

ORDINANCE NO. 2010-_____

AN ORDINANCE AMENDING THE MUNICIPAL CODE OF THE
VILLAGE OF ELMWOOD PARK, COOK COUNTY, ILLINOIS,
BY AMENDING CHAPTER 41B, ENTITLED "RENTAL RESIDENTIAL
PROPERTY," AND BY ADDING THERETO CHAPTERS 41C, ENTITLED
"CRIME FREE RENTAL RESIDENTIAL HOUSING," 41D, ENTITLED
"CHRONIC NUISANCE PROPERTY/ABATEMENT"

PASSED AND APPROVED BY
THE PRESIDENT AND BOARD OF TRUSTEES
THE ____ DAY OF OCTOBER, 2010

Published in Pamphlet form by
Authority of the Corporate
Authorities of Elmwood Park, Illinois
the ____ day of October, 2010

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AN ORDINANCE AMENDING THE MUNICIPAL CODE OF THE VILLAGE OF ELMWOOD PARK, COOK COUNTY, ILLINOIS, BY AMENDING CHAPTER 41B, ENTITLED “RENTAL RESIDENTIAL PROPERTY,” AND BY ADDING THERETO CHAPTERS 41C, ENTITLED “CRIME FREE RENTAL RESIDENTIAL HOUSING,” 41D, ENTITLED “CHRONIC NUISANCE PROPERTY/ABATEMENT”

WHEREAS, the Village of Elmwood Park is a home rule unit of government as provided by the provisions of Article VII, Section 6 of the Illinois Constitution of 1970; and

WHEREAS, as a home rule unit of government, it is expressly empowered to perform any function pertaining to its government and affairs, including, but not limited to, the power to regulate for the protection of the public health, safety, morals and welfare; and

WHEREAS, the corporate authorities of the Village of Elmwood Park have previously approved legislation codified as Chapter 41B, entitled “Rental Residential Property,” of the Municipal Code of the Village of Elmwood Park; and

WHEREAS, the corporate authorities of the Village of Elmwood Park have determined that it is proper, desirable and necessary in order to protect, preserve and promote public health, safety and welfare within the Village of Elmwood Park to further amend Chapter 41B, entitled “Rental Residential Property”; and

WHEREAS, the corporate authorities of the Village of Elmwood Park have further determined that it is desirable, necessary and in the best interest of the Village of Elmwood Park in order to protect, preserve and promote public health, safety and welfare to add Sections 41C, entitled “Crime Free Rental Residential Housing,” and 41D, entitled “Chronic Nuisance Property/Abatement,” to the Municipal Code of the Village of Elmwood Park.

NOW, THEREFORE, BE IT ORDAINED by the President and the Board of Trustees of the Village of Elmwood Park, Cook County, Illinois, as follows:

Section 1. The facts and statements contained in the preambles to this Ordinance are found to be true and correct and hereby adopted as the findings of the corporate authorities of the Village of Elmwood Park as if fully recited herein.

Section 2. The Municipal Code of Ordinances of the Village of Elmwood Park, as amended, is further amended by amending Chapter 41B, entitled “Rental Residential Property,” to read as follows:

“CHAPTER 41B
RENTAL RESIDENTIAL PROPERTY”

Sec. 41B-1. Purpose:

It is hereby declared that the purpose of this Chapter is to provide for the licensing of rental residential property in order to protect, preserve and promote public health, safety and welfare.

Sec. 41B-2 Inspection Rights and Penalties:

This Chapter shall not be construed to impede in any way the right of the Village to inspect any property pursuant to any other provisions of this Code, nor to seek penalties for violations of other provisions of this Code.

Sec. 41B-3. Definitions:

For the purposes of this Chapter, the following words and phrases shall have the meanings respectively ascribed to them by this Section.

Multiple-Family Rental Residential Property: Rental residential property containing two (2) or more dwelling units.

Premises: A lot, plot or parcel of land, including the interior and exterior of any structures thereon.

Rental Residential Property: Residential structures or dwelling units intended to be rented or leased, including single-family detached structures containing only one dwelling unit, condominium units, townhouse units, and multiple-family residential structures.

Words or phrases as used in this Chapter and not herein defined shall be defined as provided by the International Property Maintenance Code, 2003, and International Building Code, 2003, as amended.

Sec. 41B-4. License Required:

(a) It shall be unlawful for any person, firm, partnership, association, corporation, or other legal entity to operate, maintain or offer to rent within the Village any Rental Residential Property, as defined in Section 41B-3 herein, whether vacant or occupied, without first having obtained and maintained a current license, as provided in this Chapter.

(b) It shall be unlawful for any person to occupy a Rental Residential Property, as defined in Section 41B-3 herein, or for any owner to allow anyone to occupy a Rental Residential Property, as defined in Section 41B-3 herein, which is not currently licensed, as provided in this Chapter.

(c) This Chapter shall not apply to the following structures:

(1) Hotels, motels, and other structures which rent rooms to occupants if such occupancy is transient only;

(2) Dwellings, buildings, structures and uses licensed and inspected by the state or federal government, including, but not limited to, nursing homes, retirement communities and rest homes; and

(3) Dwellings, buildings and structures used or owned by other governmental agencies and public housing authorities and otherwise inspected by them for compliance.

Sec. 41B-5. License Application and Requirements:

(a) Each applicant for a license to maintain a Rental Residential Property for the purpose of renting it to others shall file a written application with the Code Administration Department, stating:

(1) The full legal name, address, and home and work telephone number of every owner;

(2) For Rental Residential Property is held in a trust, the name, address and phone number of the trustee and a person with the power of direction regarding such trust shall be provided;

(3) The address of the Rental Residential Property;

(4) The number of dwelling units if the Rental Residential Property is a Multiple-Family Rental Residential Property;

(5) The name, address and phone number of any management company retained as property agent for the property;

(6) The name, address and twenty-four (24) hour phone number or phone numbers of a responsible person who, in emergency situations, will be available on a twenty-four (24)

hour basis and who has the authority to make repairs to the Rental Residential Property as needed, whether or not on an emergency basis; and

(7) If the property is a Multiple-Family Rental Residential Property, the square footage of the Property designated for living and sleeping purposes, including individual room sizes as provided by the Village's property maintenance and/or dwelling code(s), as amended.

(b) Each application for a new rental residential license or a renewal of an existing rental residential license shall be accompanied by a fee of twenty-five dollars (\$25.00), provided, however, for single family detached structures, townhouses, condominium units, or for Multiple-Family Rental Residential structures in which one or more of the dwelling units is owner-occupied, the license fee shall be ten dollars (\$10.00). All such fees shall be payable at the Code Administration Department.

(c) All license fees shall be due and payable on or before July 1 of each calendar year. All licenses shall expire on June 30 of each calendar year. License fees that remain unpaid after June 30, shall be assessed a late payment fee of twenty-five dollars (\$25.00), in addition to the license fee.

(d) Whenever there is a change in the ownership of a Rental Residential Property or the owner's property agent or Manager, the owner(s) shall, within thirty (30) days of such change, file an updated written notice with the Code Administration Department indicating such changes.

(e) A license for a Rental Residential Property cannot be transferred to another Rental Residential Property, nor to a succeeding owner.

Sec. 41B-6. Enforcement:

It shall be the duty of the Code Administration Department to enforce the provisions of this Chapter as authorized by this Code and as amended from time to time by the Village.

Sec. 41B-7. Violations:

Failure of the owner or owners of record of Rental Residential Property to license such property with the Village shall constitute a violation of this Chapter.

Sec. 41B-8. Owner Responsibility:

The owner(s) of a Rental Residential Property shall inform each tenant, in writing, prior to occupancy, of the maximum number of persons, per dwelling unit, allowable by the Village property maintenance and/or dwelling code, as amended. The maximum number of persons per dwelling shall be determined by a Village inspector, in accordance with this Code and any and all adopted codes.

Sec. 41B-9. Penalty for Violation:

Any person, firm or corporation violating any of the provisions of this Chapter, in addition to other legal and equitable remedies available to the Village shall, upon conviction or finding of liable, whether by a court of competent jurisdiction or administrative hearing officer thereof, be subject to a fine of not less than fifty dollars (\$50.00) nor more than seven hundred fifty dollars (\$750.00) for each violation. Each day during which a violation of this Chapter continues or is permitted to exist shall be considered a separate and distinct offense.

Sec. 41B-10. Effective Date:

The provisions of this Chapter shall be in full force and effect from and after January 1, 2011.

Section 3. The Municipal Code of Ordinances of the Village of Elmwood Park, as amended, is further amended by adding Chapter 41C, entitled “Crime Free Rental Residential Property,” to read as follows:

“CHAPTER 41C
CRIME FREE RENTAL RESIDENTIAL PROPERTY”

There is hereby created within the Village a Crime Free Rental Residential Housing Program for the express purpose of deterring crime and maintaining a high quality of life and preserving peace and tranquility within and surrounding rental residential housing within the Village.

- (a) The provisions of this Section 41C shall apply to all owners and managers of rental residential housing within the Village regulated by Chapter 41B of this Code.
- (b) The Crime Free Rental Residential Housing Program shall be operated and administered by the Village of Elmwood Park Police Department with the assistance of the Village of Elmwood Park Code Administration Department.
- (c) All applicants for a rental residential license shall, within six (6) months of applying for a rental residential license or within six (6) months of applying for a rental residential license renewal, shall attend the complete Village of Elmwood Park Crime Free Rental Residential Housing Program at least once every three (3) years. The provisions of this Section shall not apply to owners of Rental Residential Property where the lessee(s) of the rental property are related by blood or marriage to the property owner.
- (d) **Crime Free Lease Addendum Provisions.** All written leases for multiple-family rental residential premises containing six (6) or more dwelling units shall be in writing and shall contain a crime free lease addendum or have a clause or

provision in the lease similar to a crime free lease addendum. The crime free lease addendum shall be approved by the Crime Free Rental Residential Housing Program Coordinator. The Crime Free Rental Residential Housing Program Coordinator, who shall be appointed by the Chief of Police, shall provide, at no cost to the lessor, samples of crime free lease addenda and shall review any clauses or addenda to determine the sufficiency of the clause or crime free lease addendum. For purposes of this section, a crime free lease addendum is a provision which makes it a material violation of a lease for a lessee, an occupant of the premises, a guest of the lessee or for any other party residing or present on the premises of a Rental Residential Property with the permission or consent of the owner or person in control of the property to engage in, facilitate or conspire to commit or commit any criminal activity or offense detailed in Section 41D of this Code while on the leased premises or any common area of the leased premises. All crime free lease addenda shall provide that commission of any criminal offenses set forth in Section 41D of this Code shall be a material breach of the terms and covenants of the lease and shall further provide the lessor or lessor's agent with authority to evict the lessee in accordance with the provisions of the Illinois Forcible Entry and Detainer Act, 735 ILCS 5/9-101 *et seq.*, if it is established by a preponderance of the evidence, either by a court of competent jurisdiction or administrative hearing officer, that a violation of the crime free lease addendum has occurred.

- (e) **Criminal Background Checks.** Unless otherwise required by Chapter 41D of this Code, owners, managers, and/or leasing agents shall not be required to perform or require lessees to submit to criminal background checks. It is, however, recommended that all prospective lessees of Rental Residential Property be required to submit to criminal background checks prior to entering into a lease agreement.

Section 4. The Municipal Code of Ordinances of the Village of Elmwood Park, as amended, is further amended by adding Chapter 41D, entitled "Chronic Nuisance Property/Abatement," to read as follows:

"CHAPTER 41D
CHRONIC NUISANCE PROPERTY/ABATEMENT"

Section 41D. Chronic Nuisance Property/Abatement.

41D-1. Definitions.

The following words, terms and phrases, when used in this Section, shall have the meaning(s) ascribed to them in this Section, except where the context clearly indicates a different meaning:

- (a) **Chief of Police** means the Chief of Police of the Village of Elmwood Park or his/her designee.
- (b) **Chronic nuisance property** means any property located within the Village upon which three (3) or more nuisance activities within a six (6) month period have occurred as a result of any three (3) separate factual events that have been independently investigated and verified by any law enforcement agency or Code Administration Department or three (3) or more citations or criminal complaints for offenses defined as nuisance activity within a six (6) month period, which have been adjudicated and findings of liable or findings of guilty have been entered either by the Village Of Elmwood Park Administrative Hearing Officer or by a court of competent jurisdiction.
- (c) **Control** means the ability to regulate, restrain, dominate, counteract, or govern conduct that occurs on that property either directly or by intervention of any governmental authority.
- (d) **Nuisance activities** mean any of the following building code, violations, property maintenance code violations, ordinance violations, or criminal activities, behavior or conduct, as defined by state law or similar provisions of the Village Code of the Village of Elmwood Park:
 - (1) Disorderly conduct as defined in 720 ILCS 5/26-1;
 - (2) Unlawful use of weapons as defined in 720 ILCS 5/24-1 *et seq.*;
 - (3) Mob action as defined in 720 ILCS 5/25-1;
 - (4) Discharge of a firearm as defined in 720 ILCS 5/24-1.2 and 1.5;
 - (5) Gambling as defined by 720 ILCS 5/28-1;
 - (6) Possession, manufacture, or delivery of controlled substances as defined by 720 ILCS 570/401 *et seq.*;
 - (7) Public indecency as defined by 720 ILCS 5/11-9;
 - (8) Assault as defined in 720 ILCS 5/12-1;
 - (9) Aggravated assault as defined in 720 ILCS 5/12-2;
 - (10) Battery as defined in 720 ILCS 5/12-3;
 - (11) Aggravated battery as defined in 720 ILCS 5/12-4;
 - (12) Reckless conduct as defined in 720 ILCS 5/12-5;

- (13) Hate crime as defined in 720 ILCS 5/12-7.1;
 - (14) Sexual abuse or related offense as defined in 720 ILCS 5/12-15 *et seq.*;
 - (15) Prostitution as defined in 720 ILCS 5/11-14 *et seq.*;
 - (16) Criminal damage to property as defined in 720 ILCS 5/21-1 *et seq.*;
 - (17) Possession, cultivation, manufacture, or delivery of cannabis as defined in 720 ILCS 550/1 *et seq.*;
 - (18) Illegal consumption or possession of alcohol by a person under the age of twenty-one (21) years as defined in 235 ILCS 5/1 *et seq.*;
 - (19) Criminal housing management as defined in 720 ILCS 5/12-5.1;
 - (20) Nuisance as defined in 720 ILCS 5/37-1;
 - (21) Three (3) or more separate violations of the Village's Property Maintenance Code which continued after a disposition of a finding of guilty by the Circuit Court of Cook County for those violations, or similar finding of liability by the Village Administrative Hearing Officer.
- (e) **Owner** means any person, partnership, land trust, or corporation having any legal or equitable interest in the property. Owner includes, but is not limited to:
- (1) A mortgagee in possession in whom is vested:
 - a. All or part of the legal title to the property.
 - b. All or part of the beneficial ownership and the rights to the present use and enjoyment of the premises.
 - (2) An occupant who can control what occurs on the property.
 - (3) Any person acting as an agent of an owner as defined herein.
- (f) **Permit** means to suffer, allow, consent to, acquiesce by failure to prevent, or attempt to prevent, or expressly assent or agree to the doing of an act.
- (g) **Person** means any natural person, association, partnership, corporation, or other entity capable of owning, occupying, or using property in the Village.

- (h) **Person in charge** means any person in actual or constructive possession of a property, including but not limited to, an owner, property manager, tenant or occupant of the property in question under his or her ownership or control.
- (i) **Property** means any real property, including its land and that which is affixed, incidental, or pertinent to land, including but not limited to, any premises, room, house, building, or structure, or any separate part or portion thereof, whether or not occupied or leased for residential purposes, owned, leased or used for commercial purposes, whether under written or oral agreement, whether permitted or not.
- (j) **Village** means the Village of Elmwood Park, Cook County, Illinois.
- (k) **Village Code** means the Municipal Code of Ordinances of the Village of Elmwood Park, including all codes adopted by specific reference.

42D-2. Violation.

- (a) Chronic nuisance property is hereby declared to be a public nuisance.
- (b) It shall be unlawful for any person to allow or permit property within the Village to become or remain a chronic nuisance property in violation of this Section.
- (c) It shall be unlawful for any property owner(s), manager(s) or person(s) in charge, or tenant in possession to:
 - (1) Encourage, aid, abet or permit a property to become a chronic nuisance property; or
 - (2) Allow a property to continue as a chronic nuisance property after receipt of notice to abate the nuisance activity.
- (d) Each day that a violation of this Section continues shall be considered a separate and distinct offense.

41D-3. Procedure.

Whenever the Chief of Police of the Village receives two (2) or more police reports or code administration department reports documenting the occurrence of a nuisance activity, as herein defined, on or within a property, the Chief of Police shall independently review such reports and any other relevant facts or evidence to determine whether nuisance activity or other prohibited conduct as provided in Section 41D-1(d) of this Chapter has occurred at or on the property in question. Upon a determination by the Chief or his/her designee that the complained of activity has occurred, the Chief of Police may:

- (a) Notify the owner(s), manager(s), person(s) in charge, or tenant in possession, in the event of property leased, in writing that the property is in danger of becoming a chronic nuisance property. The notice shall contain the following information:
- (1) The street address or legal description sufficient for identification of the property.
 - (2) A statement that the Elmwood Park Police Department has information that the property may be chronic nuisance property, with a concise description of the criminal or nuisance activity(s) that may exist or that has occurred on or at the property.
 - (3) Service of notice shall be provided by either personal delivery or by certified mail, postage prepaid, return receipt requested, addressed to the owner(s), manager(s), person(s) in charge and tenant(s) in possession in the event of a rental property, at the address of the property believed to be a chronic nuisance property, or such other place which is likely to give the owner(s), manager(s), person(s) in charge or tenant(s) in possession notice of the determination by the Chief of Police.
 - (4) A copy of the notice shall also be served on the taxpayer of record at such address as shown on the tax rolls of the County and/or the occupant, at the address of the property, if these persons are different from the person in charge, and shall be made either personally or by first class mail, postage prepaid.
 - (5) The notice shall contain a statement that the Chief of Police has investigated and has cause to believe that the property constitutes a chronic nuisance or is in danger of becoming a chronic nuisance as defined by this Section.

41D-4. Procedure for Addressing Potential Nuisance Property.

- (a) After independent review of any police reports, Code Administration Department inspection reports or any other relevant facts, evidence or data, and determination by the Chief of Police that the activity described therein as occurring upon the property meets the definition of nuisance activity on at least two (2) separate occasions within a six (6) month period, and that the owner, tenant or person(s) in control permitted the property to become a potential chronic nuisance property, the Chief of Police shall require that the owner(s), manager(s) or other persons in charge of the property and person(s) in charge, tenant(s) in possession thereof or other designee meet with the Chief of Police to discuss the nuisance activity and to further discuss proposed action the owner, manager(s), person(s) in charge or tenant(s) in the event of leased property intend to take to mitigate or abate the activity prior to a third verified incident of nuisance activity, in accordance with the following procedure:

- (1) The Chief of Police shall notify the owner(s), manager(s), person(s) in charge, or tenant(s) in the event the property is leased property, in writing that the property is a potential chronic nuisance property. Such notice shall be provided by either personal delivery or by certified mail return receipt requested. The notice shall contain the following information:
 - (i) The street address or a legal description sufficient for identification of the potential nuisance property.
 - (ii) A statement that the Chief of Police has information that the property constitutes a potential chronic nuisance property as defined by this Chapter, with a concise description of the criminal activity(s) or nuisance activity(s) that may exist, or that have occurred that the Chief of Police believes may classify the property as a potential chronic nuisance property.
 - (iii) Demand that the owner, manager(s) or person(s) in charge or his or her or its property manager or tenant in the event the property is a leased property or other designee respond and meet with the Chief of Police within twenty (20) days of receipt of the notice. Refusal of receipt of the notice by any party to whom notice is sent shall be deemed receipt of the notice for purposes of this Section.
- (2) At the meeting between the Chief of Police or his/her designee and the parties notified, the Chief of Police may request that the owner, manager(s), person(s) in charge or his or her or its tenant(s), in the case of residential rental property, implement a reasonable abatement plan designed to alleviate and prevent future occurrences of criminal activity or nuisance activity upon the property. The mitigation or abatement plan shall be reasonable under the circumstances in its objective, cost and scope, and shall be implemented within sixty (60) days of the meeting with the Chief of Police or such longer period if not practically feasible to do so within sixty (60) days.

If the criminal activity or nuisance activity complained of has or is being committed, facilitated or permitted by a tenant leasing the property, and such activity is a violation of the material terms of a lease agreement, the Chief of Police may request that the owner evict the tenant and further request that future tenants execute a "Crime Free Lease Addendum." If eviction is requested, the owner shall proceed with such an action in good faith. The Village shall assist in the eviction action by reasonably cooperating with the owner, manager(s) or person(s) in charge of the property, including, but not limited to, providing law enforcement officers or other municipal employees as witnesses regarding the nuisance activity if relevant.

- (i) Notwithstanding the provisions of Chapter 41C of this Code, a Crime Free Lease Addendum shall be mandatory for any Rental Residential Property when there have been three (3) or more sustained complaints of criminal nuisance activity within a six (6) month period at the property.
- (b) If, after complying with the procedures of subparagraph (a)(2) of this Section, within six (6) months from the date of the first confirmed case of criminal activity or nuisance activity after the meeting, the Chief of Police receives a report documenting the occurrence of a third instance of criminal activity or nuisance activity upon the property, the property may be declared a chronic nuisance property.
- (c) It shall be a violation of this Chapter for:
 - (1) the owner, manager(s), person(s) in charge of the property, or tenant, if the property in question is a leased property, within sixty (60) days of the meeting or such other reasonable amount of time under the circumstances, to fail to cause the implementation of a reasonable mitigation or abatement plan as requested by the Chief of Police, or
 - (2) any person or persons so notified to fail to respond and meet with the Chief of Police within the twenty (20) day period without good cause shown.
- (d) When any party affected by this Chapter responds and meets with the Chief of Police as required above, no statements made in connection with the furnishing of that response or in a meeting shall constitute or be used in any judicial or quasi-judicial proceeding as an admission that any nuisance activity has or is occurring at or on the property. This subsection (d) does not require the exclusion of any other evidence which is otherwise admissible and offered for any other purpose than an admission by a person affected by this Chapter.

41D-5. Abatement - Administrative Hearing.

- (a) At any hearing before the Village administrative hearing officer to determine whether the property in question is a chronic nuisance property, which hearing shall be conducted pursuant to the provisions and procedures of Chapter 2A of the Village Code, the Village shall have the initial burden of proof to show, by a preponderance of the evidence, that the property in question is a chronic nuisance property. Notice of the hearing shall be provided to all persons or entities that may be adversely affected by a decision declaring the property to be a chronic nuisance property.

The Village's representative shall present evidence in support of its claim that the property is a chronic nuisance property. The property owner(s), manager(s) or

tenant(s) in possession of a leased property, or person(s) in charge or the person in charge's local representative or attorney on behalf of the responding party shall be permitted to rebut such evidence.

No continuances shall be authorized by the administrative hearing officer in proceedings under this Chapter unless for good cause shown or except where a continuance is absolutely necessary to protect the rights of any party to the proceeding. Lack of preparedness shall not be grounds for a continuance.

The Administrative Hearing Officer may, at the request of either party(s), direct witnesses to appear and give testimony at the hearing. The formal rules of evidence will not apply at the hearing and hearsay evidence including police reports shall be admissible only if it is the type commonly relied upon by reasonable, prudent persons in the conduct of their affairs.

At the conclusion of the hearing, the administrative hearing officer shall make a determination on the basis of the evidence presented at the hearing, whether or not a violation(s) exists or existed and whether or not the property is a chronic nuisance property. The determination shall be in writing and shall be designated as the Findings, Decision, and Order. The administrative hearing officer's decision shall be final and binding, except that the provisions of the Illinois Administrative Review Law shall apply with respect to judicial review of the administrative hearing officer's Findings, Decision and Order. The Findings, Decision, and Order shall include the administrative hearing officer's findings of fact, a decision whether or not a violation(s) exists, a determination as to whether the property in question is or is not a chronic nuisance property based upon the findings of fact, and a monetary fine or other appropriate sanction imposed against the person(s) in charge/manager(s)/owner(s)/tenant(s) or occupant(s), as specified in subsection (b) below, or dismissing the case in the event a violation is not proved. A copy of the Findings, Decision, and Order shall be served upon the person in charge, owner, or tenant or occupant, within fourteen (14) business days of the date of the hearing.

- (b) If the administrative hearing officer makes a finding that a property was, or is, a chronic nuisance property, the administrative hearing officer may fine the manager(s), person(s) in charge and/or the owner(s), tenant(s) or occupant(s) of the property if those persons are different from the owner(s), manager(s) or person(s) in charge of the property, an amount not to exceed seven hundred fifty dollars (\$750.00) for each violation of this Chapter. Each day a nuisance activity occurs or continues shall be considered a separate and distinct violation for purposes of determining a property to be a chronic nuisance property. The administrative hearing officer may, in his or her discretion, impose such a fine for each day the nuisance activity goes unabated. No person shall be found in violation of this Section unless the Village proves the violation by a preponderance of the evidence.

41D-6. Alternative Enforcement.

- (a) Nuisance Abatement. The Village, as an alternative to Administrative Adjudication, may commence an action in the Circuit Court of Cook County Fourth Municipal District or Chancery Division of the Circuit Court of Cook County for a determination that the property is a chronic nuisance property and/or to abate a chronic nuisance property.

Upon being satisfied by affidavits or other sworn evidence that an alleged chronic nuisance property exists, the court may, without notice or bond, enter a temporary restraining order or a preliminary injunction or permanent injunction to enjoin any defendant from maintaining such chronic nuisance property and may enter an order restraining any defendant named from occupying, using or interfering with all property used in connection with the chronic nuisance property.

- (b) Commencement of action, burden of proof.
- (1) In an action seeking closure of a chronic nuisance property, the Village shall have the initial burden of showing by a preponderance of the evidence that the property is a chronic nuisance property.
 - (2) It shall be an affirmative defense by the property owner of rental or leased property to an action seeking the closure of a chronic nuisance property that the owner of the property, manager(s) or person(s) in charge, at the time in question, could not, in the exercise of reasonable care or diligence, determine that the property had become a chronic nuisance property, or could not, in spite of the exercise of reasonable care and diligence, control the conduct of tenants or others in possession leading to the findings that the property is a chronic nuisance property.
 - (3) In establishing the amount of any civil penalty or other relief requested, the court may consider any of the following factors if they are found appropriate, and shall cite those found applicable:
 - (i) The actions or lack of action taken by the owner or person(s) in charge to mitigate or correct the nuisance activity at the property.
 - (ii) Whether the criminal activity or nuisance activity at the property was repeated or continuous.
 - (iii) The magnitude or gravity of the criminal activity or nuisance activity at the property.
 - (iv) The cooperation of the owner or person(s) in charge of the property with the Village to correct the offending condition or abate the nuisance.

- (v) Whether the owner or property manager, in the event of rental or leased property, has required the tenant(s) to sign a “Crime Free Lease Addendum.”
- (vi) Whether the property owner(s) or property manager, in the event of rental or leased property, have attended the Village Sponsored Crime Free Housing Program Seminar.
- (vii) The cost to the Village of investigating and correcting or attempting to correct the condition.

(c) Remedy:

- (1) In the event a court determines a property to be a chronic nuisance property, the court may order that the property be closed and secured against all use and occupancy for a period of not less than thirty (30) days, but not more than one hundred eighty (180) days or until the nuisance activity(s) or violation(s) complained of is abated or the court may employ any other remedy deemed by it appropriate to abate the nuisance.
- (2) In addition to the remedy provided in subparagraph (a) above, the court may impose upon the owner(s), manager(s), person(s) in charge and/or tenant(s) or occupant(s) of the property in question a civil penalty in an amount not to exceed the sum of seven hundred fifty dollars (\$750.00) per day, payable to the Village of Elmwood Park, for each day the owner(s), person(s) in charge and/or tenant(s) or occupant(s) had actual knowledge that the property was a chronic nuisance property and permitted the property to remain a chronic nuisance property.
- (3) In determining what remedy or remedies to employ, the court may consider evidence of other conduct which has occurred on the property, including, but not limited to:
 - (i) The disturbance of neighbors;
 - (ii) The occurrence of other criminal activity or nuisance activity at, on or from the property;
 - (iii) The property's general reputation for criminal or nuisance activity and/or the reputation of persons in or frequenting the property;
 - (iv) Physical damage to the property in question or surrounding properties;

- (v) The hazard posed to any occupant of the property or adjoining property owner resulting from the physical condition of the property in question or its structures.
- (d) The court may authorize the Village to physically secure the property against use or occupancy in the event the owner fails to do so within the time specified by the court. In the event that the Village is authorized to secure the property, all costs reasonably incurred by the Village to effect the closure shall be made and assessed as a lien against the property and shall be a debt due and owing the Village. As used herein, "costs" mean those costs actually incurred by the Village for the physical securing of the property.
- (e) The Village Code Administration Department employee effecting the closure shall prepare a statement of costs, and the Village shall thereafter submit said statement to the court for its review. If no objection of the statement is made within the period described by the court, a lien in said amount may be recorded against said property.
- (f) Any person who is assessed the cost of closure and/or civil penalty by the court shall be personally liable for the payment thereof to the Village.

41D-7. Chronic Nuisance Located at Multi-Unit Rental Residential Property.

- (a) In the event any chronic nuisance property is a multi-unit rental residential property, any order entered by the court to abate the nuisance or otherwise vacate the property shall, in the discretion of the court, be limited in scope as to apply only to the individual rental unit or person(s) in charge or tenant(s) or occupants of that unit forming the basis for the finding that the property is a chronic nuisance property.

Section 4. Any ordinance or portion of any ordinance in conflict with the provisions of this Ordinance is repealed solely to the extent of such conflict.

Section 5. Severability – Should any provision or portion of this Ordinance be declared void or unenforceable by a court of competent jurisdiction, the remaining portions of this Ordinance not so declared shall remain in full force and effect.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

Section 6. This Ordinance shall be in full force and effect ten (10) days after its passage, approval and publication in the manner provided by law.

VILLAGE PRESIDENT

PASSED: This ____ day of October, 2010.

APPROVED: This ____ day of October, 2010.

PUBLISHED: This ____ day of October, 2010.

ATTEST:

VILLAGE CLERK