

## Chapter 34

# ADMINISTRATIVE ADJUDICATION OF ORDINANCE VIOLATIONS

### 34-1: ADOPTION OF SYSTEM OF ADMINISTRATIVE ADJUDICATION.

The County of DuPage ("County") hereby adopts Division 5-43 of the Counties Code, 55 ILCS 5/5-43 et seq. in its current form and as it may be amended from time to time for the adjudication of violations of County ordinances regulating animal services; septic systems, wells, food service, pools; the definition, identification, and abatement of public nuisances; the accumulation, disposal, and transportation of garbage, refuse, and other forms of solid waste; the construction and maintenance of buildings and structures; and zoning, to the extent permitted by the Illinois Constitution.

(Ord. CB-0046-10, § 1, 8-24-2010; Ord. DC-O-0022-19, 3-26-2019)

### 34-2: PROCEDURES NOT EXCLUSIVE.

The adoption by the County of a system of administrative adjudications does not preclude the County from using other methods to enforce county ordinances, including, but not limited to, relief in the Circuit Court for the 18th Judicial Circuit Court, DuPage County, Illinois.

(Ord. CB-0046-10, § 1, 8-24-2010)

### 34-3: DEFINITIONS.

In this chapter, unless the context requires otherwise:

**Code** means any County ordinance that pertains to or regulates any of the following: animal services; septic systems, wells, food service, pools; the definition, identification, and abatement of public nuisances; the accumulation, disposal, and transportation of garbage, refuse, and other forms of solid waste; the construction and maintenance of buildings and structures; sanitation practices; and zoning.

**Code enforcement officer** means a county employee authorized to issue citations for county code violations and to conduct inspections of public or private real property to determine whether code violations exist. However, nothing shall be construed to allow for administrative adjudication of an ordinance violation in the case where a State statute or administrative rule provides for a specific method or procedure to be followed, other than administrative adjudication, in enforcing a county ordinance.

**Hearing officer** means a person other than a code enforcement officer or law enforcement officer, who is appointed by the Chairman of the County Board, with the consent of the Board, to preside over administrative hearings. Every Hearing Officer must be an attorney licensed to practice law in the State of Illinois for at least three (3) years. Prior to conducting administrative adjudication proceedings, Hearing Officers shall have successfully completed a formal training program which includes the following:

1. Instruction on rules of procedure of the administrative hearings which they will conduct;
2. Orientation to each subject area of the Code violations they will adjudicate;
3. Observation of administrative hearings; and

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4. Participation in hypothetical cases, including ruling on evidence and issuing final orders.
  5. In addition, every administrative hearing officer must be an attorney licensed to practice in the State of Illinois for at least three (3) years.

**Property owner** means the legal or beneficial owner of an improved or unimproved parcel of real estate.

**Respondent** means a property owner, waste hauler, or other person charged with liability for an alleged code violation and the person to whom the notice of violation is directed.

**Solid waste** means demolition materials, food and industrial processing wastes, garden trash, land cleaning waste, mixed refuse, non-combustible refuse, and trash as defined in the Solid Waste Disposal District Act [70 ILCS 3105/1 et seq.].

**Waste hauler** means any person owning or controlling any vehicle used to carry or transport garbage, refuse, or other forms of solid waste.

(Ord. CB-0046-10, § 1, 8-24-2010; Ord. DC-O-0022-19, 3-26-2019)

#### **34-4: CODE HEARING UNIT.**

- A. There is hereby established a Code Hearing Unit in the County government. The Code Hearing Unit shall consist of a hearing officer, administrative assistant and recording secretary.
- B. The function of the Code Hearing Unit shall be to expedite the prosecution and correction of violations of County ordinances ("code violation") regulating animal control; the definition, identification, and abatement of public nuisances; the accumulation, disposal, and transportation of garbage, refuse, and other forms of solid waste; the construction and maintenance of buildings and structures; sanitation practices; and zoning.
- C. Charges of code violations are to be heard and adjudicated by a hearing officer appointed by the DuPage County Board Chairman, with the consent of the County Board. The Hearing Officer term will be for no more than two (2) consecutive years with the possibility for re-appointed at the discretion of the County Board Chairman.
- D. Hearing officers shall have the following powers and duties:
  1. To preside at an administrative hearing called to determine whether a code violation exists.
  2. To hear testimony and accept evidence from the code enforcement officer, the respondent, and all interested parties relevant to the existence of a code violation.
  3. To preserve and authenticate the record of the hearing and all exhibits and evidence introduced at the hearing.
  4. To issue and sign written findings and a decision and order stating whether a code violation exists.
  5. To issue subpoenas as allowed by section directing witnesses to appear at the hearing, upon the request of the parties or their representatives.
  6. To impose penalties consistent with applicable code provisions and to assess costs reasonably related to instituting the proceedings upon finding the respondent liable for the charged violation. In no event, however, shall the hearing officer have the authority to impose a penalty of incarceration.
  7. To revive judgments in favor of the County of DuPage issued by the Hearing Officer which are older than 8 years old, provided that such judgments are not older than 21 years from the date of issuance.

(Ord. CB-0046-10, § 1, 8-24-2010)

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### 34-5: PROCEDURE FOR INSTITUTING PROCEEDINGS.

- A. A proceeding before ~~a the e~~Code H~~e~~aring ~~u~~Unit shall be instituted upon the filing of a written pleading or violation notice by an authorized official of the county with the Code Hearing Unit.
- B. When a code enforcement officer observes a code violation, the officer shall note, or in the case of an animal control violation, the code enforcement officer may respond to the filing of a formal complaint by noting the violation on a violation notice and report form, indicating the following: the name and address of the respondent, if known; the name, address, and vehicle registration number of the waste hauler who deposited the waste, if applicable; the type and nature of the violation; the date and time the violation was observed; the names of witnesses to the violation; and the address of the location or property where the violation is observed.
- C. ~~The violation notice and report form shall contain a file number and a hearing date noted by the code enforcement officer in the spaces provided for that purpose on the forms~~summons and report form shall contain the case number and hearing date, in addition to the violation number for the violation notice issued. The violation notice and report form shall state that failure to appear at the hearing on the date indicated may result in a determination of liability for the cited violation and the imposition of fines and assessment of costs as provided by the applicable county ordinance. The violation notice and report form shall also state that upon a determination of liability and the exhaustion of or failure to exhaust procedures for judicial review, any unpaid fines or costs imposed will constitute a debt due and owe~~ing~~ to the County.
- D. The code enforcement officer shall certify the correctness of the information required by subsection (a) by signing his name to the violation notice ~~and report form~~, and indicate the date on which this was done on the violation notice. Failure to certify does not invalidate the violation notice, but will not establish a prima facie case at trial.
- E. A copy of the violation notice and report form shall be filed with the Code Hearing Unit and served on the respondent either personally or by first class mail, postage prepaid, sent to the address of the respondent. If the name of the respondent property owner cannot be ascertained or if the service on the respondent cannot be made by mail, service may be made on the respondent property owner by posting, not less than fifteen (15) days before the hearing is scheduled, a copy of the violation notice and report form in a prominent place on the property where the violation was found. If service by mail cannot be made accomplished, the Hearing Officer may order service by publication in a paper of general circulation in DuPage County for a period of at least once per week for a period of at least three weeks, as required by the Notice by Publication Act (715 ILCS 5/1, et seq.). Costs incurred in obtaining notice by publication may be assessed as costs in any judgment issued by the Hearing Officer.
- F. Where the County seeks to revive a judgment, the County may initiate revival proceedings before the Hearing Officer by sending notice to the respondent property owner by first class and certified mail, indicating that the County is seeking to revive a prior judgment.

(Ord. CB-0046-10, § 1, 8-24-2010)

### 34-6: NOTICE OF HEARING/SUBPOENAS/DEFAULT.

- A. The respondent shall have at least fifteen (15) days after service of the violation notice and report form to prepare for the hearing, unless the violation is deemed by the code enforcement officer to be an immediate threat to the public health, safety, or welfare, at which time the hearing date may be expedited as necessary.
- B. 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 hearing officer. Lack of preparation shall not be grounds for a continuance. ~~Continuances shall not exceed twenty-eight (28) days.~~

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- C. At any time prior to the hearing date, at the request of the code enforcement officer, the attorney for the county, the respondent, or the attorney for the respondent, the hearing officer assigned to hear the case may issue subpoenas directing witnesses to appear and give testimony at the hearing. Discovery shall be limited to the issuance of subpoenas only, with written and oral discovery permitted only with prior leave of the hearing officer.
  - D. If, at the time set for hearing, the respondent or ~~his~~ his or her attorney fails to appear, absent good cause shown for a continuance, the hearing officer shall proceed with the hearing and accept evidence relating to the existence of a code violation. At the close of the hearing, upon sufficient evidence of a violation, the 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 promptly 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 DuPage County.
  - E. A respondent against whom a default judgment has been entered may file a motion with the code enforcement unit to set aside the default judgment and for a new hearing. A motion to set aside a default judgment may be filed within twenty-one (21) days of entry of the default judgment. A motion to set aside a default judgment shall set forth the reason(s) the respondent failed to appear on the original hearing date. The motion will be heard and ruled upon by the code hearing officer.

(Ord. CB-0046-10, § 1, 8-24-2010)

### **34-7: REPRESENTATION AT HEARINGS.**

- A. The case for the County may be presented ~~by the code enforcement officer or~~ by the State's Attorney.
- B. In no event, however, may the case for the County be presented by an employee of the code hearing unit.
- C. The case for the respondent may be presented by the respondent or the respondent's attorney.
- D. If the respondent is a corporation, it ~~may appear through any officer, director, manager, or supervisor of the corporation, must appear through counsel.~~
- E. If the respondent is a land trust, it may appear via any person having a beneficial interest in the land trust.

(Ord. CB-0046-10, § 1, 8-24-2010)

### **34-8: CONDUCT OF HEARINGS.**

- A. The hearing officer shall preside at the hearing, shall hear testimony, and shall accept any evidence relevant to the existence or non-existence of a code violation on the property indicated.
- B. The code enforcement officer's signed violation notice and report form shall be prima facie evidence of the existence of the code violation described in the form.
- C. The strict rules of evidence applicable to judicial proceedings do not apply to hearings authorized under this chapter.
- D. 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.
- E. The burden of proof is a preponderance of the evidence.
- F. Once a prima facie case is established by the County, the burden of proof then shifts to the respondent.

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(Ord. CB-0046-10, § 1, 8-24-2010)

### **34-9: FINDINGS, DETERMINATION, AND ORDER.**

- A. At the conclusion of the hearing, the hearing officer shall make a determination on the basis of the evidence presented at the hearing as to whether a code violation exists.
- B. The determination shall be in writing and shall be designated as the hearing officer's findings, decision, and order.
- C. The findings, decision, and order shall include the hearing officer's findings of fact, a determination of whether a code violation exists based on the findings of fact, and an order imposing a fine or other penalty, directing the respondent to correct the violation, or dismissing the case if the violation is not proved.
- D. If the hearing officer determines that the respondent is liable for the cited violation, the hearing officer shall enter an order imposing sanctions that are provided in the Code for the violations proved, including the imposition of fines and the recovery of the costs of the proceedings.
- E. Costs, including publication costs and the costs incurred by the County in abating any violations as directed by the Hearing Officer, may be recovered in the same manner as fines and penalties.
- F. A copy of the findings, decision, and order shall be served by personal service or by any method provided for service of the violation notice and report form under section 34-5 herein.
- G. Orders reviving previously issued judgments shall be served upon the respondent by any method provided for service of the violation notice and report form under section 34-5 herein.

(Ord. CB-0046-10, § 1, 8-24-2010)

### **34-10: ADMINISTRATIVE REVIEW.**

The findings, decision, and order of the hearing officer shall be subject to review in the Circuit Court of DuPage County. The Administrative Review Law [735 ILCS 5/3-101 et seq.] and the rules adopted pursuant thereto shall apply to and govern every action for the judicial review of the final findings, decision, and order of a hearing officer under this section.

(Ord. CB-0046-10, § 1, 8-24-2010)

### **34-11: TRANSFER OR CONVEYANCE OF PROPERTY.**

- A. The order to correct a code violation and the sanctions imposed by the County against a respondent property owner as the result of a finding of a code violation under this chapter shall attach to the property, subject to the interests of all lien holders of record, as well as to the owner of the property, so that the owner cannot avoid the finding of a code violation against the owner by conveying or transferring the property to another.
- B. Any subsequent transferee or owner of property takes the property subject to the findings, decision, and order of a hearing officer under this chapter if a notice consisting of a copy of the order to correct a code violation and imposing any sanctions and costs, if applicable, and a description of the real estate affected that is sufficient to identify the real estate has been filed in the office of the DuPage County Recorder by the County prior to the transfer or conveyance to the subsequent transferee or owner.

(Ord. CB-0046-10, § 1, 8-24-2010)

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## 34-12: COLLECTION OF UNPAID FINES OR OTHER SANCTIONS.

- A. Any fine or other sanction or costs imposed, or any part of any fine or other sanction or costs imposed, remaining unpaid after the exhaustion of or failure to exhaust procedures for judicial review under the Administrative Review Law [735 ILCS 5/3-101 et seq.] is a debt due and owing to DuPage County and, as such, may be collected in accordance with applicable law. Any subsequent owner or transferee of property takes subject to this debt if a notice has been filed pursuant to section 34-11.
- B. After expiration of the period within which judicial review under the Administrative Review Law may be sought for a final determination of the code violation, the County may commence a proceeding in the Circuit Court of DuPage County for purposes of ~~obtaining a judgment on the hearing officer's findings, decision, and order, by filing a petition. Nothing in this chapter prevents the County from consolidating multiple findings, decisions, and orders against a person or property in such a proceeding. a proceeding to collect upon the judgment of the hearing officer in the appropriate court. Where the Hearing Officer's decision included injunctive relief, whether mandatory or an injunction prohibiting a continuing violation, if Defendant(s) fail to comply with the Hearing Officer's injunction, the County may commence a proceeding in the 18<sup>th</sup> Judicial Circuit Court seeking to enforce the relief ordered by the Hearing Officer.~~
- C. ~~Upon commencement of the action, either to collect unpaid fines, costs, or other sanctions, or to otherwise enforce the Hearing Officer's ruling, the County shall file a certified copy of the findings, decision, and order, which shall be accompanied by a certification that recites facts sufficient to show that the respondent had an opportunity for a hearing and for judicial review as provided by 55 ILCS 5/5-43, et seq. . The maximum monetary fine (\$50,000.00) under this section shall be exclusive of costs of enforcement or costs imposed to secure compliance with the county's ordinances. Upon commencement of the action, the County shall file a certified copy of the findings, decision, and order, which shall be accompanied by a certification that recites facts sufficient to show that the findings, decision, and order were issued in accordance with this chapter and 55 ILCS 5/5-43 et seq. Service of the summons and a copy of the petition may be by any method provided by Section 2-203 of the Code of Civil Procedure [735 ILCS 5/2-203] or by certified mail, return receipt requested, provided that the total amount of fines or other sanctions and costs imposed by the findings, decision, and order does not exceed fifty thousand dollars (\$50,000.00) or at the option of the county, such other amount not to exceed the maximum amount established by the Mandatory Arbitration System as prescribed by the Rules of the Illinois Supreme Court from time to time for the judicial circuit in which the county is located. The maximum monetary fine under this section shall be exclusive of costs of enforcement or costs imposed to secure compliance with the county's ordinances.~~
- D. If the court is satisfied that the findings, decision, and order ~~were entered within the requirements of 55 ILCS 5/5-43 et seq. were issued in accordance with Illinois law and that the Hearing Officer had jurisdiction over the Respondent and this chapter as set forth in 55 ILCS 5/5-43, et seq. and this Chapter,~~ and that the respondent had an opportunity for a hearing under and for judicial review as provided in 55 ILCS 5/5-43 et seq.:
1. The court shall render judgment in favor of the County and against the respondent for the amount indicated in the findings, decision, and order plus court costs, ~~post judgment interest, and attorney's fees. The judgment has the same effect and may be enforced in the same manner as other judgments for the recovery of money.~~
  2. The court may issue other orders or injunctions, or both, requested by the County to enforce the order of the hearing officer or to correct a code violation.
- E. ~~As permitted by Section 5-43035(d), any fee, fine, cost or penalty charged by any attorney or collection agency retained by the DuPage County State's Attorney for purposes of collecting any fee, fine or penalty, or installment thereof, shall be paid by the Respondent, in addition to fee, fine, cost or penalty assessed.~~

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(Ord. CB-0046-10, § 1, 8-24-2010)

**34-13: SEVERABILITY.**

Should a court of competent jurisdiction determine that one (1) or more sections or subsections of this chapter is or are invalid, the remaining sections or subsections hereof shall remain in full force and effect.

(Ord. CB-0046-10, § 1, 8-24-2010)

**34-14: EFFECTIVE DATE.**

This chapter shall become effective ~~ten (10) days after passage and publication in pamphlet form if required by law~~ immediately upon passage of [ordinance number] by the DuPage County Board.

(Ord. CB-0046-10, § 1, 8-24-2010)

**34-15: HEARING COSTS.**

- A. In the event of a determination that a violation has occurred, or if the complaint is dismissed or withdrawn based upon compliance prior to the hearing date the hearing costs shall be recovered in the amount of not less than one hundred dollars (\$100.00) or the actual costs of the hearing, whichever shall be greater.
- B. The hearing officer may, in an appropriate case, and for good cause shown, waive or reduce costs. The County, by separate ordinance or resolution may provide for additional or increased costs to be recovered.

(Ord. CB-0046-10, § 1, 8-24-2010)