# VILLAGE OF SUGAR GROVE BOARD REPORT

**TO:** VILLAGE PRESIDENT & BOARD OF TRUSTEES

**FROM:** BRENT EICHELBERGER, VILLAGE ADMINISTRATOR

ALISON MURPHY, ASSISTANT TO THE VILLAGE ADMINISTRATOR/

VILLAGE CLERK

SUBJECT: ORDINANCE: CREATING A MINOR ORDINANCE VIOLATION

ADJUDICATION PROCESS

**AGENDA:** JUNE 7, 2022 REGULAR BOARD MEETING

**DATE:** MAY 31, 2022

# **ISSUE**

Should the Village Board approve an ordinance adopting a system of local adjudication for minor ordinance violations.

### DISCUSSION

At the May 17, 2022 Board meeting, the Village Board discussed expanding the existing adjudication process to include minor ordinance violations and the authority to write citations. To improve process efficiencies, the Board directed staff to prepare an ordinance establishing a system of local adjudication for minor ordinance violations in the manner provided by state statute. This process also provides for additional (non-sworn) staff to be designated as individuals authorized to issue code violations on behalf of the Village pursuant to the local adjudication process. The Board also directed staff to provide de-escalation training for those non-police staff issuing citations. The Village has purchased a training video, SI40 De-escalation Training from In the Line of Duty, LLC. Non-police staff will participate in this training.

# **COST**

Attorney costs to research the issue were approximately \$500. There will be a small cost to codify the ordinance, which is already included in the budget. Additionally the training video cost \$100.

### RECOMMENDATION

That the Village Board approve an ordinance amending Chapter 1 of the Village Code establishing Section 1-13 Adopting a System of Local Adjudication for Minor Ordinance Violations.



# VILLAGE OF SUGAR GROVE ORDINANCE NO. 20220607A

AN ORDINANCE AMENDING CHAPTER 1 OF THE VILLAGE CODE
ESTABLISHING SECTION 1-13
VILLAGE OF SUGAR GROVE, ILLINOIS
(ADOPTING A SYSTEM OF LOCAL ADJUDICATION FOR MINOR ORDINANCE VIOLATIONS)

Passed by The President And Board of Trustees of the Village of Sugar Grove, Kane County, Illinois This  $7^{\rm Th}$  Day of June, 2022.

Published in Pamphlet Form by Authority of the President and Board of Trustees of the Village of Sugar Grove, Kane County, Illinois This  $7^{\text{th}}$  Day of June, 2022.

# ORDINANCE NO. 20220607A

# AN ORDINANCE AMENDING CHAPTER 1 OF THE VILLAGE CODE ESTABLISHING SECTION 1-13 VILLAGE OF SUGAR GROVE, ILLINOIS (ADOPTING A SYSTEM OF LOCAL ADJUDICATION FOR MINOR ORDINANCE VIOLATIONS)

**BE IT ORDAINED** by the President and Board of Trustees of the Village of Sugar Grove, Kane County, Illinois, as follows:

**WHEREAS,** the Village of Sugar Grove ("Village") is not a home rule municipality within Article VII, Section 6A of the Illinois Constitution and accordingly, acts pursuant to the powers granted to it under 65 ILCS 5/1-1 *et seq.*; and,

WHEREAS, the Village of Sugar Grove has established a Village Code of Ordinances ("Village Code"); and,

**WHEREAS,** the Illinois Municipal Code, 65 ILCS 5/-12.2 et seq. establishes a procedure for municipalities to adopt a system of local adjudication for the prosecution of minor violations to a municipal code of ordinances; and,

WHEREAS, the Village wishes to adopt such a system so that it may locally process such violations.

**NOW, THEREFORE, BE IT ORDAINED** by the President and Board of Trustees of the Village of Sugar Grove, Kane County, Illinois, as follows:

# **SECTION ONE:**

# A. Scope of Adjudication of Village Ordinance Violations

- (1) Authority. Pursuant to 65 ILCS 5/1-2.2 *et seq.*, 625 ILCS 5/11-208.3, and the Constitution of the State of Illinois, the Village of Sugar Grove hereby establishes a procedure for a system of local adjudication of violations of its Village Code of Ordinances to the extent permitted by local ordinance and State law.
- (2) Shared Process Acceptable. The process for adjudicating local ordinance violations may be consolidated and organized in conjunction other types of administrative adjudications so authorized by the Village Code of Ordinances.
- (3) **Procedures Non-Exclusive.** The adoption of the system of adjudication for minor ordinance violations are non-exclusive and shall not preclude the Village from using other methods

to enforce its municipal ordinances, including, but not limited to, the prosecution of such violations in a court of competent jurisdiction or the prosecution of Building and Zoning Code violations through an administrative process.

# **B.** Composition of Code Hearing Division; Powers and Duties

- (1) Code Hearing Division Established. A code hearing division is hereby established with the authority to oversee the system of local ordinance adjudication prosecutions in the Village, as further provided herein.
- (2) Hearing Officer. All adjudicatory hearings shall be presided over by a hearing officer, who shall be appointed by the Village President with the advice and consent of the Board of Trustees. The hearing officer's powers and duties shall include the authority to:
- (i) Preside over adjudicatory hearings, listen to testimony, and accept evidence that is relevant to the existence of code violations;
  - (ii)Administer oaths;
- (iii) Upon written request of the parties or their representatives, issue subpoenas and direct witnesses to appear and give testimony at the hearings;
  - (iv) Rule upon objections and the admissibility of evidence;
- (v) Preserve and authenticate the record, including the exhibits and evidence introduced at hearings;
- (vi) Weigh the evidence at hearings based upon relevancy and competence, determine the credibility of witnesses, and resolve conflicts in testimony;
- (vii) Make ultimate findings and determinations based on the relevant and competent evidence presented at a hearing of whether a code violation exists;
- (viii) Issue a written determination, which shall include findings of fact, final decision, and order, and which shall include any fine, costs, penalty or other action with which the defendant must comply should the defendant be found liable; and,
- (ix) The hearing officer shall not have the authority to impose a penalty of incarceration or impose a fine in excess of seven hundred and fifty dollars (\$750.00) for each violation.
- (3) Code Hearing Administrator. The Code Hearing Administrator shall be authorized and directed to perform the following functions:
  - (i) Operate and manage this system of adjudicatory hearings;

- (ii) Adopt, distribute, and process code violation notices and other notices as may be required to carry out the purpose of this chapter;
  - (iii) Collect and process monies paid after a final determination of a code violation;
- (iv) Promulgate internal rules and regulations reasonably required to operate and maintain this administrative hearing system;
- (v) Certify copies of final determinations of standing and/or parking regulation violation liability, vehicle compliance violation, vehicle sticker violation or any other ordinance violation adjudicated pursuant to this chapter, and any factual reports verifying the final determination of any violation of liability which was issued in accordance with this chapter or the laws of the state, including 625 ILCS 5/11-208.3, as may be amended from time to time;
- (vi) Certify reports to the secretary of state concerning initiation of suspension of driving privileges in accordance with the provisions of this chapter and those of 625 ILCS 5/6-306.5; and,
- (vii) Collect unpaid fines and/or penalties and otherwise pursue all post judgment remedies available under law, including compromising and setting violation notices prior to a hearing date which shall be approved by a hearing officer;
- (viii) The Code Hearing Administrator shall also serve as the traffic compliance officer, as provided in 625 ILCS 5/11-208.3;
  - (ix) Other duties as authorized by statute and as may be assigned from time to time.

# C. Administrative Hearing Process.

- (1) Authority. All full-time, part-time, and auxiliary police officers, as well as other specifically appointed individuals, shall have the authority to issue violation notices. For purposes of this adjudication process for minor ordinance violations, the Village Board hereby specifically appoints the Village Administrator, or his/her respective designee(s), as authorized to issue violation notices pursuant to this Ordinance.
- (2) Subpoenas. Parties may request in writing to the hearing officer before the hearing date that the hearing officer issue subpoenas to direct attendance and testimony of relevant witnesses and the production of relevant documents.

At any time prior to the hearing date, but not less than two (2) working days prior to the hearing date, the hearing officer assigned to the case may, at the request of either party, direct witnesses to appear and give testimony at the hearing. If, on the date set for hearing, the defendant or his attorney fails to appear, the hearing officer may find the defendant in default and shall proceed with the hearing and accept evidence relevant to the existence of a code violation in the defendant's absence.

(3) Hearing. At the hearing, parties shall be provided with an opportunity to give

testimony, present witnesses, submit evidence, and cross-examine opposing witnesses. Parties may be represented by legal counsel.

- (4) Continuances. No continuances shall be authorized by the hearing officer except in cases in which a continuance is necessary to protect the rights of the parties. Lack of preparation shall not be grounds for a continuance.
- (5) Content of Violation Notice for General Ordinance Violations. When a village official with authority to enforce Village ordinances and code provisions makes a determination that a violation has occurred, he or she shall note the violation on a multiple copy violation notice and report form that indicates the following:
  - (i) Name and address of defendant;
- (ii) Type and nature of violation, including section or regulation violated and legal authority and jurisdiction under which the hearing is to be held;
  - (iii) Date and time the violation was observed;
  - (iv) Address of the location where the violation was observed;
  - (v) Name(s) of witness(es) to the violation, if any;
- (vi) The amount of fine, if any, and notice that failure to pay within the allotted time will result in adjudication of the violation notice through the administrative hearing process and the penalties for failing to appear at the administrative hearing;
- (vii) Signature and identification number, if applicable, of the person issuing the violation notice (in the case of vehicular standing, parking, or compliance regulations the certification shall be valid if the authorized person signs the notice at the time of service);
  - (vi) Hearing date, time, and location;
  - (viii) Penalty for any late fee; and,
  - (ix) Vehicle make and state registration number, if applicable.
- (6) Content of Violation Notice for Ordinance Violations Related to Vehicle Standing, Parking, and Other Compliance Regulations. In addition to the above, there shall be a section entitled "request for hearing" setting forth that the registered owner or lessee may appear at the initial administrative hearing to contest the validity of the violation notice on the date and at the time and place as specified by the violation notice by:
- (i) Checking or placing a mark in a space provided and clearly identified as "request for hearing;"

- (ii) If a non-resident of the Village of Sugar Grove or Kane County, checking or placing a mark in a space provided and clearly identified as "nonresident request for hearing nonappearance;"
  - (iii) Placing his name and current address in the place provided;
  - (iv) Signing his name in the appropriate indicated place;
- (v) Filing the violation notice, with the request for hearing portion fully completed, with the ordinance enforcement administrator postmarked by the 25<sup>th</sup> of the month, if the violation was issued between the 1<sup>st</sup> through 15<sup>th</sup> day of the month, or postmarked by the 10<sup>th</sup> of the month, if the violation notice was issued between the 16<sup>th</sup> and the end of the prior month. The request shall be deemed filed upon receipt by the ordinance enforcement administrator; and,
- (vi) A clearly marked statement that the execution of the nonresident request for hearing is a waiver of the nonresident's right to a personal appearance and the adjudication will be made based upon the notarized statement of facts submitted by the nonresident and the facts contained in the violation notice.
- (7) Violation Notices. The violation report derived from the violation notice shall be forwarded to the code hearing division where a docket number shall be stamped on all copies of the report and a hearing date shall be noted or filled in. The hearing date shall be not less than thirty (30) nor more than forty (40) days after the notice is served. One copy of the violation notice and report shall be maintained in the files of the code hearing division and shall be part of the record of the hearing; one copy of the report shall be returned to the individual representing the village in the case so that he or she 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 either in person or by first class mail to the defendant, along with a summons commanding the defendant to appear at the hearing. Hand delivery of the violation notice containing the required content shall be sufficient for in person service. Service of a violation notice may be made by affixing the original or a facsimile of the notice to an unlawfully standing or parked vehicle.

# D. Prima Facie Case, Evidence, and Standards of Proof

- (1) **Prima Facie Case.** A prima facie case may be established if the violation notice served in compliance with the provisions of this chapter is certified by the issuer. A violation notice shall be admissible in any subsequent administrative or legal proceeding.
- (2) Rules of Evidence. The formal and technical rules of evidence shall not apply in the adjudicatory hearing process.
- (3) **Burden of Proof.** The burden of proof to sustain a finding of violation of Village ordinances shall be by a preponderance of the evidence.

# E. Findings, Decision, Order, and Penalty.

- (1) Hearing Officer Determination. At the conclusion of a hearing, the hearing officer shall make a determination, on the basis of the relevant and competent evidence presented at the hearing, whether or not a code or ordinance violation exists. The determination shall be in writing and shall be designated as findings, decision, and order. The findings, decision, and order shall include the hearing officer's findings of fact, a decision whether or not a code or ordinance violation existed based upon the findings of fact, and an order.
- (2) Determination of Violation. If an ordinance violation is found, the order may impose a fine and costs and may direct the defendant to correct the violation and/or impose such other sanctions as may be appropriate as allowed by law consistent with Village ordinance; set a date by which the violation must be brought into compliance, if applicable. The order shall contain a statement of the penalties for late payment and that any unpaid fines, costs, and penalty assessed is a debt due and owing to the Village after the exhaustion of, or the failure to exhaust judicial procedures for review. In the case in which a defendant fails to comply with a judgment ordering the correction of a code violation or imposing any fine or other sanction as a result of the code violation, the order shall provide that any expense incurred by the Village to enforce the judgment, including, but not limited to, attorney fees, costs, and costs related to property demolition or foreclosure, shall be a debt due and owing to the Village and may be collected in accordance with applicable law. If a violation is not found, the order shall include a statement to that effect and dismiss the case. A copy of the findings, decision, and order shall be served on the owner within five (5) days after issuance by first class mail.
- (3) **Default Judgment.** A notice of judgment entered by default shall be forwarded to any person who fails to appear and shall contain the same information as a determination of liability but shall also state that the judgment may be set aside by the hearing officer if, within twenty-one (21) days of issuance of the judgment, a petition is received stating what the hearing officer determines is good cause for failure to appear. The default judgment shall state that it constitutes a final determination of liability if such petition is not received, if the petition is denied, or after setting a new hearing date the person fails to appear.
- (4) Penalties and Costs. The hearing officer shall not have the authority to impose a penalty of incarceration or impose a fine in excess of seven hundred and fifty dollars (\$750.00) for each violation except for those offenses under 625 ILCS 5/11-208.3 which shall carry a maximum of five hundred dollars (\$500.00). When applicable, however, each day a code provision is found to have been violated by the defendant shall constitute a separate offense, and each separate offense subjects the defendant to the fine and penalty provided by the governing fine or penalty provision. Any fine assessed is exclusive of any costs imposed. In all cases where there is a determination of liability by the hearing officer, the hearing officer shall impose administrative costs (i.e. court costs) in the amount of twenty-five dollars (\$25.00) or greater.
- (5) Additional Penalties and Costs. In addition, and not withstanding any fines and administrative costs, the hearing officer may order:
- (a) Costs incurred by the Village for effecting compliance with code provision(s) for which a defendant has been found liable;

- (b) Compliance with the code provision(s) found to have been violated;
- (c) Performance of a term of community service in lieu of fines.
- (6) Standing, Parking, Compliance Regulation Notices. For all vehicular standing, parking, or compliance regulation violation, there shall be a second notice sent following a failure to appear at the hearing. In addition, a notice of final determination shall be sent following an appearance by the violation and a determination of the liability or the failure to appear by the violator by the final hearing date upon conclusion of judicial review. The notice shall contain, but shall not be limited to, the following information:
- (i) The date and location of violation cited in the vehicular standing, parking, or compliance regulation violation notice;
  - (ii) The particular standing, parking, or compliance regulation violated;
  - (iii) The vehicle make and state registration;
  - (iv) The fine, court costs, and any penalty that may be assessed for late payment;
  - (v) A notice to the registered owner or lessee of their current status, other than paid in full;
- (vi) The date, time, and place of the administrative hearing at which the alleged violation may be contested on its merits if the individual failed to appear at his or her first hearing date;
- (vii) A statement that the failure to either pay the fine and any applicable penalty or failure to appear at the hearing on its merits on the date and at the time and place specified will result in a final determination of vehicle standing, parking, or compliance regulation violation liability for the cited vehicle violation in the amount of the fine and penalty indicated, as well as court costs;
- (viii) If a final determination occurs, a statement that a final determination of vehicular standing, parking or compliance violation liability for the failure, and exhaustion of, or the failure to exhaust judicial procedures for review, any unpaid fine or penalty will constitute a debt due and owing to the Village;
- (ix) A warning that failure to pay the fine and any penalty due and owing the Village within the time specified may result in the Village's filing a complaint in the circuit court to have the unpaid fine or penalty rendered a judgment as provided herein;
- (x) A warning that failure to pay the fine or penalty owing within forty-five (45) days of the date of the notice may result in the Village notifying the Secretary of State that the person is eligible for initiation of suspension proceedings under 625 ILCS 5/6-306.5 if they have failed to pay any fine or penalty due and owing as a result of ten (10) or more vehicular standing, parking, or compliance regulation violations.
  - (7) **Notices.** Notice issued pursuant to these provisions shall be sent as follows:

- (i) Notice of Impending Suspension of License. A notice impending suspension of a person's driver's license shall be sent to any person determined to be liable for the payment of any fine or penalty that remains due and owing on ten (10) or more vehicular standing, parking, or compliance regulation violations. The notice shall state that the failure to pay the fine or penalty owing within forty-five (45) days of the date of the notice will result in the Village notifying the Secretary of State that the person is eligible for imitation of suspension proceedings under 625 ILCS 5/6-306.5. The notice of impending driver's license suspension shall be sent by first class mail, postage prepaid, to the address recorded with the Secretary of State.
- (ii) Other Notices Regarding Vehicles. Notices shall be sent to the registered owner of the cited vehicle at the address as is recorded with the Secretary of State or sent to the lessee of the cited vehicle at the address last known to the lessor of the cited vehicle at the time of the lease by first class mail, postage prepaid.
- (iii) Notices not related to vehicular standing, parking, or compliance. All other notices shall be sent to the last known address of the individual by first class mail, postage prepaid.

### F. Late Fees.

- (1) Fines and Fees Paid Within 21 Days. All fines and fees must be paid within twenty-one (21) days of issuance of the determination of liability and the exhaustion or failure to exhaust any administrative remedy. Failing to pay the total fines and costs within twenty-one (21) days of the issuance of the determination of liability and the exhaustion or the failure to exhaust any administrative review procedures as set forth in this chapter shall result in the imposition of a late penalty payment fee as follows:
- (2) Between 22 and 42 Days. A late payment penalty fee of fifty dollars (\$50.00) shall be imposed if the total fines and costs are paid more than twenty-one (21) days following the issuance of the determination of liability but within forty-two (42) days following the issuance of the determination of liability.
- (\$75.00) shall be imposed if the total fines and costs are paid more than forty-two (42) days following the issuance of the determination of liability but within sixty-three (63) days following the issuance of the determination of liability.
- (4) After 63 Days. A late payment penalty fee of one hundred dollars (\$100.00) shall be imposed if the total fines and costs are paid more than sixty-three (63) days following the issuance of the determination of liability.

### G. Judicial Review.

(1) Final Determination. Any final decision by a hearing officer that an ordinance violation does or does not exist shall constitute a final determination for purposes of judicial review and shall be subject to review under the Illinois Administrative Review Law, as amended.

- (2) Expiration of Judicial Review Period. After the expiration of the period within which judicial review under Administrative Review Law may be sought for final determination of an ordinance violation, the Village may commence a proceeding in the Circuit Court of the Sixteenth Judicial Circuit, Kane County, Illinois, for the purpose of obtaining a judgment on the findings, decision, and order. Nothing in this chapter shall prevent the Village from the consolidation of multiple findings, decisions, and orders against a person in such a proceeding.
- (3) Subsequent Proceedings. Issues such as whether an ordinance violation occurred and the penalties that are imposed may not be raised in any enforcement proceeding after the period for judicial review has passed.

# H. Nonresident Procedures.

- (1) **Procedure.** Nonresidents of this Village who have been issued a vehicular standing, parking or compliance regulation violation notice may contest the alleged violation on its merits without personally appearing at an administrative hearing by:
- (i). Completing, in full, the "nonresident request for hearing" section of the violation notice;
- (ii). Signing the "nonresident request for hearing" in the space specified in the violation notice and acknowledging that his personal appearance is waived and submitting to an adjudication based upon the notarized statement filed by him and the facts contained in the violation notice.
- (iii). Filing the violation notice with "request for hearing" section fully completed with the ordinance enforcement administrator postmarked by the 25<sup>th</sup> of the month, if the violation notice was issued between the 1<sup>st</sup> through the 15<sup>th</sup> day of the month or postmarked by the 10<sup>th</sup> day of the month if the violation notice was issued between the 16<sup>th</sup> and the end of the prior month. The request shall be deemed filed upon receipt by the ordinance enforcement administrator.
- (iv). Filing a notarized statement of facts specifying the grounds for challenging the violation notice which must be filed with the administrator postmarked by the 25<sup>th</sup> of the month, if the violation notice was issued between the 1<sup>st</sup> through the 15<sup>th</sup> day of the month, or postmarked by the 10<sup>th</sup> of the month, if the violation notice was issued between the 16<sup>th</sup> and the end of the prior month. The request shall be deemed filed upon receipt by the administrator. The acceptance of a "nonresident request for hearing" after the due date or with cause is at the discretion of the administrator.
- (v) The hearing officer shall make an adjudication based upon the facts set forth in the notarized statement of facts filed by the nonresident as is contained in the violation notice;
- (vi) Notice of the determination of the hearing officer shall be served upon the nonresident by first class mail, postage prepaid, addressed to the nonresident at the address set forth in the statement of facts submitted

- (vii) Service of the notice shall be complete on the date notice is placed in the United States mail
- (2) All Other Provisions Apply. All other provisions of this chapter shall apply equally to nonresidents

# I. Enforcement of Administrative Orders.

(1) **Debt Due and Owing.** Any fine, costs or other sanction imposed that remains unpaid after the exhaustion of, or the failure to exhaust judicial review procedures under the Illinois Administrative Review Law, shall be considered a debt due and owing to the Village and enforced in the same manner as a judgment entered by a court of competent jurisdiction and may be collected in accordance with applicable law.

# J. Other Methods of Code and Ordinance Enforcement

- (1) Validity of Other Systems. This chapter shall not affect the validity of any other system of administrative adjudications that were authorized by state law, including the Village of Sugar Grove Ordinances.
- (2) Contempt. Any person, having received notice and opportunity for a hearing as provided in this chapter, who knowingly fails to comply with an order issued by the hearing officer under this chapter, including the issuance of a subpoena, shall, if the order is not stayed by the court of competent jurisdiction prior to its effective date, be guilty of contempt. Each day that a violation continues shall be considered a separate and distinct offense. It shall not be a defense that a person came into compliance with an order, sought judicial review of it, or made efforts to comply with an order, subsequent to its effective date.
- (3) Additional Expenses Due. Any expense incurred by a municipality to enforce the judgment, including, but not limited to, attorney's fees, court costs, and costs related to property demolition or foreclosure, after they are fixed by a court of competent jurisdiction or a hearing officer, shall be a debt due and owing to the Village and may be collected in accordance with applicable law. However, prior to any expenses being fixed by a hearing officer, the Village shall provide notice to the defendant that states that the defendant shall appear at a hearing before the administrative hearing officer to determine whether the defendant has failed to comply with the judgment. The notice shall set the date for such a hearing, which shall not be less than seven (7) days from the date that notice is served. If notice is served by mail, the seven (7) day period shall begin to run on the date notice was deposited in the mail.

# K. Collections of Fines and Costs.

All fines and other monies to be paid to the Village in accordance with this chapter shall be remitted to the Village and deposited in the appropriate Village account as designated by the Village Administrator, or his designee.

# **SECTION TWO: GENERAL PROVISIONS**

<u>REPEALER</u>: All ordinances or portions thereof in conflict with this Ordinance are hereby repealed.

<u>SEVERABILITY</u>: Should any provision of this Ordinance be declared invalid by a court of competent jurisdiction; the remaining provisions will remain in full force and effect the same as if the invalid provision had not been a part of this Ordinance.

<u>EFFECTIVE DATE</u>: This Ordinance shall be in full force and effect from and after its approval, passage and publication in pamphlet form as provided by law.

**PASSED AND APPROVED** by the President and Board of Trustees of the Village of Sugar Grove, Kane County, Illinois this 7<sup>th</sup> day of June, 2022.

		Jennifer Konen, Village President  ATTEST:  Alison Murphy, Village Clerk			
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	Aye	Nay	Absent	Abstain	
Trustee Matthew Bonnie Trustee Sean Herron Trustee Heidi Lendi Trustee Michael Schomas Trustee Ryan Walter Trustee James F. White Village President Jennifer Konen	Ayc	Ivay	Absciit	Austain	