

**ORDINANCE NO. 17-\_\_\_\_\_**  
**AN ORDINANCE ADOPTING AN Administrative Adjudication Code Hearing System FOR CODE ENFORCEMENT VIOLATIONS**

WHEREAS, the Village of Westmont is a municipal corporation duly organized and operating pursuant to the laws of the State of Illinois; and

WHEREAS, the Village of Westmont Board of Trustees has determined that when a municipal code violation exists within the Village of Westmont for any Community Development issue, it would serve the Village better to obtain compliance as well as penalties through a Code Hearing Unit ; and

WHEREAS, in an administrative code hearing unit, violations of the Municipal Code regarding Community Development-type provisions would be heard by a hearing officer; and

WHEREAS, the Village of Westmont Board of Trustees has determined that continuing code violations are detrimental to the health, safety, and welfare of the community; and

WHEREAS, the Village of Westmont Board of Trustees has determined the most efficient method of handling code violations is to provide an administrative code hearing system for adjudication; and

WHEREAS, the Village of Westmont Board of Trustees desires to enact an ordinance providing for a Code Hearing Department and Administrative Code Hearing system which will regulate, municipal code violations within the Village, finding that doing so will protect the public health, safety and welfare, and improve the community of the Village of Westmont.

NOW, THEREFORE, BE IT ORDAINED by the Mayor and Board of Trustees of the Village of Westmont, DuPage County, Illinois, as follows:

Section 1: Chapter 1 of the Westmont Code of Ordinances is hereby amended by the adoption of the Westmont Administrative Adjudication Code Hearing System, which shall commence as a new section entitled “1-100. ADMINISTRATIVE CODE HEARING SYSTEM with Section 100 of said Chapter 1, and which shall read as follows:

**1-100. Village Administrative Code Hearing System-Established.**

A. There is hereby established and created within the Village an Administrative Code Hearing System to enforce and adjudicate violations ("Violations") of the following Chapters of the Municipal Code of the Village of Westmont (the "Code"), as the same have been, and may from time to time hereafter be, amended:

1. Chapter 6. Advertising
2. Chapter 14. Animals
3. Chapter 16. Illicit Discharge Detection and Elimination
4. Chapter 18. Buildings and building regulations
5. Chapter 22. Businesses
6. Chapter 34. Engineering and flood control
7. Chapter 38. Nuisances
8. Chapter 42. Fire Prevention, Fire Protection and Emergency Services
9. Chapter 46. Health and Sanitation
10. Chapter 10. Housing
11. Chapter 66. Solid Waste
12. Chapter 70. Streets, Sidewalks and other Public Places
13. Chapter 80. Trees and landscapes
14. Chapter 82. Utilities
15. Chapter 86. Vegetation
16. Appendix A. Zoning

2. Such other Village ordinances and Code provisions as the Mayor and Board of Trustees may from time to time designate.

B. The provisions of 65 ILCS 5/1-2.2-1. of the Illinois Municipal Code are hereby adopted and incorporated into this Chapter as if fully set forth herein.

C. The provisions of this Chapter shall apply to administrative adjudication proceedings to the extent that they are not inconsistent with the provisions of the Code which set forth specific procedures for the administrative adjudication of particular Code provisions.

**1-101. Hearing Procedures Non-Exclusive.**

The provisions of this Chapter shall not preclude the Village from using other methods or proceedings to enforce and adjudicate the Code or other ordinances of the Village, including, without limitation, the institution of an action in the DuPage County Circuit Court or the United States District Court, or any administrative proceeding.

**1-102. Administrative Composition.**

The Administrative Code Hearing System shall provide for one or more Hearing Officers, all with the power, authority and limitations as set forth in this Chapter.

**1-103. Hearing Officer.**

A. *Appointment.* The Village Manager shall appoint one or more qualified Hearing Officers to perform the functions set forth in this Section.

B. *Independent Contractor.* A Hearing Officer shall be employed as an independent contractor of the Village and shall not be considered an employee of the Village. A Hearing Officer may be removed, with or without cause, by the Village Manager.

C. *Qualifications.* To qualify as a Hearing Officer, an individual must:

1. Be an attorney licensed to practice law in the State of Illinois for at least three years;
2. Be in good standing with the Illinois Supreme Court Attorney Registration and Disciplinary Commission;
3. Complete a formal training program approved by the Village Manager and the Village Attorney consisting of:
  - a. Instruction on the rules of procedure for Administrative Code Hearings;
  - b. Orientation to each subject area of the Code that will be adjudicated;
  - c. Observation of hearings conducted by Illinois municipalities that have adopted the Administrative Adjudication Code Hearing System; and
  - d. Participation in hypothetical hearings, including ruling on evidence and issuance of final orders.

D. *Compensation.* Authorization for compensation for a Hearing Officer shall be made by the Mayor & Village Board of Trustees through the Village's annual budget process. Compensation shall be determined by the Village Manager within approved budget limitations.

E. *Authority and Powers.* Hearing Officers shall have all powers necessary to conduct fair and impartial hearings including, but limited to, the power to:

1. Hold conferences for the settlement or simplification of the issues;
2. Administer oaths and affirmations;
3. Hear testimony and accept evidence that is relevant to the allegation of a violation;
4. Issue subpoenas directing witnesses to appear and give relevant testimony at the hearing, upon the request of the parties or their representatives;
5. Preserve and authenticate the record of the hearing, including all exhibits and evidence introduced at the Hearing;
6. Issue a determination, based on the evidence presented at the hearing, on whether a violation occurred or exists. The Hearing Officer's determination shall be in writing and shall include a written finding of fact, decision, and order, including the fine, penalty, or other action with which the defendant must comply; and
7. Impose penalties consistent with applicable Code provisions and assess costs upon finding a defendant liable for the charged violation, except as expressly provided in this Chapter.

**1-104. Violation Notice.**

A. A notice of any violation ("Violation Notice") shall be issued, in writing, by the persons authorized under this Chapter, shall contain information as to:

- i. Description of the real estate sufficient enough for identification;
- ii. The nature of the Violation;
- iii. A correction order allowing for a reasonable time to make the repairs, and improvements required to bring the property, dwelling unit, or structure into compliance with the provisions of this Code;
- iv. A statement informing the property owner or violator information regarding right to appeal;
- v. A statement of the right for the Village to file a lien in accordance with state and municipal law;
- vi. Shall be certified; and
- vii. Shall constitute prima facie evidence of the Violation cited.

B. All code officers and other officers, as well as other specifically authorized individuals of any department of the Village, shall have the authority to issue Violation Notices.

C. Any individual authorized to issue Violation Notices who detects a Violation, is authorized to issue a Violation Notice thereof and shall serve the Violation Notice in the manner set forth in the Code.

D. The correctness of facts contained in any Violation Notice shall be certified by the person issuing the notice through signing his or her name to the Violation Notice at the time of issuance.

E. The records of the Community Development Department/Code Enforcement Division shall retain the original or a facsimile of the Violation Notice and keep it as a record in the ordinary course of business.

F. The Violation Notice or a copy thereof shall be admissible in any subsequent administrative or judicial proceeding to the extent permitted by law.

**1-105. Service.**

A. Service of any Violation Notice shall be made as follows:

1. Personal delivery by leaving a copy of or by handing the notice to the owner, occupant or lessee of the property or business, if present; or
2. Mailing the notice by certified mail to the owner, occupant or lessee of the property or business; or
3. If notice is returned showing that the letter was not delivered, a copy thereof shall be posted in a conspicuous place in or about the structure or property effected by such notice; or

B. If service of notice is provided by first class mail for any Violation Notice or for any Hearing notice, said service shall be deemed sent and shall be complete on the date the notice is deposited, postage prepaid, in the United States mail. The counting of any time period as set forth in the Code shall begin to run on the date the notice is deposited, postage prepaid, in the United States mail.

### **1-106. Hearings.**

All Hearings conducted under the Administrative Adjudication Code Hearing System shall be conducted by a Hearing Officer and shall be in accordance with the following rules and procedures:

- A. A record of the Hearing shall be made by tape recording or other appropriate means.
- B. The parties may be represented by counsel, present witnesses, and cross-examine opposing witnesses.
- C. No continuance shall be authorized by the Hearing Officer in proceedings under this Chapter except when 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 this section shall not exceed 25 days.
- D. All testimony shall be given under oath or affirmation.
- E. Parties may request the Hearing Officer to issue, and the Hearing Officer shall have the authority to issue, subpoenas to direct the attendance and testimony of relevant witnesses and produce relevant documents.
- F. The formal and technical rules of evidence shall 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.
- G. In a hearing on the propriety of impoundment of a vehicle any sworn or affirmed report that (i) is prepared in the performance of a law enforcement officer's duties and (ii) sufficiently describes the circumstances leading to the impoundment, shall be admissible evidence of the vehicle owner's liability, unless rebutted by clear and convincing evidence.
- H. Each hearing shall culminate in a determination of liable or not-liable by the Hearing Officer or a determination of liability based upon the failure of the defendant to appear at the hearing.
- I. The Hearing Officer shall, upon a determination of liability, assess fines and penalties in accordance with the Code. In addition, the Hearing Officer shall have the discretion to assess costs upon finding a defendant liable for the charged violation. In no event shall the Hearing Officer have authority to: (a) impose a penalty of incarceration; or (b) impose a fine in excess of \$750.00 for a violation.
- J. The maximum monetary fine imposed under the Code shall be exclusive of costs of enforcement or costs incurred by the Village to secure compliance with the Village's Code and ordinances, and shall not be applicable to cases to enforce the collection of any tax imposed and collected by the Village.

K. If the defendant or his or her attorney or designee fails to appear on the date set for the hearing, 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.

**1-107. Judicial Review.**

Any final decision by a Hearing Officer that a 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 (735 ILCS 5/3-101 *et seq.*).

**1-108. Debt to the Village.**

Any fine, penalty or part of any fine or penalty assessed in accordance with the provisions of the Code and remaining unpaid after the exhaustion of, or the failure to exhaust, administrative procedures under this Chapter and the conclusion of any judicial review procedures, shall be a debt due and owing the Village, and, as such, may be collected in accordance with applicable law.

**1-109. Enforcement of Judgments.**

A. After expiration of the period that judicial review under the Illinois Administrative Review Law may be sought for a final determination of any 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.

B. Prior to any expenses being fixed by the Hearing Officer pursuant to this subsection (B), the Village shall provide a 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 hearing that shall not be less than ten (10) days from the date that notice is served. If notice is served by mail, the ten (10) day period shall begin to run on the date that the notice is deposited in the mail.

**1-510. Schedule of Fines/Penalties.**

For a violation of any Village ordinance, fines and penalties shall be as established from time to time by the Mayor and Board of Trustees.

Section 2: If any section, paragraph, clause or provision of this ordinance shall be held invalid, the invalidity thereof shall not affect any of the other provisions of this ordinance.

Section 3: All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed to the extent of the conflict.

Section 4: This ordinance shall be in full force and effect after its passage, approval and recording as provided by law.

PASSED AND APPROVED by the Mayor and Board of Trustees of the Village of Westmont, DuPage County, Illinois, this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

Ayes: \_\_\_\_\_ Nays: \_\_\_\_\_ Absent: \_\_\_\_\_

APPROVED:

\_\_\_\_\_  
Ronald J. Gunter, Mayor

ATTEST:

\_\_\_\_\_  
Virginia Szymski, Village Clerk