

**VILLAGE OF BURNHAM**

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**ORDINANCE NO. 2013-O-001**

**AN ORDINANCE ADDING ARTICLE V. EMERGENCY RESPONSE  
REIMBURESMENT FOR HAZARDOUS SUBSTANCE AND/OR  
MATERIAL INCIDENTS TO CHAPTER 38 OF THE CODE OF  
ORDINANCES, VILLAGE OF BURNHAM, ILLINOIS**

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**PASSED BY THE  
VILLAGE PRESIDENT (MAYOR) AND BOARD OF TRUSTEES OF  
THE  
VILLAGE OF BURNHAM**

**THIS 26<sup>th</sup> DAY OF FEBRUARY, 2013**

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**PUBLISHED IN PAMPHLET FORM  
BY AUTHORITY OF THE VILLAGE PRESIDENT (MAYOR) AND  
BOARD OF TRUSTEES OF THE VILLAGE OF BURNHAM, COOK  
COUNTY, ILLINOIS THIS 28<sup>TH</sup> DAY OF FEBRUARY, 2013**

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RESPONSE REIMBURSEMENT FOR HAZARDOUS  
SUBSTANCE AND/OR MATERIAL INCIDENTS TO  
CHAPTER 38 OF THE CODE OF ORDINANCES,  
VILLAGE OF BURNHAM, ILLINOIS**

**WHEREAS**, the Village of Burnham, Cook County, Illinois, (the “Village”) has elected by Referendum on March 11, 1980 to become a home rule unit, and accordingly, pursuant to the provisions of the Constitution of the State of Illinois of 1970, particularly Article VII, Section 6(a) thereof, the Village is a home rule unit; and

**WHEREAS**, pursuant to the powers of a home rule unit set forth VII, Section 6(a) of the Constitution of the State of Illinois of 1970, may exercise any power and perform any function pertaining to its govern. affairs, including but not limited to the power to regulate for the prote public health, safety, morals, and welfare, to license, to tax and to incur debt;

**WHEREAS**, hazardous substances and/or materials are transported, used, or temporarily stored within the corporate limits of the Village; and

**WHEREAS**, the actual or threatened spill or emission of hazardous substances and/or materials endangers the public health, safety and welfare of the residents of the Village; and

**WHEREAS**, the actual or threatened spill or emission of hazardous substances and/or materials constitutes a public nuisance; and

**WHEREAS**, the actual or threatened spill or emission of hazardous substances and/or materials requires a rapid response from fire departments, police departments, public work departments, emergency service disaster agencies, and other governmental agencies and the use of sophisticated equipment, materials, and/or protective gear to neutralize, remove, and/or remedy such actual or threatened spill or emission of hazardous substances and/or materials; and

**WHEREAS**, the residents of the Village should not be obligated to pay for the costs of responding to, neutralizing or remedying actual or threatened spills or emissions of hazardous substances and/or materials in the Village; and

**WHEREAS**, the Corporate Authorities of the Village deem it to be in the best interests of the residents of the Village to place the financial responsibility for the costs of responding to, neutralizing or remedying actual or threatened spills or emissions of hazardous substances and/or materials upon those persons or entities that cause hazardous substances and/or materials to be spilled or emitted in the Village requiring an emergency response by the Village's personnel and equipment or by any other authorized emergency response agency for any removal or remedial action.

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**BE IT ORDAINED** by the Village President (Mayor) and Board of Trustees of the Village of Burnham, Cook County, Illinois, in the exercise of its home rule powers, as follows:

**Section 1.** The Village President (Mayor) and Board of Trustees of the Village hereby find that all of the recitals contained in the preambles of this Ordinance are true, correct and complete and do hereby incorporate them into this Ordinance by this reference.

**Section 2.** The Code of Ordinances, Village of Burnham, Illinois is hereby amended by adding an ARTICLE V. EMERGENCY RESPONSE REIMBURSEMENT FOR HAZARDOUS SUBSTANCE AND/OR MATERIAL INCIDENTS to Chapter 38, which Article V. reads as follows:

**ARTICLE V. EMERGENCY RESPONSE REIMBURSEMENT  
FOR HAZARDOUS SUBSTANCE AND/OR  
MATERIAL INCIDENTS**

**Sec. 38-200. Definitions.**

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning;

*Abandonment.* The act of leaving a thing with the intent not to retain possession of or assert ownership control over it. The intent need not coincide with the act of leaving. It is prime facie evidence of the

necessary intent to abandon a vehicle, vessel, or container containing a hazardous substance and/or material that:

(1) The vehicle, vessel or container has been left for more than two (2) days unattended and unmoved; or

(2) License plates or other identifying marks have been removed from the vehicle, vessel or container; or

(3) The vehicle, vessel or container has been damaged or is deteriorated so extensively that it has value only for junk or salvage; or

(4) The owner/operator has been notified by a law enforcement agency to remove the vehicle, vessel or container and the vehicle, vessel or container has not been moved within 24 hours after notification.

*Cleanup.* Cleanup includes all the activities necessary to contain, collect, analyze, treat, disperse, remove and dispose of hazardous substances and/or materials, and to restore the site to pre-incident condition.

*Container.* A receptacle used for the shipment or storage of goods that meets one or more of the following:

(1) Of permanent character and strong enough for repeated use;

or

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(2) A cargo container used to transport or store small quantities of materials such as a box, drum, barrel, can or carboy; or

(3) Specifically designed to facilitate the carriage of goods by one or more modes of transportation without intermediate reloading.

*Costs.* All expenses incurred by the Village or by any other authorized emergency response agency assisting the Village as a result of any removal or remedial action involving hazardous substance and/or material release, threatened release or fire.

*Emergency response agency.* A unit of local government, volunteer fire protection organization or other support agency including licensed hazardous waste contractor(s) that provide one or more of the following services:

- (1) Firefighting services;
  - (2) Emergency rescue services;
  - (3) Emergency medical services;
  - (4) Emergency medical treatment or transportation services;
  - (5) Hazardous materials response teams services;
  - (6) Emergency service, disaster response or civil defense services;
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- (7) Public works departments and/or maintenance departments services;
- (8) Police services (federal, state or local); or
- (9) Remediation, mitigation or disposal of hazardous substances and/or materials services by a licensed hazardous waste contractor.

*Facility.* Any building, structure, installation, equipment, pipe or pipeline including but not limited to any pipe into a sewer or publicly owned treatment works, well, pond, lagoon, impoundment, ditch, landfill, storage container, tank, motor vehicle, truck trailer, rolling stock or aircraft. Also any site or area where hazardous substances and/or materials have been deposited, disposed of, stored, placed or otherwise came to be located.

*Fire Chief.* The Fire Chief of the Village of Burnham or his authorized representative.

*Hazardous substance or material.*

- (1) Any substance as designated pursuant to section 9601 (14) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 USC 9601 (14) as amended or as may be amended in the future; or



(2) Any substance, material, waste or mixture designated as a hazardous material, waste or substance according to the provisions of Title 49 of the Code of Federal Regulations or according to the provisions of the Uniform Hazardous Substances Act of Illinois, 430 ILCS 35/1 et. seq. amended or as may be amended in the future, excluding highway route controlled quantities of radioactive materials as defined in Title 49 of the Code of Federal Regulations and special fireworks as defined in section 173.88(d) of Title 49 of the Code of Federal Regulations when the aggregate amount of the flash power does not exceed 50 lbs; or

(3) Any material listed on the Environmental Protection Agency Pollutants, 40 CFR 401.15 as amended, or as may be amended in the future; or

(4) Any material which is classified by the National Fire Protection Association (NFPA) as a flammable liquid, a class 2 combustible liquid, or a class 3 combustible liquid; or

(5) Any material which has been determined by the party storing it or having control of it through testing or other objective means to be likely to create a significant potential or actual hazard to the public

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health, safety, or welfare or to the environment. This definition shall not establish any requirement to test for the purposes of this section; or

(6) Any material, substance or mixture of materials or substances which are toxic, flammable, corrosive, explosive, carcinogenic or radioactive including but not limited to any substance or material which is designated as a hazardous material pursuant to the Hazardous Material Transportation Act (49 U.S.C.A. Sections 1801, et seq.) in a quantity and form which may pose a substantial present or potential hazard to human health, property, or the environment when improperly released, treated, stored, transported, disposed of, or otherwise managed; or

(7) Any material which has been determined by the Fire Chief, through information based on appraisal and assessment from reliable resources, to be likely to create a significant potential or actual hazard to the public health, safety, or welfare or to the environment. The fact that the material in question is not designated as a hazardous substance pursuant to subparagraphs (1) through (6) of this definition or is excluded by the legislation or NFPA classifications of subparagraphs (1) through (6) of this definition does not preclude the Fire Chief from determining that the material is a hazard, given the totality of the

particular facts and circumstances existent at the time of the hazardous substance or material incident.

*Hazardous Substance or Material Incident.* Any circumstance involving the release or threatened release of a hazardous substance and/or material which in the judgment of an emergency response authority, whether said emergency response authority be the Village, or a MABAS member unit, or a federal or state agency, or other local agency, creates a significant potential or actual hazard to the environment or to the public health, safety, and welfare excluding risks associated with hazardous substances or materials in the normal course of an individual's employment. Hazardous Substance or Material Incident includes those incidents of releasing or abandoning of a hazardous substance or material, whether or not such release or abandoning is found to threaten immediate and irreparable harm, but such term does not include any release of a hazardous substance or material authorized pursuant to federal, state, or local law or regulation.

*Mutual aid.* Any action taken by the Village, the Burnham Fire Department or any public agency pursuant to an intergovernmental agreement, including but not limited to any agreement that is part of the Mutual Aid Box Alarm System ("MABAS").

*Person.* Any individual, public or private corporation, partnership, association, firm, trust, sole proprietorship, estate, state or any department, institution or agency thereof, any municipal corporation, county or other political subdivision of the state or any other legal entity whatsoever which is recognized by law as the subject of rights and duties and which is not subject to privilege or immunity from liability for a hazardous substance or material incident.

*Release.* Any actual or threatened spilling, leaking, pumping, pouring, emitting, emptying, escaping, discharging, injecting, leaching, dumping, vaporizing, evaporating or disposing of a hazardous substance or material substance into or on any land, air, water, well, stream, sewer or pipe so that such hazardous substance or material or any constituent thereof may enter the environment, but excludes:

(1) Any release which results in exposure to persons solely within a work place, with respect to a claim which such persons may assert against the employer of such person;

(2) Emissions from the engine exhaust of a motor vehicle, rolling stock, aircraft, vessel or pipeline pumping station engine;

(3) Release of source, byproduct, or special nuclear material from a nuclear incident, as those terms are defined in the Atomic Energy

Act of 1954, as amended, if such release is subject to requirements with respect to financial protection established by the Nuclear Regulatory Commission under section 1870 of such Act;

(4) The normal application of fertilizer; or

(5) A release authorized pursuant to any federal, state or local law or regulation.

*Remedial action.* Any action consistent with permanent remedy taken instead of, or in addition to removal actions in the event of a release or threatened release of a hazardous substance or material into the environment, to prevent or minimize the release of hazardous substances or materials so that they do not migrate to cause a substantial present or potential hazard to human health, property or the environment. The term includes but is not limited to such actions at the location of the release as storage, confinement, perimeter protection using dikes, trenches, or ditches, clay cover, neutralization, cleanup of released hazardous materials or contaminated materials, recycling or reuse, diversion, destruction, segregation or reactive wastes, repair or replacement of leaking containers, collection of leachate and runoff, onsite treatment or incineration, provision of alternate water supplies, temporary evacuation and housing of threatened individuals, any emergency assistance which

may be provided under the Illinois Emergency Services and Disaster Agency Act of 1975, as amended or as may be amended in the future, and any monitoring reasonably required to assure that such actions protect the public health and welfare and the environment.

*Removal.* The cleanup or removal of released hazardous substances or materials from the environment, such actions as may be necessary or appropriate to monitor, assess, and evaluate the release or threat of release of hazardous substances or materials, the disposal or removed material, or the taking of such action as may be necessary to prevent, minimize or mitigate damage to the public health or welfare of the environment. The term includes, in addition, but without limitation, security fencing, containment barriers or other measures to limit access to or spread of hazardous substances or materials, provisions of alternative water supplies, temporary evacuation and housing of threatened individuals, any emergency assistance which may be provided under the Illinois Emergency Services and Disaster Agency Act of 1975, as amended or as may be amended, or pursuant to a MABAS agreement.

*Response.* Any removal or remedial action.

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*Vehicle.* Any device which is capable of moving itself or being moved from place to place upon wheels or endless tracks. The term includes but without limitation automobiles, trucks, semi-tractors, semi-trailers, railroad engines and railroad cars.

*Vessel.* Any craft which is made to float upon water or which does float upon water.

*Village.* The Village of Burnham, Illinois

**Sec. 38-201. Prohibited acts.**

No person shall cause, threaten or allow the release of hazardous substances or materials into the environment unless such release is in accordance with an appropriate permit granted by the Illinois Environmental Protection Agency or other State or Federal agency having primary jurisdiction over the release and such release is in such place and manner as will not create a substantial present or potential hazard to human health, property or the environment.

**Sec. 38-202. Response Authority.**

(a) The Fire Chief shall have authority to respond to any release or threatened release of hazardous substances or materials within the corporate limits of the Village or affecting the public water supply, wells, or sewage treatment works located within the Village or pursuant

to any lawful intergovernmental agreement or mutual aid agreement of which the Village or the Village Fire Department is a party. This authority includes, but is not limited to, remedial action and removal.

(b) The Fire Chief shall have primary authority to respond to any release or threatened release of hazardous substances or materials as described above. The Fire Chief shall report any release or threatened release of hazardous substances or materials to appropriate federal, state and local public health, safety and emergency agencies within twenty-four (24) hours of any substantial release of hazardous substances or materials. The Fire Chief shall relinquish his response authority at such time, if any, as the federal, state or local public health, safety or emergency agency having primary jurisdiction over the release or threatened release has assumed responsibility for response to the release or threatened release.

(c) The Fire Chief, during such time as response authority is vested in him, shall be authorized to utilize all department personnel and equipment and he may, in his sole discretion, take such remedial or removal action as he may deem necessary or appropriate to respond to the release or threatened release of hazardous substance(s) or material(s).

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(d) All responding personnel shall cooperate with and operate under the direction of the Fire Chief or other person then exercising response authority under this Ordinance until such time as the person exercising such response authority has determined that the response is complete or responsibility for response is assumed by the federal, state or local public health, safety or emergency agency having primary jurisdiction over the release or threatened release.

(e) The person exercising response authority under this Ordinance shall coordinate and/or cooperate with other federal, state or local public health, safety or emergency response agencies involved in response to the release or threatened release of hazardous substances or materials.

**Sec. 38-203. Liability for costs.**

(a) Notwithstanding any other provision or rule of law, and subject only to the defenses set forth in Section 38-204, the following person or persons shall be jointly and severally liable for all costs of removal and remedial action incurred by the Village as a result of a release or threatened release of a hazardous substance or material:

(1) The person or persons whose conduct caused a release or substantial threat of release of a hazardous substance or material.

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(2) The owner and operator of a facility, vessel, or vehicle from which there was a release or substantial threat of release of a hazardous substance or material.

(3) Any person, who, at the time of disposal, transport, storage or treatment of a hazardous substance or material, owned, operated, or controlled the facility, vessel or vehicle used for such disposal, transport, storage or treatment from which there was a release or substantial threat of a release of any such hazardous substance or material.

(4) Any person who by contract, agreement, or otherwise has arranged with another party or entity for disposal, transport, storage, or treatment of hazardous substances or materials owned, controlled or possessed by such person at a facility owned, operated, or operated by another party or entity from which facility there is a release or substantial threat of a release of such hazardous substances or materials.

(5) Any person who accepts or accepted any hazardous substances or materials for transport to disposal, storage or treatment facilities from which there is a release or substantial threat of release of hazardous substances or material.

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(6) Any person owning, leasing, or in control of any real property from which there is a release or substantial threat of release of hazardous substances or materials.

(b) In the event, any person undertakes voluntarily or upon order of the Fire Chief to remove or remediate the effects of a release or substantial threat of release of hazardous materials or substances, the Fire Chief may take such action as is necessary or desirable to supervise or verify the adequacy and safety of the removal or remediation. The persons described in subparagraph (a) of this section shall be liable to the Village for all costs incurred as a result of such supervision or verification.

(c) The costs for removal or remedial action when rendered by the Village or any other emergency response agency rendering mutual aid or assistance to the Village in any hazardous substance or material incident shall include but not be limited to the following:

(1) The reasonable cost of each vehicle of the Village or of any emergency response agency as determined respectively by the Village or by the emergency response agency;

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(2) The cost of all personnel including any overtime cost to the Village or to any emergency response agency incurred as a result of the removal or remedial action;

(3) The actual cost of any experts or consultants needed by the Village as a result of the removal or remedial action; and

(4) The cost of all materials and equipment used, expended, depleted, destroyed or removed from service in accordance with federal or state law or local ordinance as a result of the mitigation or containment operations if or at the request of the Village, Fire Chief, or any emergency response agency.

(d) Each person who is liable for the release or substantial threat of release of a hazardous substance or material shall, within thirty (30) days of receipt of written notification of the costs incurred, remit payment to the Village as indicated on the billing statement.

**Sec. 38-204. Defenses.**

There shall be no liability under Sec. 38-203 for a person otherwise liable who can establish by a preponderance of evidence that the release or substantial threat of release of a hazardous substance or material and the damages resulting there from occurred in accordance with any of the permitted defenses enumerated in 415 ILCS 5/22.2.

**Sec. 38-205. Penalties.**

(a) Any person who is liable for the release or substantial threat of release of a hazardous substance or material who fails without sufficient cause to pay for or provide removal or remedial action upon or in accordance with a notice and request of the Village, or in accordance with any order of any court having jurisdiction of the matter, shall be liable to the Village for any costs incurred by the Village as a result of such failure to provide or take such removal or remedial action, together with the cost of any removal or remedial action taken by the Village in accordance with this article, and all attorneys' fees, and related legal costs incurred in connection therewith.

(b) In addition, any such person violating any provision of this article shall, upon conviction, be fined not less than one hundred dollars (\$100.00) nor more than one thousand dollars (\$1,000.00) for each offense. A separate offense shall be deemed committed for each day on which a violation occurs or continues. Where such violation is found to be the result of willful and/or wanton conduct or gross negligence, or the person committing such violation attempts to evade responsibility hereunder by leaving the scene of the occurrence or by other means, such person shall, upon conviction, be subject to a fine as provided for

above or a fine in an amount equal to three (3) times the costs including attorneys' fees and legal costs, for which it is liable under subparagraph (a) of this section whichever is greater.

**Section 3.** All ordinances or parts of ordinances in conflict with the provisions of this Ordinance are repealed to the extent of such conflict.

**Section 4.** If any section, subsection, paragraph, sentence, clause, or phase of this Ordinance or the application thereto to any person or circumstance is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such decision shall not affect the validity of the remaining sections, subsections, paragraphs, sentences, clauses or phrases of this Ordinance or the application] of such portion to other persons or circumstances but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any portion.

**Section 5.** This Ordinance shall be in full force and effect after its passage, approval and publication according to law.

**Section 6.** This Ordinance and each of its terms shall be the effective legislative act of a home rule municipality without regard to whether such Ordinance should (a) contain terms contrary to the provisions of current or subsequent non-preemptive state law, or, (b) legislate in a manner or regarding a manner not

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delegated to municipalities by state law. It is the intent of the Corporate Authorities of the Village of Burnham that to the extent that the terms of this Ordinance should be inconsistent with any no-preemptive state law, that this Ordinance should supersede state law in that regard within its jurisdiction.

**Section 7.** This Ordinance shall be published in pamphlet form by the authority of the Village President (Mayor) and the Board of Trustees of the Village of Burnham, Cook County, Illinois.

PASSED By the Village President (Mayor) and Board of Trustees of the Village of Burnham, Cook County, Illinois, this 26th day of February, 2013.

**ROLL CALL VOTE:**

AYES: JOHN J. CAP, JR., REYNALDO (RAY) ESPINO, JESUS AVILA,  
BRENDA GREER, CARMELLA K. RICHARDSON, AND  
TRAVIS CLAYBROOKS

NAYS: NONE  
\_\_\_\_\_

ABSENT: NONE  
\_\_\_\_\_

Nancy C. Dobrowski  
VILLAGE CLERK

APPROVED by me this 28th day of February, 2013.

Robert E. [Signature]  
VILLAGE PRESIDENT (MAYOR)

ATTEST:

Gary C. [Signature]  
VILLAGE CLERK

(SEAL)

Recorded in Village Records: February 28, 2013.

Published in pamphlet form by authority of the Village President (Mayor) and Board of Trustees of the Village of Burnham, Cook County, Illinois on February 28, 2013.

ATTEST:

Gary C. [Signature]  
VILLAGE CLERK

(SEAL)



STATE OF ILLINOIS    )  
  ) SS.  
COUNTY OF COOK     )

**CERTIFICATE OF PUBLICATION IN PAMPHLET FORM**

I, the undersigned, do hereby certify that I am the duly qualified and acting Village Clerk of the Village of Burnham, Cook County, Illinois, (the "Village"), and as such official, I am the keeper of the official journal of proceedings, books, records, papers, minutes, entries, documents, resolutions, ordinances, and files of the Village and of the Village President and Board of Trustees, (the "Corporate Authorities"), thereof.

I do further certify that on the 28th day of February, 2013, there was published in pamphlet form, by authority of the Corporate Authorities of the Village, a true, correct, and complete copy of ORDINANCE NO. 2013-O-001 of the Village entitled:

**AN ORDINANCE ADDING ARTICLE V. EMERGENCY RESPONSE REIMBURSEMENT FOR HAZARDOUS SUBSTANCE AND/OR MATERIAL INCIDENTS TO CHAPTER 38 OF THE CODE OF ORDINANCES, VILLAGE OF BURNHAM, ILLINOIS**

and that said Ordinance as so published was on said date readily available for public inspection and distribution, in sufficient number, at my office as Village Clerk located in the Village.

**IN WITNESS WHEREOF**, I have affixed hereunto my official signature as

Village Clerk of the Village and the seal of the Village this 28<sup>th</sup> day of February, 2013.

  
Nancy C. Dobrowski  
NANCY C. DOBROWSKI  
Village Clerk

(SEAL)

STATE OF ILLINOIS    )  
  ) SS.  
COUNTY OF COOK     )

CERTIFICATION

I, NANCY C. DOBROWSKI, do hereby certify that I am the duly qualified and acting Village Clerk of the Village of Burnham, Cook County, Illinois, and as such Village Clerk, I am the keeper of the official journal, records, papers, entries, documents, Resolutions and Ordinances of the Village of Burnham and of the Village President and Board of Trustees of the Village of Burnham (the "Corporate Authorities") and that attached is a full, true, and correct copy of ORDINANCE NO. 2013-O-001 now on file in my office entitled:


AN ORDINANCE ADDING ARTICLE V. EMERGENCY RESPONSE REIMBURSEMENT FOR HAZARDOUS SUBSTANCE AND/OR MATERIAL INCIDENTS TO CHAPTER 38 OF THE CODE OF ORDINANCES, VILLAGE OF BURNHAM, ILLINOIS

I further certify that said Ordinance No. 2013-O-001 was duly passed on roll call vote by the Board of Trustees of the Village of Burnham, Cook County, Illinois, on the 26th day of February, 2013, and approved by the Village President (Mayor) on the 28th day of February, 2013, and that said Ordinance attached is now in full force and effect and has not been rescinded.

I do further certify that the deliberations of the Corporate Authorities on the passage of said Ordinance was taken openly, that the vote on the passage of said Ordinance was taken openly; that said meeting was held at a specified time and place convenient to the public; that notice of said meeting was duly given to all newspapers, radio or television stations and other news media requesting such notice; and that said meeting was called and held in strict compliance with the provisions of "AN ACT in relation to meeting", approved July 11, 1957, as amended, and the Illinois Municipal Code, as amended, and that the Corporate Authorities have complied will all of the provisions of said Act and said Codes and with all of the procedural rules of the Corporate Authorities.

IN WITNESS WHEREOF, I have hereunto set my hand as Village Clerk of

the Village of Burnham and have hereunto affixed the seal of said Village of Burnham this 28th day of February, 2013.

  
*Nancy C. Dobrowski*  
\_\_\_\_\_  
NANCY C. DOBROWSKI  
Village Clerk

(SEAL)