



CITY OF WASHINGTON, ILLINOIS Committee of the Whole Agenda Communication

Meeting Date: February 12, 2024

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Agenda Item: Code Enforcement Administrative Adjudication Process Discussion

Explanation: Chapter 96 (Nuisances) of the Municipal Code was first adopted by the City Council in 1985-86. It identifies the various types of nuisances, abatement procedure, enforcement, and penalties. While 14 nuisances are listed, tall grass/weed violations are the most prominent and staff estimates that 80-85 percent of all code enforcement complaints fall into that category. Staff feels that the current enforcement process for grass/weed complaints is solid. Upon verification of a violation, a one-time annual letter is sent to the property owner that gives the owner seven days from the date the notice was mailed to abate. If the violation has not been abated in that time, the City can then authorize its abatement with a third-party contractor with that cost billed to the owner. Lack of payment within 60 days causes the filing of a lien. Most grass/weed violations are abated in a timely manner by the owner.

Addressing other nuisance violations can be more challenging, time-consuming, and costly, particularly when they involve private property matters. Staff has sought a mechanism to more efficiently handle those cases. Staff recommends the consideration of the adoption of a system of administrative adjudication for code violations. This is a process used by other municipalities, including the City of East Peoria. Administrative adjudication allows the City to resolve minor code infractions without the cost or manpower required to appear before the County Court. The process ensures that due process is afforded to the respondent. It can be used to handle violations such as junk, trash, and debris; inoperable vehicles; dangerous buildings (as defined in Chapter 150 of City Code); and sanitary and safety violations (as defined in Chapter 151 of City Code).

The process is intended to be simple and its start mirrors the City's current protocols. Upon receipt of a complaint, the Code Enforcement Supervisor (CES) goes to the property and validates the infraction. A written citation is then left with the property owner or posted on the door if nobody is at home at that time that gives seven days to abate. The infraction is reinspected after that period. A Summons to Appear is issued if the infraction is not resolved. The Summons will inform the respondent of the specific code violation, the hearing date, time and location, and the respondent's right to appear. The CES will appear at the hearing to present the City's case in front of a Hearing Officer (HO). The respondent may also appear and be heard. The HO, who must be an attorney licensed to practice law in Illinois for at least three years and appointed by the Mayor with the consent of the Council, will then render a judgement and issue an order.

Fiscal Impact: Any cost associated with an administrative adjudication process is anticipated to be minimal in most cases. The City of East Peoria had approximately 125 cases that were brought to a HO in 2023 with a total cost of about \$3,000.

Action Requested: Staff feels that this is a low-cost approach to assist with some code enforcement cases that can often be difficult to abate in a timely manner. An item is placed on the agenda for the February 12 Committee of the Whole meeting for discussion and direction on the possible adoption of the attached ordinance.

ORDINANCE NO. _____

AN ORDINANCE AMENDING THE CITY’S MUNICIPAL CODE TO ADOPT A SYSTEM OF ADMINISTRATIVE ADJUDICATION FOR MUNICIPAL CODE VIOLATIONS

WHEREAS, the City of Washington, Illinois (the “City”) is a home rule municipality in accordance with the Constitution of the State of Illinois of 1970;

WHEREAS, the City has the authority to adopt ordinances and to promulgate rules and regulations that pertain to its government and affairs and that protect the public health, safety and welfare of its citizens;

WHEREAS, the corporate authorities of the City have reviewed the benefits of establishing a local administrative adjudication system, which will enable the City to remove certain local code violations from the Tazewell County circuit court system and adjudicate such violations locally; and

WHEREAS, the corporate authorities have determined that it is in the best interests of the City and its residents to amend the City’s Municipal Code to clearly reflect that determination.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WASHINGTON, TAZEVELL COUNTY, ILLINOIS, as follows:

Section 1. That the recitals; as set forth above, are incorporated herein as though fully set forth and shall be considered the express findings of the City Council.

Section 2. That the City Code of the City of Washington, Tazewell County, Illinois, be and the same hereby is amended by adding Chapter 37 as follows:

“CHAPTER 37

OFFICE OF ADMINISTRATIVE ADJUDICATION

§37.01 CREATION OF A SYSTEM OF ADMINISTRATIVE ADJUDICATION AND CODE HEARING UNIT

- (A) Pursuant to the home rule authority of the City of Washington (the “City”) and the Illinois Municipal Code (65 ILCS 5/1-2.1-1 *et seq.*), there is hereby created within the City Administrator’s Office a “Code Hearing Unit” as a system of administrative adjudication of code violations for the City.
- (B) The system of administrative adjudication/Code Hearing Unit (sometimes referred to herein as the “system”) authorizes a hearing officer to adjudicate and a Code Enforcement Prosecutor and/or a Code Enforcement Supervisor to prosecute code enforcement cases and other matters based on this City Code. Except as expressly provided herein, the terms used in this chapter shall have the same meaning as ascribed by the Illinois Municipal Code.

(C) The City hereby adopts Section 5/1-2.1-1 *et seq.* of the Illinois Municipal Code, as it may be amended from time to time. In the event of a conflict between the statute and this chapter, this chapter shall prevail pursuant to the home rule authority of the City.

§37.02 PURPOSE

The purpose of the system is to provide a process by which charges alleging violation(s) of the provisions of this City Code can be fairly, efficiently, and expeditiously adjudicated by a hearing officer. The administrative adjudication of any code violation shall afford a party due process of law.

§37.03 JURISDICTION

Those matters subject to the system provided for by this chapter are based on this City Code, so long as the relief sought for any separate offense is neither a penalty of incarceration nor a total fine in excess of \$50,000.00. The maximum monetary fine under this subsection, shall be exclusive of the costs of enforcement or costs imposed to secure compliance with the City's ordinances and shall not be applicable to cases to enforce the collection of any tax imposed and collected by the City. In addition, the system shall have jurisdiction to adjudicate matters arising out of any provisions of this City Code, except for (i) proceedings not within the statutory or the home rule authority of the City; and (ii) any offense under the Illinois Vehicle Code or a similar offense that is a traffic regulation governing the movement of vehicles and except for any reportable offense under Section 6-204 of the Illinois Vehicle Code.

§37.04 COMPOSITION OF CODE HEARING UNIT

The Code Hearing Unit shall consist of one hearing officer, one code enforcement supervisor, and, if necessary, at least one code enforcement prosecutor, all with the power, authority, and limitations as set forth in this chapter.

§37.05 HEARING OFFICER

- (A) Appointment. The Mayor, with the advice and consent of the City Council, shall appoint one qualified hearing officer to perform the functions and duties set forth in this section.
- (B) Term. The term of a hearing officer shall be not more than one year; provided, however, that the City Council may remove a hearing officer, with or without cause at any time. In the event of a vacancy, the Mayor may designate a hearing officer on an interim basis.
- (C) Qualifications. A hearing officer must be an attorney licensed to practice law in the State of Illinois for at least three (3) years and be in good standing with the Illinois Supreme Court Attorney Registration and Disciplinary Commission.
- (D) Training. Prior to conducting an administrative adjudication hearing, a hearing officer must have successfully completed a formal training program presented by the Illinois Local Government Lawyers Association or other reputable association deemed acceptable by the Mayor and City Council, such training which includes the following:

- (1) Instruction on the rules of procedure of the administrative hearings which they will conduct;
- (2) Orientation to each subject area of the code violations that they will adjudicate;
- (3) Observation of administrative hearings; and
- (4) Participation in hypothetical cases, including ruling on evidence and issuing final orders.

A person who has served as a judge in Illinois is exempt from these training requirements. The hearing officer shall provide the City Administrator with proof of completion of the training program prior to conducting any hearings hereunder.

- (E) Compensation. Authorization for a hearing officer's compensation shall be made by the City Council.
- (F) Powers and Duties. All adjudicatory hearings set under the system shall be presided over by a hearing officer. The powers and duties of a hearing officer shall include:
- (1) Hearing testimony and accepting evidence that is relevant to the existence of the code violation;
 - (2) Issuing subpoenas directing witnesses to appear and give relevant testimony at the hearing, upon the request of the parties or their representatives;
 - (3) Preserving and authenticating the record of the hearing and all exhibits and evidence introduced at the hearing;
 - (4) Postpone or continue a defendant's hearing to a later hearing date upon proper notice to the defendant;
 - (5) Issuing a determination, based on the evidence presented at the hearing, of whether a code violation exists. The determination shall be in writing and shall include a written finding of fact, decision, and order including the fine, penalty, or action with which the defendant must comply; and
 - (6) Imposing penalties consistent with applicable provisions of this City Code and assessing costs upon finding a party liable for the charged violation, except, however, that in no event shall the hearing officer have authority to (i) impose a penalty of incarceration or (ii) impose a fine in excess of \$50,000. The maximum monetary fine under this subsection, shall be exclusive of the costs of enforcement or costs imposed to secure compliance with the City's ordinances and shall not be applicable to cases to enforce the collection of any tax imposed and collected by the City.

§37.06 CODE ENFORCEMENT SUPERVISOR

- (A) Appointment. The City Administrator shall appoint one or more code enforcement supervisors to perform the functions and duties set forth in this section. The Code Enforcement Supervisor may be a City employee or any other independent contractor or agency. In the performance of the functions and duties set forth herein, the Code Enforcement Supervisor shall report to the Planning & Development Director or the City Administrator, in the Planning & Development Director's absence.
- (B) Compensation. The Code Enforcement Supervisor shall be compensated in an amount, as determined by the City Administrator, subject to his or her spending authority. Otherwise, any such compensation above the City Administrator's spending authority shall be set by the City Council.
- (C) Powers and Duties. The powers and duties of the Code Enforcement Supervisor shall include:
- (1) Promulgating such additional rules and regulations reasonably required to manage the system;
 - (2) Adopting, distributing, and processing all notices as may be required under this chapter, or as may reasonably be required to carry out the purpose of this chapter;
 - (3) Collecting payments made as a result of fines and/or penalties assessed by the hearing officer and transmit such payments to the City's Finance Director;
 - (4) Referring to the City's Finance Director the collection of unpaid fines and penalties through private collection agencies that the City may retain or by filing complaints, with the assistance of the City Attorney, in the Circuit Court of Tazewell County; or select or appoint an individual or agency to act on behalf of the City in seeking judgments for unpaid fines or penalties and pursuing all post-judgment remedies available under Illinois law;
 - (5) Certifying copies of findings, decisions and orders adjudicated pursuant to this chapter, and any factual reports verifying the findings, decisions and orders that are issued in accordance with this chapter or the laws of the State of Illinois; and
 - (6) Overseeing the operation and maintenance of the computer programs for the system, including, without limitation:
 - a. Inputting information for citations;
 - b. Establishing hearing and notice dates;
 - c. Recording fine and penalty assessment payments;

- d. Issuing payment receipts;
- e. Issuing notices of hearing dates, notices of default, final notices, and such other notices as may be necessary to implement the system; and
- f. Keeping accurate records of appearances and nonappearances at hearings, pleas entered, fines, and other penalties assessed and paid.

§37.07 CODE ENFORCEMENT PROSECUTOR

- (A) Appointment. The Mayor, with the advice and consent of the City Council, may appoint one qualified Code Enforcement Prosecutor to perform the functions and duties set forth in this section.
- (B) Compensation. Authorization for Code Enforcement Prosecutor compensation shall be set and made by the City Council.
- (C) Qualifications. A Code Enforcement Prosecutor must be an attorney licensed to practice law in the State of Illinois and be in good standing with the Illinois Supreme Court Attorney Registration and Disciplinary Commission.
- (D) Powers and Duties. The powers and duties of the Code Enforcement Prosecutor shall include:
 - (1) Receiving specific code violation assignments, as assigned by the Code Enforcement Supervisor;
 - (2) Gathering evidence through interviewing witnesses, as necessary;
 - (3) Developing strategy, arguments, and testimony, as necessary for hearings in front of the hearing officer;
 - (4) Prosecuting code violations in front of the hearing officer showing burden of proof; and
 - (5) Handling any other related matters in representing the City in the adjudication and disposition of code violations under this chapter.

§37.08 ADMINISTRATIVE CITATION

- (A) A written administrative citation ("citation") shall be issued by the persons authorized under this section, shall contain information as to the nature of the violation, shall be certified, and shall constitute prima facie evidence of the violation cited. The citation shall be accompanied by a summons duly issued by the Code Enforcement Supervisor.

(B) All police officers, the Code Enforcement Supervisor, as well as other individuals holding positions in any department of the City and as specifically authorized by the City Administrator, shall have the authority to issue citations. Any individual authorized to issue citations hereunder who detects a violation shall serve the citation only in the manner set forth in this section.

(C) A citation shall contain the following information:

- (1) The date, time and location of the alleged violation;
- (2) The name and address of the defendant, if known;
- (3) The type and nature of the alleged violation;
- (4) The signature of the person issuing the citation;
- (5) The date, time, and location of the hearing;
- (6) The legal authority and jurisdiction under which the hearing is to be held; and
- (7) The penalties for failure to appear at the hearing.

(D) Service of a citation shall be made as follows:

- (1) Handing the citation to the person responsible for the violation or handing it to his or her employee or agent;
- (2) Leaving the citation with any person 13 years of age or older at the residence of the responsible person, and informing that person of the contents of the summons, provided the person making service shall also send a copy of the summons in a sealed envelope with postage fully prepaid, addressed to the defendant at his or her usual place of abode;

- (3) Service on corporations or partnerships shall be in accordance with the Illinois Code of Civil Procedure;
 - (4) Mailing the citation by United States mail to the last known address of record of the individual/entity or his or her or its registered agent; or
 - (5) Posting the citation upon the property where the violation is found when the person alleged to have committed the violation is the owner, manager, or tenant of the property, and serving the owner/manager or agent thereof.
- (E) The correctness of the facts contained in the citation shall be certified by the person issuing the citation, through the signing of his or her name to the citation at the time of issuance.
- (F) The Code Enforcement Supervisor shall retain the original or facsimile copy of the citation and keep it as a record in the ordinary course of business.
- (G) The citation or a copy thereof shall be admissible in any subsequent administrative or judicial proceeding to the extent permitted by law.

§37.09 NOTICE OF CODE VIOLATION

Prior to the issuance of a citation in this chapter, the Code Enforcement Supervisor may issue a Notice of Code Violation (“Notice”) to alleged violators of this City Code. Notwithstanding any other provision in the City Code to the contrary, the Notice issued pursuant to this Section shall contain the following information:

- (1) The name of the property owner and the address where the code violation(s) exists;
- (2) The name and signature of the City official observing the code violation(s);
- (3) The date and time of the observation of the code violation(s); and
- (4) The type and nature of the code violation(s).

The Notice shall also provide that upon seven (7) days of receipt of the Notice, the alleged violator shall bring the property into compliance (or abate the violation(s) or contact the Code Enforcement Supervisor with a plan to rectify the violations). If the violation(s) have not been resolved or the Code Enforcement Supervisor has not been contacted, authorized

City officials may issue a citation as provided herein or pursue any other remedies authorized by this City Code or by applicable law.

§37.10 HEARINGS

All hearings before the Code Hearing Unit shall be instituted upon the filing of a written citation with the hearing officer. The hearings shall be conducted by a hearing officer and shall be held in accordance with the following rules and procedures:

- (A) The date, time, and place of the hearing shall be set forth in the citation, or such additional notices that are issued, provided that for hearings scheduled in all non-emergency situations, if requested by the violator (“defendant”), the defendant shall have at least 15 days after service of the citation and summons to prepare for a hearing. For purposes of this subsection, "non-emergency situation" means any situation that does not constitute an immediate or imminent threat to the interest, safety, or welfare of the general public. If service is provided by mail, the 15-day period shall begin to run on the day that the citation and summons are deposited in the mail.
- (B) The location of the hearings shall be determined by the hearing officer.
- (C) Parties may be represented by counsel, present witnesses, and cross-examine opposing witnesses.
- (D) Parties may request the hearing officer to issue subpoenas to direct the attendance and testimony of relevant witnesses and the production of relevant documents.
- (E) Any testimony given at the hearing shall be given under oath. Any oaths of those testifying shall be administered by the hearing officer.
- (F) The formal and technical rules of evidence do not apply. 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. Evidence may be presented at any hearing in any format, as authorized by the hearing officer. A copy of any documents proposed to be submitted as evidence at a hearing shall be emailed to the hearing officer not less than twenty-four (24) hours before the scheduled date and time of the hearing and/or before any continued date and time for such hearing.
- (G) The hearing shall be audio recorded.
- (H) Appearance at the hearing.

- (1) City Representation: The case for the City shall be presented by the Code Enforcement Prosecutor and/or the Code Enforcement Supervisor, as applicable.
- (2) Defendant Representation: The case of the defendant may be presented by the defendant or an agent or attorney of the defendant. An agent or attorney shall present an appearance and written authorization signed by the defendant giving the agent or attorney power to act and to bind the defendant to any orders entered by the hearing officer. If the defendant is an organization such as a corporation or limited liability company, the organization may be required to provide sufficient proof that the person presenting the case has the authority to do so.
- (I) Each hearing shall conclude in a determination, by the hearing officer, of liability or nonliability, or a determination of liability based upon the defendant's failure to appear at the hearing, whichever occurs first. The determination of liability must be established upon proof by a preponderance of the evidence.
- (J) Upon a determination of liability, the hearing officer has the discretion to assess fines and penalties for violations in accordance with the City Code, assess interest charges for late payments, as applicable, and order the defendant to undertake corrective actions to remedy the violation. The hearing officer shall assess administrative costs upon finding a defendant liable for the code violation.
- (K) The record of all hearings before a hearing officer shall include:
 - a. All documents presented at the hearing;
 - b. A copy of the citation; and
 - c. A copy of the findings and decisions of the hearing officer.

§37.11 LIABILITY FOR FAILING TO APPEAR AT A HEARING

- (A) Default. If at the time set for hearing, the defendant, or his or her attorney or agent of record, fails to appear, and the hearing was neither postponed nor continued by the hearing officer, the hearing officer may enter a finding of default and impose liability against the defendant including the assessment of fines and costs. A copy of the finding of default, which is a final determination, shall be sent promptly to the defendant by first class mail, postage prepaid, and shall apprise the defendant of the procedure for setting aside the judgment entered by default and shall also apprise the defendant of the availability to appeal the finding of default to the Tazewell County Circuit Court.
- (B) Set Aside Judgment Entered by Default. A written petition to set aside a judgment entered by default may be filed by a person owing the City an unpaid fine or penalty assessed for a violation, and shall be considered by the hearing officer, in accordance with the following procedure:

- (1) The written petition must be filed with the hearing officer within 21 days after the issuance of the order of default. However, if the defendant establishes that the City did not provide proper service of the citation and summons herein, said written petition can be filed at any time with the hearing officer.
- (2) The hearing officer shall review and render a decision on a timely filed petition after the date of receipt of the petition.
- (3) The grounds in which a hearing officer may set aside a judgment entered by default shall be limited to the following:
 - a. The person is not the owner or lessee of the cited vehicle or was not the owner, tenant, occupant, or manager of the cited property on the date the citation was issued;
 - b. The failure of the person to appear or request a new date for any hearing was excusable;
 - c. The City did not provide proper service of the citation and summons to the person; or
 - d. For other good cause shown.
- (4) If the judgment entered by default was set aside pursuant to this section, the hearing officer shall provide the defendant with written notice that the judgment entered by default has been set aside. Such notice shall include the date, time and place for a hearing on the merits of the citation for which the judgment entered by default relates. Such written notice shall be made by first class mail, postage prepaid, to the address set forth on the petition or citation, and service shall be deemed made on the date the notice is deposited in the United States mail. Furthermore, the 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.

(C) Penalty. Upon the entry of a finding of default against a defendant by the hearing officer, and as a penalty for such default, the applicable fine for the defendant's violation(s) may be doubled by the hearing officer in his or her sole discretion, provided that fines will not be doubled for defaults regarding violations of other state statutes that expressly limit the amount of fines the City may impose.

§37.12 JUDICIAL REVIEW

Any final decision by a hearing officer 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.

§37.13 ENFORCEMENT OF JUDGMENT

- (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 Administrator and the City's Finance Director.
- (B) Any fine, other sanction, or costs imposed, or part of any fine, other sanction, or costs imposed, remaining unpaid after the exhaustion of or the failure to exhaust judicial review procedures under the Illinois Administrative Review Law are a debt due and owing the City and may be collected in accordance with applicable law.
- (C) After expiration of the period in which judicial review under the Illinois Administrative Review Law may be sought for a final determination of a code violation, unless stayed by a court of competent jurisdiction, the findings, decision, and order of the hearing officer may be enforced in the same manner as a judgment entered by a court of competent jurisdiction.
- (D) In any case in which a defendant has failed to comply with a judgment ordering a defendant to correct a code violation or imposing any fine or other sanction as a result of a code violation, any expenses incurred by a City to enforce the judgment, 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 a hearing officer, shall be a debt due and owing the City and may be collected in accordance with applicable law.
- (E) Liens. 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 defendant in the amount of any debt due and owing the City herein. The lien may be enforced in the same manner as a judgment lien pursuant to a judgment of a court of competent jurisdiction.
- (F) Final Notice. Prior to any expenses being fixed by a hearing officer or lien being imposed on real estate or personal estate, the City shall provide notice to the defendant that states that the defendant shall appear at a hearing before the hearing officer to determine whether the defendant has failed to comply with the judgment. The notice shall set the date for such a hearing, which shall be not less than 7 days from the date that notice is served. If notice is served by mail, the 7-day period shall begin to run on the date that the notice was deposited in the mail. The defendant's failure to appear at such hearing shall not preclude the hearing officer from imposing expenses or a lien.

§37.14 ADMINISTRATIVE ADJUDICATION PROCEDURES NOT EXCLUSIVE

Notwithstanding any other provision in the City Code to the contrary, the adoption by the City of this system does not preclude the City from using other methods to enforce the City's ordinances or seeking any remedies for code violations through the use of any other administrative procedure or court proceeding.

§37.15 ADMINISTRATIVE COSTS AND INTEREST CHARGES

Administrative costs and interest charges assessed pursuant to this chapter shall be in the amounts established, from time to time by the City Council.”

Section 3. All ordinances or parts of ordinances in conflict with this Ordinance are hereby repealed insofar as they are in conflict with this Ordinance.

Section 4. If any provision of this Ordinance is adjudged invalid, such adjudication shall not affect the validity of the ordinance as a whole or of any portion not adjudged invalid.

Section 5. Pursuant to 65 ILCS 5/1-2-4 of the Illinois Municipal Code, the corporate authorities of the City do hereby find that there exists current conditions or potential conditions related to the enforcement of the ordinances of the City and the home rule authority of the City which create an urgency to provide that this Ordinance be in full force and effect immediately to allow its immediate enforcement hereof, and to that end, this Ordinance shall be in full force and effect immediately from and after its passage and approval without its publication. Notwithstanding the foregoing, the City Clerk is nonetheless directed to immediately publish this Ordinance in pamphlet form.

PASSED AND APPROVED this _____ day of _____, 2024.

AYES: _____

NAYS: _____

ATTEST:

MAYOR

CITY CLERK