

AN ORDINANCE AMENDING CHAPTER 7
OF THE ARLINGTON HEIGHTS MUNICIPAL CODE

BE IT ORDAINED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF ARLINGTON HEIGHTS:

SECTION ONE: That Chapter 7, Other Village Government Provisions, of the Arlington Heights Municipal Code, is hereby amended by adding the following article:

ARTICLE XIII ADMINISTRATIVE ADJUDICATION SYSTEM

Section 7-1301 Purpose. The purpose of this Article is to provide a procedure by which charges of violations of the Village Code ("Code") can be equitably and efficiently adjudicated administratively by an administrative hearing officer. The Administrative Adjudication System set forth in this Article is established pursuant to Division 2.1 of the Illinois Municipal Code 65 ILCS 5/1-2.1-1 et seq, as now or hereafter amended. The system created by this Article shall be in addition to the system for parking offenses established pursuant to Article VIII of Chapter 18 of this Code. In the event of a conflict between the statutes and this Article, this Article shall prevail. The adoption of this Article does not preclude the Village from using other lawful methods to enforce the provisions of this Code.

Section 7-1302 Jurisdiction. Those matters subject to the Administrative Adjudication System provided for by this Article are charges of violation of any regulation of the Village of Arlington Heights, so long as the relief sought is not a penalty of incarceration or a total fine in excess of \$50,000, excluding allowable costs. The \$50,000 limitation shall not apply to those cases brought to enforce the collection of any tax imposed and collected by the Village. In addition, any matter for which the Village Manager is the designated hearing officer under this Code may be referred to the Administrative Adjudication System for hearing and resolution in accordance with this Article.

Section 7-1303 Administrative Hearings Unit. Pursuant to 65 ILCS 5/1-2.1-4, an administrative hearings unit is established to provide for and operate a system of administrative adjudication for the purpose set forth in Section 7-1301. The primary function of this unit is to expedite the prosecution and/or correction of Code violations subject to the jurisdiction of the Administrative Adjudication System. The Village Manager shall assign an individual to act as coordinator of this Administrative Hearings process.

Section 7-1304 Qualifications of Administrative Hearing Officers. Prior to conducting administrative adjudication proceedings under this section, administrative hearing officers must have successfully completed a formal training program that includes the following:

- a. Instruction on the rules of procedure of the administrative hearings over which the administrative hearing officers shall preside;
- b. Orientation to each subject area of the Code violations they will adjudicate;
- c. Observation of administrative hearings; and
- d. Participation in hypothetical cases, including ruling on evidence and issuing final orders.

In addition, an administrative hearing officer must be an attorney licensed to practice law in the State of Illinois for at least three years and be in good standing with the Attorney Registration and Disciplinary Commission of the Supreme Court of Illinois.

Section 7-1305 Scope of Authority of Administrative Hearing Officers. Administrative hearing officers shall preside over administrative adjudication hearings. The authority of an administrative hearing officer shall encompass all acts necessary to conduct 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. 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, or other charging document ("Charging Document") and on the evidence admitted, which determination shall be final for purpose of judicial review under the Illinois Administrative Review Law. The determination shall be in writing, shall be signed by the administrative hearing officer, shall be designated as findings, decision, and order, and shall include the fine, penalty or action with which the Respondent must comply.
- f. Upon finding a Respondent liable for violating one or more charged Code provisions:
 1. Imposing penalties as provided by the governing penalty provision, except, however, that in no event shall an administrative hearing officer have authority to:
 - a. Impose a penalty of incarceration; or
 - b. Impose a fine in excess of \$50,000, excluding allowable costs. 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, costs incurred by the Village for effecting compliance with Code provision(s) for which a Respondent has been found liable.
 3. Notwithstanding fines imposed or costs assessed, ordering the Respondent to comply with Code provision(s) found to have been violated.

4. Notwithstanding fines imposed or costs assessed, ordering the Respondent to perform a term of community service.
 5. Notwithstanding fines imposed or costs assessed, ordering the payment of an amount set by the Village for court costs.
- g. Adhering to the policies, procedures and legislation set forth in the 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 that 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 Article, the rules adopted by the Village for the conduct of administrative hearings, and other applicable law.

Section 7-1306 Administrative Hearings.

- a. All administrative hearings conducted pursuant to this Article 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. The Village need not be represented by an employee; provided, however, that documentary evidence, prepared by an employee of the appropriate department of the Village, may be presented at the hearing by a Village representative.
- 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.
- d. Parties to an adjudicatory hearing may be represented by an attorney or other agent, present witnesses, and cross-examine opposing witnesses. The administrative hearing officer may issue subpoenas at the request of either party or on their own.
- e. 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. 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.

- g. The Village 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 Village. The record of all hearings before an administrative hearing officer shall include a copy of the findings, decision, and order of the administrative hearing officer's final determination.
- h. At the conclusion of a hearing, the administrative hearing officer shall issue a final determination. If the administrative hearing officer issues a final determination of liability, the administrative hearing officer may impose fines, assess costs, and make orders, all as provided herein, and as are consistent with the specific Code provision(s) found to have been violated.
- i. At the conclusion of the hearing, the administrative hearing officer shall inform the parties orally and in writing of the 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 Village voluntarily dismissing the case.

Section 7-1307 Procedure. All matters to be adjudicated by the administrative hearing officer shall be commenced against the party alleged to have violated one or more Code provisions by using the following procedure:

- a. A Charging Document shall be issued by any Village employee authorized to exercise Code enforcement authority and served as provided for in this Section. Any charging document issued pursuant to this Article shall contain the following information:
 - 1. The name, Village department, position, and identification number, if applicable, of the person issuing the Charging Document;
 - 2. The name and address of the person or entity being charged with one or more Code violations ("Respondent");
 - 3. The name and address of the person to whom the Charging Document is given if that person is not the Respondent;
 - 4. The section(s) of the Code alleged to have been violated;
 - 5. The date, time and place of the alleged violation(s);
 - 6. 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 legally

sufficient description of the facts giving rise to the allegations set forth in the charging document;

7. The complainant's name if the complainant is not the issuing Village employee. The Village employee or the complainant (if applicable), shall certify the correctness of the information required by this Section by signing his or her name on the Charging Document.
 8. The legal authority and jurisdiction under which an adjudicatory hearing will be held.
- b. Notice of the Adjudicatory Hearing shall be given utilizing one of the following methods:
1. The date, time, and place of the adjudicatory hearing to be held with respect to the violation(s) alleged in the Charging Document may be included in the Charging Document. If the Charging Document includes the hearing date, it shall also state whether an appearance is required on the date and time set forth therein or whether, in lieu of an appearance, a fine may be paid by the Respondent by a date certain in advance of the scheduled hearing.
 2. If notice of the hearing date is not included in the Charging Document, it may be given in any of the following ways:
 - a) 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. 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; or
 - b) By personal service; or
 - c) 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
 - d) By any other means permitted by law for service of a civil summons.
- c. The hearing shall be scheduled with reasonable promptness. For hearings scheduled in all non-emergency situations, if requested, the Respondent shall have at least 15 days after service to prepare for a hearing. For purposes of this Section, "non-emergency situation" means any situation that does not reasonably constitute a threat to the public interest, safety or welfare.
- d. The original or a legible copy of the Charging Document shall be filed with the administrative hearing unit coordinator as soon as practicable. Upon receiving the original or legible copy of the Charging Document, the coordinator shall select a hearing date and give Respondent notice of the date, time, and place of the hearing in the manner

set forth in this Article, unless the Charging Document sets forth the date, time and location of the hearing and was served personally on the Respondent.

Section 7-1308 Representation At Hearings.

- a. The case for the Village may be presented by a Village employee or by an attorney designated by the Village Manager. As long as it is in compliance with Section 7-1307, the Charging Document shall establish a prima facie case.
- b. 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. Any Respondent that is a corporation must be represented by an attorney.

Section 7-1309 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 judgement of liability against the Respondent and impose fines and assess costs. A copy of the order of default shall be served in any manner permitted by this Article and applicable to the violation. A copy of the default judgment, which constitutes a final determination for purposes of judicial review and is subject to review under the Illinois Administrative Review Law, shall apprise the Respondent of the procedure for setting aside the default judgment and shall also apprise the Respondent of the availability of an appeal of the default judgment to the Circuit Court of Cook County.
- b. A Respondent against whom a default judgment has been entered may file a motion with the coordinator of the administrative hearing unit to set aside the default judgment and request 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 within 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 good cause for continuing the hearing.
- c. If any default judgment is set aside pursuant to this section, 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 Village as a result of the vacated default judgment.

Section 7-1310 Fines. All fines and other monies to be paid to the Village in accordance with this Article shall be remitted to the Village and deposited in the appropriate Village account as

designated by the Village Manager. All fines and other payments must be made within ten calendar days, unless otherwise ordered by the administrative hearing officer.

Section 7-1311 Enforcement of Administrative Hearing Officer's Order.

- a. Any fine and any administrative, enforcement, or compliance costs by an administrative hearing officer's order that remain unpaid after the exhaustion of or failure to exhaust, judicial review procedures, unless stayed by a court of competent jurisdiction, shall be a debt due and owing the Village 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. At such time, the coordinator shall send a notice of final determination of liability to Respondent.
- c. Any fine, penalty, and/or cost remaining unpaid after the notice of final determination of liability is sent shall constitute a debt due and owing the Village. Failure of the Respondent to pay such fine or penalty within 14 days of the notice may result in a lien against the Respondent's property (and foreclosure of such a lien) or such other remedies as may be available by law, including the denial of the issuance or renewal of licenses or permits.
- d. 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 Village to enforce the administrative hearing officer's order, including but not limited to, attorney's fees, court costs and costs related to properly clean-up, repair, 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 Village. Prior to any such expenses being fixed by an administrative hearing officer, 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 or two-day commercial delivery service and the seven-day period shall begin to run on the date that the notice was personally served, deposited in the mail or placed with the overnight or commercial delivery service.
- e. Nothing in this Section shall prevent the Village from enforcing or seeking to enforce any order of an administrative hearing officer in any manner provided by law.

Section 7-1312 Election Of Remedies. In no case may the Village conduct an adjudicatory hearing for an alleged Code violation where the remedy provided for is a punishment of imprisonment. Nothing in this section, however, shall preclude the Village 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 TWO: The provisions of this Ordinance are severable, and the invalidity of any phrase, clause or part of this Ordinance shall not affect the validity or effectiveness of the remainder of this Ordinance.

SECTION THREE: All ordinances or parts of ordinances in conflict with the provisions of this Ordinance are hereby repealed.

SECTION FOUR: This Ordinance shall be in full force and effect from and after its passage, approval and publication in pamphlet form, in the manner provided by law.

AYES:

NAYS:

PASSED AND APPROVED this 3rd day of January, 2017.

ATTEST:

Village President

Village Clerk

CODEAMTS:7 – Article XIII