

CHAPTER 10
CODE HEARING DEPARTMENT
(Ord. 2012-07)

- 10.01 Adoption of State Statutes
- 10.02 Code Hearing Department Established
- 10.0.3 Hearing Officer Powers, Duties and Qualifications
- 10.04 Code Administrator Duties
- 10.05 Instituting Code Hearing Provisions
- 10.06 Subpoenas and Defaults
- 10.07 Continuances and Representation at Code Hearings
- 10.08 Hearing Evidence
- 10.09 Eviction and Rights of the Defendant
- 10.10 Defenses to Code Violations
- 10.11 Findings, Decision and Order
- 10.12 Administrative Review Law
- 10.13 Judgment on Findings, Decision and Order
- 10.14 Sanctions Applicable to the Owner and Property
- 10.15 Administrative Adjudication Concerning Automated Traffic Law Violations

10.01 **ADOPTION OF STATE STATUTES**

The following statutes, as from time to time amended, are adopted in their entirety and any person charged with the violation of a municipal ordinance may be prosecuted under and in accordance with the provisions herein:

1. 65 ILCS 5/1-2.2-1, *et seq.*, Code Hearing Departments;
2. 65 ILCS 5/11-31.1, *et seq.*, Building Code Violations;
3. 625 ILCS 5/11-208.3, Administrative Adjudication of Violations of Traffic Regulations Concerning the Standing, Parking or Conditions of Vehicles and Automated Traffic Law Violations; and
4. 625 ILCS 5/11-208.6, Automated Traffic Law Enforcement System.

The adoption of these statutes shall not preclude the Village from using other methods to enforce Village ordinances.

10.02 **CODE HEARING DEPARTMENT ESTABLISHED**

(a) A Code Hearing Department is hereby established for the Village as a separate and independent agency in the Village government. The purpose of the Code Hearing Department is to expedite the prosecution and correction of Code violations in the manner set forth herein. The provisions set forth in this Chapter may be used in the adjudication of any violations of a Village ordinance except for any offense under the Illinois Vehicle Code (625

ILCS 5/1-100 *et seq.*) or this Code or similar offense that is a traffic regulation governing the movement of vehicles, and except for any reportable offenses under Section 5/6-204 of the Illinois Vehicle Code, as amended from time to time.

(b) The Code Hearing Department shall be comprised of the following individuals appointed by the Village President:

1. A Hearing Officer who may also be referred to as an Administrative Law Judge;
2. The Chief of Police or designee;
3. The Village Administrator designee;
4. A Code Administrator; and
5. Any person or persons deemed necessary for the efficient administration of the Code Hearing Department.

(c) In no event may the Hearing Officer be an employee of the Village.

10.03 **HEARING OFFICER POWERS, DUTIES AND QUALIFICATIONS**

(a) It is the duty of the Hearing Officer to:

1. Preside at an administrative hearing called to determine whether or not a Code violation exists.
2. Hear testimony and accept evidence relevant to the existence or non-existence of a Code violation.
3. Preserve and authenticate the record of the hearing and all exhibits and evidence introduced at the hearing.
4. Issue a written determination, based on the evidence presented at the hearing, of whether a Code violation exists. The determination shall include a written finding of fact; decision based upon those findings of fact; and an order that states the sanctions including the fine or penalty or action with which the defendant must comply, or dismissing the case if the violation is not proved.
5. Impose penalties consistent with applicable Village provisions and assess costs upon finding a party liable for the charged violation. The maximum monetary fine imposed under this Chapter shall be exclusive of costs of enforcement or costs imposed to secure compliance with the Village's ordinances.

6. In no event shall the Hearing Officer have authority to impose a penalty of incarceration.

(b) Every Hearing Officer shall serve as the hearing officer for matters set forth under these regulations and be an attorney licensed to practice law in the State of Illinois for at least three years. Prior to conducting proceedings under this Chapter, Hearing Officers shall successfully complete a formal training program that includes:

1. Instruction on the rules of procedure of the hearing that they will conduct;
2. Orientation to each subject area of the Code violations they will administer;
3. Observation of administrative hearings; and
4. Participation in hypothetical cases, including rules of evidence and issuing final orders.

10.04 **CODE ADMINISTRATOR DUTIES**

The Code Administrator may be a Village employee or an independent contractor or agency contracted by the Village to perform such duties as enumerated herein. The Code Administrator is authorized, empowered and directed to:

1. Operate and manage the system of administrative adjudication of all Code violations, as may be permitted by law and directed by ordinance;
2. Adopt, distribute and process all notices as may be required herein;
3. Operate and maintain a computerized program for the system of administrative adjudication;
4. Keep accurate records of adjudication appearances and activities;
5. Collect monies paid as fines and/or penalties after a final determination of liability; and
6. Other duties as may be necessary to efficiently administer this Chapter.

10.05 **INSTITUTING CODE HEARING PROVISIONS**

(a) When a police officer, building inspector, code enforcement officer or other individual authorized to issue a Code violation finds that a Code violation exists, that individual shall note the violation on a multiple copy violation notice, report and hearing notice that indicates:

1. The name and address of the defendant;
2. The type and nature of the violation including a reference to the appropriate section of the Code and potential penalties that may result;
3. The date and time the violation was observed;
4. The names of witnesses to the violation;
5. In the event of a building code violation, the address of the structure or premises where the violation is observed;
6. The means by which the defendant may waive the right to a hearing and pay the applicable fine for the violation;
7. The time, date and location of the hearing; and
8. Penalties which may occur if the defendant fails to appear.

(b) For the purpose of a Code violation relating to real property, the property owner shall be prima facie responsible for a violation that occurs on such property and subject to the penalty therefore. For violations relating to motor vehicles, the owner or operator of said vehicle shall be prima facie responsible for a violation that occurs.

(c) The violation report shall be forwarded to the Code Hearing Department and a docket number shall be assigned and stamped on all copies of the report and a hearing date shall be noted on the form. The hearing date shall not be less than 30 or more than 40 days after the violation is reported.

(d) One copy of the violation report shall be maintained in the files of the Code Hearing Department and shall become part of the record of the hearing. One copy of the report shall be returned to the individual representing the Village and one copy of the report shall be served by first class mail to the defendant, along with a summons commanding the defendant to appear on the specified hearing date. In the case of a building code violation, service of the report shall be made by first class mail on the owner of the structure or premises, along with a summons commanding the owner to appear at the hearing. If the name of the owner of the structure or premises cannot be ascertained or if service cannot be made by mail, service may be made on the owner by posting, nailing or substantially affixing a copy of the violation report form on the front door of the structure or premises where the violation is found, not less than 20 days before the hearing is scheduled.

10.06 **SUBPOENAS AND DEFAULTS**

At any time 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 the defendant or the defendant's attorney fails to appear on the specified hearing date, 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.

10.07 CONTINUANCES AND REPRESENTATION AT CODE HEARINGS

No continuances shall be authorized by the Hearing Officer in proceedings under this Chapter except in cases where a continuance is absolutely necessary to protect the rights of the defendant. Lack of preparation shall not be grounds for a continuance. Any continuance authorized by a Hearing Officer under the terms of this Chapter shall not exceed 25 days unless agreed to by all parties. The case for the Village may be presented by an attorney designated by the Village or by any other Village employee, except that the case for the Village shall not be presented by an employee of the Code Hearing Department. The case for the defendant may be presented by the defendant or the defendant's attorney or any other agent or representative of the defendant.

10.08 HEARING EVIDENCE

At the hearing the Hearing Officer shall preside, shall hear testimony and shall accept any evidence relevant to the existence or non-existence of a Code violation. The strict rules of evidence applicable to judicial proceedings shall not apply to hearings authorized by this Chapter.

10.09 EVICTION AND RIGHTS OF THE DEFENDANT

No action for eviction, abatement of a nuisance, forcible entry and detainer or other similar proceedings shall be threatened or instituted against an occupant of a structure or premises solely because such occupant agrees to testify or testifies at a Code violation hearing.

10.10 DEFENSES TO CODE VIOLATIONS

It shall be a defense to a Code violation charged if the owner, the owner's attorney or any other agent or representative proves to the Hearing Officer's satisfaction that:

1. The Code violation alleged in the notice does not in fact exist, or at the time of the hearing the violation has been remedied or removed;
2. The Code violation has been caused by the current property occupants and that in spite of reasonable attempts by the owner to maintain the structure or premises free of such violation, the current occupants continue to cause the violations; or
3. An occupant or resident of the structure or premises has refused entry to the owner or the owner's agent to all or part of the structure or premises for the purpose of correcting the Code violation.

10.11 FINDINGS, DECISION AND ORDER

At the conclusion of the hearing, the Hearing Officer shall make a determination based on the

evidence presented at the hearing as to whether or not a Code violation exists. The determination shall be in writing and shall be designated as “findings, decision and order.” The findings, decision and order shall include (i) the Hearing Officer’s finding of facts, (ii) a decision as to whether a Code violation exists based on the findings of fact, and (iii) an order that states the sanction or dismisses the case if a violation is not proved. A monetary sanction for a violation under the terms of this Chapter shall not exceed the amount authorized by statute. If a building code violation is proved, the order may also impose the sanctions that are provided in this Code for the violation proved. A copy of the findings, decision and order shall be served on the defendant within five days after it is issued. Service shall be in the same manner that the violation report and summons are served in accordance with Section 10.05(d) of this Chapter. Payment of any penalty or fine and the disposition of fine money shall be in the same manner as set forth in the Code unless otherwise provided for; however, payment of such fine or penalty shall be made no later than 10 days after the determination has been made by the Hearing Officer.

10.12 **ADMINISTRATIVE REVIEW LAW**

The findings, decision and order shall be subject to review in the 22nd Judicial Circuit Court. The provisions of the Illinois Administrative Review Law (735 ILCS 5/3-101, *et seq.*) or as hereinafter amended, and the rules adopted pursuant thereto, shall apply to and govern every action for the judicial review of the findings, decision and order of the Hearing Officer under this Chapter. Any person filing for judicial review under the Illinois Administrative Review Law shall be subject to the assessment of costs for the preparation and certification of the record of proceeding before the Hearing Officer.

10.13 **JUDGMENT ON FINDINGS, DECISION AND ORDER**

(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 Administrative Review Law shall be a debt due and owing the Village and, as such, may be collected in accordance with applicable law.

(b) After expiration of the period within which judicial review under the Administrative Review Law may be sought for a final determination of the Code violation, the Village may commence a proceeding in said circuit court for the purpose of obtaining a judgment on the findings, decision and order. Nothing in this Section shall prevent the Village from consolidating multiple findings, decisions and orders against a person in such a proceeding. Upon commencement of the action, the Village shall file a certified copy of the findings, decision and order, which shall be accompanied by a certification that recites facts sufficient to show that the findings, decision and order were issued in accordance with this Chapter and the applicable Village ordinance. Service of the summons and a copy of the petition may be made by any method provided for by Section 2-203 of the Code of Civil Procedures or by certified mail, return receipt requested, provided that the total amount of fines, other sanctions and costs imposed by the findings, decision and order do not exceed \$2,500.00. If the court is satisfied that the findings, decision and order were entered in accordance with the requirements of this Chapter and 65 ILCS 5/1-2.2-1, *et seq.*, Code Hearing Departments, and the applicable Village ordinance,

and that the defendant had an opportunity for a hearing under this Chapter and for judicial review as provided: (1) the court shall render judgment in favor of the Village and against the defendant for the amount indicated in the findings, decision and order, plus costs. The judgment shall have the same effect and may be enforced in the same manner as other judgments for recovery of money; and (2) the court may also issue any other orders and injunctions that are requested by the Village to enforce the order of the Hearing Officer to correct a Code violation.

10.14 **SANCTIONS APPLICABLE TO THE OWNER AND PROPERTY**

The order to correct a Code violation and the sanctions imposed by the Village as the result of a finding of a Code violation shall attach to the property as well as to the owner of the property so that a finding of a Code violation against one owner cannot be avoided by conveying or transferring the property to another owner. Any subsequent transferee or owner of property takes ownership of the property subject to the findings, decision and order of the Hearing Officer under this Chapter.

10.15 **ADMINISTRATIVE ADJUDICATION CONCERNING AUTOMATED TRAFFIC LAW VIOLATIONS**

Except as otherwise provided for, Section 14.260, Automated Traffic Law Enforcement System, of this Code shall be subject to the procedures of this Chapter.