

CHAPTER 13

CODE HEARING DEPARTMENT

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1-13-1: **PURPOSE:** The stated purpose of this chapter is to provide for the fair and efficient enforcement of the village ordinances as may be allowed by law and directed by ordinance, through the adjudication of violations of such village ordinances and establishing procedures for collection of unpaid fines and penalties. (Ord. 2001-25, 11-5-2001)

1-13-2: **CREATION:**

- A. Pursuant to the statutory authority granted by 65 Illinois Compiled Statutes 5/1-2.2-1 et seq., the village of Broadview code hearing department is hereby established which shall have the power to enforce compliance with all municipal ordinances as from time to time authorized by the board of trustees, except for 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. The code hearing department shall also have the authority to adjudicate and enforce building code violations pursuant to 65 Illinois Compiled Statutes 5/11-31.1-1 et seq.

- B. The provisions of 65 Illinois Compiled Statutes 5/1-2.2-1 et seq., as it may be amended from time to time, is hereby adopted and incorporated into this chapter as if fully set forth herein.
- C. The provisions of 65 Illinois Compiled Statutes 5/11-31.1-1 et seq., as it may be amended from time to time, is hereby adopted and incorporated into this chapter as if fully set forth herein.
- D. The department shall be administered by an ordinance enforcement administrator, and staffed by hearing officers and other employees as may be needed, appointed by the president, subject to approval by the board of trustees.
- E. The establishment of the village of Broadview code hearing department does not preclude the village from using any other method to enforce municipal ordinances. (Ord. 2001-25, 11-5-2001)

1-13-3: **GENERAL PROVISIONS:** The provisions of this chapter shall apply to code hearing proceedings conducted by the village of Broadview code hearing department to the extent that they are not inconsistent with the provisions of this code which set forth specific procedures for the code hearings of particular code provisions. (Ord. 2001-25, 11-5-2001)

1-13-4: **ORDINANCE ENFORCEMENT ADMINISTRATOR;
POWERS AND DUTIES:** The powers and duties of the ordinance enforcement administrator shall include:

- A. Directing the department with respect to its management and structure.
- B. Promulgating rules and regulations for the conduct of code hearing proceedings.

- C. Adopt, distribute and process all notices as may be required under this chapter or as may be reasonably required to carry out the purpose of this chapter.
- D. Collecting monies paid as fines, penalties and/or cost assessed after a final determination of the existence of a violation.
- E. Certifying copies of a final determination of a code violation adjudicated pursuant to this chapter and any report verifying a final determination of the existence of a code violation, issued in accordance with this chapter.
- F. Keeping accurate records of the proceedings, including, but not limited to, appearances, nonappearances, pleas entered, and fines and penalties assessed and paid.
- G. Collecting unpaid fines and penalties through private collection agencies.
- H. Establishing any other necessary rules and regulations as may be required to carry out the provisions of this chapter. (Ord. 2001-25, 11-5-2001)

1-13-5: **RULES AND REGULATIONS:** The rules and regulations promulgated for the conduct of code hearings shall be published and kept on file in the office of the village clerk where they shall be available to the public for inspection and copying at standard fees during business hours. (Ord. 2001-25, 11-5-2001)

1-13-6: **HEARING OFFICERS QUALIFICATIONS:** Any person appointed, as a hearing officer shall:

- A. Be an attorney licensed to practice law in the state for not less than three (3) years and shall be in good standing with the attorney registration discipline committee.
- B. Prior to conducting code hearings, have successfully completed a formal training program which includes the following:
 - 1. Instruction on the rules of procedure of the code hearings to be conducted.

2. Orientation to each subject area of the code violations to be adjudicated.
3. Observation of code hearings.
4. Participation in hypothetical cases, including ruling on evidence and issuing final orders. (Ord. 2001-25, 11-5-2001)

1-13-7: **HEARING OFFICERS; POWERS AND DUTIES:** Hearing officers shall preside over code hearings and shall have all powers necessary to conduct fair and impartial hearings including, but not limited to:

- A. Holding conferences for the settlement or simplification of the issues.
- B. Administering oaths and affirmations to witnesses.
- C. Hearing testimony and accepting evidence that is relevant to the existence of a code violation.
- D. Rule upon motions, objections and the admissibility of evidence.
- E. At the request of any party or on the hearing officer's own motion, the hearing officer may subpoena the attendance of relevant witnesses and the production of relevant books, records, or other information.
- F. Preserve the record of the hearing, including all exhibits and evidence admitted into the record at the hearing.
- G. Regulate the course of the hearing in accordance with this chapter, the rules adopted by the code hearing department, or other applicable law.
- H. Issue a determination based upon a review of the notice of violation and on the evidence submitted. The determination shall be in writing, shall be signed by the hearing officer, and shall be designated as findings, decision, and order.
- I. Upon finding that a code violation exists, impose fines, penalties and costs consistent with applicable code provisions, except however, that in no event shall the hearing officer have authority to impose a penalty of incarceration.

- J. When applicable, each day a code provision is found to have been violated by the defendant shall constitute a separate offense, and each separate offense subjects the defendant to the penalty provided by the governing penalty provision.
- K. Asking questions of the parties and witnesses, if necessary, to ensure the clarity and completeness of the testimony and the record. (Ord. 2001-25, 11-5-2001)

1-13-8: **INSTITUTING CODE HEARING PROCEEDINGS:** Any authorized department or agency of the village may institute a code hearing proceeding with the code hearing department by forwarding a copy of a notice of violation to the code hearing department. (Ord. 2001-25, 11-5-2001)

1-13-9: **NOTICE AND SERVICE:** All matters to be adjudicated by the code hearing department shall be commenced against the party alleged to have violated one or more code provision(s) by issuing and serving upon that party a notice of violation and shall be conducted in accordance with the following procedures:

- A. All police officers, the building commissioner, village inspectors, as well as other specifically authorized individuals of any village department shall have the authority to issue a notice of violation.
- B. The notice of violation shall contain, but shall not be limited to, the following information:
 - 1. The name and address of the person or entity being charged with the alleged violation.
 - 2. The sections of the code alleged to have been violated.
 - 3. The date, time and place of the alleged violation.
 - 4. A legally sufficient description of the activity or conduct alleged to constitute a violation of each code section set forth in the notice of violation or a legally sufficient description of the facts giving rise to the allegations set forth in the notice of violation.
 - 5. The name and identification number of the issuer of the notice of violation, certifying the correctness of the information by signing his or her name to the notice.

6. The complainant's name if the complainant is not the issuing village officer or employee.

7. The legal authority and jurisdiction under which the hearing is to be held and the penalties for failure to appear at the hearing.

C. Unless otherwise provided by law or rule:

1. A notice of violation shall be served upon the alleged violator by first-class mail along with a summons, indicating the date, time, and location of the hearing, commanding the appearance of the defendant. The hearing date shall not be less than thirty (30) nor more than forty (40) days after the violation is reported.

2. For violations issued pursuant to 65 Illinois Compiled Statutes 5/11-31.1-1, where property owners are required to register with the village, service may be made on the owner by mailing the report and the summons to the owner's address registered with the village.

3. For violations issued pursuant to 65 Illinois Compiled Statutes 5/11-31.1-1, if the name of the owner of the structure cannot be ascertained or if service on the owner cannot be made by mail, service may also be made on the owner by posting or nailing a copy of the violation report form on the front door of the structure where the violation is found, not less than twenty (20) days before the hearing is scheduled. (Ord. 2001-25, 11-5-2001)

1-13-10: CODE HEARINGS:

- A. All code hearings conducted by the code hearing department are open to the public and shall be presided over by a duly appointed hearing officer who is charged with providing the parties a full and fair opportunity to be heard.
- B. An attorney, or any other agent or representative who appears on behalf of any person, shall file with the hearing officer a written appearance on a form provided by the department.
- C. In no event shall the case for the village be presented by an employee of the code hearing department, provided, however, that documentary evidence, including the notice of violation, which has been prepared by another department or agency of the village may be presented at the hearing by the hearing officer.

- D. The hearing officer may grant continuances only upon a showing of good cause. Lack of preparation shall not be grounds for a continuance. Any continuance granted by the hearing officer shall not exceed twenty five (25) days.
- E. All testimony shall be given under oath or affirmation.
- F. 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.
- G. No violation may be established except upon proof by a preponderance of the evidence, provided, however, that a notice of violation, or a copy thereof, issued, signed and served in accordance with section 1-13-9 of this chapter shall be prima facie evidence of the correctness of the facts specified therein.
- H. The ordinance enforcement administrator 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 ordinance enforcement administrator. The record of all hearings before a hearing officer shall include: 1) a record of the testimony presented at the hearing, which may be made by tape recording or other appropriate means; 2) all documents, exhibits, and other physical evidence presented at the hearing and admitted into evidence; 3) a copy of the notice of violation and notice of hearing; and 4) a copy of the findings and decision and order of the hearing officer. (Ord. 2001-25, 11-5-2001)
- I. At the conclusion of a hearing, the hearing officer shall issue a finding, decision and order, on the basis of the evidence presented at the hearing, as to the existence of a code violation. If a code violation is found to exist the hearing officer may: 1) impose penalties and/or fines that are consistent with applicable provisions of this code not exceeding seven hundred fifty dollars (\$750.00) for each offense; however a separate offense shall be deemed committed each day during or on which a violation or noncompliance occurs or continues, unless otherwise provided; 2) issue orders that are consistent with applicable provisions of this code; and/or 3) assess costs reasonably related to instituting the code hearing proceeding; provided, however, that in no event shall the hearing officer have the authority to impose a penalty of imprisonment. (Ord. 2005-22, 8-8-2005)

- J. At the conclusion of a hearing, the hearing officer shall inform the parties orally and in writing as to his or her determination and the defendant's right to seek judicial review of the decision. (Ord. 2001-25, 11-5-2001)

1-13-11: **DEFENSES TO CODE VIOLATIONS:** It shall be a defense to a code violation written pursuant to 65 Illinois Compiled Statutes 5/11-31.1 if:

- A. The code violation alleged in the notice does not in fact exist, or at the time of the hearing the violation has been remedied or removed.
- B. The code violation has been caused by the current property occupants and that in spite of reasonable attempts by the owner to maintain the dwelling free of such violation(s), the current occupants continue to cause the violation.
- C. An occupant or resident of the dwelling has refused entry to the owner or his agent to all or a part of the dwelling for the purpose of correcting the code violation. (Ord. 2001-25, 11-5-2001)

1-13-12: **DEFAULTS:**

- A. If on the date set for hearing the defendant, or his attorney or agent of record, fails to appear, the hearing officer shall proceed with the hearing and accept evidence relevant to the existence of a code violation and may enter a default finding against the defendant as to the existence of code violations, imposing fines, penalties and assess costs.
- B. A copy of the order of default shall be served in any manner for service of a notice of violation permitted by this chapter and applicable to the violation.
- C. A copy of the order of default shall apprise the defendant of the procedure for setting aside the default decision.
- D. A defendant against whom an order of default is entered may file a motion with the code hearing department to set aside the order of default and for a new hearing date. A motion to set aside an order of default must be filed within twenty one (21) days from the date of mailing.

3. An officer or employee, his or her spouse or an immediate family member living with the officer or employee, does not violate this subsection C if the recipient promptly takes reasonable action to return a gift from a prohibited source to its source or gives the gift or an amount equal to its value to an appropriate charity that is exempt from income taxation under section 501(c)(3) of the internal revenue code of 1986, as now or hereafter amended, renumbered, or succeeded.

D. Penalties:

1. A person who intentionally violates any provision of subsection B of this section may be punished by a term of incarceration in a penal institution other than a penitentiary for a period of not more than three hundred sixty four (364) days, and may be fined in an amount not to exceed two thousand five hundred dollars (\$2,500.00).

2. A person who intentionally violates any provision of subsection C of this section is subject to a fine in an amount of not less than one thousand one dollars (\$1,001.00) and not more than five thousand dollars (\$5,000.00).

3. Any person who intentionally makes a false report alleging a violation of any provision of this section to the local enforcement authorities, the state's attorney or any other law enforcement official may be punished by a term of incarceration in a penal institution other than a penitentiary for a period of not more than three hundred sixty four (364) days, and may be fined in an amount not to exceed two thousand five hundred dollars (\$2,500.00).

4. A violation of subsection B of this section shall be prosecuted as a criminal offense by an attorney for the village of Broadview by filing in the circuit court an information, or sworn complaint, charging such offense. The prosecution shall be under and conform to the rules of criminal procedure. Conviction shall require the establishment of the guilt of the defendant beyond a reasonable doubt.

5. A violation of subsection C of this section may be prosecuted as a quasi-criminal offense by an attorney for the village of Broadview.

6. In addition to any other penalty that may be applicable, whether criminal or civil, an officer or employee who intentionally violates any provision of subsection B or C of this section is subject to discipline or discharge. (Ord. 2004-07, 5-3-2004)

1-8-11: RESIDENCY REQUIREMENTS:

- A. All Employees: All employees of the village shall be required to live within a ten (10) mile radius of the intersection of 17th Avenue and Roosevelt Road in the village. (Ord. 87-9, 8-17-1987; amd. Ord. 2000-12, 8-21-2000)
- B. Department Heads:
1. Definition: For purposes of this subsection an "appointive municipal officer" is defined as a department head.
 2. Residency: The residency requirements currently in effect for the union employees of the village of Broadview will apply to the department heads under the provisions of this subsection. This will allow department heads to live within the ten (10) mile radius already established by the village or in any municipality touching the ten (10) mile radius except the city of Chicago. The ten (10) mile radius currently in effect which includes parts of the city of Chicago will remain as is. (Ord. 2000-12, 8-21-2000)

1-8-12: ELECTRONIC ATTENDANCE AT MEETINGS: The rules established for electronic attendance at meetings in section 1-6-7 of this title shall apply to all committees, boards and commissions established by authority of the village of Broadview. (Ord. 2006-30, 12-18-2006)

- E. A motion to set aside an order of default shall set forth the reason(s) the defendant failed to appear on the original hearing date. A hearing officer shall hear and rule on the motion. If the hearing officer determines that the defendant's failure to appear at the hearing was for good cause and grants the motion, a hearing will be held immediately on the alleged code violation set forth in the notice of violation unless the defendant requests another hearing date and presents a showing of good cause for continuing the hearing.
- F. If any default judgment is set aside pursuant to this section, the 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. (Ord. 2001-25, 11-5-2001)

1-13-13: **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 under the Illinois administrative review law. (Ord. 2001-25, 11-5-2001)

1-13-14: **FINAL DETERMINATION OF THE EXISTENCE OF CODE VIOLATIONS:** A final determination shall occur following the failure to pay the fine or penalty after the hearing officer's determination of the existence of a violation, and the exhaustion of, or the failure to exhaust, any administrative review procedures hereinafter set forth. (Ord. 2001-25, 11-5-2001)

1-13-15: **ENFORCEMENT OF JUDGMENTS:**

- A. Any fine, other sanction, or cost 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 shall be a debt due and owing the municipality and be collected in accordance with applicable law.
- B. After expiration of the period in which judicial review under the Illinois administrative review law may be sought for a final determination of the code violation, the municipality may commence a proceeding in the circuit court of the county in which the municipality is located for purpose of obtaining a judgment on the findings, decision and order for the amount indicated.

- C. Nothing in this section shall prevent the village from consolidating multiple findings, decisions, and orders against a person in such a proceeding.
- D. Upon commencement of the action, the village 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 was issued in accordance with this chapter and other applicable ordinances. Service of the summons and a copy of the petition may be by any method provided for by section 2-203 of the code of civil procedure or by certified mail, return receipt requested.
- E. If the court is satisfied that the findings, decision and order was entered in accordance with state statutes, the provisions of this chapter and other municipal ordinances, and that the defendant had an opportunity for a hearing under this chapter and for judicial review, the court shall render judgment in favor of the village and against the defendant for the amount indicated in the findings, decision and order, plus cost.
- F. Any judgment rendered in favor of the village and against the defendant shall have the same effect and may be enforced in the same manner as other judgments for the recovery of money.
- G. 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 municipality under this section. The lien may be recorded and enforced in the same manner as a judgment lien pursuant to a judgment of a court of competent jurisdiction. No item may be enforced under this section until it has been recorded in the manner provided by article XII of the code of civil procedure or by the uniform commercial code.
- H. Nothing in this section shall prevent the village from enforcing or seeking to enforce any order of a hearing officer in any manner provided by law. (Ord. 2001-25, 11-5-2001)

1-13-16: MISCELLANEOUS PROVISIONS:

- A. If any section, paragraph, clause or provision of this chapter shall be held invalid, the invalidity thereof shall not affect any of the other provisions of this chapter.

- B. All ordinances in conflict herewith are hereby repealed to the extent of such conflict.
- C. This chapter shall be in full force and effect from and after its passage, approval and publication as provided by law. (Ord. 2001-25, 11-5-2001)

