

84-O-00

**AN ORDINANCE**

**Amending Title 11, Chapter 1  
of Evanston City Code**

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

**SECTION 1. TITLE 11, CHAPTER 1 OF THE EVANSTON CITY CODE OF 1979,**  
as amended, is hereby further amended by the language underscored:

**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 charges of Code violations for the City of Evanston. The system is authorized to conduct adjudicatory hearings of cases instituted by City Departments upon receipt of written notice from the Head of a City Department directed to the Director of the Division of Administrative Hearings, provided, however, that the Director of the Division of Administrative Hearings may decline jurisdiction over specific classes of cases whenever resources are not available to handle the additional caseload.

**SECTION 2:** That section 11-1-2 is hereby revised as follows:

**SECTION 11-1-2: PURPOSE:**

The purpose of the system of administrative adjudication of charges of Code violations is to provide a procedure by which charges of Code violations can be administratively adjudicated equitably and efficiently by Administrative Hearing Officers.

**SECTION 3:** That section 11-1-3 is hereby revised as follows:

**SECTION 11-1-3: JURISDICTION:**

Except as provided by Section 11-1-(a), those matters subject to the administrative adjudication system provided for by this Title 11 are charges of violation of any ordinance alternatively, "City Code, "Code" of the City of Evanston, so long as the relief sought is not a penalty of incarceration or a fine in excess of \$50,000 per violation, excluding allowable costs and in those cases brought to enforce the collection of any tax imposed and collected by the City.

**SECTION 4:** That section 11-1-4 is hereby revised as follows:

**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 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 will consist of a Division Director and such other persons as the Division Director appoints to assist with the administrative adjudication system provided for in this Title 11.

**SECTION 5:** That sections 11-1-9(C), 11-1-9(D), 11-1-9(E), and 11-1-9(F) are hereby revised as follows, with Section 11-1-9 otherwise unchanged:

**SECTION 11-1-9: SCOPE OF AUTHORITY OF ADMINISTRATIVE LAW JUDGES:**

Administrative Hearing Officers shall preside over adjudicatory hearings. The authority of an Administrative Hearing Officer shall encompass all acts necessary for conducting fair and impartial adjudicatory hearings, 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 Section 11-1-10, at the request of any party or on

the Administrative Hearing Officer's own motion, issuing subpoenas for the attendance of relevant witnesses and/or the production of relevant books, records, or other information.

D. Preserving the record of the hearing, including all exhibits and evidence admitted into the record at the hearing.

E. Issuing a determination based upon a review of the notice of violation, citation, other charging document (hereinafter, "charging document") and on the evidence admitted, which determination shall be final for purposes of judicial review under the Illinois Administrative Review Law. The determination shall be in writing, shall be signed by the Administrative Hearing Officer, and shall be designated as findings(s), decision, and order.

F. Upon finding a respondent liable for violating for one or more charged Code provisions, imposing penalties as provided by the governing penalty provision, except, however, that in no event shall an Administrative Hearing Officer have authority to (i) impose a penalty of incarceration, or (ii) impose a fine in excess of \$50,000. When applicable, each day a Code provision is found to have been violated by the respondent shall constitute a separate offense, and each separate offense subjects the respondent to the penalty provided by the governing penalty provision.

(2) Imposing, in addition to fines, administrative and/or enforcement costs and when applicable, imposing costs incurred by the City for effecting compliance with Code provision(s) for which a respondent has been found liable.

(3) Ordering, notwithstanding fines imposed or costs assessed, the respondent to comply with Code provision(s) found to have been violated, and, if appropriate, ordering the respondent to post a compliance bond as provided by Section 11-1-16B.(1)

(4) Ordering, regardless of fines imposed or costs assessed, the Respondent to perform a term of community service.

G. Adhering to the policies, procedures, and legislation set forth in the City Code, except where discretion is specifically vested in the Administrative Hearing Officer, provided, however, that an Administrative Hearing Officer is authorized to waive the fine and/or costs that otherwise would be imposed upon finding a respondent liable for one or more Code violations when the Administrative Hearing Officer specifically finds as a

matter of fact that the violation(s) occurred under such circumstances as to a reasonable person would constitute an excuse for the violation(s).

H. Asking questions of the parties and witnesses, if necessary, to ensure the clarity and completeness of the testimony and the record.

I. 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 6:** That section 11-1-11 is hereby revised as follows:

**SECTION 11-1-11: ADMINISTRATIVE HEARINGS:**

A. All administrative hearings conducted by the Division of Administrative Hearings are open to the public and shall be presided over by a duly appointed Administrative Hearing Officer who is charged with providing the parties a full and fair opportunity to be heard.

B. City shall not be represented by an employee or other representative of the Division of Administrative Hearings, provided, however, that documentary evidence, prepared by another Department 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. The Administrative Hearing Officer may issue subpoenas pursuant to Section 11-1-10.

E. [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.

F. 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 original or a legible copy of the charging document, issued in accordance with the applicable provisions of this Code, 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 made by tape recording or other appropriate means. Recording by any means by any member of the public is prohibited unless expressly authorized by the Division Director. The record of all hearings before an Administrative Hearing Officer shall include . . . (4) a copy of [the findings, decision, and order of] the Administrative Hearing Officer's final determination. . . .

I. At the conclusion of a hearing, the Administrative Hearing Officer shall issue his final determination. If the Administrative Hearing Officer issues a final determination of liability, he may (1) impose fines, assess costs, and make orders, all as provided by Section 11-1-9 F. and as are consistent with the specific Code provision(s) found to have been violated.

J. At the conclusion of the hearing, the Administrative Hearing Officer shall inform the parties orally and in writing of his determination, which determination constitutes a final determination for purposes of judicial review and is subject to review under the Illinois Administrative Review Law. Based on the charging document and the evidence admitted, the Administrative Hearing Officer may issue the following determinations: liable, not liable, or liable upon a plea of no contest. The Administrative Hearing Officer also may dismiss the case with or without prejudice or grant a properly made motion by the City voluntarily dismissing the case.

**SECTION 7:** That section 11-1-12 is hereby revised as follows:

**SECTION 11-1-12: PROCEDURE:**

All matters to be adjudicated by the Division of Administrative Hearings shall be commenced against the party alleged to have violated one or more Code

provisions by issuing and serving upon that party a charging document and shall be conducted in accordance with the following procedures:

A. The charging document shall be issued by a City officer or employee authorized to exercise Code enforcement authority and served as provided for in Section 11-1-12(D.)

B. (1) Any charging document issued pursuant to this Section 11-1-12 shall contain the following information:

(a) The name; City Department; position; and identification number, if applicable, of the person issuing the charging instrument;

(b) The name and address of the person or entity being charged with one or more Code violations ("respondent");

(c) The name and address of the person to whom the charging document is given if that person is not the respondent;

(d) The section(s) of the Code alleged to have been violated;

(e) The date, time, and place of the alleged violation(s);

(f) A legally sufficient description of the activity or conduct alleged to constitute a violation of each Code section set forth in the charging document or a legally sufficient description of the facts giving rise to the allegations set forth in the charging document;

(g) The complainant's name if the complainant is not the issuing City officer or employee.

The City officer or employee shall certify the correctness of the information required by this Subsection 11-1-12B.(1) by signing his name to the charging document to be issued. Compliance with this Subsection 11-1-12B.(1) establishes a *prima facie* case.

(2) A charging document issued pursuant to Subsection 11-1-12B.(1) also shall set forth (a) the date, time and place of the adjudicatory hearing to be held with respect to the violation(s) alleged in the charging document and (b) the legal authority and jurisdiction under which the hearing will be held.

C. (1) The respondent named in a charging document, shall be given notice of the date of the adjudicatory hearing which may appear on the face of the notice of violation, citation, or other charging document. Notice of the hearing date may be given in any of the following ways: (i) by first class mail or by overnight or two-day commercial delivery service at the respondent's last known address or if the respondent is a business entity, at any address identified for its registered agent or at its principal place of business; or, (ii) by personal service, (iii) by posting upon the property that is the site of the alleged violation(s) when the respondent is the owner or person in control of the property, or (iv) by any other means permitted by law for service of civil summons.

... If service is provided by first class mail or by overnight or two-day commercial delivery service, the 15-day period shall begin to run on the day that the notice is deposited in the mail or given to the commercial delivery service, as applicable.

(2) Notwithstanding anything to the contrary in this Section 11-1-12, service of notices of violation and notices of hearing for violations of Title 10, "Motor Vehicles and Traffic," shall be as prescribed in Title 11, Chapter 2.

E. The original or a legible copy of the notice of violation, citation, or other charging document shall be filed with the Division of Administrative Hearings as soon as practicable at the place and in the manner as the Director of Administrative Adjudication directs. Upon receiving the original or legible copy of charging document, the Division of Administrative Hearings shall select a hearing date and give respondent notice of the date, time, and place of the hearing in the manner set forth in Subsection 11-1-12D(1), unless the charging document sets forth the date, time, and location of the hearing and was served personally on the respondent.

F. Parties to an adjudicatory hearing 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 8:** That section 11-1-13 is hereby revised as follows:

**SECTION 11-1-13: REPRESENTATION AT HEARINGS:**

A. City Representation: The case for the City may be presented by a City employee, or by an attorney designated by the corporation Counsel but not by an employee or other representative of the Division of Administrative Hearings except as allowed by Section 11-1-11B.

B. Respondent Representation: The case for the respondent may be presented by the respondent or by an attorney or agent of the respondent. An attorney or agent appearing at an adjudicatory hearing on behalf of a respondent shall present the Administrative Hearing Officer with a signed appearance form stating, on oath or affirmation, that he or she has been authorized by the respondent to represent the respondent at the hearing.

**SECTION 9:** That section 11-1-15 is hereby revised as follows:

**SECTION 11-1-15: DEFAULT:**

**SECTION 11-1-15: DEFAULT:**

A. If at the time set for hearing, the respondent, or his attorney or agent of record, fails to appear, the Administrative Hearing Officer may enter a default judgment of liability against the respondent and impose fines and assess costs. 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. A copy of the default judgment, which is a final determination, shall apprise the respondent of the procedure for setting aside the default judgment and also shall apprise the respondent of the availability of an appeal of the default judgment to the Circuit Court of Cook County. The default judgment shall be mailed promptly to the respondent as provided by Section 11-1-12D(1).

B. A respondent against whom a default judgment has been entered may file a motion with the Division of Administrative Hearings to set aside the default judgment and for a new hearing. A motion to set aside a default judgment may be filed at any time if the respondent alleges lack of subject matter or personal jurisdiction; in all other cases, the motion must be



filed with 21 days of entry of the default judgment excepting Saturdays, Sundays, and holidays. A motion to set aside a default judgment shall set forth the reason(s) the respondent failed to appear on the original hearing date. An Administrative Hearing Officer shall hear and rule on the motion. If the Administrative Hearing Officer grants the motion, a hearing will be held immediately on the alleged Code violation(s) set forth in notice of violation, citation, or other charging document unless the respondent requests another hearing date and presents for good cause for continuing the hearing. Notwithstanding any of the foregoing to the contrary, a motion to set aside a default judgment 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 Code.

C. If any default judgment is set aside pursuant to this Section 11-1-15, 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 10:** That section 11-1-16 is hereby revised by adding a new section 11-1-16(B) to read as follows:

#### **SECTION 11-1-16 FINES; COMPLIANCE BOND:**

A. 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.

B.(1.) In order to ensure that Code violations are remedied in a timely manner, an Administrative Hearing Officer, upon issuing a determination of liability that includes an order of compliance, may order the respondent in the case to obtain a bond to ensure respondent's timely compliance with the Code provision(s) found to have been violated. Any bond ordered pursuant to this Subsection 11-1-16B.(1.) shall name the City as beneficiary and shall be in the amount specified by the Administrative Hearing Officer, provided that the amount of the bond shall be reasonably related to the cost of compliance. Any bond issued as a result of an Administrative Hearing Officer's order is subject to review and modification by the City Manager as to form and amount. If the respondent fails to remedy in a timely manner the Code violation(s) for which a bond has been ordered and issued and the City undertakes remediation or otherwise expends funds related to the Code violation(s) for which a bond has been ordered and issued, the Administrative Hearing Officer, after giving the parties notice and opportunity to be heard, may issue an order permitting the City to draw against the bond

in an appropriate amount. The Administrative Hearing Officer shall order the bond amount, less the reasonable costs incurred by the City, returned to the respondent upon proof of compliance with the Code provision(s) found to have been violated.

2. In the event a respondent ordered to secure a bond as provided by Subsection 11-1-16B.(1.), seeks judicial review of that portion of the Administrative Hearing Officer's order requiring a bond and prevails on that issue, the City shall release the bond, and if the City has drawn against the bond, the City shall refund to the respondent the total amount drawn within 30 days of receiving a copy of the reviewing court's mandate.

**SECTION 11:** That section 11-1-17 is hereby revised as follows:

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

A. Any fine and any administrative, enforcement, or compliance costs imposed by an Administrative Hearing Officer's order that remain unpaid after the exhaustion of, or the failure to exhaust, judicial review procedures, unless stayed by a court of competent jurisdiction, shall be a debt due and owing the City and may be collected in accordance with applicable law.

B. After the expiration of the period for which judicial review may be sought, unless stayed by a court of competent jurisdiction, the determination of liability of an Administrative Hearing 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 respondent fails to comply with an Administrative Hearing Officer's order to correct 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 foreclosure, 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 pursuant to this Subsection 11-1-17C., the respondent shall be provided with notice that directs the respondent to 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 place and the time for the hearing, which shall not be less than seven days from the date the notice is served.

Notice may be served by first class mail or by an overnight commercial delivery service and the seven-day period shall begin to run on the date that the notice was deposited in the mail or with the overnight commercial delivery service.

B. Nothing in this Section shall prevent the City from enforcing or seeking to enforce any order of an Administrative Hearing Officer in any manner provided by law.

**SECTION 12:** That section 11-1-18 is hereby revised as follows:

**SECTION 11-1-18: ELECTION OF REMEDIES:**

In no case may the Division of Administrative Hearings conduct an adjudicatory hearing for an alleged Code violation where the remedy provided for is a punishment of imprisonment. Nothing in this Chapter, however, shall preclude the City from petitioning a court of competent jurisdiction to adjudicate any ordinance violation or an ordinance violation which provides the remedy of imprisonment, or from petitioning a court of competent jurisdiction to impose the remedy of imprisonment for failure to comply with an order of an Administrative Hearing Officer.

**SECTION 13:** That all ordinances or parts of ordinances in conflict herewith are hereby repealed.

**SECTION 14:** That this ordinance shall be in full force and effect upon passage and approval.

Introduced: July 24, 2000

Adopted: August 14, 2000

Approved: August 15, 2000

Lorraine H. Morton  
Mayor

ATTEST:

Maury D. Morris  
City Clerk

Approved as to form:  
[Signature]  
Corporation Counsel