

12-O-99

AN ORDINANCE

**Establishing Title 11, Chapter 1,
a System of Administrative Adjudication
of Certain City Code Violations**

WHEREAS, the Illinois Legislature has amended the Illinois Municipal Code to allow Illinois Home Rule municipalities to enact a system of administrative adjudication of municipal code violations; and

WHEREAS, said enabling legislation is set forth in 65 ILCS 5/1-2.1, *et seq.*; and

WHEREAS, the City of Evanston is an Illinois Home Rule municipality; and

WHEREAS, the City Council of the City of Evanston is desirous of establishing a system of administrative adjudication pursuant to 65 ILCS 5/1-2.1, *et seq.*, to adjudicate certain violations of the Evanston City Code; and

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EVANSTON, COOK COUNTY, ILLINOIS:

SECTION 1: That the Evanston City Code of 1979, as amended, be, and it hereby is, further amended, by adding a new Title 11, Chapter 1, "Administrative Adjudication", to read as follows:

ADMINISTRATIVE ADJUDICATION

SECTION 11-1-1: a) CREATION OF ADMINISTRATIVE

ADJUDICATION SYSTEM: Pursuant to authority of Section 5/1-2.1-1, *et seq.*, of the Illinois Municipal Code (65 ILCS 5/1-2.1-1, *et seq.*), which authorizes

municipalities to implement a system of administrative adjudication, there is hereby created a system of Administrative Adjudication of certain charges of City Code violations for the City of Evanston.

b) The City adopts 65 ILCS 5/1-2.1.1, *et. seq.*, as it may be amended from time to time. In the event of a conflict between said statute and this Ordinance, this Ordinance shall prevail.

c) The adoption of this Title does not preclude the City from using other lawful methods to enforce the provisions of the City Code.

SECTION 11-1-2: PURPOSE: The purpose of the system of Administrative Adjudication of charges of City Code Violations is to provide a procedure by which charges of certain City Code violations can be administratively adjudicated equitably and efficiently by Administrative Hearing Officers.

SECTION 11-1-3: JURISDICTION: Those matters that shall be subject to the Administrative Adjudication System provided for hereby are charges of violation of any ordinance of the City of Evanston, which, by its terms, is expressly subject to administrative adjudication so long as the relief sought is not a penalty of incarceration or a fine in excess of \$50,000.00 (per violation), excluding allowable costs and in those cases brought to enforce the collection of any tax imposed and collected by the City. Excluded from the Administrative

Adjudication System are: (a) matters not within the statutory or home rule authority of the City of Evanston; and (b) an offense under the Illinois Vehicle Code (625 ILCS 5/1-100 *et seq.*) or a similar offense that is a traffic regulation governing the movement of vehicles; and (c) any reportable offense under Section 6-204 of the Illinois Vehicle Code (625 ILCS 5/6-204).

SECTION 11-1-4: DIVISION OF ADMINISTRATIVE HEARINGS: There is hereby established a Division of Administrative Hearings, the function of which is to expedite the prosecution and/or correction of City Code violations subject to the jurisdiction of the administrative adjudication system. The Division is authorized to conduct and manage administrative adjudication proceedings in the manner provided for in this Title 11. The Division shall consist of a Division Director and such other persons as he deems necessary to assist with the administrative adjudication system provided for in this Title 11.

SECTION 11-1-5: DIVISION DIRECTOR - POWERS AND DUTIES: The City Manager shall appoint a Division Director to administer the Division of Administrative Hearings. The Division Director's responsibilities shall include:

- (1) Operating and managing the Administration Adjudication System; and;
- (2) Appointing and removing Administrative Hearing Officers, as necessary;

- (3) Promulgating rules and regulations for the conduct of administrative adjudication proceedings;
- (4) Monitoring the performance of Administrative Hearing Officers for adherence to applicable City Code provisions; and
- (5) Collecting monies paid as fines, penalties, and/or costs assessed by Administrative Hearing Officers.
- (6) Certifying copies of final determinations of Administrative Hearing Officers.
- (7) Keeping accurate records of the proceedings, including, but not limited to, appearances, non-appearances, pleas entered, and fines and penalties assessed and paid.
- (8) Performing the functions of the Traffic Compliance Administrator as delegated by Title 11, Chapter 2 of the City Code, Administrative Adjudication of Certain Parking Violations.
- (9) Establishing any other necessary rules and regulations and performing any other duties and functions as may be required or appropriate to establish and administer the City's Administrative Adjudication System.

SECTION 11-1-6: RULES AND REGULATIONS: The rules and regulations promulgated for the conduct of administrative adjudication hearings

shall be published and kept on file in the Office of the City Clerk where they shall be available to the public for inspection and copying at standard fees during business hours.

SECTION 11-1-7: ADMINISTRATIVE HEARING OFFICER: Charges of City Code violations are to be heard and adjudicated by a Hearing Officer(s) appointed by the Division Director.

SECTION 11-1-8: HEARING OFFICER QUALIFICATIONS: Any person appointed as Hearing Officer shall:

- A. Be an attorney licensed to practice law in the State of Illinois for not less than three (3) years.
- B. Prior to conducting any administrative adjudication hearing herein under, have successfully completed a formal training program approved by the Division Director which includes the following:
 - (1) instruction on ethical considerations and rules of procedure of the administrative hearings to be conducted;
 - (2) orientation to each subject area of the Code violations to be adjudicated;
 - (3) observation of administrative hearings; and
 - (4) participation in hypothetical cases, including ruling on evidence and issuing final orders.

SECTION 11-1-9: POWERS AND DUTIES OF HEARING

OFFICERS: Administrative Hearing Officers shall preside over adjudicatory hearings. The powers and duties of an Administrative Hearing Officer shall include all powers and duties necessary to the fair and impartial conduct of an administrative hearing, including, but not limited to:

- A. Hearing testimony and accepting evidence that is relevant to the existence of the code violation.
- B. Administering oaths and affirmations to witnesses.
- C. Subject to the restrictions contained in Section 11-1-10, at the request of any part or on the administrative law officer's own motion, subpoena the attendance of relevant witnesses and the production of relevant books, records, or other information.
- D. Preserving and authenticating the record of the hearing and all exhibits and evidence introduced and admitted into the record at the hearing.
- E. Issuing a determination of liability or non-liability for a City Code violation based upon the evidence presented at the hearing and the record. The determination shall be in writing, shall be signed by the Administrative Hearing Officer and shall be designated as finding(s), decision and order. The findings, decision, and order shall include the

Administrative Hearing Officer's findings of fact, a decision whether or not a Code violation exists based upon the findings of fact, and, depending upon the nature of the violation, an order requiring the defendant to correct the violation and/or imposing a fine and/or costs. In the event a violation is not proved, issue an order dismissing the case. If a Code violation is proved, the order may impose the sanctions that are provided in the Code for the violation proved. A copy of the findings, decision, and order shall be mailed to the Respondent within three business days after their issuance; service shall be in the same manner as the notice of violation is served or otherwise, in accordance with the applicable legislation.

F. Imposing penalties consistent with applicable Code provisions and assessing costs upon finding a defendant liable for the charged violation, except, however, that in no event shall the Administrative Hearing Officer have authority to (i) impose a penalty of incarceration, or (ii) impose a fine in excess of \$50,000.00. The maximum monetary fine imposed in any case shall be exclusive of costs of enforcement or costs imposed to secure compliance with the City's ordinances. Each day that the violation continues shall be considered a separate and distinct offense.

- G. Adhering to the policies, procedures, and legislation set forth in the City Code, except where discretion is specifically vested in the Hearing Officer.
- H. Ruling upon motions, objections, and the admissibility of evidence.
- I. Asking questions of the parties and witnesses, if necessary, to ensure the clarity and completeness of the testimony and the record.
- J. Regulating the course of the hearing in accordance with this Chapter, the rules adopted by the Division Director for the conduct of administrative hearings, and other applicable law.

SECTION 11-1-10: SUBPOENAS:

- A. *Issuance:* Subpoenas shall only be enforceable against persons or for documents that have a relevant evidentiary connection with the (1) the subject matter, and (2) facts which are relevant to the case and related to a contested issue in the case. A party's request to the Administrative Hearing Officer for a subpoena must be timely. Service of subpoenas shall be made in the same manner as summons in a civil action;
- B. *Content:* A subpoena issued under this Chapter shall identify:
 - (1) the person to whom it is directed;
 - (2) the documents or other items sought by the subpoena, if any;
 - and

(3) the date, time, and place for the appearance of the witnesses and the production of the documents or other items described in the subpoena;

- C. *Appearance:* The date identified for the appearance of the witnesses or the production of the documents or other items shall not be less than seven (7) days after service of the subpoena.
- D. *Contesting the Subpoena:* Within three (3) business days of being served with a subpoena issued in accordance with this Chapter, the recipient of the subpoena may appeal the order authorizing the issuance of the subpoena, by filing a written appeal detailing the nature of any objection(s). The appeal shall be filed with the Division of Administrative Hearings. A hearing on the objections shall be scheduled for the next scheduled hearing date in the case, with the initiator of the subpoena bearing the responsibility for notifying all parties.

SECTION 11-1-11: ADMINISTRATIVE HEARINGS:

- A. Any administrative proceeding conducted by the Division of Administrative Hearings shall afford the parties an opportunity for a public hearing before an Administrative Hearing Officer.

B. The City shall not be represented by an employee of the Division of Administrative Hearings; provided, however, that documentary evidence, including the notice of violation, which has been prepared by another department or agency of the City and submitted to the Division of Administrative Hearings, may be presented at the hearing by the Administrative Hearing Officer.

C. All administrative hearings shall be conducted on the date set for hearing. For good cause shown, a continuance may be granted at the discretion of the Administrative Hearing Officer. The purpose of administrative hearings is to provide a prompt resolution of alleged Code violations, and accordingly, the request for, and the grant of, continuances shall be curtailed to the extent fairness permits. Lack of preparation shall not be grounds for a continuance. Continuances shall not be granted for more than twenty-eight (28) days.

D. All testimony shall be given under oath or affirmation.

E. The Administrative Hearing Officer may issue subpoena pursuant to section 11-1-10.

F. 1.) The formal and technical rules of evidence shall not apply in the conduct of the hearing. Evidence, including hearsay, may be admitted

only if it is of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs.

2.) The Administrative Hearing Officer shall permit persons to contest the merits of an alleged parking violation subject to the administrative adjudication procedures of this Title 11 without attending a hearing.

G. No violation may be established except upon proof by a preponderance of the evidence; provided, however, that the notice of violation, or a copy thereof, issued and signed in accordance with the provisions of this Chapter, shall be *prima facie* evidence of the correctness of the facts specified therein.

H. The Division Director shall determine the manner in which the record shall be preserved. Such preservation may be by tape recording or other appropriate means. The record of all hearings before an Administrative Hearing Officer shall include: (1) a record of the testimony presented at the hearing; (2) all documents, exhibits, and other physical evidence presented at the hearing and admitted into evidence; (3) a copy of the notice of violation and notice of hearing; and (4) a copy of the findings, decision, and order of the Administrative Hearing Officer. Any party may request that the proceedings be taken and transcribed by a

certified court reporter. The cost of the reporter shall be borne by the party requesting the court reporter. If the City makes a tape recording of the proceedings, a defendant may obtain a transcript at defendant's cost.

I. At the conclusion of a hearing, the Administrative Hearing Officer shall issue a final determination. Upon issuing a final determination of liability, the Administrative Hearing Officer: (1) may impose penalties, fines, and/or costs of enforcement. Any penalties, fines, and/or costs imposed shall be consistent with applicable provisions of the City Code; (2) shall issue an order or orders that are consistent with applicable provisions of the City Code. Any costs assessed shall be reasonably related to the City's costs of enforcement.

J. The Administrative Hearing Officer shall inform the parties in the final order that a final determination that a Code 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.

SECTION 11-1-12: PROCEDURE: All proceedings hereunder shall be commenced upon service of written notice of violation upon the party alleged to have committed such violation and the following procedure shall be followed:

A. The notice shall be initiated by a person(s) authorized to exercise City Code enforcement authority and served as provided for in Section 11-1-12(D).

B. The issuer of a notice of violation shall specify on the notice his or her name and department; where known, the name and address of the person or entity charged with the violation; the date, time and place of the violation; and the Section of the City Code alleged to have been violated; and shall certify the correctness of the specified information by signing his or her name to the notice.

C. 1.) Unless otherwise provided by rule or law, the notice of violation must include the identification number of the person issuing the notice, the type and nature of the Code violation to be adjudicated, the date, time, manner, and location of the adjudicatory hearing, the legal authority and jurisdiction under which the hearing is to be held, and the fine and any penalties that may be assessed, including, if applicable, for late payment.

2.) All notices of violation of Title 10 of the City Code, "Motor Vehicles and Traffic", subject to adjudication under this Title 11 shall contain the vehicle make and state registration number, or if none, the vehicle identification number.

D. 1.) Parties shall be served with a notice of violation or a notice of hearing in a manner reasonably calculated to give them actual notice, including, as appropriate, personal service of said notice upon a party or its employees or agents; service by mail at a party's address; or notice that is posted upon the property where the violation is found when the party is the owner or manager of the property. Notice of a hearing date shall be provided (i) by first class or express mail or by overnight carrier at the violator's residence or, if the violator is a business entity, at any address identified for its registered agent or at its principal place of business; or (ii) by personal service, or by any other means permitted by law for Service of Civil Summons.

Hearings shall be scheduled with reasonable promptness, provided that for hearings scheduled in all non-emergency situations, unless otherwise specified by other legislation or rule, the defendant shall have at least 15 days after service of notice to prepare for the hearing. For purposes of this subsection, 11-1-11(D), "non-emergency situation" means any situation that does not reasonably constitute a threat to the public health, safety, or welfare. If service is provided by mail or overnight carrier, the 15-day period shall begin to run on the day that the notice is deposited in the mail or given to the carrier, as applicable.

2.) Notwithstanding anything to the contrary in section 11-1-11(D)(a), service of notices of violation and notices of hearing for violations of Title 10, "Motor Vehicles", shall be as prescribed in Title 11.

E. A copy of the notice of violation shall be filed with the Director of Administrative Adjudication as soon as practicable at the place and in the manner he or she shall from time to time direct. The Director of Administrative Adjudication shall provide by rule or regulation for the Division of Administrative Adjudication to issue hearing notices.

F. Parties shall be provided with an opportunity for a hearing during which they may be represented by an Attorney or other agent, present witnesses, and cross-examine opposing witnesses. Parties may request the Administrative Hearing Officer to issue subpoenas as provided for in section 11-1-10.

SECTION 11-1-13: REPRESENTATION AT HEARINGS

A. City Representation: The case for the City may be presented by a City employee, other than an employee of the Division of Administrative Hearings, or by an Attorney designated by the Corporation Counsel.

B. Respondent Representation: The case for the Respondent may be presented by the defendant or an attorney or agent of the defendant. An attorney shall present a written authorization signed by the defendant

giving the attorney power to act and to bind the defendant to any orders entered by the Administrative Hearing Officer. Any other agent of the Respondent shall present a notarized authorization that he or she has the power to act and to bind the defendant to any orders entered by the Administrative Hearing Officer.

SECTION 11-1-14: VIOLATIONS OF ORDERS: Any person, having received notice and an opportunity for a hearing as provided in this Chapter, who knowingly fails to comply with an order issued by an Administrative Hearing Officer under this Chapter, including the issuance of a subpoena, shall, if the order is not stayed by a court of competent jurisdiction prior to its effective date, be guilty of contempt. Contempt shall be enforceable only by the Cook County judicial system and shall be punishable by applicable law. Each day that the violation continues shall be considered a separate and distinct offense. In a prosecution under this Section, 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.

SECTION 11-1-15: DEFAULT:

A. If at the time set for hearing, the Respondent, or his or her Attorney or agent of record, fails to appear, the Administrative Hearing Officer may find the recipient in default and proceed with the hearing and accept

evidence relevant to the existence of a Code violation and conclude with a finding, decision, and order. A copy of the order of default shall be served in any manner for service of a notice of violation permitted by this Chapter and applicable to the violation.

B. Within twenty-one (21) calendar days from the issuance of an order of default, a Respondent found to be in default may petition the Administrative Hearing Officer to set aside the determination and set a new hearing date on the basis that the failure to appear at the hearing was for good cause. A petition alleging that the City did not have jurisdiction over the Respondent may be filed at any time. If the petition is granted, the Administrative Hearing Officer shall cause to be served notice of the new hearing date on all parties in any manner permitted by this Chapter for service of a notice of violation no less than fifteen (15) calendar days prior to the hearing date. Notwithstanding any of the foregoing to the contrary, a petition to set aside a default regulation order entered on a notice of violation of parking, standing, or vehicle compliance shall be subject to the provisions of Title 11, Chapter 2 of the City Code.

C. If any judgment is set aside pursuant to this Chapter, the Administrative Hearing Officer shall have authority to enter an order

extinguishing any lien which has been recorded for any debt due and owing the City as a result of the vacated default judgment.

SECTION 11-1-16: FINES: All fines and other monies to be paid to the City in accordance with this Chapter shall be remitted to the City and deposited in the appropriate City account as designated by the City Manager.

SECTION 11-1-17: ENFORCEMENT OF ADMINISTRATIVE HEARING OFFICER'S ORDER:

- A. Any fine, other sanction or costs imposed by an administrative hearing officer's order that remain unpaid after the exhaustion of, or the failure to exhaust, judicial review procedures shall be a debt due and owing the City and, so to as such, may be collected in accordance with applicable law.
- B. After the expiration of the period in which judicial review may be sought, unless stayed by a court of competent jurisdiction, the findings, decision and order of an administrative law officer may be enforced in the same manner as a judgment entered by a court of competent jurisdiction.
- C. In any case in which a Defendant fails to comply with an administrative hearing officer's order to correct a code violation or imposing a fine or other sanction as a result of a code violation, any expenses incurred by the City to enforce the administrative hearing officer's order, including but not limited to attorney's fees, court costs and costs related to property demolition or

for reclosure, after they are fixed by a court of competent jurisdiction or an administrative hearing officer, shall be a debt due and owing the City. Prior to any expenses being fixed by an administrative hearing officer, the respondent shall be provided with notice that states that the respondent shall appear at a hearing before an administrative hearing officer to determine whether the respondent has failed to comply with the administrative hearing officer's order. The notice shall set the time for the hearing, which shall not be less than seven days from the date that notice is served. Notice shall be served by first class mail and the seven-day period shall begin to run on the date that the notice was deposited in the mail.

D. Upon being recorded in the manner required by Article XII of the Code of Civil Procedure or by the Uniform Commercial Code, a lien shall be imposed on the real estate or personal estate, or both, of the respondent in the amount of a debt due and owing the City. The lien may be enforced in the same manner as a judgment lien pursuant to a judgment of a court of competent jurisdiction.

E. Nothing in this section shall prevent the City from enforcing or seeking to enforce any order of an administrative law officer in any manner which is in accordance with applicable law.

SECTION 11-1-18: ELECTION OF REMEDIES: In no case may the Division of Administrative Hearings conduct an administrative adjudication

proceeding for an alleged violation of the City Code where the remedy provided for is a punishment of imprisonment. Nothing in this Chapter, however, shall preclude the City from petitioning a court of law to adjudicate an ordinance violation which provides the remedy of imprisonment, or from petitioning a court of law to impose the remedy of imprisonment for failure to comply with an order of an Administrative Hearing Officer.

SECTION 11-1-19: ADMINISTRATIVE ADJUDICATION PROCEDURES

NOT EXCLUSIVE: The adoption by the City of a system of administrative adjudication does not preclude the City from using other methods to enforce municipal ordinances.

SECTION 11-1-20: SEVERABILITY: The provisions of this Chapter shall be interpreted so as not to be in conflict with the laws of the State of Illinois or any other limitations imposed by law. In the event, however, that any Chapter, provision, sentence, or clause of this Chapter is declared unconstitutional by a court of competent jurisdiction, that determination will not affect the other remaining provisions of this Chapter.

SECTION 2: All ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 3: This ordinance shall be in full force and effect from and after its passage, approval, and publication in the manner provided by law.

Introduced: September 13, 1999

Adopted: September 27, 1999

Approved: October 7, 1999

Praine H. Norton
Mayor

ATTEST:

Mary J. Morris
City Clerk

Approved as to form:

[Signature]
Corporation Counsel

