

ORDINANCE NO. 04-05

**AN ORDINANCE REGULATING MAINTAINING OF DEBRIS,
GARBAGE, REFUSE, RUBBISH, TRASH, WASTE, AND OTHER JUNK
ON PREMISES, AND REVOKING, SUPERCEDING, AND REPLACING IN
ITS ENTIRETY ORDINANCE NO. 02-04 PREVIOUSLY PASSED
RELATING TO THE SAME**

WHEREAS, the problem of debris, garbage, refuse, rubbish, trash, waste and other junk being present on premises within the corporate limits of the Village of Winnebago for an extended period of time has become a recurring problem in the Village of Winnebago; and

WHEREAS, it was believed necessary to enact regulations regarding the same so as to protect the health and safety of the residents of the Village of Winnebago, as well as to protect the value of land and improvements so as to strengthen the economic base of the Village of Winnebago; and

WHEREAS, on August 19, 2002, the Board of Trustees of the Village of Winnebago enacted Ordinance No. 02-04 entitled "An Ordinance Regulating Maintaining of Refuse, Debris, and Other Junk on Premises" to deal with said problem; and

WHEREAS, subsequent Illinois case law has imposed additional requirements on municipalities for the enforcement of such a type of ordinance; and

WHEREAS, The Village of Winnebago Board of Trustees feels it is in the best interest of the Village to pass a new ordinance establishing all rules and regulations for maintaining debris, garbage, refuse, rubbish, trash, waste, and other junk on premises and revoking, superceding, and replacing in its entirety Ordinance No. 02-04 previously passed relating to the same, which ordinance shall provide for additional procedural safeguards for purported violators of the ordinance, and which shall incorporate many of the terms in Ordinance No. 02-04 referred to aforesaid; and

WHEREAS, the Village of Winnebago Board of Trustees deems it to be in the best interest of the Village to revoke, supercede, and replace Ordinance No. 02-04 in its entirety by the instant ordinance, effective ten (10) days after its final passage, and publication in pamphlet form as provided by law.

NOW THEREFORE, BE IT ORDAINED BY THE PRESIDENT AND THE BOARD OF TRUSTEES OF THE VILLAGE OF WINNEBAGO AS FOLLOWS:

SECTION I

REVOCATION OF ORDINANCE NO. 02-04

Ordinance No. 02-04 entitled "An Ordinance Regulating Maintaining of Refuse, Debris, and Other Junk on Premises", which ordinance was passed and adopted on August 19, 2002, shall be and hereby is revoked, superceded, and replaced in its entirety by the instant ordinance, effective ten (10) days after its passage, approval, and publication in pamphlet form as provided by law.

SECTION II

SHORT TITLE

The instant ordinance shall be known and may be cited as the "Village of Winnebago Junk and Debris Ordinance".

SECTION III

DEFINITIONS

For the purpose of this ordinance the following definitions shall apply:

A. **ABATEMENT:** Abatement means the removal, stoppage, or action that mitigates that which causes or constitutes a public nuisance.

B. **CONSTRUCTION AND DEMOLITION DEBRIS:** Construction and demolition debris means non-hazardous, uncontaminated materials resulting from the construction, remodeling, repair and demolition of utilities, structures, and roads including, but not limited to the following: bricks, concrete, and other masonry materials, soil, rock, wood, including non-hazardous painted, treated, and coated wood and wood products, wall coverings, plaster, drywall, plumbing fixtures, electrical fixtures, non-asbestos insulation, roofing shingles and other roof coverings, asphalt, and similar materials.

C. **DEBRIS:** Debris means the scattered remains of something broken or destroyed, apparently abandoned to the elements.

D. **GARBAGE:** Garbage means putrescible animal and vegetable wastes resulting from the handling, processing, preparation, cooking, and consumption of food, and wastes from the handling, processing, storage, and sale of produce.

E. **IMMINENT HAZARD:** Imminent hazard means a situation or condition, located on private or public property or right-of-way, that is determined to pose a threat of harm to the health or safety of any person, property or thing for which abatement action shall be taken within twenty-four (24) hours and shall be considered to be a public nuisance.

F. **JUNK:** Junk means items of no practical or functional utility.

G. **NUISANCE:** Nuisance means public nuisance as defined in this ordinance and shall be construed to have the same meaning.

H. **PROPERTY:** Property means a lot, plot, or parcel of land.

I. **PROPERTY OWNER:** Property owner means the owner of record or purchaser under contract or deed based upon official records of the county.

J. **PERSON:** Person means any individual, partnership, co-partnership, firm, company, corporation, association, joint stock company, trust, estate, political subdivision, state agency, or any other legal entity, or their legal representative, agent or assigns.

K. **PREMISE:** Premise means property including adjoining street right-of-way or legal easement located between the property line of a lot, plot, or parcel and the roadway surface or pavement of an adjoining street or road inclusive of all parkways, sidewalks, and waterways found therein.

L. **REFUSE:** Refuse means all putrescible and nonputrescible wastes including garbage and rubbish.

M. **RUBBISH:** Rubbish means nonputrescible wastes consisting of both combustible and noncombustible material and residuals, including but not limited to paper products, cardboard, glass, plastic or metal products, discarded or non-functional automotive parts and tires, discarded furniture or furniture not designed for or modified to withstand the elements and outdoor use, abandoned or non-functional appliances, construction materials that have been exposed to outdoor elements for such a period of time that such material has substantially deteriorated, junk, debris, and similar materials.

N. **SUMMARY ABATEMENT:** Summary abatement means abatement of the nuisance by the Village, or a contractor employed by the Village, by removal or other action, acts without prior notice to the property owner except as provided herein.

O. **TRASH:** Trash shall be defined as worn out, broken up, or worthless things, and refuse.

P. **VILLAGE:** Village means the Village of Winnebago, Illinois.

SECTION IV

PUBLIC NUISANCES--DECLARED GENERALLY

Public nuisance means any lot, land, yard, premises or location which in its entirety, or in any part thereof, by reason of the condition in which the same is found or permitted to be or remain, shall or may endanger the health, safety, life, limb or property, or cause any hurt, harm, blight, substantial inconvenience or discomfort, damage or injury to any person, in any one or more of the following particulars:

- (a) By reason of being a menace, threat, and/or hazard to the general health and safety of the public;
- (b) By reason of lack of maintenance or adequate maintenance of the property, and/or being vacant, any of which depreciates the enjoyment, aesthetic appearance and use of properties in the immediate vicinity or neighborhood to such an extent that is detrimental to the Village at large;
- (c) By reason of the manner, location, or condition of storage of any materials or articles, regardless of whether such materials or articles are functional or have value, where such manner, location, or conditions of storage result in visual or other blight; and
- (d) All acts, conduct, omissions, conditions or things hereinafter specifically prohibited by the provisions of this ordinance.

The various public nuisances described and enumerated in this ordinance shall not be deemed to be exclusive, but shall be in addition to all other public nuisances or nuisances described and prohibited by other Village ordinances.

SECTION V

PUBLIC NUISANCES--SPECIFICALLY DEFINED

It shall constitute a public nuisance to maintain private property in all districts in such a manner so as to cause a detrimental effect to adjacent properties, by causing to have stored on the exterior of the premises construction and demolition debris, debris, garbage, junk, refuse, rubbish, or trash, except such of the aforesaid items that are placed outside the premises for the customary regularly scheduled pick up by a contracted waste hauler, provided the same is picked up in a timely manner by such waste hauler, as well as any of the following:

- a) Material and items stored in a haphazard or unorganized manner, so as to present an objectionable visual appearance or a nuisance; but not to include stacked firewood for use on the premises or compost material for use on the premises;
- b) Yard maintenance equipment including, but not limited to, lawn mowers, garden tractors, snow blowers, garden tools, and similar items, which are stored outside in a haphazard, unorganized, or unprotected manner, past the season of the reasonable use of such equipment;
- c) Material or items brought to the premises for planned improvements such as landscaping, construction, and similar purposes, including but not limited to, fill dirt, mulch, and building materials, and which are not used for said improvements within 90 days of being brought to the premises, or which merely constitute outdoor storage of said materials or items;
- d) Recreational equipment, or parts thereof, including, but not limited to, bicycles, motorcycles, boats, jet skis, and snowmobiles, which are stored on the exterior premises outside of the normal season, of usage, and which are stored in a haphazard, unorganized, or unprotected manner;

e) Household, commercial, and industrial objects and materials which are not ordinarily found in residential districts, stored for more than two (2) weeks on the exterior premises visible from adjacent properties or public right-of-way.

SECTION VI

VIOLATION

It shall be unlawful for any person to cause, permit, or maintain the existence of a public nuisance.

SECTION VII

INSPECTION

All complaints received alleging the existence of a public nuisance shall be inspected by authorized Village employees to determine existence of a nuisance and to determine whether a nuisance has been abated.

SECTION VIII

NOTICE

(a) Upon determining that a public nuisance exists, the Village Chief of Police or his or her designee shall cause written notice of the violation to be served to at least one of the property owner(s) of the property upon which the public nuisance exists, except as provided for abandoned or inoperable motor vehicles which are covered in a separate ordinance.

(b) Such notice shall specifically describe the public nuisance and shall direct the property owner to abate such nuisance as specified herein. The notice shall state that unless the nuisance is so abated by the property owner the Village shall cause it to be abated and such costs relating to the same, including, but not limited to, administrative costs, attorney fees, and/or fines

shall be charged to the property owner, and such notice shall also contain a description of the appeal process.

- (c) Notice shall be deemed to be properly served by:
 - (1) depositing the notice in the U.S. mail, prepaid first class postage regardless of whether the addressee accepts or refuses delivery; or
 - (2) Personal service; or
 - (3) Posting of notice upon property.

SECTION IX

ABATEMENT

(a) **Responsibility to abate.** In all cases, except as provided for in this ordinance, it shall be the ultimate responsibility of the property owner to abate the nuisance violation existing on the premises.

(b) **Normal abatement time.** The property owner shall have seven (7) days from the date of service of the notice to abate the nuisance.

(c) **Failure to abate.** If a public nuisance is not abated pursuant to this article, the Village may cause the abatement of such nuisance.

(d) **Summary abatement.** Prior written notice to the property owner shall not be required in order to summarily abate a nuisance under the conditions described herein. When practicable, an attempt to contact the property owner by telephone may be made. Following summary abatement, a written notice shall be served upon the property owner describing the situation, actions taken, and penalty and costs incurred.

When the following conditions arise, the Village may proceed with summary abatement:

- (1) Whenever an imminent hazard is determined to exist; or

- (2) Whenever a property has been issued three (3) previous written notices to abate a nuisance within any twelve-month time frame following the adoption of this ordinance, and the property owner has failed to abate the same; or

(e) **Abatement by Village.** Should any nuisance not be abated within the normal abatement time or within such additional time as may be granted under the appeal process, the Village shall have the authority to enter upon the premise and abate the nuisance. In abating the nuisance, the Village may go to whatever extent may be necessary to complete the abatement.

SECTION X

PENALTY; FINES FOR VIOLATIONS

Any person or persons, corporation, firm, or organization which shall violate any provision of this ordinance shall be fined not less than fifty (\$50.00) dollars nor more than two hundred dollars (\$200.00), plus reasonable attorney fees and court costs. Each day any violation of this ordinance shall continue, other than time provided for abatement of a nuisance, shall constitute a separate offense.

SECTION XI

APPEAL

(a) The owner of the property who has been served with a notice pursuant to Section VIII hereinabove, may within three (3) calendar days after receipt of such notice, make a written request to the Village Chief of Police or designee for a hearing on the question of whether the alleged public nuisance in fact exists. Such request shall be delivered to the Village of Winnebago office, 108 West Main Street, Winnebago, Illinois, or if offices are closed, deposited into a drop box at the same location. The hearing shall be held within seven (7) calendar days

following receipt of the written request and at least two (2) days notice of the hearing shall be given to the individual who made the written request for the hearing either by telephone or other means.

(b) The hearing shall be conducted by the Village Chief of Police or designee as the hearing officer. The hearing officer may amend or modify the notice and/or order, or extend the time for compliance.

(c) The owner, agent of the owner, occupant, and lien holder, if any, of the subject property shall be given the opportunity to present evidence to the hearing officer, and conduct cross examination of witnesses.

(d) In those instances where the nuisance has been abated by the Village, the hearing officer shall have the discretion to waive the cost of abating the nuisance, in whole or in part, if in the course of hearing and reviewing the decision, the hearing officer finds that any of the following did not conform to the provisions of this ordinance:

- (1) The notice to abate the nuisance;
- (2) The work performed in abating the nuisance; or
- (3) The computation of charges.

SECTION XII

COST OF ABATEMENT AND FINES AS A LIEN

(a) Whenever a bill for the costs and expenses incurred by the Village for the abatement of a nuisance remains unpaid for thirty (30) days after it has been sent to the property owner, the Village may file a notice of lien upon the property so affected. Such lien shall be superior to all other liens and encumbrances, except tax liens, provided that the notice of lien is filed with the county recorder within (60) days after such cost and expense is incurred.

(b) The notice shall consist of a sworn statement setting out the following:

- (1) A description of the property sufficient for identification thereof;
- (2) The amount of money representing the costs and expenses incurred or payable for the abatement; and
- (3) The date or dates when such costs and expenses were incurred by the Village.

(c) Cost and expenses include, but are not limited to, the costs and expenses in time of Village employees or Village authorized contractors concerning the actual abatement of the nuisance, administrative fees, title searches or certifications, and reasonable attorney expenses.

(d) Upon payment of the costs and expenses by the owner after notice of lien has been filed, the lien shall be released by the Village or person whose name the lien has been filed and the release shall be filed of record as in the case of filing notice of lien.

(e) However, the lien of the Village shall not be valid as to any purchaser whose rights in and to such real estate have arisen subsequent to removal of the construction and demolition debris, debris, garbage, refuse, rubbish, trash, waste, or junk, and prior to the filing of such notice, and the lien of such municipality shall not be valid as to any mortgagee, judgment creditor, or other lien or whose rights in and to such real estate arose prior to the filing of such notice. The lien may be enforced by proceedings to foreclose as in the case of mortgages or mechanic's liens. Suit to foreclose this lien shall be commenced within two (2) years after the date of filing notice of lien as set forth in Illinois Compiled Statutes, Chapter 770, Section 60/9.

SECTION XIII

SEVERABILITY

The provisions of this ordinance shall be severable, and if any provision hereof shall be held to be unconstitutional, invalid, or illegal, by any court of competent jurisdiction, such

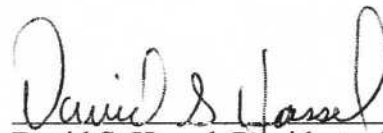
decision shall not affect the validity of any of the remaining provisions of this ordinance. It is hereby declared as legislative intent that this ordinance would have been enacted had such unconstitutional, invalid, or illegal provisions not been included herein, and that any court of competent jurisdiction should reform such unconstitutional, invalid, or illegal provision to the minimum extent necessary to make such provision constitutional, valid, and legal.

SECTION XIV

EFFECTIVE DATE

This ordinance shall become effective 10 days after its passage, approval, and publication in pamphlet form of three copies of said ordinance at the Village of Winnebago, Illinois, Office.

APPROVED:



David S. Hassel, President of the Board of
Trustees of the Village of Winnebago, Illinois

ATTEST:


Village Clerk

PASSED: 5-10-04

APPROVED: 5-10-04

PUBLISHED: 5-22-04