

1/6/2019
2/7/2019
3/27/2019
4/1/2019

159-O-18

AN ORDINANCE

Amending Portions of the City Code Incorporating Restorative Justice Practices for Minors

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

SECTION 1: City Code Section 11-1-9, "Scope of Authority of Hearing Officers," of the Evanston City Code of 2012, as amended, is hereby further amended to read as follows:

11-1-9. - SCOPE OF AUTHORITY OF HEARING OFFICERS.

Hearing Officers will preside over adjudicatory hearings. The authority of a Hearing Officer will encompass all acts necessary to conduct fair and impartial adjudicatory hearings, including, but not limited to:

- (A) Hear testimony and accept evidence that is relevant to the existence of the Code violation.
- (B) Administer oaths and affirmations to witnesses.
- (C) Subject to City Code Section 11-1-10, at the request of any party or on the Hearing Officer's own motion, issue subpoenas for the attendance of relevant witnesses and/or the production of relevant books, records, or other information.
- (D) Preserve the record of the hearing, including all exhibits and evidence admitted into the record at the hearing.
- (E) Issue a determination based upon a review of the notice of violation, citation, ticket, or other charging document (any of which will constitute a "charging document" under this Title) and on the evidence admitted, which determination will be final for purpose of judicial review under the Illinois Administrative Review Law, 735 ILCS 5/3 et seq. The determination will be in writing, will be signed by the Hearing Officer, and will be designated as finding(s), decision and order.
- (F) Upon finding a respondent liable for violating one or more Code provisions, impose penalties as provided by the governing penalty provision; except, however, that in no event will a Hearing Officer have authority to: 1) impose a penalty of incarceration; or 2) impose a fine in excess of fifty thousand dollars

(\$50,000.00). When applicable, each day a code provision is found to have been violated by the respondent, will constitute a separate offense, and each separate offense subjects the respondent to the penalty provided by the governing penalty provision. In all cases where a finding of liability is made, the Hearing Officer shall offer to the respondent the option of performing a number of community service hours not to exceed a number commensurate in value to the otherwise impossible fine. If the ordered community service hours are completed within one hundred twenty (120) days, no fine may thereafter be imposed for that violation. The Hearing Officer may also:

1. Tax administrative and/or enforcement costs and when applicable, tax incurred by the City for effecting compliance with Code provision(s) for which a respondent has been found liable.
 2. Order, in addition to fines or costs, the respondent to comply with code provision(s) found to have been violated, and, if appropriate, order the respondent to post a compliance bond as provided by City Code Subsection 11-1-16(B)(1).
- (G) Follow the policies, procedures and legislation set forth in this Code, except where discretion is specifically vested in the Hearing Officer. A Hearing Officer is authorized to waive the fine and/or costs that otherwise would be imposed upon finding a respondent liable for one (1) or more Code violations when the 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) Rule upon motions, objections and the admissibility of evidence.
- (I) Ask questions of the parties and witnesses to ensure the clarity and completeness of the testimony and the record.
- (J) Regulate the course of the hearing in accordance with this Chapter, the rules adopted by the Chief Financial Officer or his/her designee for the conduct of administrative hearings, and other applicable law.

SECTION 2: City Code Section 11-1-11, "Administrative Hearings," of the Evanston City Code of 2012, as amended, is hereby further amended to add City Code Subsection 11-1-11(H), "Administrative Adjudication for Minors," to read as follows:

- (H) Administrative Adjudication for Minors.
1. Whenever a charging document is issued alleging a violation of the City Code by a person who is under eighteen (18) years of age at the time of the alleged violation, the City's Division of Administrative Hearing shall maintain the confidentiality of any records generated from that charging document, including the document itself, in compliance with 705 ILCS 405/1-7, "Confidentiality of Law Enforcement and Municipal Ordinance Violation Records." For purposes of this subsection, a minor shall be

defined as anyone who is under the age of eighteen (18) at the time of the alleged violation of the City Code.

2. The City's Division of Administrative Hearings shall provide separate and private hearings for minors.
3. If a minor has previously been found liable for violating the subject City Code provision and received three (3) or fewer prior findings of a violation of the subject City Code offense, the minor shall upon disposition receive the option to participate in restorative practices. Restorative practices may include a convening where the minor and members of the community, including victims, where appropriate, convene to identify harm, repair harm to the extent possible, address trauma, reduce the likelihood of further harm, and/or strengthen community ties by focusing on the needs and obligations of all parties involved through a participatory process, which may involve a minor participating in any of the following or similar services determined necessary by an administrative hearing officer: substance abuse education, counseling, career training, victim-offender mediation, and/or the performance of community service not to exceed forty (40) hours.
4. In order to participate in restorative practices, the minor and parent/guardian or emancipated minor shall be required to sign an agreement that requires completion of the services within a reasonable time period, not to exceed one hundred twenty (120) days, as determined by the administrative hearing officer.
5. If the minor is successful in completing the requirements under the agreement, the minor shall not be issued a fine for that violation and the matter will be marked a closed case. If the minor is not successful, an allowable fine may be imposed.

SECTION 3: City Code Section 9-5-26, "General Theft," of the Evanston

City Code of 2012, as amended, is hereby further amended to read as follows:

9-5-26 – GENERAL THEFT OF PROPERTY UNDER \$500; RETAIL THEFT UNDER \$300.

(A) Definitions.

<p>THEFT DETECTION DEVICE REMOVER.</p>	<p>Any tool or device specifically designed and intended to be used to remove any theft detection device from any merchandise.</p>
<p>THEFT DETECTION SHIELDING DEVICE.</p>	<p>Any laminated or coated bag or device designed and intended to shield merchandise from detection by an electronic or magnetic theft alarm sensor.</p>

UNDER-RING.	To cause the cash register or other sales recording device to reflect less than the full retail value of the merchandise.
SHOPPING CART.	Push carts of the type or types which are commonly provided by grocery stores, drug stores, or other retail mercantile establishments for the use of the public in transporting commodities in stores and markets and, incidentally, from the stores to a place outside the store.
RETAIL MERCANTILE ESTABLISHMENT.	Any place where merchandise is displayed, held, stored, or offered for sale to the public.
PREMISES OF A RETAIL MERCANTILE ESTABLISHMENT.	Includes, but is not limited to, the retail mercantile establishment, any common use areas in shopping centers, and all parking areas set aside by a merchant or on behalf of a merchant for the parking of vehicles for the convenience of the patrons of such retail mercantile establishment.
MERCHANT.	An owner or operator of any retail mercantile establishment or any agent, employee, lessee, consignee, officer, director, franchisee, or independent contractor of such owner or operator.
MERCHANDISE.	Any item of tangible personal property.
FULL RETAIL VALUE.	The merchant's stated or advertised price of the merchandise. To "conceal" merchandise means that, although there may be some notice of its presence, that merchandise is not visible through ordinary observation.

- (B) It shall be unlawful for any person to commit general theft of property under five hundred dollars (\$500.00). A person commits the offense of general theft when said person knowingly:
1. Obtains or exerts unauthorized control over property of the owner.
 2. Obtains control over stolen property knowing the property to have been stolen or under such circumstances as would reasonably induce him or her to believe the property was stolen.

- (C) It shall be unlawful for any person to commit retail theft of property under three hundred dollars (\$300.00). A person commits the offense of retail theft when said person knowingly:
1. Takes possession of, carries away, transfers, or causes to be carried away or transferred, any merchandise displayed, held, stored, or offered for sale in a retail mercantile establishment with the intention of retaining such merchandise or with the intention of depriving the merchant permanently of the possession, use, or benefit of such merchandise without paying the full retail value of such merchandise; or
 2. Alters, transfers, or removes any label, price tag, marking, indicia of value, or any other markings which aid in determining value affixed to any merchandise displayed, held, stored, or offered for sale, in a retail mercantile establishment, and attempts to purchase such merchandise personally or in consort with another at less than the full retail value with the intention of depriving the merchant of the full retail value of such merchandise; or
 3. Transfers any merchandise displayed, held, stored, or offered for sale, in a retail mercantile establishment from the container in or on which such merchandise is displayed to any other container with the intention of depriving the merchant of the full retail value of such merchandise; or
 4. Under-rings with the intention of depriving the merchant of the full retail value of the merchandise; or
 5. Removes a shopping cart from the premises of a retail mercantile establishment without the consent of the merchant given at the time of such removal with the intention of depriving the merchant permanently of the possession, use, or benefit of such cart; or
 6. Represents to a merchant that he or another is the lawful owner of property, knowing that such representation is false, and conveys or attempts to convey that property to a merchant who is the owner of the property in exchange for money, merchandise credit, or other property of the merchant; or
 7. Uses or possesses any theft detection shielding device or theft detection device remover with the intention of using such device to deprive the merchant permanently of the possession, use, or benefit of any merchandise displayed, held, stored, or offered for sale in a retail mercantile establishment without paying the full retail value of such merchandise; or
 8. Obtains or exerts unauthorized control over property of the owner and thereby intends to deprive the owner of the use or benefit of the property when a lessee of the personal property of another fails to return it to the owner, or if the lessee fails to pay the full retail value of such property to the lessor in satisfaction of any contractual provision requiring such, within ten (10) days after written demand from the owner for its return. A notice in writing, given after the expiration of the leasing agreement by registered mail to the lessee at the address given by the lessee and shown on the leasing agreement shall constitute proper demand.

In all subsections of City Code 9-5-26(C), the property must have a value of less than three hundred dollars (\$300.00).

(D) Violations. A violation of this Section shall be punishable by a fine of one hundred fifty dollars (\$150.00).

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

SECTION 5: This ordinance shall be in full force and effect on July 1, 2019.

SECTION 6: 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.

Introduced: May 28, 2019

Approved:

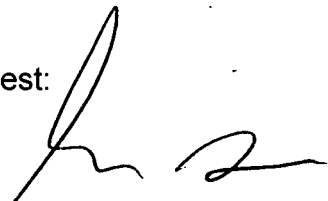
Adopted: May 28, 2019

May 28, 2019


Stephen H. Hagerty, Mayor

Attest:

Approved as to form:


Devon Reid, City Clerk


Michelle L. Masoncup, Corporation Counsel

Eduardo Gomez, Deputy City Clerk