

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

ROBERT PETERSON and )  
LEIBUNDGUTH STORAGE )  
& VAN SERVICE, INC. )  
 )  
Plaintiffs, )  
 )  
v. )  
 )  
VILLAGE OF DOWNERS GROVE, )  
ILLINOIS, an Illinois municipal )  
corporation )  
 )  
Defendant. )

Civil Action No. 14-cv-9851  
Judge: Honorable Edmond E. Chang  
Magistrate Judge: Honorable Young B. Kim

**DEFENDANT’S VERIFIED ANSWER TO  
PLAINTIFFS’ AFFIRMATIVE DEFENSES TO COUNTERCLAIM**

NOW COMES Defendant, VILLAGE OF DOWNERS GROVE, ILLINOIS, an Illinois municipal corporation (“Village”) by and through its attorneys, DAY & ROBERT, P.C., and answers Plaintiffs’ Affirmative Defenses to Counterclaim, as follows:

1. Defendant’s Counterclaim must be denied if Plaintiffs prevail on the claims alleged in the First Amended Complaint.

**ANSWER: The Village admits that if the Court rules in favor of Plaintiffs on all four counts within the Verified First Amended Complaint, and further declares that Sections 9.020.P, 9.050.C.1 and 9.050.A of the Village sign ordinance are all unconstitutional, the Village’s Counterclaim will be rendered moot and therefore denied. The Village denies the balance of paragraph #1 of Plaintiffs’ Affirmative Defenses to Counterclaim.**

2. Defendant asserts that the Court has supplemental jurisdiction over its Counterclaim, but if Plaintiffs do not prevail on their claims, then the only basis for federal jurisdiction will be removed from this case.

**ANSWER: The Village admits that it has asserted the Court has supplemental jurisdiction over its Counterclaim and denies the balance of paragraph #2 of Plaintiffs’ Affirmative Defenses to Counterclaim. Furthering answering, if Plaintiffs request that the Village remove its Counterclaim to State court, the Village will do so and will commence enforcement of the sign ordinance against Plaintiffs for Plaintiffs continuing violations of Sections 9.020.P,**

**9.050.C.1 and 9.050.A as of April 17, 2015 pursuant to its prior written notification sent to Plaintiffs.**

3. Defendant is not required to file a Counterclaim to preserve its rights to enforce the sign ordinance against Plaintiffs because, if Plaintiffs do not prevail, Defendant may simply enforce the sign ordinance in state court as provided by the Village Municipal Code, §§ 1.15(e), 1.18.

**ANSWER: The Village admits that it is not required to file a Counterclaim in this case to preserve its right to enforce the sign ordinance against Plaintiffs, and that the Village can file its Counterclaim either in this case or seek enforcement of the sign ordinance against Plaintiffs by a proceeding initiated in State court in accordance with Sections 1.15(e) and 1.18 of the Village Municipal Code. The Village denies the balance of paragraph #3 of Plaintiffs' Affirmative Defenses to Counterclaim.**

4. If Plaintiffs do not prevail, Defendant cannot retroactively enforce the sign ordinance against Plaintiffs because of the Court's order in which Defendant agreed not to enforce the sign ordinance until a ruling on the cross motions for summary judgment, including daily fines during the pendency. (Doc. 11).

**ANSWER: The Village admits that as reflected in the Court's January 30, 2015 order, the Village voluntarily agreed to delay enforcement of the sign ordinance against Plaintiffs until after the Court rules on the cross-motions for summary judgment in this case, and that if the Village prevails, it will not seek enforcement, fines or penalties against Plaintiffs until after said ruling is made. The Village denies the balance of paragraph #4 of Plaintiffs' Affirmative Defenses to Counterclaim.**

5. The Village Municipal Code provides an enforcement mechanism and procedures which the Village must follow to enforce violations of the sign ordinance. Defendant's Counterclaim seeks to avoid following such procedures. Village Zoning Ordinance, Article 13.020.

**ANSWER: The Village admits that a true and accurate copy of the text of Section 13.020 of the Village Zoning Ordinance entitled "Violations, Penalties and Enforcement" is attached hereto and incorporated into this answer as Exhibit A. The Village denies the balance of paragraph #5 of Plaintiffs' Affirmative Defenses to Counterclaim.**

VILLAGE OF DOWNERS GROVE, ILLINOIS, an  
Illinois municipal corporation, Defendant

BY: /s/ Scott M. Day

Scott M. Day

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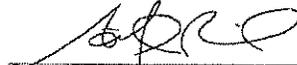
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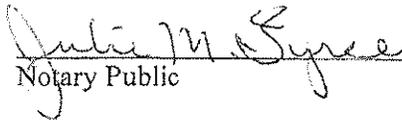
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VERIFICATION

I, Stanley J. Popovich, declare under penalty of perjury that the allegations in this Defendant's Verified Answer to Plaintiffs' Affirmative Defenses to Counterclaim are true and correct to the best of my knowledge, except as to matters stated to be on information and belief, and as to such matters I certify that I verily believe the same to be true.

  
\_\_\_\_\_  
Stanley J. Popovich

SUBSCRIBED and SWORN to  
before me this 11<sup>th</sup> day of March, 2015

  
\_\_\_\_\_  
Notary Public



**CERTIFICATE OF SERVICE**

I, Scott M. Day, an attorney, certify that on March 11, 2015, I filed Defendant's Verified Answer to Plaintiffs' Affirmative Defenses to Counterclaim with the Clerk of the Court, United States District Court for the Northern District of Illinois using the CM/ECF System, which also served same upon all parties of record by the CM/ECF System.

/s/ Scott M. Day  
Scott M. Day

# **EXHIBIT A**

Sec. 13.020 Violations, Penalties and Enforcement

A. Responsibility for Enforcement

The community development director has primary responsibility for enforcing this zoning ordinance.

B. Violations

Unless otherwise expressly allowed by this zoning ordinance or state law, any violation of a provision of this zoning ordinance—including but not limited to all of the following— may be subject to the remedies and penalties provided for in this zoning ordinance.

1. to use land or buildings in any way not consistent with the requirements of this zoning ordinance;
2. to erect a building or other structure in any way not consistent with the requirements of this zoning ordinance;
3. to install or use a sign in any way not consistent with the requirements of this zoning ordinance;
4. to engage in the use of a building, structure or land, the use or installation of a sign, or any other activity requiring one or more permits or approvals under this zoning ordinance without obtaining such required permits or approvals;
5. to engage in the use of a building or land, the use or installation of a sign, or any other activity requiring one or more permits or approvals under this zoning ordinance in any way inconsistent with any such permit or approval or any conditions imposed on the permit or approval;
6. to violate the terms of any permit or approval granted under this zoning ordinance or any condition imposed on the permit or approval;
7. to obscure, obstruct or destroy any notice required to be posted or otherwise given under this zoning ordinance;
8. to violate any lawful order issued by any person or entity under this zoning ordinance;  
or
9. to continue any violation after receipt of notice of a violation.

C. Continuing Violations

Each day that a violation remains uncorrected after receiving notice of the violation from the village constitutes a separate violation of this zoning ordinance.

D. Remedies and Enforcement Powers

The village has all remedies and enforcement powers allowed by law, including the following:

1. Fines

Fines may be levied in accordance with the User-Fee, License & Fine Schedule.

2. Liens

The village may file liens against a property for failure to pay levied fines or fees and to cover any expenses incurred by the village for remedying violations of this ordinance.

3. Withhold Permit

a. The community development director may deny or withhold permits, certificates or other forms of authorization on any land or structure or improvements upon which there is an uncorrected violation of a provision of this zoning ordinance or of a condition or qualification of a permit, certificate, approval or other authorization previously granted by the village. This enforcement provision may be used regardless of whether the current owner or applicant is responsible for the violation in question.

b. The community development director may deny or withhold permits, certificates or other forms of authorization on any land or structure or improvements owned by or being developed by a person who owns, developed or otherwise caused an uncorrected violation of a provision of this zoning ordinance or of a condition or qualification of a permit, certificate, approval or other authorization previously granted by the village. This enforcement provision may be used regardless of whether the property for which the permit or other approval is sought is the property in violation.

c. Instead of withholding or denying a permit or other authorization, the community development director may grant such authorization subject to the condition that the violation be corrected.

4. Revoke Permits

a. Any permit, certificate or other form of authorization required under this zoning ordinance may be revoked by the community development director when the community development director determines:

(1) that there is departure from the plans, specifications, or conditions as required under terms of the permit;

(2) that the development permit was procured by false representation or was issued by mistake; or

(3) that any of the provisions of this zoning ordinance are being violated.

b. Written notice of revocation must be served upon the owner, the owner's agent or contractor, or upon any person employed on the building or structure for which such permit was issued. If no persons can reasonably be served with notice, the notice must be posted in a prominent location.

5. **Stop Work**  
With or without revoking permits, the community development director may stop work on any building or structure on any land on which there is an uncorrected violation of a provision of this zoning ordinance or of a permit or other form of authorization issued under the zoning ordinance.
  6. **Revoke Plan or Other Approval**  
Where a violation of this zoning ordinance involves a failure to comply with approved plans or conditions to which the approval of such plans was made, the community development director may, upon notice to the applicant and other known parties in interest (including any holders of building permits affected):
    - a. revoke the plan or other approval; or
    - b. condition its continuance on strict compliance with this zoning ordinance or the provision of security to ensure that construction is completed in compliance with approved plans, or such other conditions as the community development director may reasonably impose.
  7. **Injunctive Relief**  
The village may seek an injunction or other equitable relief in court to stop any violation of this zoning ordinance or of a permit, certificate or other form of authorization granted under the zoning ordinance.
  8. **Forfeiture and Confiscation of Signs on Public Property**  
Any sign installed or placed on public property, except in compliance with the regulations of this zoning ordinance will be forfeited to the public and subject to confiscation. In addition to other remedies and penalties of this section, the village has the right to recover from the sign owner or person who placed the sign, the full costs of sign removal and disposal.
  9. **Abatement**  
The village may seek a court order in the nature of mandamus, abatement, injunction or other action or proceeding to abate or remove a violation or to otherwise restore the premises in question to the condition in which they existed prior to the violation.
  10. **Other Penalties, Remedies and Powers**  
The village may seek such other penalties as are provided by Illinois law.
  11. **Continuation of Previous Enforcement Actions**  
Nothing in this zoning ordinance prohibits the continuation of previous enforcement actions, undertaken by the village pursuant to previous valid ordinances and laws.
- E. **Cumulative Remedies**  
The remedies and enforcement powers established in this zoning ordinance are cumulative, and the village may exercise them in any combination or order.
- F. **Persons Subject to Penalties**  
The owner or tenant of any building, structure, premises, or part thereof, and any architect, builder, contractor, or agent, or other person who commits, participates in, assists in, or maintains such violations may each be found guilty of a separate offense and be subject to penalties, remedies and enforcement actions.

G. Enforcement Procedures

1. Non-Emergency Matters

In the case of violations of this zoning ordinance that do not constitute an emergency or require immediate attention, the community development director must give notice of the nature of the violation to the property owner or to any other person who is party to the agreement or to any applicant for any relevant permit in the manner stated in this section, after which the persons receiving notice have 10 days to correct the violation before further enforcement action may be taken. Notice must be given in person, by US Mail, or by posting notice on the premises. Notices of violation must state the nature of the violation and the time period for compliance and may state the corrective steps necessary and the nature of subsequent penalties and enforcement actions should the situation not be corrected.

2. Emergency Matters

In the case of violations of this zoning ordinance that constitute an emergency situation as a result of public health or safety concerns or violations that will create increased problems or costs if not remedied immediately, the village may use the enforcement powers available under this zoning ordinance without prior notice, but the community development director must attempt to give notice simultaneously with beginning enforcement action. Notice may be provided to the property owner, to any other person who is party to the agreement and to applicants for any relevant permit.

H. Appeals

Enforcement actions taken by the community development director may be appealed by the affected party in accordance with Sec. 12.100.