

ORDINANCE NO. 2004-~~13~~¹³

ADMINISTRATIVE ADJUDICATION ORDINANCE

WHEREAS, the corporate authorities of the Village of Bismarck have determined that it is in the best interest of the citizens of the Village to adopt a system of administrative adjudications of certain alleged violations of village ordinances and codes, and;

WHEREAS, the Village is authorized by the Illinois Municipal Code to adopt such a system.

NOW, THEREFORE, BE IT ORDAINED by the Village Trustees of the Village of Bismarck, Illinois, as follows:

That the ordinances of the Village of Bismarck are hereby amended to add the following:

ADMINISTRATIVE ADJUDICATION

- Section 1.01 Adoption of state statutes
- 1.02 Definitions
- 1.03 Code Hearing Department
- 1.04 Village Code Hearing jurisdiction
- 1.05 Village Code Hearing procedure
- 1.06 Findings, decision, order of the Hearing Officer
- 1.07 Costs of administrative adjudication proceeding
- 1.08 Administrative Review Law to apply
- 1.09 Enforcement of judgment
- 1.10 Sanctions applicable to property and property owner
- 1.11 Defenses to certain village code violations
- 1.12 Intergovernmental agreement

§1.01 ADOPTION OF STATE STATUTES.

The Village hereby adopts 65 ILCS Sec 5/1-2.2-1 et seq and 65 ILCS Sec. 5/11-31.1-1 et seq as they may be amended from time to time and as allowed by said divisions.

§ 1.02 DEFINITIONS.

“VILLAGE CODE.” The Code of Ordinances of the Village of Bismarck.

“VILLAGE OFFICIAL.” All full-time and part-time police officers as well as any other officer or employee of the Village authorized to enforce the Village code.

“COMPLAINT.” A formal written accusation against a person or entity (i.e., a ticket or notice of violation for a violation of the Village code).

“DEFAULT.” A failure to appear for a scheduled hearing or legal proceeding.

“HEARING OFFICER.” An individual appointed by the Mayor, with the approval of the Village Trustees or designated pursuant to any intergovernmental agreement between the Village and another municipality, whose powers and duties shall include:

- (1) Presiding at all administrative adjudication hearings called to determine whether or not a violation of the Village code exists;
- (2) Issuing subpoenas directing witnesses to appear and give relevant testimony at administrative hearings, upon the request of the parties or their representatives;
- (3) Hearing testimony and accepting evidence relevant to the existence of a violation of the Village code;
- (4) Preserving and authenticating the record of administrative adjudication hearings and all exhibits and evidence introduced at such hearings;
- (5) Issuing determinations, based on the evidence presented at administrative adjudication hearings, of whether a Village code violation exists. The determinations shall be in writing and shall include written findings of fact, decisions, and orders, including fines, penalties, or actions with which respondents must comply; and
- (6) Imposing penalties consistent with the applicable Village code provisions and assessing costs upon finding a respondent liable for a violation, except, however, that in no event shall the hearing officer have authority to (i) impose a penalty of incarceration or (ii) impose a fine in excess of \$750.00. The maximum monetary fine under this subsection shall be exclusive of the costs of enforcement or the costs imposed to secure compliance with the Village code and shall not be applicable to cases to enforce the collection of any tax imposed and collected by the Village.

Prior to conducting administrative adjudication proceedings, hearing officers shall have successfully completed a formal training program which includes the following:

- (1) Instruction on the rules of procedure of the administrative hearings which they will conduct;
- (2) Orientation to each subject area of Village code violations which may be adjudicated;
- (3) Observation of administrative hearings;
- (4) Participation in hypothetical cases, including ruling on evidence and issuing final orders.

In addition, every hearing officer must be an attorney licensed to practice law in the State of Illinois for at least three years.

“PETITIONER.” The person or entity making a Village code violation allegation initiating the administrative adjudication hearing process.

“PRIMA FACIE EVIDENCE.” The bare minimum of evidence needed to bring and prove a case before a hearing officer.

“PROPERTY OWNER.” The legal or beneficial owner of real property.

“RESPONDENT.” A person or entity who is accused of a violation.

§ 1.03 CODE HEARING DEPARTMENT.

(A) There is hereby established a Village Code Hearing Department, the function of which is to expedite the prosecution and correction of violations of the Village code in the manner provided by this chapter. The Code Hearing Department of the Village is hereby designated to be the Code Hearing Department of the City of Danville, Illinois, so long as there exists any intergovernmental agreement between the Village and the City of Danville that so provides. The hearing officer and such other agents or employees assigned to the hearing officer shall constitute the Code Hearing Department.

(B) The adoption of this chapter does not preclude the Village from using other lawful methods to enforce the provisions of the Village code.

§ 1.04 VILLAGE CODE HEARING JURISDICTION.

An administrative adjudication proceeding under this chapter may be initiated for any alleged Village code violation, except for an offense that is a traffic regulation governing the movement of vehicles and except for any reportable offenses under Section 6-204 of the Illinois Vehicle Code.

§ 1.05 VILLAGE CODE HEARING PROCEDURE.

The administrative adjudication of ordinance violations, pursuant to this chapter, shall adhere to the following procedures:

(A) Complaint.

- (1) Upon finding an alleged ordinance violation, a Village official shall prepare and issue a complaint.
- (2) The complaint shall contain, but not necessarily be limited to, the following information:
 - (a) The name and last known address of the respondent;
 - (b) The date, time, and location at which the alleged violation was observed;
 - (c) A statement detailing the type and nature of the violation;

- (d) The chapter and section of the Village code alleged to have been violated;
- (e) The signature and identification of the Village official issuing the complaint, which signature shall act as a certification of the accuracy of all information contained within the complaint;
- (f) The names of witnesses to the alleged violation;
- (g) The date, time and location of the Village Code Hearing at which the alleged violation shall be administratively adjudicated, which hearing date shall not be less than 30, nor more than 40 days after the date of the complaint in non-emergency situations. For purposes of this chapter, "non-emergency situation" means any situation that does not reasonably constitute a threat to the public interests, safety or welfare. In emergency situations, meaning those situations that reasonably constitute threats to the public interests, safety or welfare, the hearing date shall not be less than three, nor more than seven days after the date of the complaint.

(3) The signed complaint shall constitute prima facie evidence of the violation.

(B) Village Code Hearing Department procedures.

- (1) The original and a copy of the complaint shall be provided to the Village Code Hearing Department.
- (2) Upon receiving the complaint, the Village Code Hearing Department shall assign a docket number to the complaint.
- (3) The Village Code Hearing Department shall retain the complaint as part of the record of the administrative adjudication hearing.

(C) Service of complaint. Respondents shall be served with complaints in a manner reasonably calculated to give them actual notice of the complaint, including, as appropriate:

- (1) Personal service upon the respondent or its employees or agents;
- (2) Service by first class mail at the respondent's last known address;
- (3) Notice that is posted upon the property where the alleged violation is found when the respondent is the owner or manager of the property; or
- (4) Such other method as is reasonably calculated to provide the respondent with actual notice of the administrative hearing proceedings.

The complaint shall be served along with a summons commanding the respondent to appear at the administrative adjudication hearing. The summons shall include the following information:

- (1) The type and nature of the code violation to be adjudicated;
- (2) The date and location of the adjudicatory hearing;
- (3) The legal authority and jurisdiction under which the hearing is to be held; and
- (4) The penalties for failure to appear at the hearing.

(D) Sufficiency of pleadings.

- (1) The complaint and summons shall be liberally construed with the view to doing substantial justice between parties.
- (2) If any complaint is insufficient in substance or form, the hearing officer may order a fuller or more particular statement. If the complaint does not sufficiently define the issues, the hearing officer may order another complaint prepared.
- (3) No complaint is bad in substance which contains such information as reasonably informs the respondent of the nature of the claim which he is called upon to meet.
- (4) All defects in pleadings, either in form or substance, not objected to prior to the hearing are waived.

(E) Conduct of administrative adjudication hearings.

- (1) At any hearing conducted pursuant to this chapter, the respondent may be represented by counsel, present witnesses or other evidence on his or her own behalf, and cross-examine opposing witnesses.
- (2) Any party to a hearing conducted pursuant to this chapter may request the hearing officer to issue subpoenas directing the attendance and testimony of relevant witnesses and the production of relevant documents.
- (3) All continued or adjourned hearings shall be scheduled with reasonable promptness commensurate with the nature and status of the proceeding.
- (4) The formal and technical rules of evidence do not apply in any hearing under this chapter. Evidence, including hearsay, may be admitted if it is of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs.

- (5) No continuances shall be authorized by the hearing officer except in cases where a continuance is absolutely necessary to protect the rights of the respondent. Lack of preparation shall not be grounds for a continuance. Any continuance authorized by a hearing officer shall not exceed 25 days.
- (6) All administrative adjudication hearings conducted pursuant to this chapter shall be recorded.
- (7) All alleged ordinance violations adjudicated pursuant to this chapter shall be prosecuted by the Village attorney unless there is an intergovernmental agreement between the Village and the City of Danville in which case they shall be prosecuted by the Danville City Attorney.
- (8) The case for the respondent may be presented by the respondent, his or her attorney, or any other agent or representative.
- (9) The burden of proof in all ordinance violations adjudicated pursuant to this chapter shall be upon the respondent to refute the prima facie case set forth in the complaint. Such burden shall be by a preponderance of the evidence.
- (10) Hearings shall regularly take place on Thursdays at 5:30 p.m. in the Danville City Council Chambers on the lower level of the municipal Building, 17 West Main Street, or such other days and times as may be necessary and designated by the Code Hearing Department.

(F) Failure to appear. If, on the date set for hearing, the respondent or his or her attorney fails to appear, the hearing officer may find the respondent in default and shall proceed with the hearing and accept evidence relevant to the existence of a city code violation.

§ 1.06 FINDINGS, DECISION, ORDER OF THE HEARING OFFICER.

- (A) At the conclusion of an administrative adjudication hearing the hearing officer shall make a determination, on the basis of the evidence presented at the hearing, whether a Village code violation exists. The determination shall be in writing and shall be designated as the findings, decision and order. The findings, decision and order shall include the hearing officer's findings of fact, a decision of whether a Village code violation exists based upon the findings of fact, and an order directing and ordering the respondent to correct the violation or, in the event a violation is not proved, dismissing the case. If a Village code is proved, the order shall also impose the sanctions that are provided in the Village code for the violation proved as well as the costs of the administrative adjudication proceeding as set forth in Section 1.07.
- (B) A copy of the findings, decision and order shall be served upon the respondent within five days after it is issued. Service of the copy upon the respondent shall be in the same manner as a complaint and summons may be served under this chapter.
- (C) Payment of any penalty or fine and disposition of fine money shall be in the same manner as set forth in the Danville, Illinois, city code.

(D) In the event that the findings, decision and order of the hearing officer directs the correction of the violation, the hearing officer shall also establish a status hearing date scheduled after the date established for the correction of the violation, at which status hearing compliance with the corrective direction shall be determined. At such time, the hearing officer shall hear testimony and accept evidence relevant to the corrective actions of the respondent. If the hearing officer determines that the Village code violation has not been corrected, additional sanctions may be imposed as provided by the Village code.

§ 1.07 COSTS OF ADMINISTRATIVE ADJUDICATION PROCEEDING.

If a code violation is proved and the respondent is ordered to pay the costs of the administrative adjudication proceeding, the following costs shall be paid by the respondent pursuant to such order:

- (A) File management/record keeping - \$10.00
- (B) Hearing officer - \$25.00
- (C) Prosecuting attorney's fee cost - \$25.00

§ 1.08 ADMINISTRATIVE REVIEW LAW TO APPLY.

The findings, decision and order of the hearing officer shall be subject to review in the Circuit Court for the Fifth Judicial Circuit, Vermilion County, Illinois and the provisions of the Administrative Review Law (ILCS CH. 735, Act 5, §§ 3-101 et seq.) and all amendments and modifications thereto, and the rules adopted pursuant thereto, are adopted and shall apply to govern every action for the judicial review of the findings, decision and order of the hearing officer under this chapter.

§ 1.09 ENFORCEMENT OF JUDGMENT.

(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 Illinois Administrative Review Law are a debt due and owing to the Village and may be collected in accordance with applicable law.

(B) After expiration of the period in which judicial review under the Illinois Administrative Review Law may be sought for a final determination of a Village code violation, unless stayed by a court of competent jurisdiction, the findings, decision and order of the hearing officer may be enforced in the same manner as a judgment entered by a court of competent jurisdiction.

(C) In any case in which a respondent has failed to comply with an order directing the respondent to correct a Village code violation or imposing any fine or other sanction as a result of a Village code violation, any expenses incurred by the Village to enforce the order, including, but not limited to, its attorney's fees, court costs and costs related to property demolition or

foreclosure, after they are fixed by a court of competent jurisdiction, shall be due and owing the Village and may be collected in accordance with applicable law. Prior to any expenses being fixed by a hearing officer pursuant to this subsection, the Village shall provide a notice to the respondent that states that the respondent shall appear at a hearing before the hearing officer to determine whether the respondent has failed to comply with the order. The notice shall set the date for such hearing, which shall not be less than seven days from the date that notice is served. If notice is served by mail, the seven day period shall begin to run on the date that the notice was deposited in the mail.

(D) Upon being recorded in the manner required by Article XII of the Illinois Code of Civil Procedure, a lien shall be imposed upon the real estate of the respondent in the amount of any debt due and owing under this chapter. The lien may be enforced in the same manner as a judgment lien pursuant to a judgment of a court of competent jurisdiction.

(E) The hearing officer may set aside any order entered by default and set a new hearing date upon a petition filed within 21 days after the issuance of the order of default, if the hearing officer determines that the respondent's failure to appear at the hearing was for good cause or at anytime if the respondent establishes that the Village did not provide proper service of process. If any judgment is set aside pursuant to this subsection, the hearing officer shall have the authority to enter any order extinguishing any lien which has been recorded for any debt due and owing the Village as a result of the vacated default order.

§ 1.10 SANCTIONS APPLICABLE TO PROPERTY AND PROPERTY OWNER.

An order to correct a Village code violation and the sanctions imposed by the Village as the result of a finding of a Village code violation under this chapter shall attach to the property as well as to the property owner, so that a finding of a Village code violation against one property owner cannot be avoided by conveying or transferring the property to another owner. Any subsequent transferee or property owner takes subject to the findings, decision and order of the hearing officer under this chapter.

§ 1.11 DEFENSES TO CERTAIN VILLAGE CODE VIOLATIONS.

It shall be a defense to a Village code violation charged under the Village's building code which establish construction, plumbing, heating, electrical, fire prevention, sanitation or other health and safety standards that are applicable to structures in the Village, if the respondent proves by a preponderance of the evidence that:

(A) The Village code violation alleged does not, in fact, exist or at the time of the hearing the violation has been remedied or removed;

(B) The Village code violation has been caused by the current property occupants and that, in spite of reasonable attempts by the respondent to maintain the dwelling free of such violations, the current occupants continue to cause the violations; or,

(C) An occupant or resident of the dwelling has refused entry to the respondent or his agents to all or part of the dwelling for the purpose of correcting the Village code violation.

§ 1.12 INTERGOVERNMENTAL AGREEMENT.

Pursuant to the Illinois Constitution and Illinois Compiled Statutes, the Village hereby adopts and approves an Intergovernmental Agreement between the Village and the City of Danville, Illinois, to implement this Administrative Adjudication Ordinance, and authorizes the Village Mayor and Village Clerk to execute the Intergovernmental Agreement (a copy of which is attached hereto and marked "Ordinance Exhibit A") as well as any other documents necessary to implement this ordinance.

This ordinance shall be in effect upon its passage, approval and publication in pamphlet form.

Passed this 16 day of November, pursuant to a roll call vote as follows:

AYES: 5
NAYS: 1
ABSTAIN: Ø
ABSENT: Ø

Approved by me this 16 day of November, 2004.

Eleanor White
Village President

ATTEST:

Beverly Madden
Village Clerk

Published by me in pamphlet form this 16 day of November, 2004.

Beverly Madden
Village Clerk

"Ordinance Exhibit A"

INTERGOVERNMENTAL COOPERATION
AGREEMENT

Between

City of Danville, A Municipal Corporation
And
Village of Bismarck, A Municipal Corporation

This Intergovernmental Agreement is made and entered into as of the 16th day of November, 2004, but actually executed by each of the undersigned municipalities on the dates set forth beneath the respective signatures of their duly authorized officers below, by and between the City of Danville, Illinois, A Municipal Corporation (hereafter "Danville") and the Village of Bismarck, A Municipal Corporation (hereafter "Bismarck"), collectively the "Parties".

The parties hereto, as political subdivisions of the government of the State of Illinois, hereby agree, as permitted in 5 ILCS 220/1 et seq., to the following terms and conditions to define their responsibilities pursuant to the system of Administrative Adjudication set forth in 65 ILCS 5/1-2.1-1 et seq. and 65 ILCS 5/11-31.1-1 et seq.

WITNESSETH:

WHEREAS, Danville is a home rule unit of local government under and pursuant to Section 6 of Article VII of the Constitution of the State of Illinois; and,

WHEREAS, Bismarck is a non-home rule unit of local government; and,

WHEREAS, the Illinois Municipal Code, 65 ILCS 5/1-2.2-1 et seq., provides home rule municipalities may establish a system of administrative adjudication for prosecuting certain violations of municipal ordinances; and,

WHEREAS, the Illinois Municipal code, 65 ILCS 5/1-2.2-1 et seq., provides non-home rule municipalities may establish a system of administrative adjudication for prosecuting certain violations of municipal ordinances; and,

WHEREAS, the Illinois Municipal code, 65 ILCS 5/1-2.2-10 provides that a municipality may establish a code hearing department within an existing code enforcement agency; and,

WHEREAS, Danville has established and is currently operating an administrative adjudication system for the prosecution of certain violations of Danville ordinances; and,

WHEREAS, Bismarck desires to utilize an administrative adjudication system to prosecute certain violations of Bismarck ordinances; and,

WHEREAS, the Intergovernmental Cooperation Act, 5 ILCS 220/1 et seq., grants broad authority for units of local government to contract with one another to perform governmental services; and,

WHEREAS, Bismarck desires to enter into an Intergovernmental Agreement with Danville to utilize Danville's Administrative Adjudication system; and,

WHEREAS, Danville will incur little or no additional expense in entering into such an agreement.

NOW, THEREFORE, in consideration of the matters set forth above, the agreements, covenants, representations and undertakings made and contained in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Danville and Bismarck hereby agree, covenant, represent and undertake as follows:

ARTICLE I
Administration and Staff

- A. Danville's Code Hearing Department shall act as the Code Hearing Department for Bismarck.
- B. Danville's Hearing Officers shall act as Hearing Officers for Bismarck and conduct those hearings necessary to carry out the purposes of the administrative adjudication system regarding those matters involving Bismarck.
- C. Any employees or agents assigned to the Hearing Officers by Danville shall continue to act in such capacity regarding those matters involving Bismarck.
- D. Danville shall have the sole authority with regard to decisions concerning the operation of the administrative adjudication system, including the date, time and location of hearings.
- E. Bismarck shall have the sole authority over the disposition of the matters referred to Danville's Code Hearing Department.

ARTICLE II
Personnel

- A. Police Officers and all other employees of Bismarck involved in enforcing the ordinances of Bismarck shall be available to be called as witnesses on any matter involving Bismarck.
- B. Employees of Danville and Bismarck shall be at all times employees of their respective municipality and shall retain all of the rights, privileges, immunities, and benefits pursuant to such employment.

ARTICLE III
Collection and Distribution of Funds

- A. Danville shall collect and hold all money to be paid toward any penalties imposed on a matter related to Bismarck.

ARTICLE III
Collection and Distribution of Funds

- A. Danville shall collect and hold all money to be paid toward any penalties imposed on a matter related to Bismarck.
- B. At the end of each month, Danville shall cause to be issued a check, payable to Bismarck, for those funds collected and applied toward the fines imposed on matters related Bismarck.
- C. All funds collected and applied toward costs and fees shall be kept by Danville. Said funds shall act as reimbursement for the costs and fees incurred by Danville for prosecuting ordinance violation cases for Bismarck.

ARTICLE IV
Procurement, Records, Audits

- A. Danville shall keep accurate records of all matters pursued on behalf of Bismarck, which shall include disposition of the cases, any penalties imposed, and any payments made toward the penalties imposed.
- B. Bismarck may request copies of those records pertaining to matters prosecuted on behalf of Bismarck.
- C. Bismarck may request an audit of Danville's records with regard to cases and funds received pertaining to matters prosecuted on behalf of Bismarck.
- D. Danville shall be the sole authority regarding procurement of any items, such as equipment, software, or personnel, related to the administrative adjudication system currently operated by Danville.

ARTICLE V
Professional and Technical Support Services

- A. Danville shall be the sole authority in obtaining Professional Support Services. This may include obtaining the services of outside counsel to assist the City Attorney in prosecuting cases within the administrative adjudication system.
- B. Danville shall be the sole authority in obtaining Technical Support Services to assist in issues affecting matters within the administrative adjudication system.

2. Notices, Communications. All notices, demands, request for records, requests for funds, or other communications under or in respect of this Agreement shall be in writing and shall be deemed to have been given when the same are (i) deposited in the United States mail and sent by first class mail, postage prepaid or (ii) delivered in each case, to Danville or Bismarck at their respective addresses (or at such other addresses as each may designate by notice to the other), as follows:

- (1) if to Danville, at the City of Danville, Robert E. Jones Municipal Building, 17 West Main St., Danville, Illinois 61832, Attn: Mayor; and,
- (2) if to Bismarck, at Village of Bismarck, P.O. Box 141, Bismarck, Illinois 61814, Attn: Mayor.

3. Term and Termination. This Agreement shall automatically be renewed for a period of one year each May 1, unless not less than 90 days prior thereto one of the Parties hereto shall, in writing, have notified the other Party that it shall deem this agreement to be terminated on the impending April 30.

IN WITNESS WHEREOF, Danville and Bismarck have each caused this Agreement to be executed by proper officers duly authorized to execute the same as of the date set forth beneath the signatures of their respective officers set forth below.

City of Danville

By: Scott Eisenhauer
Scott Eisenhauer, Mayor

Attest:
By: Janet K Myers
City Clerk

Date: February 3, 2005
Resolution No. 2005-9

Village of Bismarck

By: Eleanor White
Eleanor White, Mayor

Attest:
By: Beverly Madden
Village Clerk

Date: November 16, 2004

CERTIFICATION

Beverly Madden, Clerk of the Village of Bismarck, Vermilion County, Illinois, hereby certifies that the foregoing is a true and correct copy of the Ordinance on file with me in the corporate records of the Village of Bismarck, Illinois, and that said Ordinance was adopted by the vote as set forth above, with a quorum present at the meeting of the Bismarck Village Board.


VILLAGE CLERK

RESOLUTION NO.: 2005-9

A RESOLUTION APPROVING AN INTERGOVERNMENTAL
AGREEMENT WITH THE VILLAGE OF BISMARCK

WHEREAS, pursuant to 65 ILCS 5/1-2.1-1 et seq. and 65 ILCS 5/11-31.1-1 et seq, the City has established an administrative adjudication system for addressing alleged violations of the City Code; and,

WHEREAS, pursuant to 5 ILCS 220/1 et seq., municipalities may enter into intergovernmental cooperation agreements for the establishment and maintenance of an administrative adjudication system; and,

WHEREAS, such intergovernmental cooperation agreements are beneficial to smaller municipalities which could not otherwise establish and maintain their own separate systems; and,

WHEREAS, the Village of Bismarck desires to enter into such an intergovernmental cooperation agreement with the City of Danville for the use of its already established system; and,

WHEREAS, the Village of Bismarck has voted on and approved a proposed intergovernmental cooperation agreement; and,

WHEREAS, the City of Danville desires to assist the Village of Bismarck through the use of the City's administrative adjudication system to address alleged violations of the Village of Bismarck codes.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Danville, Illinois as follows:

SECTION 1. The intergovernmental cooperation agreement, a copy of which is attached hereto and expressly made a part hereof, is approved and adopted.

SECTION 2. The Mayor and City Clerk are hereby authorized to execute the intergovernmental cooperation agreement on behalf of the City.

PASSED this 1st day of February, 2005, by 11 Ayes, 0 Nays,
3 Absent.

APPROVED:

By: Scott Bismarck
Mayor

ATTEST:

By: Janet K. Meyers
City Clerk