

CHAPTER 9  
CODE HEARING DEPARTMENT

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1-9-1      ADOPTION OF STATE STATUTES

The following statutes, as amended, are adopted in their entirety and any person charged with the violation of a municipal ordinance may be prosecuted under and in accordance with the provisions herein:

1. 65 ILCS 5/1-2.2-1 *et seq.*, Code Hearing Departments, which authorizes a non-home rule municipality to create and implement a system of administration adjudications for Code violations;
2. 65 ILCS 5/11-31.1-1 *et seq.*, Building Code Violations, which authorizes a municipality to adopt a code hearing department for building code violations; and
3. 625 ILCS 5/11-208.3, Administrative Adjudication of Violations of Traffic Regulations Concerning the Standing, Parking or Conditions of Vehicles and Automated Traffic Law Violations, which authorizes a municipality to create and implement a system of administrative adjudication of violations of traffic regulations concerning the standing, parking or condition of vehicles; and
4. 625 ILCS 5/11-208.7, Administrative Fees and Procedures for Impounding Vehicles for Specified Violations.

The adoption of these statutes shall not preclude the Village from using other methods to enforce Village ordinances.

1-9-2            CODE HEARING DEPARTMENT

- A.     A Code Hearing Department is established for the Village as a separate and independent agency in the Village. The purpose of the Code Hearing Department is to expedite the prosecution and correction of Code violations in the manner set forth herein. The provisions set forth in this Chapter may be used in the adjudication of any violations of a Village ordinance except for any offense under the Illinois Vehicle Code (625 ILCS 5/1-100 *et seq.*) or this Code or similar offense that is a traffic regulation governing the movement of vehicles, and except for any reportable offenses under 625 ILCS 5/6-204.
  
- B.     The Code Hearing Department shall be comprised of the following individuals appointed by the Village President:
  - 1.     A hearing officer;
  - 2.     The Chief of Police or designee;
  - 3.     A code administrator; and
  - 4.     Any person or persons deemed necessary for the efficient administration of the Code Hearing Department.
  
- C.     In no event may the hearing officer be an employee of the Village.

1-9-3            HEARING OFFICER POWERS, DUTIES AND QUALIFICATIONS

- A.     It is the duty of the hearing officer to:
  - 1.     Preside at an administrative hearing called to determine whether or not a Code violation exists.
  - 2.     Hear testimony and accept evidence relevant to the existence or non-existence of a Code violation.
  - 3.     Preserve and authenticate the record of the hearing and all exhibits and evidence introduced at the hearing.
  - 4.     Issue a written determination, based on the evidence presented at the hearing, of whether a Code violation exists. The determination shall include a written finding of fact; decision based upon those findings of fact; and an order that states the sanctions including the fine or penalty or action with which the defendant must comply, or dismissing the case if the violation is not proved.
  - 5.     Imposing penalties consistent with applicable Village provisions and assessing costs upon finding a party liable for the charged violation. The maximum monetary fine imposed under this Chapter shall be exclusive of costs of enforcement or

costs imposed to secure compliance with the Village's ordinances.

6. In no event shall the hearing officer have authority to impose a penalty of incarceration.
- B. Every hearing officer shall serve as the hearing officer for matters set forth under these regulations and be an attorney licensed to practice law in the State of Illinois for at least three years. Prior to conducting proceedings under this Chapter, the hearing officer shall successfully complete a formal training program that includes:
1. Instruction on the rules of procedure of the hearing that they will conduct;
  2. Orientation to each subject area of the Code violations they will administer;
  3. Observation of administrative hearings; and
  4. Participation in hypothetical cases, including rules of evidence and issuing final orders.

#### 1-9-4 CODE ADMINISTRATOR DUTIES

The code administrator may be a Village employee or an independent contractor or agency contracted by the Village to perform such duties as enumerated herein. The code administrator is authorized, empowered and directed to:

1. Operate and manage the system of administrative adjudication of all Code violations, as may be permitted by law and directed by ordinance;
2. Adopt, distribute, and process all notices as may be required herein;
3. Operate and maintain a computerized for the system of administrative adjudication;
4. Keep accurate records of adjudication appearances and activities;
5. Collect monies paid as fines and/or penalties after a final determination of liability; and
6. Other duties as may be necessary to efficiently administer this Chapter.

#### 1-9-5 INSTITUTING CODE HEARING PROVISIONS

- A. When a police officer, building inspector, code enforcement officer or other individual authorized to issue a Code violation finds that a Code violation exists, that individual shall note the violation on a multiple copy violation notice, report and hearing notice that indicates:
1. The name and address of the defendant;

2. The type and nature of the violation including a reference to the appropriate section of the Code and potential penalties that may result;
  3. The date and time the violation was observed;
  4. The names of witnesses to the violation;
  5. In the event of a building code violation, the address of the structure or premises where the violation is observed;
  6. The means by which the defendant may waive the right to a hearing and pay the applicable fine for the violation;
  7. The time and date and location of the hearing; and
  8. Penalties which may occur if the defendant fails to appear at a hearing provided by this Chapter.
- B. For the purpose of a Code violation relating to real property, the property owner shall be prima facie responsible for a violation that occurs on such property and subject to the penalty therefore. For violations relating to motor vehicles, the owner or operator of said vehicle shall be prima facie responsible for a violation that occurs.
- C. The violation report shall be forwarded to the Code Hearing Department and a docket number shall be assigned and stamped on all copies of the report and a hearing date shall be noted on the form. The hearing date shall not be less than 10 or more than 40 days after the violation is reported.
- D. One copy of the violation report shall be maintained in the files of the Code Hearing Department and shall become part of the record of the hearing. One copy of the report shall be returned to the individual representing the Village and one copy of the report shall be served by first class mail to the defendant, along with a summons commanding the defendant to appear on the specified hearing date. In the case of a building code violation, service of the report shall be made by first class mail on the owner of the structure or premises, along with a summons commanding the owner to appear at the hearing. If the name of the owner of the structure or premises cannot be ascertained or if service cannot be made by mail, service may be made on the owner by posting, nailing or substantially affixing a copy of the violation report form on the front door of the structure or premises where the violation is found, not less than 20 days before the hearing is scheduled.

1-9-6            NOTICE OF VIOLATION (NON-VEHICULAR)

The form and manner of notice for a vehicular parking, compliance or standing violation shall be as provided in Section 1-9-7. All matters, excepting vehicular parking, compliance or standing violations, to be adjudicated shall be commenced against the party alleged to have violated one

or more Code provision(s) by issuing and serving upon that party a charging document in accordance with the following procedures:

1. Issuance of Complaint: The charging document for a violation of any provision of this Code subject to the system of administrative adjudication provided in this Chapter, other than vehicular standing, parking and compliance violations, shall be issued by a Village officer or employee as authorized in Section 1-9-5 and served as provided for in paragraph 3 of this Section.
2. Contents: The charging document shall contain the following information:
  - a. The name, Village department, and identification number, if applicable, of the person issuing the charging instrument;
  - b. The name and address of the person or entity being charged with the violation;
  - c. The name and address of the person to whom the charging document is served upon if that person is not the respondent;
  - d. The section(s) of the Code alleged to have been violated;
  - e. The date, time and place of the alleged violation(s);
  - f. A legally sufficient description of the activity or conduct alleged to constitute a violation of each Code section set forth in the charging document; and
  - g. The name of the complaining witness(es) if the violation was not witnessed by the Village officer or employee issuing the charging document.
3. Certification: The Village officer or employee issuing the charging document shall certify the correctness of the information required by this Section by signing his or her name to the charging document.
4. Prima Facie Evidence: Charging documents that comply with this Section will be sufficient to establish a prima facie case of liability for the Code violation charged.
5. Hearing Information: A charging document issued pursuant to this Section shall also set forth:
  - a. The date, time, and place of the adjudication hearing to be held with respect to the violation;
  - b. The legal authority and jurisdiction under which the hearing will be held;
  - c. The penalties for failure to appear at the hearing; and

- d. The fine to be paid within the time frame set forth in Section 1-4-3, Settlement of Offenses, of this Code, and/or noting that appearance is required on the hearing date.

1-9-7      SERVICE (NON-VEHICULAR)

A. The form and manner of service for a vehicular parking, compliance or standing violation shall be as provided in Section 1-9-6. A proceeding before the hearing officer shall be instituted upon the filing of a written sworn pleading or complaint by any authorized official of the Village, including police officers, code enforcement officers and such other employees as authorized by the President.

B. Respondents shall be served with a copy of the written sworn pleading or complaint along with a notice of the hearing in any manner reasonably calculated to give them actual notice of the proceeding instituted against them including:

1. Personal service upon a party or its employees or agents; or
2. Service by first class mail, certified mail return receipt requested, or express mail at the party's address; or
3. Service by posting a copy of the sworn pleading or complaint upon the property when a structure is involved where the violation is found if service on the owner cannot be made by mail. Posting shall be on the front door of the structure not less than 20 days before the hearing is scheduled. However, notice by posting shall not be effective notice if the property at issue is a vacant lot or a vacant building.

1-9-8      SUBPOENAS AND DEFAULTS

At any time prior to the hearing date, the hearing officer assigned to the case may, at the request of either party, direct witnesses to appear and give testimony at the hearing. If the defendant or the defendant's attorney fails to appear on the specified hearing date, the hearing officer may find the defendant in default and shall proceed with the hearing and accept evidence relevant to the existence of a Code violation.

1-9-9      CONTINUANCES AND REPRESENTATION AT CODE HEARINGS

No continuances shall be authorized by the hearing officer in proceedings under this Chapter except in cases where a continuance is absolutely necessary to protect the rights of the defendant. Lack of preparation shall not be grounds for a continuance. Any continuance authorized by a hearing officer under the terms of this Chapter shall not exceed 30 days unless agreed to by all parties. The case for the Village may be presented by an attorney designated by the Village or by any other Village employee, except that the case for the Village shall not be presented by an employee of the Code Hearing Department. The case for the defendant may be presented by the defendant or the defendant's attorney or any other agent or representative of the defendant.

1-9-10        HEARING EVIDENCE

At the hearing, the hearing officer shall preside, shall hear testimony and shall accept any evidence relevant to the existence or non-existence of a Code violation. The strict rules of evidence applicable to judicial proceedings shall not apply to hearings authorized by this Chapter.

1-9-11        EVICTIION AND RIGHTS OF THE DEFENDANT

No action for eviction, abatement of a nuisance, forcible entry and detainer or other similar proceedings shall be threatened or instituted against an occupant of a structure or premises solely because such occupant agrees to testify or testifies at a Code violation hearing.

1-9-12        DEFENSES TO BUILDING CODE VIOLATIONS

It shall be a defense to a building code violation charged only under Title 4 of this Code if the owner, their attorney, or any other agent or representative proves to the hearing officer's satisfaction that:

1.        The building 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;
2.        The building code violation has been caused by the current property occupants and, in spite of reasonable attempts by the owner to maintain the dwelling free of such violation, including filing civil action to evict current occupants, the current occupants continue to cause the violation;
3.        An occupant or resident of the dwelling has refused entry to the owner or their agent to all or part of the dwelling for the purpose of correcting the building code violation.

1-9-13        FINDINGS, DECISIONS AND ORDERS

At the conclusion of the hearing, the hearing officer shall make a determination based on the evidence presented at the hearing as to whether or not a Code violation exists. The determination shall be in writing and shall be designated as "findings, decision and order". The findings, decision and order shall include (i) the hearing officer's finding of facts, (ii) a decision as to whether a Code violation exists based on the findings of fact, and (iii) an order that states the sanction or dismisses the case if a violation is not proved. A monetary sanction for a violation under the terms of this Chapter shall not exceed the amount authorized by statute. If a building code violation is proved, the order may also impose the sanctions that are provided in this Code for the violation proved. A copy of the findings, decision and order shall be served on the defendant within five days after it is issued. Service shall be in the same manner that the violation report and summons are served in accordance with Section 1-9-4 of this Chapter. Payment of any penalty or fine and the disposition of fine money shall be in the same manner as set forth in the Code unless otherwise provided for; however, payment of such fine or penalty shall be made no later than 10 days after the determination has been made by the hearing officer.

1-9-14            ADMINISTRATIVE REVIEW LAW

The findings, decision, and order shall be subject to review in the 22<sup>nd</sup> Judicial Circuit Court of McHenry County, Illinois. The provisions of the Illinois Administrative Review Law, 735 ILCS 5/3-101 *et seq.*, or as hereinafter amended, and the rules adopted pursuant thereto, shall apply to and govern every action for the judicial review of the findings, decision and order of the hearing officer under this Chapter. Any person filing for judicial review under the Illinois Administrative Review Law shall be subject to the assessment of costs for the preparation and certification of the record of proceeding before the hearing officer.

1-9-15            JUDGMENT ON FINDINGS, DECISIONS AND ORDER

- A. 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 Administrative Review Law shall be a debt due and owing the Village and, as such, may be collected in accordance with applicable law.
  
- 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 Village may commence a proceeding in the 22<sup>nd</sup> Judicial Circuit Court for the purpose of obtaining a judgment on the findings, decision and order. Nothing in this Section shall prevent the Village from consolidating multiple findings, decisions and orders against a person in such a proceeding. 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 were issued in accordance with this Chapter and the applicable Village ordinance. Service of the summons and a copy of the petition may be made by any method provided for by Section 2-203 of the Code of Civil Procedures or by certified mail, return receipt requested, provided that the total amount of fines, other sanctions and costs imposed by the findings, decision and order do not exceed \$2,500.00. If the court is satisfied that the findings, decision and order were entered in accordance with the requirements of this Chapter, 65 ILCS 5/1-2.2-1 *et seq.*, Code Hearing Departments, and the applicable Village ordinance, and that the defendant had an opportunity for a hearing under this Chapter and for judicial review as provided: (1) 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 costs. The judgment shall have the same effect and may be enforced in the same manner as other judgments for recovery of money; and (2) the court may also issue any other orders and injunctions that are requested by the Village to enforce the order of the hearing officer to correct a Code violation.

1-9-16            SANCTIONS APPLICABLE TO THE OWNER AND PROPERTY

The order to a correct a Code violation and the sanctions imposed by the Village as the result of a finding of a Code violation shall attach to the property as well as to the owner of the property, so that a finding of a Code violation against one owner cannot be avoided by conveying or trans-



ferring the property to another owner. Any subsequent transferee or owner of property shall be subject to the findings, decision and order of the hearing officer under this Chapter.

1-9-17            VEHICLE SEIZURE AND IMPOUNDMENT

A.    Violations Authorizing Seizure: A motor vehicle, operated with the permission, express or implied, of the owner of record, that is used in connection with the following violations, shall be subject to seizure and impoundment by the Village, and the owner of record of said vehicle shall be liable to the Village for an administrative penalty in the amount of \$500, in addition to costs of prosecution and any towing and storage fees as hereinafter provided:

1.    Operation or use of a motor vehicle in the commission of, or in the attempt to commit, an offense for which a motor vehicle may be seized and forfeited pursuant to 720 ILCS 5/36-1 (Criminal Code of 1961); or
2.    Driving under the influence of alcohol, another drug or drugs, an intoxicating compound or compounds, or any combination thereof, in violation of 625 ILCS 5/11-501(a); or
3.    Operation or use of a motor vehicle in the commission of, or in the attempt to commit, a felony or in violation of the Cannabis Control Act (720 ILCS 550/4(d), (e), (f) and (g)); or
4.    Operation or use of a motor vehicle in the commission of, or in the attempt to commit, an offense in violation of the Illinois Controlled Substances Act (720 ILCS 570/402); or
5.    Operation or use of a motor vehicle in the commission of, or in the attempt to commit, an offense in violation of 720 ILCS 5/24-1 (Unlawful Use of Weapons), 720 ILCS 5/24-1.5 (Reckless Discharge of a Firearm), or 720 ILCS 5/24-3.1 (Unlawful Possession of Firearms and Firearm Ammunition) (Criminal Code of 1961); or
6.    Driving while a driver's license, permit, or privilege to operate a motor vehicle is suspended or revoked pursuant to 625 ILCS 5/6-303; except that vehicles shall not be subjected to seizure or impoundment if the suspension is for an unpaid citation (parking or moving) or due to failure to comply with emission testing; or
7.    Operation or use of a motor vehicle while soliciting, possessing, or attempting to solicit or possess cannabis or a controlled substance, as defined by the 720 ILCS 550/3 (Cannabis Control Act) or 720 ILCS 570/102 (Illinois Controlled Substances Act); or
8.    Operation or use of a motor vehicle with an expired driver's license, in violation of 625 ILCS 5/6-101, if the period of expiration is greater than one year; or

9. Operation or use of a motor vehicle without ever having been issued a driver's license or permit, in violation of 625 ILCS 5/6-101, or operating a motor vehicle without ever having been issued a driver's license or permit due to a person's age; or
10. Operation or use of a motor vehicle by a person against whom a warrant has been issued by a circuit clerk in Illinois for failing to answer charges that the driver violated 625 ILCS 5/6-101, 6-303, or 11-501; or
11. Operation or use of a motor vehicle in the commission of, or in the attempt to commit, an offense in violation of 720 ILCS 5/16, *et seq.*, or 720 ILCS 5/16A, *et seq.*; or
12. Any other circumstances under which the vehicle may be towed pursuant to this Code, the Hebron Police Department Operations Procedures, or the Hebron Police Department Administrative Procedures.

B. General Regulations:

1. This Section shall not replace or otherwise abrogate any existing State or federal laws or Village ordinance pertaining to vehicle seizure and impoundment, and these penalties shall be in addition to any penalties that may be assessed by a court for any criminal charges.
2. The administrative penalty under this Section shall be waived if the vehicle used in the violation was stolen at that time and the Village is provided with verifiable proof that the vehicle was stolen.
3. Fees for towing and storage of a vehicle under this Section shall be those approved by the Chief of Police for all towers authorized to tow for the Police Department.

- C. Notice: Whenever a police officer has probable cause to believe that a vehicle is subject to seizure and impoundment pursuant to this Section, the police officer shall provide for the towing of the vehicle to a facility authorized by the Village. At the time the vehicle is towed, the Village shall notify or make a reasonable attempt to notify the owner, lessee, or person identifying himself of herself as the owner or lessee of the vehicle, or any person who is found to be in control of the vehicle at the time of the alleged offense, of the fact of the seizure, and of the vehicle owner's or lessee's right to an administrative hearing. The Village shall also provide notice that the motor vehicle will remain impounded pending the completion of an administrative hearing, unless the owner or lessee of the vehicle or a lienholder posts with the Village a bond equal to the administrative fee as provided by ordinance and pays for all towing and storage charges.

D. Preliminary Hearing: If the owner of record of a vehicle seized pursuant to this Section desires to appeal the seizure, said owner must make a request for said hearing within 24 hours of the seizure. Said request shall be in writing and filed with the Chief of Police or designee who shall conduct such preliminary hearing within 24 hours after receipt of the request excluding Saturdays, Sundays, or Village holidays. All interested persons shall be given a reasonable opportunity to be heard at the preliminary vehicle impoundment hearing. The formal rules of evidence will not apply at the hearing and hearsay evidence shall be admissible only if it is the type commonly relied upon by reasonably prudent persons in the conduct of their affairs. If, after the hearing, the Chief of Police or the designee determines there is probable cause to believe that the vehicle is subject to seizure and impoundment pursuant to this Section, the Chief or the designee shall order the continued impoundment of the vehicle as provided in this Section, unless the owner of the vehicle posts with the Village a cash bond in the amount of \$500 plus costs of prosecution and pays the tower any applicable towing and storage fees. If the Chief of Police or the designee determines that there is no such probable cause, the vehicle will be returned without penalty or other fees.

E. Administrative Hearing:

1. All owners of record of seized and impounded vehicles shall be provided with a notice of hearing within five business days after a vehicle is seized and impounded pursuant to this Section. The Village shall notify the owner of record at the owner's address as registered by the Secretary of State or any other applicable governmental agency, by first class mail, of the date, time, and location of a plea hearing that will be conducted in accordance with Chapter 9, Code Hearing Department, of Title 1 of this Code. Unless waived by the owner of record, a hearing shall be scheduled within 45 days of the mailing of the notice of hearing.
2. The owner will appear at a hearing and enter a plea of guilty or not guilty. If, after the hearing, the Administrative Law Judge determines by a preponderance of evidence that the vehicle was used in connection with a violation set forth in this Section, the Administrative Judge shall enter a written order finding the owner of record of the vehicle civilly liable to the Village for an administrative penalty in the amount of \$500 and requiring the vehicle to continue to be impounded until the owner pays the administrative penalty plus costs of prosecution to the Village plus fees to the tower for the towing and storage of the vehicle. If the owner of record fails to appear at the hearing, the Administrative Law Judge shall enter a default order in favor of the Village.
3. If, after the hearing, the Administrative Law Judge does not determine a preponderance of the evidence that the vehicle was used in such violation, the Administrative Law Judge shall enter a written order finding for the owner and for the immediate return of the owner's vehicle or cash bond without fees.
4. The final decisions of the Administrative Law Judge shall be subject to judicial review under the provisions of administrative review law.

F. Administrative Penalty: If an administrative penalty is imposed pursuant to this Section, such penalty shall constitute a debt due and owing to the Village unless stayed by a court of competent jurisdiction. If a cash bond has been posted pursuant to this Section, the bond shall be applied to the penalty. The Village may seek to obtain a judgment on the debt and enforce such judgment against the vehicle after the deadline for seeking review under administrative review law has passed. Except as provided otherwise in this Section, a vehicle shall continue to be impounded until the penalty plus costs of prosecution are paid to the Village and any applicable towing and storage fees are paid to the tower, in which case possession of the vehicle shall be given to the person who is legally entitled to possess the vehicle, or the vehicle is sold or otherwise disposed of to satisfy a judgment to enforce a lien as provided by law. If the administrative penalty, costs, and applicable fees are not paid within 35 days after the Administrative Law Judge issues a written decision the vehicle shall be deemed abandoned and shall be disposed of in the manner provided by law for the disposition of abandoned vehicles.

G. Vehicle Possession:

1. Except as otherwise specifically provided by law, no owner, lien holder, or other person shall be legally entitled to take possession of a vehicle impounded under this Section until the administrative penalty, costs, and fees applicable under this Section have been paid. However, whenever a person with a lien of record against an impounded vehicle has commenced foreclosure proceedings, possession of the vehicle shall be given to that person if such person agrees in writing to refund to the Village the amount of the net proceeds of any foreclosure sale, less any amounts required to pay lien holders of record, not to exceed the administrative penalty, plus the applicable costs and fees.
2. For purposes of this Section, the “owner of record” of a vehicle is the record title holder as registered with the Illinois Secretary of State or any other applicable governmental agency.

H. Bail Bond Fee:

1. The Police Department shall charge an administrative processing fee in the amount of \$20 for posting bail or bond in any legal process, civil or criminal, or on any bookable arrest, including a warrant, to be levied and paid at the time of posting said bail or bond.
2. In order for the fee to be assessed, the subject must be processed in the Police Department’s booking room and post bond at the Police Department.
3. Exception: The processing fee shall not be charged to a subject if the individual is incurring the administrative vehicle impoundment penalty.
4. If the administrative processing fee is imposed pursuant to this Section, such pen-

alty shall constitute a debt due and owing to the Village, and the Village may seek to obtain a judgment on the debt and enforce such judgment as provided by law.