ORDINANCE NO. 2018-13

AN ORDINANCE AMENDING CHAPTER 2 ADMINISTRATION, ARTICLE III OFFICERS AND EMPLOYEES OF THE CODE OF ORDINANCES OF THE VILLAGE OF CHERRY VALLEY, ILLINOIS TO ESTABLISH A NEW DIVISION 13 CODE ENFORCEMENT HEARING DIVISION AND TO ESTABLISH PROCEDURES AND PENALTIES FOR THE ENFORCEMENT OF CERTAIN CATEGORIES OF CODE VIOLATIONS AND TO ESTABLISH THE POSITION OF HEARING OFFICER AS WELL AS AMENDING SECTION 1.8 (A) GENERAL PENALTY FOR VIOLATION OF CODE; CONTINUING VIOLATIONS; JUDICIAL ENFORCEMENT OF CODE UPON CONVICTION

WHEREAS, certain sections of the Village of Cherry Valley, Winnebago and Boone County, Illinois ("Village") Code of Ordinances govern buildings and building regulations; and

WHEREAS, certain sections of the Village Code of Ordinances govern the usage of motor vehicles upon Village controlled streets and highways, and the operation and storage of motor vehicles thereupon and adjacent to; and

WHEREAS, certain sections of the Village Code of Ordinances provide for the towing and enforcement of traffic and parking regulations which are not inconsistent with the State of Illinois Vehicle Code as well as for the imposition of administrative fees in relation to the towing, impounding, and storage of vehicles involved in certain offenses committed within the Village; and

WHEREAS, the Village finds that there is a need for the enforcement and adjudication of its Village Code of Ordinances, for violations thereof within the limits of the Village of Cherry Valley; and

WHEREAS, the Village has determined that it is in the best interest of the Village and its citizens that it enact a process for the administrative adjudication and resolution of code violations.

NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE VILLAGE OF CHERRY VALLEY, BOONE AND WINNEBAGO COUNTY, ILLINOIS, AS FOLLOWS:

SECTION 1. The above recitals are incorporated herein and made a part hereof.

SECTION 2. That Article III of the Code of Ordinances of the Village of Cherry Valley, Illinois is hereby amended to include a new Division 13 which shall read as follows:
"Division 13. Administrative Enforcement

Code Hearing Division

Section §2-423 Definitions.

As used in this Chapter, unless the context requires otherwise, the following terms are defined below:

Code Inspector: A Village employee, or agent of the Village, whose duties include the inspection or examination of structures or property in the Village to determine if code violations exist.

Property Owner: The legal or beneficial owner of a property with or without a structure appurtenant thereto.

Code: Any Village Ordinance, law, housing, building code or zoning ordinance that establishes construction, plumbing, heating, electrical, fire prevention, sanitation or other health and safety standards that are applicable to structures or such ordinance that requires, after notice, the cutting of weeds, the removal of garbage and debris, the removal of inoperable motor vehicles, or the abatement of nuisances from private property in the Village; and Village Ordinance, law or code that governs or regulates the standing, parking or conditions of vehicles; and any Village Ordinance, law or code that governs or regulates the imposition of administrative fees in relation to the towing, impounding, and storage of vehicles involved in certain offenses committed within the Village. “Code” as used in this Chapter shall also mean any other Village Ordinance or law that expressly allows for, or provides for, adjudication or hearing before an Administrative Hearing Officer.

Administrative Hearing Officer: A Village employee or an officer or agent of the Village, other than a Code Inspector or Law Enforcement Officer, whose duty it is to:

A. Preside at an administrative hearing called to determine whether or not a code violation exists.

B. Hear testimony and accept evidence from the Code Inspector, Law Enforcement Officer, the Property Owner, and all interested parties relative to the existence of a code violation;

C. Preserve and authenticate the transcript and record of the hearing and all exhibits and evidence introduced at the hearing;

D. Issue and sign a written finding, decision, and order stating whether a code violation exists.
Section §2-424  Code Hearing Division Established.

The Village hereby adopts: 65 ILCS 5/11-31.1 et seq.; 65 ILCS 5/1-2.2-1 et seq.; and all amendments and modifications thereto and establishes a Code Hearing Division, in conjunction with the Village Attorney acting as its legal department. The function of the Code Hearing Division is to expedite the prosecution and correction of code violations in the manner set forth in this Chapter.

Section §2-425 Hearing Procedures not exclusive.

This Article does not preclude the Village from using other methods to enforce the provisions of its Code, or to enter into intergovernmental agreements as authorized under the Illinois Municipal Code, for the enforcement of such provisions of its Code by other municipal bodies or agencies.

Section §2-426 Instituting Code Hearing Proceedings.

A. When a Code Inspector finds a code violation while inspecting a property or structure, s/he shall note the violation on a multiple copy violation notice and report form indicating the name and address of the Property Owner, the type and nature of the violation, the date and time the violation was observed, the names of witnesses to the violation, and the address of the structure or property where the violation is observed.

B. The violation report form shall be forwarded by the Code Inspector to the Code Hearing Division where a docket number shall be stamped on all copies of the report and a hearing date noted in the blank spaces provided for that purpose on the form. The hearing date shall not be less than thirty (30) nor more than forty (40) days after the violation is reported by the Code Inspector.

C. One copy of the violation report form shall be maintained in the files of the Code Hearing Division and shall be part of the record of hearing; one copy of the report form shall be returned to the Code Inspector so that s/he may prepare evidence of the Code violation for presentation at the hearing on the date indicated; and one copy of the report form shall be served by first class mail on the Property Owner, along with a Summons commanding the Property Owner to appear at the hearing. If the name of the Property Owner cannot be ascertained, or if service on the Owner cannot be made by mail, service may be made on the Owner in person or by posting or nailing a copy of the violation report form on the front door of the structure where the violation is found or otherwise conspicuously posting Notice on the property shall not be less than twenty (20) days before the hearing is scheduled.
Section §2-427 Subpoenas; Default.

At any time prior to the hearing date the Administrative Hearing Officer assigned to hear the case may, at the request of the Code Inspector, or the attorney for the Village, or the Property Owner or his attorney, issue Subpoenas commanding witnesses to appear and give testimony at the hearing. If, on the date set for the hearing the Property Owner or his attorney fails to appear, the Administrative Hearing Officer may find the Property Owner in default and shall proceed with the hearing and accept evidence to the existence of a code violation.

Section §2-428 Continuances, Representation at Code Hearings.

No continuances shall be authorized by the Administrative Hearing Officer in proceedings under this Article except in cases where a continuance is absolutely necessary to protect the rights of the Property Owner. Lack of preparation shall not be grounds for a continuance. Any continuance authorized by a Administrative Hearing Officer under this Article shall not exceed twenty-five (25) days. The case for the Village may be presented by the Code Inspector, by any other Village employee, or by an attorney designated by the Village. However, in no event shall the case for the Village be presented by an employee of the Code Hearing Division. The case for the Property Owner may be presented by the Property Owner, his attorney, or any other agent or representative.

Section §2-429 Hearings; Evidence.

At the hearing, an Administrative Hearing Officer shall preside and shall hear testimony and accept any evidence relative to the existence or non-existence of a code violation. The strict rules of evidence applicable to judicial proceedings shall not apply to hearings authorized by this Chapter.

Section §2-430 Evictions; Rights of Occupants.

No action for eviction, abatement of a nuisance, forcible entry and detainer or other similar proceedings shall be instituted or threatened against an occupant of a dwelling solely because such occupant agrees to testify or testifies at a code violation hearing.

Section §2-431 Defenses to Building Code Violations.

It shall be a defense to a building code violation being adjudicated under the authority of 65 ILCS 5/31.1-1 et seq. of the Illinois Municipal Code, if the Property Owner, his attorney, or any other agent or representative proves to the Administrative Hearing Officer’s satisfaction that:

A. The code violation alleged in the notice does not in fact exist, or at the time of the hearing the violation has been remedied or removed;
B. The code violation has been caused by the current occupant, and that, in spite of reasonable attempts by the Owner to maintain the property free of such violations, the current occupants continue to cause the violations;

C. An occupant or resident of the property has refused entry to the Owner or his agent to all or a part of the property for the purpose of correcting the code violation.

Section §2-432 Findings, Decisions, Order.

At the conclusion of the hearing, the Administrative Hearing Officer shall make a determination on the basis of evidence presented at the hearing whether or not a code violation exists. The determination shall be in writing and shall be designated as Findings, Decision & Order. The Findings, Decision and Order shall include the Administrative Hearing Officer’s findings of facts, a decision whether or not a code violation exists based upon the findings of fact, and an Order ordering the owner to correct the violation or dismissing the case in the event a violation is not proved. If a code violation is proved, the Order may also impose the sanctions that are provided in the code for the violation proved. A copy of the Findings, Decision and Order shall be served on the Property Owner within five (5) days after they are issued; service shall be in the same manner as the Report form and Summons are served pursuant to Section 2-454(c) above. Payment of any penalty or fine and the disposition of fine money shall be in the same manner as set forth in the Code.

Section §2-433 Review under Administrative Law.

The Findings, Decision and Order of the Administrative Hearing Officer shall be subject to review in the Seventeenth Judicial Circuit Court, and the provisions of the administrative review law, and all amendments and modifications thereto, and the rules adopted pursuant thereto are adopted and shall apply to and covering every action for the judicial review of the final Findings, Decision and Order of an Administrative Hearing Officer under this Chapter.

Section §2-434 Judgment on Findings, Decision, Order.

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 administrative review law shall be a debt due and owing the Village, and as such may be collected in accordance with applicable law.

B. 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, the Village may commence a proceeding within the Seventeenth Judicial Circuit Court for purposes of obtaining a judgment on the Findings, Decision and Order. The Village may consolidate multiple
Findings, Decisions and Orders against a person in such proceedings. 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 this Article and the applicable State Laws. Service of the Summons and a copy of the Petition may be by any method provided 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 or costs imposed by the Findings, Decision and Order does not exceed Two Thousand Five Hundred Dollars ($2,500.00). If the Court is satisfied that the Findings, Decision & Order were entered in accordance with the requirements of this Article and the applicable State law, and that the Property Owner had an opportunity for a hearing under this article and for judicial review as provided in this article, the Court shall render judgment in favor of the Village and against the Property Owner for the amount indicated in the Findings, Decision and Order plus costs. Such judgment shall have the same effect and may be enforced in the same manner as other judgments for the recovery of money and the Court may also issue such other Orders and Injunctions as are requested by the Village to enforce the Order of the Administrative Hearing Officer to correct a violation.

Section §2-435 Sanctions applicable to Owner; property.

The order to correct a code violation and the sanctions imposed by the Village as the result of a finding of a code violation under this article shall attach to the property as well as to the Owner of the Property, so that a Finding of a Code Violation against one owner cannot be avoided by conveying or transferring the property to another owner. Any subsequent transferee or owner of the property takes subject to the Findings, Decision and Order of an Administrative Hearing Officer under this Chapter.

Section §2-436 Administrative Fee.

In addition to any fines or other costs of the proceeding that may be imposed by the Administrative Hearing Officer, upon a finding of a violation of the Village’s Code of Ordinances the Administrative Hearing Officer may order the imposition of an administrative fee in the amount of $500.00, which shall be credited towards the costs of the proceedings.

Section §2-437 Administrative Hearing Officer.

“(A) Creation of Position. The position of Administrative Hearing Officer is hereby created to hear and adjudicate allegations of code violations brought by the Village and to impose fines, costs and penalties for such violations as are proven. The Administrative Hearing Officer shall be appointed by the Village President and the Village President hereby is authorized and empowered to appoint, with the advice and consent of the Village Board of Trustees, an individual or firm to provide the services of Administrative
Hearing Officer as an independent contractor on a part-time basis with such individual or firm to serve at the pleasure of the Village President. The position of Administrative Hearing Officer shall not be a civil service position and the Village President shall have the authority to remove, replace or reappoint such individual or firm from time to time as he, in his sole discretion, may choose with any new appointment subject to the advice and consent of the Village Board of Trustees.

(B) Qualifications of Hearing Officer. Every hearing officer must be an attorney licensed to practice law in the State of Illinois for at least 3 years. Prior to conducting any proceedings, the hearing officers shall successfully complete a formal training program that includes the following:

1. instruction on the rules of procedure of the hearing that they will conduct;
2. orientation to each subject area of the code violations that they will administer;
3. observation of administrative hearings;
4. participation in hypothetical cases, including rules on evidence and issuing final orders.

SECTION 3. Chapter 1 General Provisions, Section 1.8(A) of the Code of Ordinances of the Village of Cherry Valley, Illinois shall be amended to read as follows (new language in **bold**,
language to be removed shown as strikethrough):

(a) Whenever in this Code or in any ordinance of the Village any *Where an act or omission* is prohibited or is made or declared to be unlawful or an offense, or whenever in such Code or ordinance the doing of any act is required or the failure to do any act is declared to be unlawful in this Code, and no penalty is otherwise provided, the offender shall be fined not more than the amount set forth by the statutes of the State of Illinois as the maximum amount authorized for a municipality for each such act or omission, where no specific penalty is provided therefore, the violation of any such provision of this Code or any ordinance shall be a misdemeanor and punished by a fine not exceeding $750.00. Each day any violation of any provision of this Code or any ordinance shall continue shall constitute a not less than $100.00 and not more than $750.00 for each offense, such amount being in addition to any court costs and/or attorneys' fees applied by the court or Administrative Hearing Officer. A separate offense

(b) A penalty imposed for violation of an ordinance may include, or consist of, a requirement *shall be deemed committed on each day* that the defendant perform some reasonable public service work, such as, but not limited to, the picking up of litter in public parks or along public highways or the maintenance of public facilities. A violation occurs or continues. Notwithstanding the foregoing, the minimum and maximum fines for violations of the Illinois Vehicle Code (625 ILCS 5/1-100 et seq.) as adopted by section 70-1 and 70-10 of this Code shall be as set forth in the Illinois Vehicle Code or other relevant state statute.

(b) Whenever in this Code a minimum but not a maximum fine or penalty is imposed, the court or Administrative Hearing Officer may in its discretion fine
the offender any sum exceeding the minimum fine or penalty so imposed but not exceeding the amount set forth by the statutes of the State of Illinois as the maximum amount authorized for a municipality, such amount being in addition to any court cost that is applied by the court or Administrative Hearing Officer.

(c) This section and any section of this Code imposing the penalty or providing for an administrative hearing or procedure shall not be construed to preclude the Village from pursuing other remedies.

SECTION 4. Any portion of any other ordinance in conflict with this ordinance is hereby expressly repealed to the extent of the conflict.

SECTION 5. All other portions of the Code of Ordinances of the Village of Cherry Valley shall remain in full force and effect.

SECTION 6. 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 AND APPROVED by the President and Board of Trustees of the Village of Cherry Valley this 27TH day of August, 2018.

PASSED UPON MOTION BY: NANCY BELT

SECONDED BY: SALLY HOLLEMBEAK

BY ROLL CALL VOTE THIS 27TH DAY OF AUGUST, 2018 AS FOLLOWS:

VOTING “AYE”: STEPHEN APPELL, NANCY BELT, JEFF FUSTIN, SALLY HOLLEMBEAK, JEFF O’HARA, DAVID SCHROEDER

VOTING “NAY”: NONE

ABSENT, ABSTAIN, OTHER: NONE

APPROVED AUGUST 27, 2018:

JIM E. CLAESSEN, VILLAGE PRESIDENT

ATTEST:

KATHY TRIMBLE, VILLAGE CLERK