

**28-O-12**

**AN ORDINANCE**

**Enacting a New Chapter 17 of Title 9 of the Evanston City Code,  
Prohibiting Unauthorized Operation of CB Radio Equipment**

**WHEREAS**, the City of Evanston is a home-rule municipality pursuant to Article VII of the Illinois Constitution of 1970; and

**WHEREAS**, as a home rule unit of government, the City has the authority to adopt ordinances and to promulgate rules and regulations that promote the public health, safety, and welfare of its residents; and

**WHEREAS**, pursuant to its 47 U.S.C. § 302a(f), attached hereto as Exhibit A and incorporated herein by reference, the City has the authority to enact an ordinance that prohibits violation of certain regulations of the Federal Communications Commission related to the unauthorized use of citizens band radio equipment; and

**WHEREAS**, the enactment of such an ordinance will promote the public health, safety, and welfare of the City's residents,

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

**SECTION 1:** The foregoing recitals are hereby found as fact and incorporated herein by reference.

**SECTION 2:** Title 9 of the City Code is hereby further amended by the enactment of a new Chapter 17 thereof, "Citizens Band Radio Equipment," to read as follows:

**9-17-1: TITLE:**

This Chapter, enacted pursuant to 47 U.S.C. § 302a(f), shall be titled and referred to as the "Citizens Band Radio Equipment Ordinance."

**9-17-2: UNAUTHORIZED OPERATION PROHIBITED:**

- (A) **Equipment:** No person shall use citizens band radio equipment that is not authorized by the Federal Communications Commission.
- (B) **Operation:** No person shall operate citizens band radio equipment on a frequency between twenty-four megahertz (24 MHz) and thirty-five megahertz (35 MHz) unless he/she is authorized to do so by the Federal Communications Commission.

**9-17-3: PENALTIES:**

Any person found liable for violating Section 2 of this Chapter shall be fined one hundred dollars (\$100.00) for the first offense, two hundred fifty dollars (\$250.00) for the second offense in any one (1)-year period, and five hundred dollars (\$500.00) for the third and any subsequent offense in any one (1)-year period. A separate offense shall be deemed committed each day during which a violation occurs or continues.

**9-17-4: LICENSED RADIO STATIONS EXEMPT:**

Pursuant to 47 U.S.C. § 302a(f)(2), any radio station that is licensed by the Federal Communications Commission pursuant to 47 U.S.C. § 301, as amended, shall be exempt from the terms of this Chapter.

**9-17-5: SEVERABILITY:**

If any provision of this Chapter or application thereof to any person or circumstance is held unconstitutional or otherwise invalid, such invalidity shall not affect other provisions or applications of this Chapter that can be given effect without the invalid application or provision, and each invalid provision or invalid application of this Chapter is severable.

**SECTION 3:** The findings and recitals contained herein are declared to be prima facie evidence of the law of the City and shall be received in evidence as provided by the Illinois Compiled Statutes and the courts of the State of Illinois.

**SECTION 4:** All ordinances or parts of ordinances in conflict herewith are hereby repealed.

**SECTION 5:** If any provision of this ordinance or application thereof to any person or circumstance is held unconstitutional or otherwise invalid, such invalidity shall not affect other provisions or applications of this ordinance that can be given effect without the invalid application or provision, and each invalid application of this ordinance is severable.

**SECTION 6:** This ordinance shall be in full force and effect from and after its passage, approval, and publication in the manner provided by law.

Introduced: August 13, 2012

Adopted: September 10, 2012

Approved:

September 12, 2012

Elizabeth B. Tisdahl

Elizabeth B. Tisdahl, Mayor

Attest:

Rodney Greene

Rodney Greene, City Clerk

Approved as to form:

W. Grant Farrar

W. Grant Farrar, Corporation Counsel

**EXHIBIT A**

47 U.S.C. § 302a(f)

(2) accept as prima facie evidence of such compliance the certification by any such organization; and

(3) establish such qualifications and standards as it deems appropriate for such private organizations, testing, and certification.

**(f) State and local enforcement of FCC regulations on use of citizens band radio equipment**

(1) Except as provided in paragraph (2), a State or local government may enact a statute or ordinance that prohibits a violation of the following regulations of the Commission under this section:

(A) A regulation that prohibits a use of citizens band radio equipment not authorized by the Commission.

(B) A regulation that prohibits the unauthorized operation of citizens band radio equipment on a frequency between 24 MHz and 35 MHz.

(2) A station that is licensed by the Commission pursuant to section 301 of this title in any radio service for the operation at issue shall not be subject to action by a State or local government under this subsection. A State or local government statute or ordinance enacted for purposes of this subsection shall identify the exemption available under this paragraph.

(3) The Commission shall, to the extent practicable, provide technical guidance to State and local governments regarding the detection and determination of violations of the regulations specified in paragraph (1).

(4)(A) In addition to any other remedy authorized by law, a person affected by the decision of a State or local government agency enforcing a statute or ordinance under paragraph (1) may submit to the Commission an appeal of the decision on the grounds that the State or local government, as the case may be, enacted a statute or ordinance outside the authority provided in this subsection.

(B) A person shall submit an appeal on a decision of a State or local government agency to the Commission under this paragraph, if at all, not later than 30 days after the date on which the decision by the State or local government agency becomes final, but prior to seeking judicial review of such decision.

(C) The Commission shall make a determination on an appeal submitted under subparagraph (B) not later than 180 days after its submittal.

(D) If the Commission determines under subparagraph (C) that a State or local government agency has acted outside its authority in enforcing a statute or ordinance, the Commission shall preempt the decision enforcing the statute or ordinance.

(5) The enforcement of statute or ordinance that prohibits a violation of a regulation by a State or local government under paragraph (1) in a particular case shall not preclude the Commission from enforcing the regulation in that case concurrently.

(6) Nothing in this subsection shall be construed to diminish or otherwise affect the jurisdiction of the Commission under this section over devices capable of interfering with radio communications.

(7) The enforcement of a statute or ordinance by a State or local government under paragraph (1) with regard to citizens band radio equipment on board a "commercial motor vehicle", as defined in section 31101 of title 49, shall require probable cause to find that the commercial motor vehicle or the individual operating the vehicle is in violation of the regulations described in paragraph (1).

(June 19, 1934, ch. 652, title III, § 302, as added Pub. L. 90-379, July 5, 1968, 82 Stat. 290; amended Pub. L. 97-259, title I, § 108(a), Sept. 13, 1982, 96 Stat. 1091; Pub. L. 102-556, title IV, § 403(a), Oct. 28, 1992, 106 Stat. 4195; Pub. L. 104-104, title IV, § 403(f), Feb. 8, 1996, 110 Stat. 131; Pub. L. 106-521, § 1, Nov. 22, 2000, 114 Stat. 2438.)

**AMENDMENTS**

2000—Subsec. (f). Pub. L. 106-521 added subsec. (f).

1996—Subsec. (e). Pub. L. 104-104 added subsec. (e).

1992—Subsec. (d). Pub. L. 102-556 added subsec. (d).

1982—Subsec. (a). Pub. L. 97-259, § 108(a)(1), (2), inserted "(1)" after "regulations" and "; and (2) establishing minimum performance standards for home electronic equipment and systems to reduce their susceptibility to interference from radio frequency energy" after "radio communications", and substituted "or shipment of such devices and home electronic equipment and systems, and to the use of such devices" for "shipment, or use of such devices".

Subsec. (b). Pub. L. 97-259, § 108(a)(3), substituted "or ship devices or home electronic equipment and systems, or use devices," for "ship, or use devices".

Subsec. (c). Pub. L. 97-259, § 108(a)(4), inserted "or home electronic equipment and systems" after "devices" wherever appearing, inserted "and home electronic equipment and systems" after "Devices", substituted "objectives" for "common objective", and inserted "and to home electronic equipment and systems" after "reception".

**EFFECT ON OTHER LAWS**

Section 403(c) of Pub. L. 102-556 provided that: "This section [amending this section] shall not affect section 2512(2) of title 18, United States Code."

**MINIMUM PERFORMANCE STANDARDS; HOME ELECTRONIC EQUIPMENT AND SYSTEMS MANUFACTURED BEFORE SEPTEMBER 13, 1982**

Section 108(b) of Pub. L. 97-259 provided that: "Any minimum performance standard established by the Federal Communications Commission under section 302(a)(2) of the Communications Act of 1934 [subsec. (a)(2) of this section], as added by the amendment made in subsection (a)(1), shall not apply to any home electronic equipment or systems manufactured before the date of the enactment of this Act [Sept. 13, 1982]."

**§ 303. Powers and duties of Commission**

Except as otherwise provided in this chapter, the Commission from time to time, as public convenience, interest, or necessity requires, shall—

(a) Classify radio stations;

(b) Prescribe the nature of the service to be rendered by each class of licensed stations and each station within any class;

(c) Assign bands of frequencies to the various classes of stations, and assign frequencies for each individual station and determine the power which each station shall use and the time during which it may operate;

(d) Determine the location of classes of stations or individual stations;