Village President.

§39.06 HEARING OFFICER:

- A. Either the Village President shall appoint a qualified attorney as the Village Administrative Hearing Officer (“the Hearing Officer”), with the advice and consent of the Board of Trustees, in accordance with 65 ILCS 5/1-2.2-1, et seq., and 65 ILCS 5/11-31.1-1, et seq. of the Illinois Municipal Code, or, in the alternative, an administrative hearing officer appointed by another municipality may also serve as the hearing officer for the Village pursuant to an intergovernmental agreement.
- B. A Hearing Officer must be an attorney licensed to practice law in the State of Illinois for at least three (3) years and shall have successfully completed a formal training program as required by the applicable Illinois statutes.
- C. The Hearing Officer shall preside over all adjudicatory hearings and shall have the following powers and duties:
 - (1) Hear testimony and accept evidence that is relevant to the existence of a Village Code violation;
 - (2) Preserve and authenticate the record of the hearing and all exhibits and evidence introduced at the hearing;
 - (3) Issue and sign a written finding, decision and order stating whether a Village Code violation exists;
 - (4) Impose penalties, sanctions, or such other relief consistent with applicable Village Code provisions and assessing costs upon finding a party liable for the charged violation, except however, that in no event shall the Hearing Officer have authority to impose a penalty of incarceration; and
 - (5) As part of the disposition of any notice of violation, the Hearing Officer shall be authorized to enter an Order of Supervision and, in addition to other applicable penalties and charges, may order the defendant to perform community service and/or to participate in remedial classes or counseling.
- D. Prior to conducting administrative adjudication proceedings under this Chapter, the Hearing Officer shall have successfully completed a formal training program which includes the following:
 - (1) Instruction on the rules of procedure of the administrative hearings over which the Hearing Officer shall preside;
 - (2) Orientation to each subject area of the code violations that he/she will adjudicate;
 - (3) Observation of administrative hearings; and
 - (4) Participation in hypothetical cases, including rules on evidence and issuing final orders.

§39.07 ORDINANCE ENFORCEMENT ADMINISTRATOR:

The Ordinance Enforcement Administrator is authorized and directed to:

- A. Operate and manage the system of administrative adjudication of Village ordinance violation as may be permitted by law and directed by ordinance.
- B. Adopt, distribute and process all notices as may be required under this Chapter or as may be reasonably required to carry out the purpose of this Chapter.

- C. Collect moneys paid as fines and/or penalties assessed after a final determination of liability.
- D. Certify copies of final determination of an ordinance violation adjudicated pursuant to this Chapter, and any factual reports verifying the final determination of any violation liability which was issued in accordance with this Chapter, the laws of the State of Illinois, including 625 ILCS 5/11-208.3, as from time to time amended.
- E. Certify reports to the Secretary of State concerning initiation of suspension of driving privileges in accordance with the provisions of this Chapter as hereinafter set forth, and those of 625 ILCS 5/6-306.5.
- F. Promulgate rules and regulations reasonably required to operate and maintain the administrative adjudication system hereby created.
- G. Collect unpaid fines and penalties through private collection agencies and pursuit of all post-judgment remedies available by current law.

§39.08 SYSTEM COORDINATOR:

The System Coordinator is hereby authorized and directed to operate and maintain the computer programs utilized in the Village's Administrative Adjudication System, including but not limited to:

- A. Input of violation notice information.
- B. Establishing court dates and notice dates.
- C. Record fine and penalty assessment and payments.
- D. Issue payment receipts.
- E. Issue succeeding notice of hearing dates and/or final determination of liability; issue notice of immobilization; issue notice of impending impoundment; issue notice of impending driver's license suspension, as directed by the Ordinance Enforcement Administrator in accordance with the provisions hereinafter set forth.
- F. Keep accurate records of appearances and non-appearances at administrative hearings, pleas entered, judgments entered, sanctions imposed, if any, fines and penalties assessed and paid.
- G. The Ordinance Enforcement Administrator may also serve as the System Coordinator.

§39.09 HEARING ROOM PERSONNEL:

Hearing room personnel shall be employees of the Village or employees of the municipality with which the Village has entered into an intergovernmental agreement for the provision of an administrative adjudication system and shall perform such services as directed by the Hearing Officer or by the Ordinance Enforcement Administrator and may be authorized and directed to:

- A. Maintain hearing room decorum.

- B. Have and execute authority as is granted to courtroom deputies of the Circuit Court.
- C. Perform such other duties or acts as may reasonably be required and as directed by the Hearing Officer or Ordinance Enforcement Administrator.

§39.10 ISSUANCE OF VIOLATION NOTICES:

- A. Notice of any ordinance violation shall be issued by the persons authorized under this Code and shall contain information adequate to inform the violator of the nature of the violation and shall be certified by the person issuing the violation notice and constitute prima facie evidence of the violation cited as hereinafter set forth.
- B. All sworn police personnel, or any community service officer serving the Village, any Village inspector, any Village building officer, and/or the Village President of the Village, or any designee of the Village President, as well as other specifically designated individuals authorized by the Village President.
- C. Any individual authorized by this Chapter to issue violation notices and who observes or 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 notice of violation thereof and shall make service thereof as is hereinafter set forth.

§39.11 VIOLATION NOTICE:

- A. The violation notice shall contain, but shall not be limited to, the following information:
 - 1. The name of the party violating the ordinance, if known.
 - 2. The date and time of the violation (date of issuance).
 - 3. The type and nature of the violation and the ordinance violated.
 - 4. Vehicle make and state registration number (if applicable).
 - 5. The names of any witnesses to the violation.
 - 6. The signature and identification number of the person issuing the notice.
 - 7. The date and location of the adjudicating hearing of ordinance violations which date shall be not less than 30 nor more than 40 days after the date of the violation notice, except that violations noticed under the Village's Automated Traffic Law Enforcement System, if any, shall have the hearing scheduled within 6 months of the date of the violation.
 - 8. The legal authority and jurisdiction under which the hearing is to be held and the penalties for failure to appear at the hearing.
 - 9. Notices issued under the provisions of the Village's Automated Traffic Law Enforcement System, if any, may, but shall not be required to, establish a hearing date therein and may provide instructions to the alleged violator for requesting a hearing and hearing date on the alleged violation according to a schedule provided consistent with the provisions of this Chapter.

- B. The correctness of facts contained in any violation notice shall be verified by the person issuing said notice by:
1. Signing his/her name to the notice at the time of issuance; or
 2. In the case of a notice produced by a computer device used by the Village's Automated Traffic Law Enforcement System, if any, by signing a single certificate, to be kept by the Ordinance Enforcement Administrator, attesting to the correctness of all notices produced by the device while under his/her control.
- C. The original or a facsimile of the violation notice shall be retained by the Ordinance Enforcement Administrator where a docket number shall be stamped on all copies and a hearing date noticed. The notice shall be kept as a record in the ordinary course of business by the Ordinance Enforcement Administrator. One copy of the violation notice shall be returned to the person issuing the notice that he or she may prepare evidence for presentation at the hearing on the date indicated. One copy of the violation shall be served by first class mail to the alleged violator along with a summons commanding the alleged violator to appear.
- D. Any violation notice issued, signed and served in accordance herewith, or a copy of the notice, shall be prima facie correct and shall be prima facie evidence of the correctness of the facts shown on the notice.
- E. Notices issued in accordance with a Village automated traffic law enforcement system, if any, which records violations of the Illinois Vehicle Code, 625 ILCS 5/11-306, disregarding a traffic control device or turn on red violation may be issued by the Village or its designated representative. Written notice of the violation shall be made to the registered owner or lessee of the vehicle by U.S. mail within 30 days after the Illinois Secretary of State makes notification of the identity of the registered owner or lessee of the vehicle, and in no event later than 90 days following the violation. The Village, or its designated representative, shall only be required to notify a lessee if the leasing company/lessor provides the lessee's name by an affidavit and a copy of the lease within 60 days, if the leasing company/lessor does not so respond within the time required, the leasing company/lessor may be found liable. If any notice to an address is returned as undeliverable, a second notice shall be sent to the last known address recorded in a United States Post Office approved database of the owner or lessee of the cited vehicle.
- F. An automated traffic law violation shall require a review of the associated recorded image by a Traffic Compliance Administrator provided by the municipality with which the Village has entered into an intergovernmental agreement for the provision of an administrative adjudication system, who shall inspect the image and determine whether the motor vehicle was being operated in violation of the Illinois Vehicle Code, or whether a lawful defense is visible. Upon determination that the recorded image captures a violation and that no defense applies, the notice of violation shall be served upon registered vehicle owner in the manner provided above. The Traffic Compliance Administrator shall retain a copy of all violation notices, recorded images and other correspondence mailed to the owner of the vehicle. Each notice of violation shall constitute evidence of the facts contained in the notice and is admissible in any proceeding alleging a violation of the above noted statutory and local provisions and shall be prima facie evidence of a violation, subject to rebuttal on the basis of the defenses established by law.
- G. Traffic Compliance Notice – Additional Notice Requirements. The notice of violation shall be issued by the Village or its designated authority and shall include the following information:

1. Name and address of the registered owner or lessee of the vehicle, as indicated by the records of the Secretary of State, or, if such information is outdated or unattainable, then the last known address recorded in the United States Post Office approved database.
2. The make (only if discernable) and registration number of the motor vehicle involved in the violation.
3. Violation charged.
4. The location where the violation occurred.
5. Date and time of violation.
6. A copy of recorded images.
7. The amount of civil penalty and the date by which the penalty should be paid (21 days from the date of issuance), if a hearing is not requested, and a statement that the payment of the fine shall operate as a final disposition of the violation.
8. A statement that a failure to pay the civil penalty by the date noted may result in an additional late fee being assessed against the owner or lessee.
9. The amount of late fee.
10. A statement that failure to pay by the date specified will result in a final determination of liability and may result in the suspension of driving privileges for the registered owner of the vehicle.
11. A statement that the recorded images constitute prima facie evidence of violation.
12. A statement that the person may elect to proceed by paying the fine or challenging the charge, by mail or by administrative hearing.
13. A statement of how an administrative hearing may be requested.

§39.12 REMEDIAL HEARING DATE MAY BE REQUIRED:

Notwithstanding any provisions of this Code to the contrary by which the pre-hearing settlement of a citation or notice to appear or a notice of violation (“initial charging document”) is authorized, any enforcement officer or agent of the Village may provide in the initial charging document that the appearance of the defendant at an administrative hearing or in court shall be required if such enforcement officer or agent of the Village reasonably believes, based upon one or more prior or continuing offenses of the same or similar nature or other circumstances, that the defendant’s appearance is necessary and should be required to assure that the defendant thereafter takes appropriate remedial measures to comply with the applicable provisions of this Code or of any other applicable ordinance(s) of the Village.

§39.13 SUBPOENAS:

At any time prior to the date set for the hearing, the Hearing Officer assigned to hear the violation, at the request of the authorized person issuing the violation notice, the Village Prosecutor, or the alleged violator, may issue subpoenas directing witnesses to appear and give testimony at the hearing.

§39.14 CONTINUANCES:

No continuances shall be authorized by the Hearing Officer in proceedings under this Chapter except in cases where a continuance is absolutely necessary to protect the rights of the alleged violator. Lack of a defendant's preparation shall not be grounds for granting a continuance. Inconvenience or nonattendance at work shall not be grounds for granting a continuance. Any continuance authorized by a Hearing Officer under this Chapter shall not exceed the next scheduled date for the Hearing Officer to hear Village cases.

§39.15 HEARING AND EVIDENCE:

- A. At the hearing, a Hearing Officer shall preside, shall hear testimony, and shall accept any evidence relevant to the existence or non-existence of a Village Code violation. The strict rules of evidence applicable to judicial proceedings shall not apply to hearings authorized by this Chapter.
- B. The case for the Village may be presented by an attorney designated by the Village President or by any other Village employees, except that the case for the Village shall not be presented by the Hearing Officer or by an employee or member of the Village's Ordinance Enforcement Hearing Department. The case for the alleged violator may be presented to the alleged violator, his or her attorney, or any other agent or representative of the defendant, except that any corporation or limited liability company shall be represented by an attorney.
- C. If on the date set for hearing the alleged violator or his or her attorney fails to appear, the Hearing Officer may find the alleged violator in default and shall proceed with the hearing and accept Plaintiff's evidence relevant to the existence of the alleged violation.
- D. Upon the Hearing Officer's finding that the alleged violator is in default and/or guilty of or liable for the alleged violation(s), the Ordinance Enforcement Administrator shall send, or cause to be sent, notice thereof by first class mail, postage prepaid, to the violator who received the notice of the alleged ordinance violation(s); or, in the case of a violation of the Village's Automated Traffic Control System, if any, such notice shall be sent to the registered owner or operator of the cited vehicle at the address as is recorded with the Secretary of State, and, in the case of a leased vehicle, shall also be sent to the lessee of the cited vehicle at the address last known to the lessor of the cited vehicle at the time of the lease. Service of notices sent in accordance herewith shall be complete as of the date of deposit in the United States mail.

§39.16 FINDINGS, DECISION AND ORDER:

- A. At the conclusion of the hearing, the Hearing Officer shall make a determination on the basis of the evidence presented at the hearing as to whether or not a Code violation exists. The determination shall be in writing and shall be designated as the Hearing Officer's findings, decision, and order. The findings, decision and order shall include:
 - 1. The Hearing Officer's findings of fact;
 - 2. A decision of whether or not a Code violation exists based upon the findings of fact; and
 - 3. An order that states the sanction or dismisses the case if a violation is not proven.

- B. Except as otherwise provided by this Code or Illinois statutes, a fine or monetary sanction for a violation heard under the provisions of this Chapter shall not be less than \$100.00 and shall not exceed \$750.00 for each and every violation, and each day each violation exists or continues shall constitute a separate offense.
- C. As part of the disposition of any notice of violation, the Hearing Officer shall be authorized to enter an Order of Supervision and, in addition to other applicable penalties and charges, may order the defendant to perform community service and/or to participate in remedial classes or counseling.
- D. A copy of the Hearing Officer's findings, decision, and order shall be served on the violator within 5 days after it is issued. Service of the findings, decision and order shall be by first class mail as provided for instituting Code hearing proceedings. Payment of any penalty or fine and the disposition of fine money shall be in the same manner as set forth in the Village Code.

§39.17 DEBT DUE VILLAGE:

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

§39.18 ENFORCEMENT IN THE CIRCUIT COURT:

After expiration of the period within which judicial review under the Administrative Review Law may be sought for a final determination of the Code violation, upon authorization of the Corporate Authorities of the Village, the Village Attorney may commence a proceeding in the Twenty-Second Judicial Circuit Court of McHenry County, Illinois for purpose of obtaining a judgment on the findings, decision, and order. Nothing in this section shall prevent the Village from consolidating multiple findings, decisions, and orders against a person in such a proceeding. Upon commencement of the action, the Village shall file a certified copy of the findings, decision, and order, which shall be accompanied by a certification that recites facts sufficient to show that the findings, decision, and order was issued in accordance with State law and the applicable Village ordinance. Service of the summons and a copy of the petition may be by any method provided for by Section 2-203 of the Code of Civil Procedure or by certified mail, return receipt requested, provided that the total amount of fines, other sanctions, and costs imposed by the findings, decision, and order in such case does not exceed \$2,500.00. If the Court is satisfied that the findings, decision, and order was entered in accordance with the requirements of State law and the applicable Village ordinance and that the violator had an opportunity for a hearing and for judicial review:

- A. The Court shall render judgment in favor of the Village and against the violator for the amount indicated in the findings, decision and order, plus costs. The judgment shall have the same effect and may be enforced in the same manner as other judgments for the recovery of money.
- B. The Court may also issue any other orders that are requested by the Village to enforce the order of the Hearing Officer to correct a Code violation.

§39.19 DRIVER’S LICENSE SUSPENSION:

A notice of impending suspension of a person’s driver’s license shall be sent to any violator determined to be liable for the payment of any fine or penalty that remains due and owing on 10 or more vehicular standing or parking regulation violations:

- A. The notice shall state that the failure to pay the fine or penalty owing within 45 days of the date of the notice will result in the Village notifying the Secretary of State that the person is eligible for initiation of suspension proceedings under 625 ILCS 5/6-306.5, incorporated herein by reference.
- B. The notice of impending driver’s license suspension shall be sent by first class mail, postage prepaid, to the address recorded with the Secretary of State.
- C. A warning that failure to pay the fine and any penalty due and owing the Village within the time specified may result in proceeding with collection procedures in the same manner as a judgment entered by any court of competent jurisdiction.
- D. A warning that the vehicle owned by the person and located within the Village may be immobilized and impounded for failure to pay fines or penalties for 10 or more vehicular standing or parking regulation violations.

§39.20 JUDICIAL REVIEW:

The findings, decision, and order of the Hearing Officer shall be subject to review in the Twenty-Second Judicial Circuit Court of McHenry County, Illinois. The provisions of the Illinois Administrative Review Law, as amended, and the rules adopted pursuant thereto, as amended, shall apply to and govern every action for the judicial review of the findings, decision, and order of the Hearing Officer under this Chapter.

§39.21 GENERAL FINE FOR ANY VIOLATION OTHER THAN THOSE CONCERNING STANDING, PARKING OR CONDITION OF VEHICLES:

Under this Chapter for violation of any Village ordinance other than a violation concerning the standing, parking or condition of vehicles, and other than for violation of regulations designating and regulating spaces for handicapped parking, fines and penalties shall be as set forth in Section 10.99 of this Village Code, as amended from time to time by the Corporate Authorities of the Village.

§39.22 FINES FOR VIOLATIONS CONCERNING STANDING, PARKING OR CONDITION OF VEHICLES OTHER THAN HANDICAPPED PARKING:

Under this Chapter for violation of any provision of an ordinance concerning the standing, parking or condition of vehicles; or any compliance violation; or, violation of any other Village ordinance regulating, restricting or prohibiting the standing or parking of motor vehicles along the streets, by-ways, alleyways, regulated parking lots or such other locations as may be control by off-street parking agreements, located within the geographical boundaries of this Village, other than for handicapped parking, the fine shall be as set forth in Section 10.99 of this Village Code, as amended from time to time by the Corporate Authorities of the Village.

§39.23 FINES FOR VIOLATIONS OF HANDICAPPED PARKING RESTRICTIONS:

For violation of any Village ordinance regulating, restricting or prohibiting the standing or parking of motor vehicles specifically designated for handicapped parking, the fine shall be the maximum fine established by the Illinois Motor Vehicle Code regulating handicapped parking areas.

§39.24 FINES FOR AUTOMATED TRAFFIC LAW ENFORCEMENT SYSTEM VIOLATION:

A person violating 625 ILCS 5/11-306, or any substantially similar Village ordinance where such violation is enforced by the Village's use of an automated traffic law enforcement system, if any, the fine shall be \$100.00 for each offense. Failure to pay the fine within 14 days of issuance of a notice of final determination shall result in the imposition of an additional \$100.00 late payment fine.

(Ord. 2015-03-01, passed 03-18-2015)